

WOMEN'S LEGAL CENTRE NEWSLETTER

RECENT COURT CASES OF INTEREST

**Collu & Rinaldo [2010] FamCAFC 53
(May, O’Ryan and Strickland JJ)
25 March 2010**

This international relocation case involved a child who was aged four years at the date of the appeal. It is the first Full Court decision to be handed down following on from the High Court’s decision in MRR & GR.

The parties met in 2002 and commenced a relationship in 2003. The only child of the relationship was born in 2005. The parties resided in Sydney for the majority of their relationship before the mother relocated with the child to Dubai in March 2007 with the father’s consent. The parties’ agreement was that the mother would live in Dubai for a period of 13 months.

Before the 13 month period had elapsed, the mother sought an order that she be permitted to remain in Dubai for a period of approximately two years. This application was pursued at trial with an alternative proposal that the mother and child relocate to North Queensland and for the child to spend three months with the father in Sydney.

Prior to the appeal the arrangement in place for the child was that he live with each parent on a month about basis in Dubai and Sydney. The Full Court criticised that arrangement as being unsatisfactory.

In light of the recent High Court decision in *MRR v GR* [2010] HCA 4, their Honours provided the parties with an opportunity to make further submissions.



The mother’s complaints were summarised into three broad areas:

- 1) the mother’s attitude to the relationship of the child and father and her capacity to provide for the emotional needs of the child
- 2) the trial Judge failing to adequately assess and weigh up all of the relevant considerations regarding the best interests of the child, and
- 3) the trial Judge failing to adequately deal with the statutory considerations for considering whether the child should spend equal or substantial and significant time with each parent.

On the first issue the Full Court found that the trial Judge erred in relation to the various matters that she took into account in forming her view about the mother and further did not consider, weigh and assess the evidence regarding the best interests of the child. On the issue of equal time, the Full Court found that the trial Judge was obliged to undertake what the High Court in *MRR v GR* (supra) described as a ‘practical assessment’ of whether equal time or substantial and significant time was ‘feasible’. The appeal was subsequently allowed and remitted for redetermination.

CASES CONTINUED.....

Children and Parental Religious Differences

In *Macri* [2010] FMCAfam 662 McGuire FM preferred the position of the father, granting him an injunction against the mother's proposal for the formal introduction of children of eight and ten into the Jewish faith, the mother "see[ing] the Bar or Bat Mitzvah to be a fundamental step in that process", saying at paras 45-47:

"Essentially, the mother wants to commit the children now. The father's view is that such a decision should be deferred. I have no evidence before me that the deferring of a decision even at the age of 13 or 12 would prohibit a later choice to enter the Jewish religion."

The mother was allowed (para 30) to take the children to a Jewish youth group and to the Jewish Synagogue for observances, while the father could take them to Catholic Mass and events.

Other Cases Dealing with Religion

C & B [2007] FMCAfam 539 in which the mother, of Jewish faith, sought orders to prevent the father from baptising their son in the Catholic church. Altobelli FM declined to make any orders on the issue of the child's religion, saying (at para 113) "[t]here are some matters of parental responsibility that are simply best left to parents to decide."

Y & H [2005] FMCAfam 229 Bauman FM ordered the father be allowed to baptise the child in the Anglican faith. The mother, who had primary care responsibility, was a committed atheist. Bauman FM found the child could be baptised as an infant, as is common practice in the Christian faith, but that this would not prevent the child from choosing his own religion later on.



L & O [2005] FMCAfam 223 in which the mother sought an order preventing the father from taking their two children to Jehovah's Witness meetings until they were ten years old. The mother, who was the primary carer, considered herself Catholic, while the father became a committed Jehovah's Witness after their divorce, having been introduced to the religion by his new wife. The mother was concerned, amongst other things, that the children would become drawn into the faith and thus 'excluded'. Phipps FM dismissed the application, considering it in the best interests of the children that they participate in an activity important to their father's life. The mother, as the primary carer, would still have the principle influence on the children's lives. The father did not object to the children attending Catholic services with the mother or her family, nor to their having blood transfusions. Both agreed that the children should be able to make their own decisions as to their religion later in life.

WLC Human Rights Lawyer

Kate commenced employment with Women's Legal Centre on 19 July as the Human Rights Lawyer while Heidi is on maternity leave. Kate has practised as a solicitor since her admission in 1994 mostly in Western NSW, where she worked initially as a prosecutor and then as a criminal lawyer for the Aboriginal Legal Services in places like Walgett, Wilcannia and Wentworth.

After the birth of her children Kate took a position as Principal Solicitor of Western NSW CLC, a generalist CLC based in Dubbo which also ran a Rural Women's Outreach Program. After more than 5 years in that position Kate briefly worked at Legal Aid as a civil lawyer before re-locating to Canberra. In Canberra she filled in for the senior solicitor at the Aboriginal Legal Service for 3 months and then commenced employment at the CIT, teaching legal subjects to students studying topics such as Forensic Science and Accounting.

Kate is very pleased to have been given the position of Human Rights lawyer and really enjoys being back in the Community Legal Sector, especially working in such an easy and pleasant environment.

New Workplace Laws for Domestic Violence Victims

In a first for Australia, the Public Service Association of NSW has negotiated a deal with the University of NSW to grant employees who are the victims of domestic violence special leave to attend court, counselling or a doctor.

The leave amounts to 20 extra days of paid leave per year. It also ensures bosses cannot sack or suspend an employee if their attendance or work performance suffered because of domestic violence. Affected persons will be able to request safety measures like changed telephone numbers and transfers. A training programme for human resource staff will also be implemented.

The Union has also written to Premier Kristina Keneally, urging the extension of the provision to the state's 300,000 public servants. Discussions on a statewide domestic violence clause are under way. A similar clause is being tabled by the Australian Services Union as part of enterprise agreements with the Surf Coast Shire Council.

Recent US research has revealed that at any given time 10% of working women were experiencing, or had recently experienced, domestic violence. It is hoped the clause will improve the workplace productivity of domestic violence victims, and encourage a workplace where victims feel safe to reveal instances of abuse.



The Women's Legal Centre would like to invite you to our Annual General Meeting

Date: Monday 15 November 2010
Time: 6.00pm
Venue: Reception Room,
ACT Legislative Assembly
RSVP: 8 November 2010
coordinator@womenslegalact.org

Women and the Law in Australia

New Publication

Women and the Law in Australia examines the contextual jigsaw puzzle within which women and the law interact. It covers many areas of the law such as ADR, trusts and equity, family law, intellectual property, taxation, and money matters. It explores how gender bias and inequality is manifested in the administration of justice, in processes such as the application of legislation, the negotiation and mediation of private disputes, the gathering and adducing of evidence, and the exercise of judicial discretion. In the opening chapter, Professor Eastal explains that "an iceberg is an apt metaphor since, as we will see, some of these biases are visible, the majority are not."

Professor Eastal's newest book is a milestone in the pursuit of justice and equity for all Australians. She says:

"By highlighting the specific issues for women in the law and by offering practical steps that lawyers can take to redress the often invisible biases that permeate the legal system, Women and the Law in Australia will truly help women in this country to access justice."

The text is a compilation of contributions from 30 esteemed experts, drawn from legal practice, academia and government. Together, they bring a wealth of experience and expertise to advance and promote women's rights.

Each author contributes a thorough and rigorous review of gender issues in their own diverse specialist areas of practice such as criminal, family, discrimination, employment, and commercial law.

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ACT DOMESTIC VIOLENCE
PREVENTION COUNCIL

Family Violence in Parental Relationship Breakdowns

The Domestic Violence Prevention Council and the ACT Family Law Pathways Network present **PROFESSOR THEA BROWN** from Monash University, Department of Social Work in **TWO FREE** Seminars.

WHEN: Thursday 28 October 2010
WHERE: Johnson Auditorium, Pilgrim House, 69 Northbourne Ave, Canberra City ACT
TIME: 12:00pm – 3:00pm (lunch will be provided)
DETAILS: **Professor Brown** will:

- ❖ review the findings of the Monash University study which investigated the impact of family violence which had occurred before, during and/or after parental relationship breakdown, on post-separation decision making and arrangements, as viewed by children and parents
- ❖ examine the outcomes of the Frankston and Mornington Peninsula Family Relationship Centre

R.S.V.P: dvpc@act.gov.au or call Stewart on 6207 4265.

AND

WHEN: Thursday 28 October 2010
WHERE: Legal Aid ACT, 2 Allsop Street, Canberra City ACT
TIME: 4:30pm – 6:30pm (light snacks provided, BYO drinks)
DETAILS: **Deputy Chief Justice John Faulks**, Family Court of Australia will open this seminar and **Professor Brown** will discuss the findings of the Monash University study as above.

R.S.V.P: margaret.crawford@legalaidact.org.au or call Margaret on 0420 598 120 or 6243 3463

Advice Line Details

Our free and confidential
telephone advice
service is open
Monday to Friday
9:30 am - 12:00 noon.

For telephone advice ring:
from Canberra: 6257 4499
from outside Canberra: 1800 634 669



There is no drop-in service.

Short Brief on Australia's Review by the CERD Committee, 2010

The United Nations Committee on the Elimination of Racial Discrimination (CERD Committee) is a body of independent human rights experts, which reviews countries who are party to the UN Convention on the Elimination of Racial Discrimination. Australia, as a party to that treaty, will be reviewed on the following key issues:

Northern Territory Intervention (NTI)

The Australian government will be asked to explain recent amendments to the NTI, which have been criticised as failing to restore rights and dignity to communities subject to the Intervention.

Asylum seekers

The issue of mandatory detention affecting mainly Afghani, Sri Lankan and Chinese asylum seekers, as well as the 'asylum freeze' on Sri Lankan and Afghan claims, will be raised. At the last review in 2005, the CERD recommended Australia review its Policy of mandatory and off-shore detention. It is expected this concern will again be raised.

Violence and vilification against minorities

In light of the weak legal protections against racial vilification and negative media portrayal of African, Arab and Muslim communities in Australia, the Committee has asked for evidence of measures countering such harassment, and of efforts to better protect minority communities (especially Indian and international students).



Women and the Law in Australia

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They identify specific examples of biases, which might lead to existing legal categories and processes being impractical, inappropriate or disadvantageous for women, especially for those with disabilities, Indigenous women, lesbians, and migrants.

What follows is thoughtful and pragmatic guidance for responding to the variable and complex needs of women as defendants, complainants, prisoners, victims, and practitioners. By identifying practical solutions for solicitors, barristers, community workers, policy makers and the general public, *Women and the Law in Australia* takes a forward-looking perspective on the abolition of gender bias.

Women and the Law in Australia is available for pre-order on the LexisNexis store at www.lexisnexis.com/store. It will also be available through leading retailers upon its release.