



# family flyer

Michael Lynch  
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 – Starts Today!
- Disqualifying the Expert
- “Close-up” Edition
- A Common Dilemma

## SEMINAR SERIES – STARTS TODAY!

Our latest Seminar Series starts today!

These seminars are extremely popular, so don't miss your opportunity to get easy-to-understand legal information and advice on separation, children's arrangements and property agreements at one of our seminars.

The seminars provide amazing value - valued at over \$500 – but for ONLY \$20! For all attendees, there is also a **Special Offer!**

We will be presenting 2 different topics across Brisbane. Check our website [www.mlfl.com.au/seminars](http://www.mlfl.com.au/seminars) for all details.

Next seminar dates:

### “Separation & Property”:

- Thursday, 10 March – 6pm, Redcliffe Leagues Club, Cnr Klingner and Ashmore Roads, Redcliffe
- Tuesday, 15 March – 1pm, Chifley at Lennons Hotel, Brisbane City
- Wednesday, 16 March – 6pm, Paloma Reception Centre, Mains Road, Sunnybank
- Tuesday, 29 March – 6pm, Links Hope Island, Hope Island

### “Separation & Children”:

- Tuesday, 8 March – 6pm, Redland Bay Golf Club, North Street, Redland Bay
- Tuesday, 22 March – 6pm, Springlake Hotel, Springfield Lakes Blvd, Springfield Lakes

- Wednesday, 23 March – 6pm, Full Moon Hotel, Eagle Tce, Sandgate

Book your seat today! Ph. 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au).

## DISQUALIFYING THE EXPERT

Can a parent get a Court appointed Psychiatric expert disqualified from giving evidence?

In a recent case, the Father argued that the psychiatrist was no longer ‘independent’ and a new expert should be appointed.

The day before the psychiatrist prepared a report on each of the parents regarding parenting arrangements for the child, the Mother's solicitor provided the psychiatrist with a document, which was a mix of opinion and allegations.

The Court stated that the test to apply when considering the disqualification of an expert, was the same test as for the disqualification of a judge. The test is – ‘whether a fair-minded, lay observer might reasonably believe that the expert might not bring an impartial mind to the resolution of the question required to decide’.

The Mother argued that the psychiatrist should not be dismissed as what was said in the document was available to the psychiatrist from other Court documents.

Despite the fact that the document was provided in breach of the Court Rules, the Court has the power to allow the psychiatrist's report to be submitted. In this case, the Court decided that a child's right to be cared for by a parent should be decided on the ‘best evidence’ available, that is evidence not obtained by breaching the rules.

The expert was disqualified on the basis that the report was not objective and unbiased.



## **“CLOSE- UP” EDITION**

Filing a Court Application should always be seen as the ‘last option’, but what happens when a former spouse can’t stop filing Court Applications?

Read more in [“What is a Vexatious Litigant?”](#)

## **A COMMON DILEMMA**

After separation, it is common for parents to move apart, whether it be interstate or locally. Often parents will decide to remain in the same city but live on opposite sides. This can complicate parenting arrangements and increase travel time. Whether a ‘week-about’ arrangement would be practicable, the Court will ask – is it workable and in the child’s best interest? The Court recently considered such a case.

### **The Facts:**

- The parents had (2) children aged 8 and 5. After separation, the parents moved 35km apart.
- For the 2 years following separation, the children lived mainly with the Mother.
- The Father lived in a Northern suburb of Adelaide and the mother in a Southern suburb. Both intended to remain living where they were.
- The children attended school in the Southern suburbs of Adelaide and also had other activities there.
- The Father wanted the children to live with the parents on a week-about basis.
- The Father’s proposal required him to drive across the metropolitan area of Adelaide twice a day. At peak hour traffic this would take an hour.

- The Mother thought the Father’s proposal was impracticable due to the ‘onerous driving’ required from the location of his home and unworkable due to his work commitments, and the children’s commitment to schooling and other activities.
- The Mother proposed that the children live with her and spend time with the Father on alternate weekends, as well as 1 night per fortnight.
- The Father argued that the time that the Mother proposed he spend with the children was inadequate to maintain a “meaningful relationship”.
- The Family Report writer supported an equal time arrangement.

### **Court found:**

- The children’s educational and social lives were where the Mother lived.
- The frequency of driving the children between the two suburbs was not practicable.

### **Court Order:**

- The children live with the Father on alternate weeks from Wednesday to Monday during school term.
- During the school holidays, the children live with the Father on a week-about basis.

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