



McKenzie Friends Club

# GUIDE TO A **MCKENZIE FRIEND**

By McKenzie Friends Club  
<https://mckenziefriendsclub.com>



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Go to [Family Court Secrets](#) for more information about McKenzie Friends and the [McKenzie Friends Club](#).  
<http://familycourtsecrets.com.au>

This guide is produced for educational purposes. This is a general guide and cannot contemplate all eventualities dealing with a friend in court. It covers the role of a friend to court in a general way. This guide will provide information on how a friend (McKenzie Friend) can assist a self-representing person in Court.

It is recommended that self-representing persons and their McKenzie Friend obtain legal advice. The law, including Acts, Regulations, Rules of Court, Court Practices and Court Precedents can change without warning. The users of this guide should check to see if this guide is up to date. This is another reason to consult a lawyer.

### **BACKGROUND: Who are McKenzie Friends?**

If you are representing yourself in court (i.e., you are not using a solicitor or barrister to represent you), you may have someone sit next to you to take notes, offer non legal advice (in whispers), and prompt you to ask particular questions etc, but cannot address the court directly. This person is usually called a “McKenzie Friend”.

Many people don't use McKenzie friends, and they are not meant to be a substitute for a solicitor. It is just another name for an assistant or friend to sit with you, however a McKenzie friend is very useful if you have not been in court before and need that extra bit of confidence or help. Even if you are confident about your defence, a McKenzie friend can help by taking notes, freeing you to concentrate on your own case.

In order to use a McKenzie friend, you simply tell the clerk at the start of the trial (when you are asked to sit in the dock or at the front of the courtroom, separate from the rest of the public or your supporters), that you are not represented by a solicitor and would like to have an assistant to help you with taking notes and occasional non legal advice. It should be as straightforward as that, there is normally no need to mention the term “McKenzie friend”, or to justify your desire to have an assistant by complicated legal argument.

### **THE LEGAL BASIS OF MCKENZIE FRIENDS**

McKenzie friends have no official legal status. They have no particular right to sit next to you in court, and the name is not an official one. You however, as a defendant, have a right to reasonable assistance, and that is the basis for allowing the McKenzie friend. The name

comes from a particular case which establishes this assistance (see below).

Two cases are involved. The first is *McKenzie v McKenzie*, 1970, which was a divorce case in which the court of appeal ruled that the husband (who did not have legal aid and was representing himself), should have been allowed to have someone sit next to him to give him advice and take notes etc. The second case in *R v Leicester City Justice et al, ex parte Barrow et al*, 1991, which was a poll tax case in which the defendants had wanted a friend to sit with them and help them in the same sort of way.

If you ever need to mention these two cases, you need to know not just the titles of these two cases (as above, in italics), but also the reference to their reports in the law journals. *McKenzie v McKenzie* is (1970) 3 W.L.R. 472, which you would read out in court as "year 1970, volume 3, Weekly Law Reports, page 472". *R v Leicester City Justices* is (1991) 3 W.L.R. 368, which you read out as "year 1991, volume 3, Weekly Law Reports, page 368."

Here are two favourable legal mentions:

*[The applicants] have a right to be heard in their own defence. Fairness, which is fundamental to all court proceedings, dictates that they shall be given all reasonable facilities for exercising this right and, in case of doubt, they should be given the benefit of that doubt for courts must not only act fairly, but be seen to act fairly. (Lord Donaldson, page 379A).*

*In my opinion there are in general no grounds for objecting to a litigant in person being accompanied by an assistant, who will sit beside the person, take notes and advise sotto voce on the conduct of the person's case. (Staughton LJ, page 380E-F).*

## WHAT DOES A MCKENZIE FRIEND DO?

- provides moral support for the self representing person;
- sits at the counsel table with the self representing person;
- assists with paper work including the taking of notes as the court proceedings go on;
- whispers quiet advice to the self representing person;
- generally assists the self representing person.

The McKenzie friend cannot speak in court for the self representing person except in special circumstances. Special circumstances may include having a language problem, having a disability or being of old age to name a few. The decision to allow this to happen lies with the discretion of the judge hearing the case. Some judges are more accommodating than others. For that reason it is best to have a self representing person prepared to go ahead alone in case special permission is not given by the judge.

## **WHO CAN BE A MCKENZIE FRIEND?**

Anyone can be a McKenzie friend. There are no specific qualifications. The following Qualities make a good McKenzie friend: -

- ➔ being trustworthy
- ➔ having common sense;
- ➔ being well organised;
- ➔ being a “big picture” person;
- ➔ being a person who is good at reading and writing English.

Persons who are “show-offs” do not make good McKenzie friends. Persons who are confident that they know the law, do not make good McKenzie friends. If you want someone who is knowledgeable about the law, get a lawyer to represent you. The function of a McKenzie friend is different. He or she exists to assist you, not to act as your lawyer. Finally, a person who may be required give evidence in front of the court should not act as your McKenzie friend.

A level headed, reasonably educated person makes an excellent McKenzie friend. In addition, there is nothing stopping you from having more than one McKenzie friend. One could help you prepare the paper work for your case; another could accompany you to court. Please remember, you can only have one McKenzie friend sit with you during the court hearing. Other friends may sit in the main body of the court room.

## **INSTRUCTIONS FOR A MCKENZIE FRIEND**

### **Just Being There**

The most important contribution a McKenzie friend can make is support. Going to court can be intimidating. The self representing person needs someone by his or her side. Beyond support, here are some ways a McKenzie friend can help. Remember a McKenzie friend may not be able to do all these things.

### **Attending Legal Aid or Pro Bono Clinics**

Self representing persons will need legal advice. The McKenzie friend can attend legal clinics with the self representing person. A second pair of eyes and ears can be useful. Many people are nervous when they see a lawyer. Ask the lawyer if a McKenzie friend can sit in. Some lawyer interviews are not appropriate to have a friend sit in with you.

### **Reading Self Help Material**

Written material exists to help self representing persons. A McKenzie friend can read and explain it to a self representing person. Some people have literacy problems. Even those with no literacy problems can benefit from having someone else read over the material. Written self help material can be quite expensive.

### **Preparing Court Documents**

An important element of the court hearing is the preparation of court documents including affidavits. Here too, the McKenzie friend can help. A self representing person may not be good at writing. A McKenzie friend who is a good writer can help. At least, the McKenzie friend can proofread the material.

## **Attending Sample Court Hearings**

Attend a court hearing on a day before your case is actually heard. The self representing person can do this along with the McKenzie friend. This can give you an idea of what to expect. During this time, it might be a good idea to check out the local eating establishments for the day of the court hearing. On the day of the hearing you do not want to be spending a lot of time looking for a place to eat. You want something quick, light and nearby. The McKenzie friend and self representing person may be discussing the case over lunch depending on the court schedule that day.

## **PREPARING FOR THE COURT HEARING**

A McKenzie friend can help the self representing person prepare for the court hearing. This friend can read over all the court documents and help the self representing person prepare the presentation to the court. Are the important points being covered? Is the presentation clear and simple?

## **The Court Hearing**

The day of the hearing is where the McKenzie friend shines. Here are some of the ways a McKenzie friend can help: -

- ➔ The McKenzie friend can help locate the courtroom.
- ➔ The McKenzie friend can ensure you keep to your notes or time schedule during your presentation. The best way to do this is to pass a note or quietly whisper in the person's ear.
- ➔ The judge may ask where certain material is (court documents). The self representing person may not be able to find it. The self representing person can always say to the court "your honour I can't find it right away. I will ask my friend to find it." The self representing person can always point out the material to the judge later. (A McKenzie friend should always have copies of court documents).
- ➔ The McKenzie friend can monitor the body language of the judge. Judges sometimes telegraph their views of the case by body language. A McKenzie friend can monitor better than a self representing person. For example, the self representing person may be hammering a point in their argument too much. The judge may become frustrated because the self representing person is not moving along to the next point. A McKenzie friend can draw this to the attention of the self representing person.
- ➔ A McKenzie friend can keep notes as the matter proceeds in court.
- ➔ The court hearing for your case may have a break. There are breaks in the morning or afternoon sessions. During the break, the McKenzie friend can go over the presentation so far pointing out matters that have been left out or things that should be clarified.

- ➔ At the end of the self representing person's presentation, the self representing person should always turn to the McKenzie friend to see if there is any final comments that should be made.

The McKenzie friend must be careful not to overdo it. A little bit of note passing and whispering in the ear is okay. However, if it becomes persistent, the McKenzie friend will annoy the judge and go outside of the role of the McKenzie friend.

## **WAIVER**

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