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Welcome

Welcome to our October 2006 issue of the “Hartley Healy” newsletter.

The purpose of this newsletter is to keep you informed of important developments in family law and de facto law which may be of interest to you. We also aim to keep you up to date regarding our firm and the services that we provide to our clients.

In this issue we cover:-

- Important changes to the *Family Law Act* regarding shared parental responsibility.
- An update on recent developments at Hartley Healy – as you can see we have changed our name and our logo, but in all respects our firm remains the same with an ongoing commitment and passion for family law. We have updated our mission and values to reflect our passion and commitment to family law and to our clients.

Recent Developments

Recent Developments at Hartley Healy

Change of Name and Logo

As you can see, we have changed our name from Hartley Family Law Services to Hartley Healy. Our firm still specialises only in family law and de facto law.

Joe Healy became a partner of Hartley Family Law Services on 1 July 2005 and on 1 July 2006 Brett and Joe decided to change the name of the firm to recognise Joe’s long involvement, expertise and association with the firm.

As you can also see, we have decided to change our colours and more importantly our logo. Our logo not only represents the common letter in our surnames, but also is symbolic of the need for separating parents, lawyers and the wider community to always focus on the child in a separation and to have the child’s interests as the centre of our attention. The yellow dot at the centre of the oblique H is symbolic of the child.

Children are often the sad victims of abuse, violence and often the forgotten victims of marital breakdowns. Making the child the centre of our logo is a reminder of the need for parents, lawyers and the wider community to remain focused on the rights of children.

Our New Mission and Values

As our firm grows, we have also decided it is important to update and make more visible our mission and core values. We have outlined our mission and core values on the back page of this newsletter. Central to our mission and values is to effectively and efficiently settle our clients’ matters as soon as practicable to enable them to move on with their lives. A marriage breakdown causes enormous stress for all parties involved. Sadly, there are some lawyers who promote aggressive tactics and who wish to litigate at all costs. We are proud to say that we are not such lawyers and are determined to keep our clients out of Court and to use Court only as a last resort.

We are also passionate about being the best at what we do and provide “big picture” commercial realistic and tactical advice to our clients. We can only provide this advice if we are at the “leading edge” of all aspects of family law and leaders in our field as far as expertise and talent is concerned. We are passionate about recruiting and retaining the best lawyers and proactively growing our firm.

Updated Website

We have also revamped and updated the website.

Our website is still an important part of our firm. It provides numerous information sheets and details of papers and seminars that have been presented by members of our firm over many years. The information sheets are a "thumb sketch" of important aspects of family law and can be viewed freely and easily at our website.

We encourage all of you to use our website as a resource tool. We aim to keep the website updated with important events and developments in family law that may be of interest to you and your clients. The new website is:

www.hhfamilylaw.com.au

New Appointments

We are pleased to announce that both Beata Leszczuk and Sarah Minnery have been promoted to Associates at the firm effective from 1 July 2006. Beata and Sarah's profiles can be viewed on our website.

www.hhfamilylaw.com.au/beataleszczuk.php
www.hhfamilylaw.com.au/sarahminnery.php

We have also welcomed Tuskeen Jacobs as a family law solicitor in February 2006 and Kate Pateman as a family law solicitor in July 2006. Tuskeen and Kate's profiles can be viewed on our website.

www.hhfamilylaw.com.au/tuskeenjacobs.php
www.hhfamilylaw.com.au/katepateman.php

We also welcome Alira Morey as a family law solicitor who will commence with our firm in November 2006.

Publications and Seminars

Sarah Minnery has written an article which was published in the Australian Family Lawyer in Autumn 2006 Vol 18 No. 4 on the new Part VIII AA Amendments to the Family Law Act involving third parties. Sarah posed the question "Will Part VIII AA Survive Constitutional Challenge?"

There has been much debate since the introduction of the amendments as to whether these new amendments allow the Family Court to make Orders against third parties (in certain circumstances) in relation to property matters. Sarah's article concludes:-

"Time will tell whether the provisions will survive constitutional challenge, but in light of this discussion it seems that the legislators have ensured the powers in Part VIII AA are well protected."

The article has been well received by both academics and senior family law colleagues.

A copy of the article has been reproduced on our website at www.hhfamilylaw.com.au/docs/Aust_Fam_Lawyer_March_2006.pdf

Recent Amendments to the Family Law Act – Shared Parental Responsibility

On 1 July 2006, new amendments to the *Family Law Act* have taken effect relating to the parenting of children and the type of Orders that the Family Court can now make.

The words "residence" and "contact" have been removed from the Act and replaced with the words "live with" and "spend time with". These changes continue a long line of what we consider to be "cosmetic" changes to terminology in the *Family Law Act* regarding children.

The new amendments fall short of requiring that children must spend an equal amount of time with both parents. There is no requirement that shared care regimes be put in place by the Court.

However, the amendments that have been made are so substantial that in our view there is now a greater probability that the Court will be more inclined to Order shared care than previously occurred prior to 1 July 2006.

Importantly, there is now a presumption of "equal shared parental responsibility". This presumption of equal shared parental responsibility can only be displaced in very limited circumstances including where there are incidences of family violence or child abuse.

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Parental responsibility does not refer to the time that a child spends with each parent, but instead generally refers to the decision making responsibilities of parents and the duties, powers, responsibilities and authority that parents have in relation to children. Practically speaking, this includes making major long term decisions about issues such as the child's:-

- education;
- religious and cultural upbringing;
- health;
- name;
- changes to children's living arrangements that would make it significantly more difficult for a child to spend time with the parent (but does not include a decision of the parent of a child to form a relationship with a new partner).

This amendment to the Act introduces a positive onus on parents to consult with the other parent in relation to a decision to be made about one of the major long term issues above and to make a genuine effort to come to a joint decision.

This is a significant change from the previous Act and the legislation now makes it clear that with major decisions concerning the welfare of the children, that the parents not only have an equal right to make that decision, but now share in that decision making process. It is our opinion therefore that if a parent makes a major long term decision about a child's welfare (without consultation and agreement by the other party) then that parent is technically in breach of the *Family Law Act*. For instance, if a parent is to relocate to another State or change a child's school or surname, then that is a shared decision that must be made equally. If a decision cannot be made on a joint basis, then that parent wishing to make the change should seek an Order from the Court rather than unilaterally implement their own decision.

Importantly, if the presumption of shared parental responsibility is not displaced (which it rarely will be) then when the Court is considering making a parenting Order the Court **must consider** an Order where the children spend equal time with each parent or alternatively an Order where the children spend "significant or substantial" time with each parent.

The Act then goes on to set out a number of considerations the Court should take into account including primary and additional considerations when considering making an Order for shared care or significant or substantial time with the other parent. These factors are substantially the same as the relevant factors the Court had to consider under the old legislation, but there have been some additions.

The Court must now also consider whether an Order providing that children spend equal time with both parents or significant and substantial time with both parents is "reasonably practicable". The Court needs to consider the following factors in determining the "reasonable practicality" of a proposed Order:-

- how far apart the parents live from each other;
- the parents current and future capacity to implement an arrangement that the child spend an equal time, or substantial and significant time with each of the parents;
- the parents current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind;
- the impact that an arrangement of that kind would have on the child.

The Family Court does retain its wide discretion to make any Order that it thinks appropriate and proper having regard to the best interests of the child being the paramount consideration.

"Substantial and significant time" is defined to mean the time that the child spends with a parent including:-

1. days that fall on weekends and holidays; and
2. days that do not fall on weekends and holidays; and
3. the time the child spends with the parent allows that parent to be involved in:-
 - a. the child's daily routine; and
 - b. occasions and events that are of particular significance to the child.

In other words, even if the Court is not minded to Order shared or equal time, then the time that the child will spend with the other parent will need to include holiday time, weekend time and also time not on the weekend (eg., days or nights during the week).

The Practical Effect of the Above Amendments

There are yet to be any reported cases by the Full Court of the Family Court on the effect of these amendments. However, it is our opinion that the amendments are profound and will have a significant effect on the Orders made to the parenting of children in the future.

It is clear that although the Act does not mandate shared care of children, it elevates the importance of shared care and substantial or significant time with each parent to a level that it has never been at before.

It is our view that shared care Orders will be more the "norm" rather than the exception in the future.

There will be obvious situations where a shared care arrangement will not work. Some of these may include the following:-

1. where children are particularly young (babies or toddlers);
2. where parents live a significant distance apart;
3. where there are substantiated allegations of violence / abuse between the parents of children;
4. where a shared care arrangement isn't practicable due to one party's working hours and arrangements and/or environment etc;
5. where the children are of such an age that they have strong and genuine wishes (that are independently verified) that they do not wish to live in a shared care arrangement.

However, each case is uniquely different. Our legislation and the system under which we live dictates that the interests of each individual child is paramount. This entails that every case must be looked at on its particular facts and the interests and welfare of each particular child in a marital breakdown must be considered seriously.

Our Vision

To become Queensland's most desirable Family Law Service provider for our clients, staff and the community to be associated with.

Our Mission

Our Mission is to be proactive in resolving our clients' matters quickly and cost effectively to minimise their emotional and financial stress so that they can move on with their lives.

To achieve our Mission, we:

- Recruit and retain the best lawyers;
- Work as a united team;
- Provide "Big Picture" commercial and tactical advice;
- Educate our clients that there are no "winners" in relationship breakdowns if a matter escalates into a litigious, time-consuming and costly dispute.

Litigation promotes and feeds conflict between parties and their families and profits aggressive and litigious lawyers who do not care about their client's predicament. We are not such lawyers. Litigation must always be a last resort.

Our Values

At Hartley Healy, our firm's culture supports our seven core values of:

- **Absolute client focus and commitment** – we are a client focused firm, we strive for excellence in our service and seek to constantly exceed our client expectations.
- **Always proactive, never reactive** – our proactive approach is to ensure the best possible outcome for our clients in a timely and cost effective manner.
- **Ethics without compromise** – although we have a duty to comply with our client's instructions and to use our utmost skill and diligence in representing our clients, this duty is subject to our overriding duty to the Court / administration of Justice. Our role is to secure the best result possible for our client on the basis of the facts and the applicable law. By understanding our ethical obligations, it makes us better tacticians because an ethical lawyer will always approach a matter on a cost effective basis for clients where as unethical lawyers increase their client's costs either because their focus is on their monetary rewards as opposed to their client or they act in a manner which hinders settlement.
- **Teamwork** – We enjoy strong cohesion in a supportive working and social environment. We celebrate our successes, individual achievements and promotions. Furthermore, our team encompasses not only employees within the firm but our strategic partners. We seek to utilize and form relationships with the best professional advisers in the community who also assist in serving our clients (Valuers, Accountants, other Lawyers, Barristers, Financial Planners etc).
- **Recruit and retain the best** – we aim to attract the best talented prospective employees to our firm and to retain and develop our talented staff. We actively ensure our staff maintains superior technical skills and knowledge in Family Law. Our firm policy is to only employ Accredited Family Law Specialists or Solicitors who are prepared to undertake study toward achieving their Specialist Accreditation.
- **Continuously improve and grow** – we have a commitment to grow the business and to assist in the growth and development of our individual staff.
- **Give back to the community** – Helen Keller said "true happiness is not obtained through self gratification but through fidelity to a worthy purpose". As a business we create jobs and provide services but in addition we believe it is important that we give back to the community. We have a commitment to raise funds for certain charities and we encourage our staff to be involved in volunteer activities that support the community.

Our Staff

Brett Hartley, B.Com, LL.B. (U.Q.), Acc. Spec. Family Law – Partner
Joe Healy, B.Bus. (Accy.), LL.B. (Q.U.T.), Acc. Spec. Family Law – Partner
Beata Leszczuk, B.A., LL.B. (U.Q), Grad Dip LP – Associate
Sarah Minnery, B.Bus. (Accy), LL.B. (Hons)(Q.U.T.) – Associate
Tuskeen Jacobs, B.A. LL.B. Grad Dip LP. – Solicitor
Kate Pateman, LL.B., Grad Dip LP – Solicitor
Alira Morey, B.A., LL.B (U.W.S.) – Solicitor
Dianne Scott – Financial Controller / Office Manager
Julie Lewin – Senior Legal Assistant
Tyanne S'ua – Senior Legal Assistant
Hayley Erickson – Legal Assistant
Maureen Farlow – Receptionist
Tenielle Falcone – Junior Legal Assistant
Montanna Wells – Junior Legal Assistant
Shantel Reid – Junior Legal Assistant

Level 15, Brisbane Club Tower
241 Adelaide Street
Brisbane QLD 4000

GPO Box 678
Brisbane QLD 4001

Telephone 07 3220 1299
Fax 07 3220 1277

Website www.hhfamilylaw.com.au

Our Staff

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PRIVACY
Hartley Healy Family Law Specialists uses your personal information to represent and advise you. We may use it to tell you about changes in the law and our practice. It is only used for other purposes if we are legally required to do so or with your consent.

If your name or contact details have changed or if the information we hold is inaccurate please contact us. You may have your name removed from our communication list or update your details by contacting us on 07 3220 1299 or email dianne.scott@hhfamilylaw.com.au