

FAMILY Flyer



THIS ISSUE -

No. 193

- "Close-Up" Edition
- How not to Prepare a Family Report
- No changeover at McDonald's
- "The Last Thing I Want is his Child Support"
- Superannuation – 2 Pools?

"CLOSE-UP" EDITION

Quite often after a relationship breaks down one spouse will want to relocate with the children to another city, or State.

Generally, the Court will not consider an urgent (or interim) application for relocation, preferring to consider the request fully at a final hearing. This can result in a delay of up to a year!

To see how the court approaches these urgent requests read our close-up article "[Interim Relocations](#)"

HOW NOT TO PREPARE A FAMILY REPORT

Family Reports are common in disputes regarding children's arrangements and are of great assistance to the parents and the Court in determining what arrangements would be in the children's 'best interests'. It is therefore essential that the Report process be open and transparent.

The Court recently considered a case where there were allegations that the independence of the Family Report had been compromised.

- The family consultant owned a business with his wife, both were registered psychologists. Over the duration of the case (before the Court) the family consultant had been engaged to prepare two family reports.

- The Father made an application to set aside the two family reports on the basis that the family consultant's wife had compromised the report by her dealings with the children. It had been discovered that there had been 81 text messages and numerous phone calls between the family consultant's wife and the children.
- The consultant's wife contended that she was trying to assist the children, however she had made no steps to involve the relevant authorities about her concerns. Her involvement with the children was without the parents or the court's knowledge. However, her husband, the Family Consultant, was aware of her interaction with the children.
- Whilst the court found that the family consultant's wife may have had well meaning intentions, her actions clearly impacted the independence of the family report. The family reports prepared by the family consultant were sealed and not to be used or relied upon. The parties were ordered to attend a separate family consultant to prepare another family report.

NO CHANGEOVER AT MCDONALD'S

McDonald's might be losing its grip as the Court's preferred place for neutral changeover for child contact arrangements. In a recent case the Court considered whether McDonald's was an appropriate changeover venue.



Facts:

- At the time of the hearing there were two children aged 9 and 7. The Father requested that the Court make an order that changeovers occur at the local McDonald's family restaurant on days where the children were not being delivered or collected from school. The Mother requested that the changeovers occur at a local Woolworths supermarket.
- The Father opposed a changeover inside Woolworths as it would occur in front of a cigarette counter, however during the hearing he conceded that the cigarettes were locked away and were out of sight.
- The Mother opposed McDonald's on the basis that the children requested that they be entitled to eat McDonald's at any time they attended and that was not healthy.

Court Found:

- It was not in the children's 'best interests' that they eat McDonald's every time they attended contact handover.

Court Order:

- When changeovers do not occur at school, they should occur at Woolworths and on the occasions that Woolworths is closed, only then should changeover occur at McDonalds.

“THE LAST THING I WANT IS HIS CHILD SUPPORT”

Sometimes parents entitled to be paid Child Support by the other parent advise us that they do not want it, or that they do not intend to claim it. Such statements are often emotionally driven.

It is important to remember that Child Support is a legal obligation, not a moral one. While a parent may believe they

do not need this money or want any tie to the other parent, it must be remembered that child support is not about the parent – it is about the child.

If the idea of receiving money from the other parent is unattractive or abhorrent, you can look into other ways in which Child Support may be paid, e.g. 'Non-Agency Payments' to third parties such as towards school fees, private medical insurance etc.

If you are unsure about your Child Support liability or entitlement it is important to obtain legal advice from an experienced family law solicitor.

SUPERANNUATION – 2 POOLS?

Superannuation is usually a significant part of a separated couple's property pool, in some cases it is the largest item of property. This increased significance brings with it 2 major challenges, firstly, how to determine the "contributions" to its acquisition and secondly, how best to "split" it.

A recent case before the Court involved a 16 year marriage that had produced 2 children. There were "non-super" assets of \$358,000 (pool A) and in superannuation (pool B) the Mother had \$27,000 and the Father had \$864,000 in his Military Super. The Federal Magistrate assessed the contributions to pool A as 53%/47% favouring the Mother and to pool B favouring the Husband 68%/32% for the total super.

The Wife appealed the decision and the Full Court allowed the appeal. The Court noted that the Father's superannuation had accrued for 10 years before cohabitation and 2 years post-separation. On a re-exercise of discretion the Court left the division of the "non-super" assets however found the Mother entitled to half of the difference between the Father's superannuation at separation and its value at cohabitation.

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