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GETTING MONEY RELEASED

Quite often the inability of a spouse to access funds in order to meet legal and accounting costs poses a significant impediment to that spouse being able to pursue their proper entitlement. If the spouse with control of the funds does not agree to release some of those funds, a Court Application will be required. Here is an example of a recent case and the factors the court had to consider in determining whether there should be an interim distribution of funds.

The Facts:

- The Husband and Wife had a relationship spanning approximately 30 years, and there were 2 adult children of the relationship.
- The main asset of the marriage was the former matrimonial home, which the Wife was living in. The Husband also had a collection of vintage cars worth approximately \$600,000. The Husband had cash savings of \$150,000, while the Wife had savings of approximately \$20,000.
- The Wife applied for a partial property settlement of \$50,000 to be released from the Husband's savings account to her.
- The Husband opposed the release of funds on the basis that it could skew the final property settlement, particularly if the Wife received the former matrimonial home in the final settlement.
- The parties were in dispute on a number of issues including the value of the property pool, each

parties contribution during the marriage and their "future needs" entitlement.

Court Found:

- Due to the nature of an "interim hearing", the Court was not in a position to determine the factual disputes between the couple.
- An interim property order should be made cautiously.
- The Husband had significantly greater access to funds than the Wife.

Court Held:

- Both parties be allowed to access \$25,000 each from the Husband's savings account.

DIVORCE RATES

Statistics from the Australian Bureau of Statistics show high divorce rates in the first 4 years of marriage. From 2007-2009, the number of people under 30 divorcing after less than 4 years of marriage rose by 12%.

DOMESTIC VIOLENCE CHANGES – PART 2

The Queensland Domestic Violence Act was significantly changed on 17 September 2012 – (see article "[Alert – New Domestic Violence Laws – Queensland](#)".) Last edition, we discussed the new powers of police to issue "protection notices" in circumstances of domestic violence. The

domestic violence amendments have also provided police with new powers of detention.

These powers mean that police can detain a perpetrator of domestic violence in circumstances where there is a danger of injury to a person or property. The period of detention will depend on the situation but can be as long as 8 hours where a person is intoxicated and incapable of understanding the requirements of an order. A detention period of up to 4 hours is allowed where a person's behaviour indicates they present an ongoing danger.

With these powers, there are also strict requirements on police to record details of the incident in the enforcement acts register.

Stay tuned for Part 3 in the next edition of the flyer!

WHICH SCHOOL?

A decision over which school a child should attend can be complicated and involve a variety of factors including cost, religion, location, education level and the child's wishes (see our previous article – "[Getting Ready for School](#)"). The law provides that the paramount consideration is what is in the child's best interests.

The Court recently considered some of these factors when determining which school a child should attend for secondary schooling.

The Facts:

- The Mother and Father had 3 children, although it was only the eldest child that was being discussed. The parents agreed that the 2 younger children would attend the same school as the eldest child.
- Consent Orders had been made in 2008 providing that the parents have equal shared parental responsibility and that the children 'spend time' with the Mother and Father on a "week about"

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basis.

- The child attended a Catholic primary school and the Mother wanted her to continue her secondary education at a Catholic high school.
- The Father wanted the child to attend the local State school. He said he could not afford to contribute to school fees at the Catholic school, and that the State school was closer, required less travel time and would better support the learning needs of the child.

Child's wishes:

- The child was 12 years old at the time, and had expressed a clear wish to attend a Catholic school.
- The Family Report writer formed the view that the child was immature and could not provide clear reasons why she wished to attend the school.
- The Family Report writer did say that the child's transition from primary to secondary school would be easier at the Catholic school.

Court held:

- The Court was satisfied that the child had a "genuine and real wish" to continue in a Catholic school and that this view should be given weight.
- The Mother indicated that she would pay the school fees for all the children, therefore the cost was not an issue.

Court Ordered:

- The child attend the Catholic school proposed by the Mother.

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