



# family flyer

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Family Lawyers

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## Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

## This edition includes:

- Seminar Series
- Domestic Violence – Police Held to Have Trespassed
- What Weight is Given to Children’s Wishes?
- The Treatment of a Lottery Win in Property Settlements.

## SEMINAR SERIES

The launch of our latest Public Seminar Series is almost here! The Series will include 8 seminars presented in various locations around Brisbane. For a “Guide to Family Law” make a note in your diary (the first 2 seminars are,):

- Wednesday, 27<sup>th</sup>, August, 6 – 7pm – Ashgrove Golf Club, and
- Monday, 1<sup>st</sup>, September, 1 – 2pm – Sebel Hotel, Brisbane City.

A complete list of all seminar dates and locations will soon be available on our website [www.mlfl.com.au](http://www.mlfl.com.au).

## DOMESTIC VIOLENCE – POLICE HELD TO HAVE TRESPASSED

The High Court last week made a landmark decision when finding that police officers who had attended a house to investigate an allegation of domestic violence had trespassed when they had not left when requested.

### Facts:

- After hearing yelling and screaming coming from a couple’s apartment, a neighbour reported an alleged domestic violence incident to the police.
- The police entered the apartment and the boyfriend told the police his girlfriend had left. He then agreed to allow the police to examine the premises to see whether the girlfriend had in fact left. During this inspection the boyfriend withdrew his permission and asked the police to leave.
- The police refused to leave until their investigation was complete. A physical dispute erupted and the boyfriend was arrested.
- The boyfriend successfully sued the police

for trespass and was awarded \$418,000 in damages.

- The police then successfully Appealed the decision. The Appeal Court held that the police were entitled to enter and remain at the apartment even after the consent was withdrawn.

### High Court:

The boyfriend then successfully Appealed to the High Court. The High Court held that:

- The boyfriend’s withdrawal of the invitation to the Police terminated the police officer’s permission to remain on the premises. The boyfriend’s withdrawal of permission could only have been overruled by the police if the suspected victim of the violence (the girlfriend) had invited the police to remain on the premises.
- The police have a duty to take reasonable steps to make a person breaching or threatening to breach the peace to refrain from doing so, in this case however, there was no continuing or threatening breach when the police arrived at the apartment.

## WHAT WEIGHT IS GIVEN TO CHILDREN’S WISHES?

One of the most frequently asked questions in Family Law is “What age does a child have to be for the Court to take their wishes into account?” Regrettably, the answer is not straight-forward.

The question is regularly considered by the Court. Earlier this year the Court had to consider the weight that should be given to two children’s views with regard to their “time with” their Father.



**Facts:**

- The 2 children (daughters) were aged 13 years and 15 years. The parents had been separated for 2 years.
- The children said they were “extremely angry” with their Father and were not ready to see him.

**Court Findings:**

- The Mother had involved the children in matters that should have been kept between the parents.
- The 15 year old daughter held a sophisticated understanding of the situation and felt betrayed by her Father. Although the Mother reinforced the children’s negative attitudes towards their Father, the children were found to have made their own assessment and held these strong views since the marriage breakdown.
- Significant weight should be given to the children’s views due to their maturity and age.

**Court Order:**

- The Mother and Father have equal shared parental responsibility, although this did not mean the children would have to “spend time” with their Father.
- The children should have counselling and after an assessment, and only if appropriate, should joint counselling with their Father be considered.
- It would not be of benefit for the children to see their Father. For the first 3 months no contact was to occur but after that time the Father be permitted to forward cards, gifts and correspondence to the children.

**THE TREATMENT OF A LOTTERY WIN IN PROPERTY SETTLEMENTS**

The Family Court considers lottery wins received during cohabitation as a joint contribution of the couple. This was made clear in a recent Appeal by a Wife against a Trial Judge’s decision.

**Facts:**

- The couple was married for 22 years and had 3 children.
- The property was valued at \$980,000.
- Both spouses worked hard and made contributions towards the assets and the welfare of the family.
- The Husband made a greater initial contribution, having 10 years of accumulated superannuation entitlements.
- The Husband also purchased a lottery ticket during the marriage and won \$60,000. He shared part of this with the Wife’s father and uncle.

**Trial:**

- The trial Judge regarded the lottery win as substantial and as attributable to the Husband and apportioned the property 55% to the Wife and 45% to the Husband.

**Wife’s Appeal:**

The Wife Appealed and was successful. The Appeal Court changed the Trial Judge’s Order, saying:

- The lottery win was a joint contribution.
- The gift from the Wife’s father of \$250,000 should have been treated as a contribution on behalf of the Wife.

The Court Ordered 60% to the Wife and 40% to the Husband.

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