

Welcome to the first edition of our quarterly Newsletter for 2008.

In this newsletter we bring you:

- an update on 'Sanderson Partners' developments
- the new Family Law amendments in practice
- Easter and school holidays information



## ABOUT SANDERSON PARTNERS LAWYERS – FAMILY LAW MATTERS

*Put your family first  
- find out what's fair at  
Family Law Matters*

Sanderson Partners Lawyers commenced in 2002. The Principal Solicitor, Antonella Sanderson, envisioned a boutique Family Law practice that recognised a need for a practical and sensitive approach to Family Law. She leads the only all-female, dedicated family law practice in the Penrith and Blue Mountains region.

We have registered the additional trading name, "Family Law Matters" to properly reflect our core business. Of course, we still retain the formal name Sanderson Partners Lawyers, reflecting our history.

What do you think of our new logo? We would love to hear your thoughts!

### Our Guarantee

We guarantee that our clients will leave their first conference with a clear understanding of their rights and responsibilities, reasonable ways to settle their matter, and an action plan to achieve the best manner of resolution. If our client feels that they have had no value from their first conference, then it's free.

Feel free to mention this to any friends who might need some family law advice

Commencing on 1 March 2008, we introduced something new for our clients - we now offer our last appointment free - our opportunity to discuss the overall result of the case, talk about compliance required with Orders, advice about future legal options, and to wish our clients all the best as they begin a new chapter in their life!

### Our Team

We said farewell to Dianne Hamey, who returned to the Women's Legal Services as the Indigenous Women's Program supervising solicitor. We said hello to Kate O'Grady, joining our team as a part-time and then full-time Solicitor. We took more space in the building, by "overtaking" part of our neighbour's office. Come in and see our lounge-room style Conference Room, where our clients can be comfortable when meeting with their solicitor – relationship breakdown is stressful, so we like to ensure our clients feel at ease when we get together to talk about their matter.



*We take this opportunity to profile Kate O'Grady, the newest member of our team, having started part-time as a junior solicitor in January 2007 and commencing full-time work in June 2007.*



#### STAFF PROFILE

Having attained her combined degree in 2005, Kate holds a degree in Law and a degree in Communications majoring in journalism.

Kate was admitted as a solicitor in 2006 and has gained experience working in Family Law prior to commencing with our team, and with the Elizabeth Evatt Community Legal Centre in Katoomba as a volunteer and employed solicitor.

On a more social note, Kate is a talented pianist and is one very keen soccer player – putting to good use her wonderful tactical skills. As we go to print, Kate's soccer team has reached the Grand Final in their grade! Congratulations, Kate! And good luck for the Grand Final!

Did you know that Antonella now contributes fortnightly articles about family law to the Penrith Press? By doing this, Antonella hopes to raise awareness in the community about family law and how it works.

#### Shared Care when it's not right.

In disputes between parents in relation to with whom children live the Family Court must consider the children spending equal time with each parent. The underlying principle is whether such an arrangement would be in the best interests of the children.



John and Jackie had been married for 10 years. They had two children: James aged 6 and Jemima aged 8. They had been separated for 2 years.

Since the date of separation the children have lived with John. They have spent little or no time with their mother, Jackie.

Jackie had a serious drug and alcohol problem. Jackie was unable to care for the children.

Since separation John has organised his working life and now has in place in a very good routine for the care of James and Jemima.

Jackie now wishes to re-enter the children's lives. She has made an application to the Court for the children to live with each parent on a week-about basis.

This application is based on the fact that Jackie has been to a rehabilitation clinic. She feels good. She considers that she is over the problem that she once had. She can now just resume the role that she was unable to perform due to her addiction.

John is very cautious about Jackie's sudden recovery and rehabilitation. He has seen it before.

"I don't think that it is in the interests of James and Jemima for a shared parenting arrangement to be established now," says John. It is my view that the Court would agree with this assessment.

John continues to doubt Jackie's ability to respond to and care for the children on a long term basis. He wants to be supportive of Jackie but he is focused on the children.

John would support the children spending time with Jackie. However, she needs to be carefully reintroduced to their lives. They are not possessions. They are children with a need to be loved and secure.

You see, it is not really about Jackie and her rehabilitation. It is about James and Jemima and their best interests.

An experienced Family Lawyer would be able to assist Jackie to see beyond her own needs and help her focus on the needs of her children. An application to the Family Court for a week about shared parenting agreement will fail in these circumstances and cause great distress for the children, John and Jackie too. There needs to be a plan of gradual reintroduction.

# PROPERTY AND BAD BEHAVIOUR

Our system of Family Law is based on a “no fault” foundation. The Court is not generally concerned with why the relationship broke down but only that it has broken down.

There are exceptions to this rule and in these instances the Court will look at bad behaviour.

The Family Court often hears arguments as to how one party’s bad behaviour impacted on property available for division between the parties.

John and Jenny had been together for ten years. They married when they were in their late 40’s. Both had been married before.

Jenny introduced into the relationship a substantial amount of money. John also had money. John then introduced Jenny to a friend and the 3 of them became involved in overseas business dealings. Both John and Jenny injected all of their money into this business venture. Initially, they made money. However, towards the end of their relationship the overseas business dealings started to turn sour. Jenny blamed John. She said, “It was his idea. We have now lost money. The pool of assets which is now available between John and myself is only half what it had been when he and I started living together.”

Jenny then went on to run the argument that the pool of assets available for division between John and herself should be increased to what it was. She should receive her share out of the available assets and John should receive his share being a small balance from the available assets and accept all of the losses. From Jenny’s perspective, that seemed reasonable. The business deal was his idea. They had suffered loss. John should wear it!

This is an argument, on these facts, that the Family Court would reject.

Jenny would not be running the same argument if, as a result of the overseas business venture, the assets of the parties had doubled. She would be asking for a share of the profit.

Both John and Jenny joined in the overseas investment venture. Both of them hoped to gain from it. It was not John’s fault that they lost money. Just as both would share in the profit, both now have to share in the loss.

It is important for people to get good Family Law advice in relation to the division of property. A lot of money can be spent preparing a case for argument when the argument has little or no merit. The experienced Family Lawyer will be able to advise you in relation to what a relevant argument is and whether or not it has prospects for success.

Behaviour can impact on property – if you have questions about bad behaviour, you should contact us to discuss.



## DO YOU OWN PROPERTY IN JOINT NAMES?

**If the answer is yes, keep reading!**

If you are separated, and there are no Court Proceedings in place to deal with property settlement, then your jointly owned property may well pass to your ex-partner if you suddenly die.

There are ways to prevent this occurring – we can make sure your property is left to your estate to be distributed to your children, or however you may wish to direct. This is a fairly simple process and certainly worth considering when protecting your assets.

Please contact us if you would like to know more, on **1300 FAM LAW**.

## LEGAL LANGUAGE

Most of our clients still ask us to help them with “custody” disputes about children, even though this terminology has not been used by the Courts for over 10 years.

It seems that once everybody gets used to particular terms, the Government passes legislation to change the terminology all over again.

Prior to July 2006, the legal terminology for where a child lives was ‘residence’ and with whom a child spends time was ‘contact’.

After the amendments were made to the Family Law Act in July 2006, these terms were changed again in an attempt to make the terminology easier for everyone to understand.

The correct legal terminology for an Order in relation to where a child lives, is now simply called “lives with” and the terminology for whom a child spend time with is now “spends time with”, so it would be correct to ask the Court for an Order that the child live with the one parent and spend time with the other.



## EASTER & SCHOOL HOLIDAYS

This year, Easter falls outside the public school gazetted school holidays in NSW. Unless you have specific Orders or Parenting Plans which relate to the Easter period or other special occasions style orders, then it is likely this period of time might fall into a “usual weekend” style arrangement.

If there are no Orders in place, or if there are Orders which allow some flexibility by agreement, parents can come to their own agreement regarding how the children will spend time in each household. We usually suggest that:

- in the first year, the children spend from after school on the Thursday prior to Good Friday until 5:00pm on Easter Saturday with one parent;
- and from 5:00pm on Easter Saturday until the commencement of school on Tuesday after Easter Monday with the other parent;
- In the second year, this would swap over.

We encourage you to make sure any agreement is put in writing so both parents are clear about the arrangement. Ideally, your Orders or Parenting Plan should deal with Easter arrangements to make sure there is no confusion.

Each year there is much confusion about what is the half-way point of school holidays. According to the NSW Board of Studies website, the last school day of Term 1 is 11 April 2008, and the first school day of Term 2 is 28 April 2008. Your Orders or Parenting Plan may define how the holiday should be calculated. If they don't, we offer this by way of assistance:

- assuming that holiday periods start the day after end of Term 1 and finish the day before commencement of Term 2, this gives a total of 16 days for this holiday.
- The half-way point, being day 8, is 19 April 2008.
- You may wish to discuss changeover to occur at about 5pm on Saturday 19 April 2008.

However, if there are Orders in place, you should make sure you comply with the Order in relation to the half-way point.

If you are not sure about what to do over Easter or the school holidays, you should contact us to seek some advice. Contravention Applications are commonly filed against a parent who has not properly complied with school holiday provisions.



FamilyLawMatters

This newsletter is designed to provide information, not legal advice. Please note the people and examples used in this newsletter are fictional characters. You should ensure you obtain legal advice as the law applies to individual situations in different ways.

Liability limited by a scheme approved under Professional Standards Legislation.

**1300 FAM LAW • [www.familylawmatters.com.au](http://www.familylawmatters.com.au)**

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