

# FAMILY Flyer

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No. 240

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## PUBLIC SEMINAR SERIES STARTS IN 2 WEEKS!

Our first Public Seminar Series for the year is starting in 2 weeks!

This Seminar Series will provide you with the opportunity to get up-to-date information on Family Law in an easy-to-follow 1 hour seminar.

There are 2 Seminar topics being presented by Accredited Family Law Specialist, Michael Lynch, including “**Separation and Children**” and “**Separation and Property**”. For only \$20 you will receive information valued at over \$500, as well as the opportunity to ask questions and there will be a **Special Offer** for all attendees.

### “Separation and Children”

- Holland Park – 6pm – Wednesday, 25 February, Holland Park Hotel, 945 Logan Road, Holland Park.

### “Separation and Property”

- Grange – 6pm – Tuesday, 24 February, Brothers Grange Community Sports Club, 41 Agincourt Street, Grange.

**Seats are limited, so book now!** – Phone (07) 3221 4300 or email us at [law@mlynch.com.au](mailto:law@mlynch.com.au).

## MONEY IN THE BANK – CAN YOU STILL GET SPOUSE MAINTENANCE?

It’s not an uncommon scenario. A couple separate and one spouse is not in paid employment, has limited job skills and

no income but does have access to funds in a bank account. Are they entitled to spouse maintenance? The dilemma of capital versus income is not straight-forward. The Court recently considered such a case.

### Facts:

- The wife sought orders for interim spousal maintenance, on the basis that she could not meet her reasonable expenses from her income, particularly with the primary care of the 3 young children.
- The husband had a gross weekly income of \$5,000, paid child support of \$802 per week and was found to have “capacity” to support the wife of \$2,869 per week.
- The husband opposed the application and suggested that the wife use the funds held in a bank account in her name with a balance of \$87,000 to supplement her expenses. The wife said that the account was established for the children’s tertiary expenses and should be excluded.
- The judge found the wife to be a “witness of truth” and the husband appeared to tailor his answers to try to defeat the wife’s application for spousal maintenance.
- The judge accepted the wife’s “reasonable expenses” and ordered the husband to pay her interim spousal maintenance of \$1,492 per week.



- The husband appealed the interim orders.

#### **Court found:**

- The judge had failed to take into account the bank account held in the wife's name. Whilst the parties agreed that prior to separation the funds would be utilised for tertiary expenses, as the wife had alleged she could not support herself adequately and required spousal maintenance, the court could not disregard the funds held in the account.

#### **Court held:**

- The husband's appeal was allowed and the orders for interim spousal maintenance were set aside. The matter was remitted for re-hearing so the question of spousal maintenance could be determined taking into account the funds in the account.

## **"YOU CAN'T LEAVE THE COUNTRY"**

All sorts of issues can arise when a couple separate, some are more urgent and serious than others. As the *Family Law Act* has no power outside of Australia, issues can become particularly challenging if they become international, eg a child is taken overseas, or money is taken overseas, etc.

To stop a spouse leaving Australia can be a very compelling and coercive power to help resolve a dispute. But, can the Court do that?

The answer is, yes! However it is not a power the court will exercise lightly.

Recently, a case involving the restraint of a person came before a single judge in the Federal Circuit Court. The matter involved a couple who had 7 children. They had spent much of the past 8 years living between Australia and Lebanon. The parents were dual citizens and the 7 children had been born in Australia. At the time of the hearing the 3 eldest children had

been living in Lebanon for much of the past 8 years whilst the remaining children transferred back and forth with their parents and sometimes only 1 parent.

The eldest 3 children were being cared for by their paternal grandparents for extended periods and were fully immersed in the school system in Lebanon. On one such return to Australia, the mother alleged significant family violence against the father and sought and obtained a protection order.

The wife also alleged that her husband had contrived a situation where they would collect all government benefits they were entitled to as Australian citizens, including ensuring that all the children were born in Australia for the "*baby bonus*" and also staying long enough to meet the requirements for the wife to collect her Centrelink benefits but with the intention of returning to live in Lebanon.

The wife wanted to remain in Australia and not return to Lebanon but also wanted her 3 eldest children returned to Australia. Lebanon is not a Hague Convention country, so the Court was entitled to deal with the matter under the *Family Law Act*. The Judge stopped the father from leaving Australia and ordered that he do all that he could to ensure the return of the 3 eldest children to Australia.

The father appealed. On appeal the trial Judge was criticised for his handling of the matter. The Appeal Court Judges considered that the trial judge overstepped the mark in that he had pre-judged the matter and utilised the incorrect legal power to restrain the father. They ordered that the father remain restrained in Australia using another section of the Act and ultimately remitted the matter for rehearing.

If you are concerned about a child being taken out of the country or property being transferred out of the country, you must get urgent Specialist Family Law advice. Call us on (07) 3221 4300.

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**Principal: Michael Lynch\***  
\*Queensland Law Society  
Accredited Family Law Specialist



**CONTACT:**  
**Telephone:** 07 3221 4300  
**Address:** Level 6, 193 North Quay  
Brisbane QLD 4000  
**Website:** [www.mlfl.com.au](http://www.mlfl.com.au)

