



## In this issue

- Our New Toowoomba Office
- Appointments
- An Update on Financial Agreements
- Spousal Maintenance

## Welcome

Welcome to our April 2008 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 like to keep you up to date regarding our Firm and the services we provide to our clients.

In this issue we cover:-

- Recent Developments at Hartley Healy
- Update on Financial Agreements
- Information on Spousal Maintenance

## Recent Developments at Hartley Healy

### Our New Toowoomba Office

In line with the Hartley Healy vision to be Queensland's most desirable Family Law service provider, we are pleased to announce the opening of our new office in Toowoomba, which commenced operation on the 25th of March. We now have three Family Law Specialist offices in Queensland with our main office in Brisbane, our Gold Coast office, which commenced operation 12 months ago, and now our new Toowoomba office.



The Toowoomba office is located at Suite One, the Old Tafe College, 124 Margaret Street which overlooks Queens Park. We have free car parking for our clients, with access via Hume Street. The premises was built in 1911 and has recently been beautifully restored to its former glory by Maria Vasas who has done a fantastic job with her renovation in converting the rooms into office suites.



The office will be headed up by our new Associate, Mr Richard Mahler. Richard, who resides in Toowoomba with his wife and two children, was admitted as a solicitor in 2002 and practiced in Corporate Law with a leading top tier national law firm until June 2004. Following this, Richard chose to specialise in Family Law and showed his commitment to this when he achieved his Specialist Accreditation in Family Law last year. Richard has shown great enthusiasm and commitment to growing the Toowoomba office and to the Hartley Healy Mission and Values. We are all excited to welcome him to the team.

Along with Richard, Hartley Healy is pleased to welcome Ms Cindy Smalley who will join Richard in our Toowoomba office as a Receptionist and Legal Assistant.

*Continued on Page 2...*

### Our New Toowoomba Office continued

The decision to expand our services to the Toowoomba region came as a result of our perception that we could effectively fill the need in Toowoomba, and surrounding Darling Downs area, for Specialist Family and De Facto Law services. We are very excited about this expansion and believe it will be a great success.

#### Toowoomba Contact Details:

Suite 1, Old Tafe College  
124 Margaret Street, Toowoomba Qld 4350  
PO Box 936, Toowoomba Qld 4350  
Phone: 07 4699 5700  
Fax: 07 4699 5711

### Appointments

Hartley Healy is pleased to announce that Mr Peter Hooper of our Brisbane office has been appointed as an Associate of the firm. Peter joined the Hartley Healy team in May 2007 and since that time has



achieved his Specialist Accreditation in Family Law. We congratulate Peter on this achievement and on his appointment as an Associate.

Hartley Healy would also like to announce a new addition to the firm. Ms Polly Richardson will be commencing work in our Brisbane office in April as a Junior Solicitor and we welcome her to the team.

### An Update on Financial Agreements

A Binding Financial Agreement (otherwise known as "BFA") can be entered into between parties either prior to marriage (often referred to as a Pre-Nuptial Agreement), during a marriage, or at the end of a marriage.

They are essentially private agreements which oust the jurisdiction of the Family Court and therefore do not require approval by the Family Court, but are nonetheless binding and enforceable.



For the agreements to be binding and enforceable, they need to be drafted pursuant to specific legislative provisions in the *Family Law Act*. Typically, these agreements deal with how property and spousal maintenance issues are to be resolved in the event of a breakdown in the relationship.

These agreements are not straight forward. They require a high degree of technical expertise to draft correctly and substantial care and caution should be taken by lawyers and by the parties when entering into these agreements.

Parties who are considering entering into such agreements should stay well away from packaged or "kit" type agreements often promoted on the Internet or by lawyers without the necessary expertise.

It is important not only that the agreements be drafted with a high level of expertise and care, but it is also necessary for agreements to be revisited by the parties and their lawyers on a regular basis (at least every 3 years).

The importance of doing Binding Financial Agreements correctly is best illustrated by a recent decision of the Full Court of the Family Court in the case of *Black v Black*. In this case, the parties had a short marriage of approximately 18 months during which time they entered into a financial agreement. The husband sought to have the agreement set aside on the basis that it did not comply with the statutory requirements for a Binding Financial Agreement pursuant to section

90G as it was prior to the 2004 amendments. In other words, there were amendments made in 2004 that now require that the financial agreement needed to include a statement that the parties had received independent legal advice in relation to certain matters as set out in the *Family Law Act*. Previously, it was sufficient for that statement to simply be attached to a Certificate to the Agreement rather than being included in the body of the Agreement.

The Trial Judge held that there had been substantial compliance even though the specific words required by section 90G were not included in the body of the Agreement.

However, the Full Court disagreed with the Trial Judge and allowed the appeal and struck down the financial agreement. The Full Court of the Family Court stated that a strict interpretative approach and strict compliance requirements should be applied where legislation ousts the Court's jurisdiction to make property/spousal maintenance orders under section 79 of the *Family Law Act*.

## Spousal Maintenance

We are often asked questions about the relevance of spousal maintenance and how it applies in Australia.

Spousal maintenance is applied differently in other countries around the world. For instance, the decision recently delivered in the much publicised divorce case between Heather Mills and Sir Paul McCartney relating to property settlement and maintenance, would not have been a decision made by the Family Court of Australia seized of similar facts and circumstances.

In Australia, there is no automatic right to spousal maintenance upon separation. A party to a marriage is liable to maintain the other party to the extent that the first mentioned party is reasonably able to do so, if and only if, the other party is unable to support herself/himself adequately.

Therefore, there is a two step process to determining whether a Spousal Maintenance Order can be successfully obtained. The party seeking maintenance must first of all be able to show that they are unable to support themselves adequately. A party may be unable to support themselves adequately due to the reasons of having the care and control of a child under 18, or by reason of their age, or physical or mental incapacity for appropriate gainful employment, or for any other adequate reason. When considering whether someone could adequately support themselves, there are specific legislative provisions that must be looked at, specifically being those matters contained in section 75(2) of the *Family Law Act*. Some of these matters include things such as the length of the marriage, whether the length of the marriage has any effect on any parties' earning capacity, the age and health of the parties, and the property and financial resources available for division between the parties.

In other words, this case can be seen as an indicator of what could possibly be the attitude by the Full Court or the Family Court in future applications relating to the setting aside or striking down of Binding Financial Agreements. The Full Court has made it quite clear that due to the fact that these Binding Financial Agreements effectively take away the jurisdiction of the Judges to make Orders for property settlement, the Family Court Judges will only allow the agreements to stand if they strictly and fully comply with all parts of the legislation regarding the drafting and implementation of these agreements.

It is therefore imperative that parties or advisors contemplating recommending their clients to enter into such Binding Financial Agreements, have their Agreements prepared by specialist family lawyers to ensure that the Agreement complies, in all respects, with the legislative provisions.

The question of whether someone can support themselves "adequately" is not determined by reference to any fixed or absolute standard, but by having regard to relevant matters referred to in section 75(2). Therefore, the Judge in each case has a wide discretion as to what is adequate in the particular circumstances of that case.

It is not always the case that a party can expect to be maintained to the same standard that they enjoyed during the marriage. Likewise, "adequate" does not mean mere subsistence.

In our experience, the length of the marriage and the effect (if any) that it has had on the parties' earning capacity, together with the size and nature of assets available for division, often have a strong influence on the quantum of maintenance that may be awarded in a particular case. Typically, we find that agreements are usually made with one party to assist with the other party's maintenance prior to a property settlement being finalised. Where no agreement can be reached, the Court, in some situations, can make interim or interlocutory orders for spousal maintenance to ensure that one party is supported adequately until a final determination and division of assets.

After a final division of assets is made for property settlement and a party is still unable to adequately support themselves, then that party may still have a claim for an ongoing periodic spousal maintenance amount.

Spousal Maintenance Orders in Australia cease automatically upon the death of either party and/or remarriage of the party receiving maintenance. Spousal Maintenance Applications (just like Property Applications) must be filed within 12 months of a party's divorce becoming absolute.

## 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;

## 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.

- 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.

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, Acc. Spec. Family Law Associate  
Sarah Minnery, B.Bus (Accy.), LL.B. (Hons) (Q.U.T.), LL.M. (U.Q.) Associate  
Tuskeen Jacobs, B.A. LL.B. (J.C.U), Grad Dip LP Associate  
Peter Hooper, LL.B. (J.C.U.), Acc. Spec. Family Law Associate  
Richard Mahler, B.Com, LL.B. (Hons1) (Griffith), Acc. Spec. Family Law Associate  
Sophia Bookallil, B.A. LL.B. (U.N.E), Grad Dip LP Solicitor  
Amy Honan, B.Com, LL.B. (Griffith), Grad Dip LP Solicitor  
Gavin Lai, LL.B. (Q.U.T.), GDipPLEAT (U.Q.), JP(Qual.) Solicitor  
Dannielle Young, B.A. (Psych), LL.B. (Griffith), Grad Dip LP Solicitor  
Polly Richardson, LL.B, ABMS (Latrobe), Grad Dip LP Solicitor  
Dianne Scott Financial Controller / Office Manager  
Julie Lewin Senior Legal Assistant  
Tyanne Su'a Senior Legal Assistant  
Hayley Erickson Senior Legal Assistant  
Laurel Platter Legal Assistant  
Debra Sinclair Word Process Operator  
Maureen Farlow Receptionist  
Shantel Reid Assistant Financial Controller  
Camilla Gautam Marketing and Human Resources Assistant  
Eva Kalita Receptionist / Legal Assistant  
Cindy Smalley Receptionist / Legal Assistant

### Brisbane

Level 10, 87 Wickham Terrace  
Brisbane QLD 4000  
GPO Box 678,  
Brisbane QLD 4001  
Telephone 07 3220 1299  
Fax 07 3220 1277

### Gold Coast

Level 4, Southport Central,  
56 Scarborough Street  
Southport QLD 4215  
PO Box 3661, Australia Fair  
Southport QLD 4215  
Telephone 07 5561 1198  
Fax 07 5561 1210

### Toowoomba

Suite 1, Old Tafe College  
124 Margaret Street,  
Toowoomba QLD 4350  
PO Box 936,  
Toowoomba QLD 4350  
Telephone 07 4699 5700  
Fax 07 4699 5711