



family flyer

Michael Lynch
Family Lawyers

Issue #127

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:

- New Seminar Series!
- “Close-up” – Edition
- Property Settlement: Considering the “Forever Student”
- Child Stealing

NEW SEMINAR SERIES!

If you are about to separate and need easy-to-understand legal information, our **NEW Seminar Series** is for you! Whether it’s general information (on shared parenting, property settlements, agreements etc) or specific information on how to protect your assets – don’t miss these seminar dates!

Two **NEW** presentations – “**Separation & Children**” and “**Separation and Property**”! Family Law Specialist and renowned speaker, Michael Lynch will be presenting the seminars across Brisbane. Book now (ph. 3221 4300) to secure your seat. The first (2) seminars are on “Separation and Property”:

- Tuesday, 27 July, 6-7pm – Pathways Library, 1 The Corso, [North Lakes](#).
- Wednesday, 28 July, 6-7pm – McLeod Country Golf Club, 61 Gertrude McLeod Crescent, [Mt Ommaney](#).

For complete details of dates, venues and topics visit www.mlfl.com.au/seminars.

“CLOSE-UP” – EDITION

‘Relocation’ cases are challenging at the best of times, but what happens when a parent only wants to relocate a short distance away? Read more in ‘[Relocating Locally](#)’.

PROPERTY SETTLEMENT: CONSIDERING THE “FOREVER” STUDENT

In a property settlement, once the property has been valued and ‘contributions’ by both partners have been taken into account, adjustments are often made for the ‘future needs’ of the partners. ‘Future needs’ can take into account a wide range of potential factors. This

can include a situation where one spouse is studying to attain qualifications to earn a higher income.

How far will the Court go in considering such a situation? In a recent case, the Court had to consider a situation where the Husband had been a student for more than 9 years!

The Facts:

- The Wife, aged 46 and Husband, aged 56 had been in a relationship for 8 years and had 1 child, aged 8. Since separation the child had lived with the Wife.
- When the child was born, the Wife worked 1 day a week and commenced studying a university degree for 3 years. During this time, the Wife received a Centrelink income.
- Upon qualification, the Wife was employed and earned \$60,499 a year. The Wife was the primary income earner for the family, working full-time during the last 4 years of the marriage, when the child began school.
- The Husband was a full-time PhD student and received a student Centrelink allowance of \$245 a week. The Wife described him as a “perpetual student.”
- The Husband initially brought into the marriage property worth approximately \$140,000.
- The Husband had not paid any Child Support since separation and said that he was not in a position to do so, as he was not finishing his studies until 2013.
- The Husband made a claim for Spouse Maintenance from the Wife of \$250 a week.



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Court Found:

- During the relationship, both spouses were found to have contributed equally to the family expenses and the care of the child.
- Since separation, the Wife had the sole financial and caring responsibility of the child, with the exception of some school holidays. The Wife had greater 'future needs.'
- The Husband did not have the care of the child and did not have the capacity to gain employment.

Court Order:

- The Wife was not required to pay Spouse Maintenance to the Husband.
- The Wife receive 45% of the property pool, of which 15% was for 'future needs.'

CHILD STEALING

A recent Queensland Family Law dispute resulted in the extraordinary situation of criminal charges being laid for 'child stealing.'

The Facts:

- The Mother had the primary care of her 2 children, a daughter of school age and a son, aged 2.
- The Mother had asked the Father to look after the 2 children while she was moving house. When the Mother then tried to collect the children, the Father refused.
- The Mother called the police and the police visited the Father and reported back to the Mother and her Father (the children's 'grandfather') that the children were being

properly cared for. The 'grandfather' then stated that he would 'kidnap' the kids. The police told him he could be charged and he should get Family Law advice.

- The 'grandfather' then tried to take the daughter from the back of a car when the Father was in the driver's seat, but was prevented from doing so by passers by.
- An altercation later occurred at a shopping centre, where the Mother, the 'grandfather' and the children's uncle tried to take the daughter from a shopping trolley, by pulling the Father away and kicking him.

The Criminal Trial:

- The 'grandfather' was charged with 'child stealing' and assault. At trial the jury found him not guilty of child stealing, but guilty of assault.

On Appeal:

- The 'grandfather' argued that he was wrongly sentenced for 'child stealing' when the jury found that he acted in the belief he had a right to take the children.
- The Judge agreed with the Trial Judge's decision and said that the Trial Judge was not sentencing the 'grandfather' for 'child stealing,' only for assault. It was found that although the 'grandfather' acted in good faith and this relieved him from the charge of 'child stealing,' this was not a defence to assault.

The charge of 'child stealing' is very unusual in Family Law matters.