



family flyer



Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

This edition includes:

- Changes to Spouse Maintenance Application
- Custodial Parents Relocation
- International Child Abduction
- Child's Maintenance and Austudy
- Semen Donor is not a "Parent"
- The Effect of Bankruptcy in a Property Settlement
- Difficulties in Assessing Superannuation
- Conditions for Travel Overseas

CHANGES TO SPOUSE MAINTENANCE APPLICATION

Since the commencement of the Family Court's new forms, a new form was designed for Maintenance Applications.

This separate form has created confusion because when it is filed, a separate hearing date is allocated.

In response to widespread requests from Solicitors and clients, the Family Court intends to introduce from 1 July, 1997 a rule change, to enable Maintenance Applications to again be issued in conjunction with Property Applications.

CUSTODIAL PARENTS RELOCATION

A topic that has been discussed in previous issues of the Flyer is the ability of the custodial parent, (now known as a Residence Parent), to relocate to a different geographic area.

The effect of a relocation is the impact it has upon the other parent's contact rights to the children.

This area of the law has always been difficult. Since the June 1996 Family Law amendments, that is now more so the case.

The Full Court of the Family Court is sitting in Brisbane in May and will complete an Appeal concerning a parent's right to "relocate". The Attorney-General will appear to put submissions to the Court on the impact of the *Family Law Reform Act*.

INTERNATIONAL CHILD ABDUCTION

The Full Court has ordered a child's immediate return to New Zealand. The Court found that the child's mother had rights of custody in New Zealand immediately before the child's retention in Australia and that the retention by the father interfered with those rights of custody.

In a separate case, the Family Court has refused to order the return of 3 children to Crte, 17 months after they had been brought to Australia from Crete by their mother, without their father's consent.

The Court found that the children were now settled in their new environment and were settled at the date that the Court proceedings commenced. The mother satisfied the Court that the circumstances had changed.

CHILD'S MAINTENANCE AND AUSTUDY

The Full Court of the Family Court has said that an adult child's Austudy entitlement should be disregarded in considering the question of maintenance for the child, to enable her to complete her education.

The case related to an 18 year old student seeking maintenance from her father so that she could complete her education. The child's parents were never married.





SEMEN DONOR IS NOT A "PARENT"

The Family Court has stated that a donor of semen is not a "Parent" under the *Family Law Act* and therefore not liable to pay Child Support.

The case involved a donor providing semen, on 2 separate occasions to a woman and her lesbian partner as a result of which 2 children were born.

The Court stated that a semen donor who is not married to a woman who gives birth to a child as a result of an artificial insemination procedure and who does not live in a genuine domestic relationship, is to have no rights nor incur any liabilities in respect of the child unless they marry or form a relationship.

THE EFFECT OF BANKRUPTCY IN A PROPERTY SETTLEMENT

In a case before the Family Court the husband filed a petition for bankruptcy the day before the property settlement hearing was to commence.

The effect was that the husband's property was passed to the Official Trustee in Bankruptcy.

The wife sought an Order from the Family Court that the bankruptcy petition be cancelled. The Court ordered that it should be on the basis that the husband was not bankrupt at the date he presented his petition nor did he think that he was.

DIFFICULTIES IN ASSESSING SUPERANNUATION

In recent editions of the Flyer we have discussed the many problems that the Family Court has faced in attempting to deal with superannuation in property settlements.

In recent times the Court has opted for a "formula" style in assessing superannuation.

In a recent case before the Full Court, the husband appealed stating that an error had occurred in properly applying the "formula".

It was held that the Court was entitled to consider the time when contributions are made, rather than the time of cohabitation and that the formula should not be blindly applied in all cases.

CONDITIONS FOR TRAVEL OVERSEAS

In a case recently before the Family Court, the mother, who had a residence order for 2 children, sought to travel to the United States with the children.

The father opposed the trip seeking an assurance that the mother would return. The Court ordered that an amount of \$3,000 be paid by the mother on account, by way of security, to ensure the mother's return.

The father appealed to the Full Court on the basis that the amount ordered was inadequate. The Full Court ordered that the amount be \$20,000. The Court found that the lower amount was not sufficient. The mother was born in the United States and she had stated that she would take the children to the United States and not return.

The Court set out the factors to consider when determining the level of security.

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