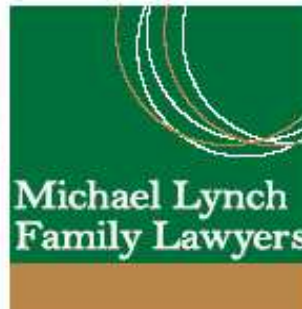


family flyer



Issue #125

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:

- Stopping a Spouse's Interference with a Business
- What Happens with a Lotto Win?
- Getting Money for Legal Costs
- "Close-up" Edition
- Hague Convention and India
- Glossary

STOPPING A SPOUSE'S INTERFERENCE WITH A BUSINESS

The Court recently considered a case involving a couple that owned a business, to which harm was being caused as a result of the separation.

The couple had been married for 17 years, during which the Husband worked full-time and the Wife worked part-time in the business. After separation, the Husband continued to work at the business and the Wife worked from home.

Later it was agreed the Wife would attend the business two days a week. The Husband claimed that the Wife took a cheque book from the business and wrongly removed a total of \$51,000 from various business bank accounts and was attending the business on more occasions than agreed. This resulted in the Husband choosing between paying employees' wages and suppliers. The Wife withdrew another \$15,000 without the authority of the Husband and claimed it was a wage pay-back, the Husband then changed the Wife's password.

The Court found that the stress on the company and its other employees was not to the company's benefit. The Court concluded that the Wife did not tell her lawyers that she had withdrawn the wage pay-back.

The Court Ordered an injunction against the Wife from interfering with the business, so it would not be brought down with the parties' marriage.

WHAT HAPPENS WITH A LOTTO WIN?

A British bus driver recently won lotto a day after his divorce. The Court said he didn't have to share it with his former Wife. If this happened in Australia – what would be the outcome?

In a recent case in Australia, a Husband won \$5 million in the lottery, 20 months after separation. The couple had been together for 12 years and had one child. At separation, however, they had no property. The Court granted the Wife 15% of the lotto win, an amount of \$750,000.

GETTING MONEY FOR LEGAL COSTS

It is often the case that when separation occurs, one spouse is unable to meet their legal expenses in pursuing their property settlement entitlement. In such a situation, a spouse can request a payment from the other spouse – who holds the bulk of the assets.

This process has tended to be tedious, if a Court Application has had to be made – but this has recently changed dramatically and been made easier, by a recent Full Court decision.

Here are the facts of a case that recently followed this leading decision:

The Facts:

- The Husband, 66 and Wife, 38, disputed the date of separation, but the marriage was arguably between 3 to 6 years.
- The Husband brought all assets into the marriage, including a business.



- Property values were in dispute, but the Husband had assets of approximately \$900,000 to \$2.4 million.
- The Wife needed funds to continue with legal proceedings.

Court Order:

- The Husband pay the Wife \$135,000 towards her past and future legal costs.

“CLOSE-UP” EDITION

Once a property settlement is finalised and a Court Order is made, people sometimes come back at a later date wanting to consider a challenge to the Order. There are a variety of reasons someone would consider this – e.g. the delayed discovery of hidden assets, or the pressures that existed at the time of the property settlement.

Is it possible to change a finalised property settlement? To find out more read [“How Final is Final? Varying and Setting Aside Court Orders”](#).

HAGUE CONVENTION AND INDIA

In our last edition we featured “Holiday in India,” in which the Father did not want the Mother to take the child to India, as he feared that the Mother would not return with the child.

We received queries from several readers, as to whether India is part of the Hague Convention. Our sincere thanks to those readers!

India is a member of the Hague Convention, (there are various treaties that have been enacted under that Convention). By way of clarification, India is not a signatory to the specific Treaty on

the “Civil Aspects of International Child Abduction”. The purpose of that Treaty is to secure the prompt return of children wrongfully removed or retained in any State or Country that is a party to that particular Treaty.

The Treaty allows for the laws of one contracting Country to respect the laws of another Country if they are both a signatory of this particular Treaty.

GLOSSARY

Here are some explanations of common Family Law terms:

- **Affidavit:** a written statement by a party or witness, it is the main way of presenting the facts by a person in Court.
- **Consent Order:** an Order approving an agreement between parties in financial matters and/or children matters.
- **Contravention:** when a Court finds a party has not followed a Court Order, that party has then breached (or contravened) the Order.
- **Sealed copy:** a document that has been filed in the Court and has a Court seal (stamp) on it.
- **Service:** the process of sending or giving Court documents to the other party to a case.
- **Subpoena:** a document issued by a Court at the request of a party, requiring a person to produce documents and/or give evidence to the Court.

Contact details

Michael Lynch Family Lawyers

Principal

Michael Lynch*

Senior Associates

Helen Bryden*

Kirstie Colls*

Associates

Elizabeth Millar

Amelia Trotman

Solicitors

Clare McCormack

*Queensland Law Society Accredited Family Law Specialists

Telephone: 07 3221 4300

Facsimile: 07 3221 9454

Email: law@mlynch.com.au

Web: www.mfl.com.au

Address: Level 6
193 North Quay
Brisbane QLD 4000

Post: PO Box 12027
George St, Brisbane Qld 4003



Copyright 2008

This document contains general comments only and should not be relied upon as specific legal advice. Readers should contact this Office for a detailed information or advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to any person acting in reliance on this document shall be accepted by the Principal of this Office. No part of this document may be included on any document, circular or statement without our written approval.