

FAMILY Flyer



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PUBLIC SEMINAR SERIES – COMING SOON!

It's the start of a new year and our first Public Seminar Series is coming!

If you want to get up to date with the latest information in Family Law and you want it in plain English, come along to our upcoming Seminar Series!

Choose from two Seminar topics – “**Separation and Children**” or “**Separation and Property**”

Each one hour seminar provides a wealth of easy-to-understand information – valued at over \$500 – but for **ONLY \$20!** For all attendees, there is also a **Special Offer**.

The seminars will be held on the following dates:

“**Separation & Property**”:

- 28 February – Sunnybank
- 6 March – Brisbane City

“**Separation & Children**”:

- 29 February – Grange
- 7 March – Springwood

For full details visit www.mfl.com.au/seminars. Book your seat now!
Ph. 3221 4300 or email law@mfl.com.au.

A SECOND RELOCATION APPLICATION

Once a Final Court Order is made it is very difficult to vary the Order at a later date. To do so it is necessary to show that a significant change

in circumstances has occurred. In a recent case before the Court the issues were complicated as the Mother had originally filed an Application to relocate, then withdrew the Application and agreed to a Court Order, but then 3 years later sought to bring the same relocation Application. Did the Court allow her to file the Application and, if so, allow her to relocate?

The Facts:

- The Mother, aged 28 and Father, aged 46 had one child aged 7.
- The Mother had since re-partnered and had a 2 year old child with her new partner.
- The Mother had previously filed an Application to relocate from Victoria to Western Australia. The Father had opposed the Application.
- At that time a Family Report was prepared that recommended that since the child was young (about 3) that he remain close to his Father and that the Mother not relocate.
- A Consent Order was then made providing for the Mother to remain in Victoria. The child continued to live with the Mother and spent time with the Father on alternate weekends and on Tuesdays.
- A couple of years after the Orders were made the Father moved 3 hours away from the Mother. This created difficulties between the parents as the move resulted in the Father's lack of support to the Mother, making it particularly difficult since the child had ADHD.
- The Father doubted that the child had ADHD and often did not give the child his medication.

- The Mother filed another Application seeking a Court Order allowing her to move with the child to Perth. The Mother proposed that she be allowed to move as her family would provide the support which the Father could not provide, as the Mother also suffered from OCD.
- The Father opposed the Application and argued that he would not be able to get time off from work to see the child in the school holidays.
- The Father also argued that the child had a close relationship with the Father's family in Victoria.

Court Found:

- The Father did not have a job and had not had a job for some time.
- Any support from the Father disappeared once he relocated 3 hours away.
- It was in the child's best interests to live in Perth, as the Mother would be supported by her family.

Court Order:

- The Mother's Application be allowed to proceed and she be allowed to relocate to Perth with the child.
- The Mother pay for the costs of the child to travel to spend time with the Father for 3 years. Thereafter, the Mother and Father share the child's travel costs.

POST SEPARATION INCOME – HOW IS IT TREATED?

Spouses are required to make full disclosure of all post separation income and of any assets acquired or disposed of

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post-separation. The Court does have the power to 'add-back' funds to the asset pool in situations where one of the parties has acted 'recklessly, negligently or wantonly'.

So what happens with income earned by the spouses post separation?

The Court recently considered this issue when dealing with a case where the spouses had separated 6 years earlier.

The Husband earned a high income working overseas in the finance industry. Post separation, his income often exceeded \$1 million per year. The Wife worked part-time earning less than \$35,000 per year and had the primary care of their only child, aged 11.

The Husband used much of his income during the post-separation period to acquire assets. The Wife also argued that approximately \$148,000 was donated by the Husband to religious organisations and \$600,000 of the Husband's income should be 'added-back' into the asset pool as it was unaccounted for because of the Husband's failure to provide 'full disclosure'.

The Court rejected the Wife's argument and refused to add the money back to the asset pool on the basis that the spouses were entitled to reasonably conduct their financial affairs post separation in a manner that is consistent with properly getting on with their lives.

The Court noted that the Husband did not dissipate an existing asset but instead he created assets from his post separation income which added to the pool. The Husband was under no legal obligation to provide further funds from his income to the Wife in the form of spouse maintenance beyond what he was already contributing voluntarily.

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