

# FAMILY Flyer



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## PUBLIC SEMINAR – TODAY!

Don't miss your chance to attend our most popular public seminar, "Separation & Property". It's on today!

For only \$30, you will receive a 1 hour information session and have the opportunity to ask questions. There will also be a **Special Offer** for all attendees.

### "Separation & Property"

- Brisbane – 1-2pm, Tuesday, 17 May, Berkleys on Ann, 255 Ann St, Brisbane City

Register now by calling (07) 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au)

## MOTHERS RELOCATION THREAT AND THE CHILD'S WISHES

The Court recently considered an interim application by the mother of a child, aged 11, to relocate 2 hours away. The ICL and the father opposed the application.

The mother indicated to the Court that she intended to relocate, regardless of whether the Court ordered that the child could relocate with her. The Court identified the mother's attitude as 'concerning' however, noted that a decision must be made that is in the 'best interest' of the child.

A 'child inclusive conference' was conducted, and the child indicated that she did not wish to move. The child had always lived in the town, attended school there and was settled in the current parenting arrangements.

There was no dispute that the mother had always been the child's primary carer. The father put forward evidence that, if

the child was to live with him, he would need to rely on others to assist with the child's care, due to his work roster.

Despite the mother's "worrying attitude" (that she would relocate regardless of the Court's decision), the Court determined that the father was an "unknown quantity" in relation to him being the primary carer, and therefore permitted the mother to relocate with the child. The Court also found that it was likely that the child's relationship with the father would continue after relocation.

The Court noted that the interim decision could be reversed at final hearing, and in particular noted that the child's wishes may be given more weight as the child would be older and more articulate.

## WHAT IF I DON'T AGREE WITH THE FAMILY REPORT?

A Family Report is a document written by a 'family consultant', who is a psychologist or a social worker. They will usually have expertise with children going through separation. A Family Report provides an independent assessment of the issues in the case and can help the Judge hearing the case to make decisions about arrangements for the children.

The Family Report is only one piece of evidence that the Court considers in making its decision and therefore is not bound by any recommendations made in the report by the family consultant.

As with any evidence, the appropriate place to challenge the report is at a final hearing. This is done by calling the family consultant as a witness. The family consultant can then be cross-examined and asked questions about the contents of the report and their assessment of the family.



## CHILD SUPPORT TIPS – PART 2

**Q:** Can my property settlement impact on my child support?

**A:** Yes it can. There is a catch to be aware of when negotiating a property settlement. Where parties are equal shareholders and directors of a company, they may agree for a payment to be made to one of them in a property settlement, and maybe the only place this payment can come from is the company. Parties are often conscious of the tax implications created by a Division 7A loan (a loan from the company to one or more of its directors). Sometimes issuing a dividend from the company to a party is a sensible solution for property settlement purposes. However what often isn't contemplated is the effect of this dividend on a party's income for child support purposes i.e. their "adjusted income". It might:

- increase your child support payments if you are a "payer" for child support purposes; and
- Increase your income. If you are in receipt of an income tested government benefit you have to be careful not to forget about including the dividend in your income amount provided to Centrelink, otherwise you might receive an overpayment and then have a debt owed to Centrelink.

## PARENTING ARRANGEMENTS WHILE PARENTS ON BRIDGING VISA

For some people after the breakdown of a relationship they will need to consider how it will affect their immigration status in Australia – in addition to working out how the children will be looked after.

The Department of Immigration directs that they must be informed if a relationship ends, especially before a person has been granted a Permanent Partner Visa. Once informed, the Department in cases of a Partner Visa will subsequently ask the sponsor (the ex-partner) to formally withdraw their sponsorship.

Once sponsorship has been withdrawn there is then an opportunity to explain why the relationship broke down. It is

therefore important that the Department is kept informed of up-to-date contact details, including postal address.

Just because the relationship ends that person may still be eligible to stay in Australia. Victims of domestic violence do not have to stay in an abusive relationship to protect their immigration status in Australia. It is also possible to stay in Australia if there has been a child of the relationship, who is under 18 years of age and for which the parents have shared parental responsibility.

The Court recently considered a case for interim parenting arrangements, where neither parent was an Australian citizen. The mother, the father and all the children were on bridging visas issued by the Department of Immigration. Their respective status and ability to continue living in Australia was solely dependent on a favourable exercise of discretion on the part of the Department.

The Judge was satisfied that pending 'final hearing' the children's 'best interests' would be met by spending 'equal time' with each of their parents on a "week about" basis, subject to the parties' agreement in relation to the upcoming school holiday . Further, the court ordered that the names of the children be placed on the Airport Watch List.

## DIVORCE – IF MARRIED LESS THAN 2 YEARS

If you have been married for less than 2 years at the time of filing your Application for Divorce, you must attend to one of the following:-

1. Attend counselling with a family counsellor to discuss the possibility of reconciliation with your spouse. Following the counselling, the counsellor will need to complete a counselling certificate setting out that the possibility of reconciliation was discussed with both spouses; or
2. If counselling has not occurred, seek permission from the Court to apply for a divorce, which is done by filing an affidavit with the Divorce Application setting out why there are 'special circumstances' why the counselling has not occurred. For example, there has been domestic violence or a spouse cannot be located.

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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

