

Family Court CaseWatch - February 2008, by Wendy Kayler-Thomson, Forte Family Lawyers, released February/2008

The first of our CaseWatches this month is Family court CaseWatch, and with me in the studio is Wendy-Kayler Thomson from Forte Family Lawyers. Wendy, welcome back to Sound Education in Family Law and thank you once again for joining us.

We've got a lot of cases this month. Let's start with a group on relocation. The first is the decision of Justice Young in Davis and Spring. The mother applied to have sole parenting of the child and to relocate to aboriginal lands in central Australia from the Latrobe Valley in Victoria. There were two other interested parties: the father and the paternal grandmother.

The child was almost 3 years old at the time of the hearing before Justice Young. Both the mother and father were 24 years of age. The paternal grandmother was 52 years of age. The mother had 2 children from a former relationship aged 6½ and 4½ at the time of the hearing.

The mother and father had commenced their relationship at Ernabella, South Australia in September 2003. The mother is a Western Arrernte Aboriginal woman. Her homelands are the area west of Alice Springs. The father and the paternal grandmother were both Anglo Australian and came from the Latrobe Valley in Eastern Victoria.

The mother and father separated in September 2004, one month before the child was born. During the relationship of approximately 1 year the mother and father had travelled in the Northern Territory and Victoria, with the child being born in Victoria. 7 days after the birth of the child the mother left the child in the care of the paternal grandmother and travelled to Central Australia to be involved in various important cultural ceremonies. The child remained living with the paternal grandmother up to the date of trial. The mother travelled between Central Australia and the Latrobe Valley over the intervening 3 year period. When the mother was living in the Latrobe Valley, she had regular contact with the child. The father was at the time of trial living with the paternal grandmother.

What applications had been made?

The primary dispute was between the paternal grandmother and the mother. The paternal grandmother sought an order that the child live with her and that the child have contact with each of the mother and the father. The mother's application was that the child live with her and that she be permitted to relocate the residence of the child to the Pitjantjara Lands in the north of South Australia. She proposed contact between the child and the paternal grandmother during school holidays and that the father would be at liberty to participate in the paternal grandmother's time with the child at her discretion.

The father's application was that the child live with the paternal grandmother, or in the alternative, with him. He proposed that the mother have only supervised contact with the child and that she be restrained from leaving the Latrobe Valley.

Does the Family Law Act contain special provisions relating to indigenous culture?

As part of the 2006 amendments to the Family Law Act, a new clause was inserted into the provisions dealing with children of Aboriginal or Torres Strait Islander backgrounds. Section 60B of the Act sets out the objects and principles of the Act in relation to children. A principle underlying the objects of the Act includes Section 60B (2)(e), which provides that children have a right to enjoy their culture, including the right to enjoy that culture with other people who share that culture. Specifically pursuant to Section 60B(3) a child's right to enjoy his or her Aboriginal or Torres Strait Islander culture is stated to include the right to maintain a connection with that culture and to have the support, opportunity and encouragement necessary to explore the full extent of that culture and to develop a positive appreciation of that culture. These 2006 amendments strengthened the language in relation to the cultural needs of indigenous children. The previous legislation required the Court to consider the

need of an indigenous child to maintain a connection with his or her culture. However the new legislation, according to Justice Young, gives the notion of connection with culture a much stronger and more active meaning by giving the child a right to explore the full extent of their culture and to have the necessary support, opportunity and encouragement to do so. Section 60CC sets out how a court determines what is in a child's best interests and again one of the considerations that the court must consider includes, as set out in subsection 6, the right of an Aboriginal or Torres Strait Islander's child to enjoy their culture including the right to maintain a connection with that culture and to have the support, opportunity and encouragement necessary to explore the full extent of that culture and to develop a positive appreciation of that culture.

What observations did Justice Young make on the application of these provisions?

His Honour gave a very thorough investigation into research which has been undertaken in relation to indigenous culture and what constitutes the connection of a child with his or her culture. His Honour had the benefit of the evidence at trial of a culture consultant with special experience of the Aboriginal people of Central Australia. Some of the issues that His Honour commented upon was the mother's strong affiliation for her Aboriginal heritage and her adherence to the customary practices of her culture and of her people and her desire to ensure that the child was properly affiliated within that culture. He considered the difference between the child having exposure to the local Koori community in the Latrobe Valley and how the cultural practices of that community were not the same as the cultural practices of the mother's community. His Honour also considered the rights of the child to have a connection with its Anglo Australia culture. His Honour considered that the child's right to have a connection with her culture meant that she needed to actively participate in the mother's community and that this could only come from spending time with family members and the community. His Honour took judicial notice of what was said to be the long term impact upon Aboriginal children of their connection to their culture or lack of it as they pass through adolescence and their later adjustment as an adult. One of the very important factors for the Judge to consider was the balance between the emotional stability that the child had by the time of trial having lived with the paternal grandmother for 3 years compared to the child's right of cultural connections. It was the mother's case that she propose to raise the child in a traditional way very much relying on the importance of kinship. The mother's two other children spent various periods of time in the care of the mother's extended family as was the norm in her community and she intended to do likewise with the child the subject of the proceedings. Evidence was given by a psychiatrist and a psychologist about the theory of emotional attachment and how the theory of a child's emotional attachment to a primary carer is very much based in the tradition of western psychology as opposed to the Indigenous perspective which values very much a child's capacity to attach themselves to many carers in the course of their growing up and that this was vital in a society where responsibilities and obligation to family and to kin are deeply rooted and pervasive.

What parenting order did His Honour make?

Both the paternal grandmother and the father sought orders that all three parties have shared equal parental responsibility. The mother however made the unique submission that she have sole parental responsibility and that the presumption of equal shared parenting responsibility should be rebutted on the basis that she didn't want to be out voted by the other two parties on any primary parental decision. His Honour rejected that application suggesting that the question of "voting" was not the reality of how shared parental responsibility operated. His Honour ordered that it was appropriate to continue an order of equal shared parental responsibility. He did so primarily on the basis that the mother in evidence showed considerable respect to the paternal grandmother and the responsibility that she had given to the care of the child for its first three years and His Honour said that he intended to re-enforce that line of respect and influence.

What was the fate of the relocation application?

His Honour referred to previous decisions in relation to relocation, both before the 2006 amendments and after. His Honour agreed with the decisions of Justices Kay, Strickland and Dessau in three recent cases which suggest that the 2006 amendments do not raise a presumption against relocation and that the best interests of the child remain the paramount consideration. His Honour considered the concept of a meaningful relationship, the 2006 amendments requiring the court to consider the

benefit to the child of having a meaningful relationship with both parents. His Honour considered the concept of meaningful relationship meant a relationship of significance and importance to the child and of adding value to her life. He indicated that this was difficult to balance in the factual circumstances of the case. Overall His Honour decided to agree to the relocation of the child. He found that the decision about whom the child live with was invariably bound up in the relocation aspect of the matter. It was the mother's clear intention that if the child was to live with her she would relocate to Central Australia.

How then did the Court deal with the need to allow the father and the grandmother equal or significant time?

There were enormous practicable difficulties in His Honour determining what time the child could spend with the grandmother or father. His Honour determined that because of the practical, travel, financial and other reasons outlined by him the time that the child spends with the paternal grandmother and father should be what is reasonably available and practicable. He made a specific finding that a period of more significant and substantial time would have an adverse impact on the child because of the travel time involved and the disruption that it would cause her upbringing, education, learning of language, traditions and culture and the level of confusion that she might experience from the vastly different cultures and lifestyles. As a consequence the relocation was delayed by His Honour for a period of some months whilst there was a transmission period of the child increasingly spending time with the mother and that upon the relocation taking place some holiday contact.

Morgan and Miles, a decision of Justice Boland, considers the effect of the shared parenting laws on the principles which apply to relocation applications. What were the facts here, Wendy?

The parties had a relationship for about 7 years. There were 2 children of the relationship aged 6 ½ and 4 at the time of the appeal. During the parties' relationship and after separation the parties lived together in a small town on the coast of New South Wales. The mother's family lived in a second town about 140 kilometres away. About 2 years after separation the parties entered into a Parenting Plan which provided for the father to spend time with the children each alternate weekend and on school holidays.

In 2007 the father filed a fresh application seeking that the children spend equal time with them.

The mother then made a unilateral decision and moved herself and the children to the second town where her family lived. The matter came before a Federal Magistrate on an interim application regarding relocation.

What decision did the FM reach?

The Federal Magistrate refused to approve the relocation on an interim basis and required the mother to return to the small town where the parties had previously lived. The major controversy in the case was that because this was a relatively local relocation, it was arguable that the relocation of the mother did not substantially affect the time that the children would spend with the father - that is the alternate weekend arrangements could continue.

The first ground of appeal was that the FM should have applied the principles in D and SV, a 2003 decision prior to the shared parenting laws.

D & SV looked at the move of a parent involving a relatively short distance and established, at least in relation to the old provisions of the Act, that where residence, as it was then known, of the child was not really an issue, then the focus should be on what alternative contact or shared residence arrangements could be made, rather than on the permission or otherwise to be given to the move. Her Honour also quite rightly pointed out that prior to the 2006 amendments, generally speaking on an interim basis, the court was keen to preserve the stability of the child's existing arrangements until a full trial could hear and determine the relocation issue. Thus where a parent unilaterally relocated a

child prior to final hearing, more often than not that parent was required to return to their original place of residence pending the final determination.

What was the Court's view on the effect of the amendments?

Her Honour's view was that D & SV could not be easily referable to the new amendments. The suggestion by the counsel for the mother was that D & SV before the amendments suggested that where residence was not in dispute, then a local relocation was not really an issue and that the major focus of the court ought to be on alternative contact or shared residence arrangements. The mother's counsel sought to then infer that D & SV would apply under the new amendments in such a way that if shared care arrangements were not in place prior to a proposed move, then if it was thought to be in the children's best interests, the question would then be what arrangements should be made for the child to spend time with the other parent once relocation has taken place. Her Honour suggested that some of the principles to be applied when determining relocation matters, particularly core principles, remained the same under the new legislation as they did under the old. That included the principles that the child's best interests remain the paramount but not sole consideration, the parent wishing to move doesn't need to demonstrate compelling reasons for a relocation, the judicial officer must consider all of the proposals and may themselves formulate proposals in relation to the child's best interests and the child's best interest must be weighed and balanced with the right of the proposed relocating parent's freedom of movement. Her Honour indicated her view that the new legislation now required consideration of the competing proposals against the criteria now set out in Section 60CC and Section 60C.

What was the Court's conclusion on ground 1?

Her Honour found against the mother and required her to return to the original place of residence pending final hearing. Effectively the Judge was confirming that unilateral moves on an interim basis will still be difficult to maintain under the new legislation as they were difficult to maintain under the old legislation. Her Honour found that there was nothing in the new legislation which gave a parent with whom the children primarily lived any greater rights to unilaterally move a child's residence than under the old legislation. She also confirmed that there was nothing in the legislation to define any difference between a local or interstate or overseas relocation and that each move needed to be judged on a case by case basis. There were other grounds for appeal which focused in some part on the difference between the time that the father would spend with the children and the quality of that time if they lived in different towns as opposed to the same town. Those other grounds of appeal were also rejected by Her Honour.

The Full Court had to consider a similar question in Taylor and Barker. What was the background to that case?

This matter involved a 10 year old child. There was an application by the mother to relocate the child's residence from Canberra to North Queensland. That application was successful in the Federal Magistrates Court and the father appealed to the Family Court.

The main ground of appeal was that the FM did not follow the principles outlined in the 2006 case of Goode and Goode. First of all, what are those principles?

Goode & Goode effectively set out the process the court should apply in parenting cases under the 2006 amendments. The Full Court in Goode & Goode set out that the making of a Parenting Order triggers the application of the presumption that it is in the best interest of a child for each of the child's parents to have equal shared parental responsibility. That presumption must be applied unless there are reasonable grounds to believe that a parent or a person who lives with a parent is engaged in abuse of a child or family violence. The presumption can be rebutted if the court is satisfied that the presumption would conflict with the best interests of the child. Once the presumption is applied the first thing the court must do is to consider making an order for the child to spend equal time with each of the parents. If equal time is not in the interest of the child or reasonably practicable a court must go on to consider making an order for the child to spend substantial and significant time with each of the parents. The concept of substantial and significant time is defined in the Act. Where neither the

concept of equal time or substantial and significant time delivers an outcome that promotes a child's best interest then the issue is at large and to be determined in accordance with the child's best interests. A child's best interests remain the overriding consideration. The argument by the father was that the Federal Magistrate effectively treated the relocation aspects of the case as a separate issue to be determined from the issues in Section 60CC

What conclusion did the Full Court reach on this ground? Q16:It was also asserted that the FM erred "in failing to consider whether the child spending equal time with each of his parents was reasonably practicable".

The Full Court found against the father on this point. The Full Court found that the Federal Magistrate did assess the relocation proposals in the context of making necessary findings in relation to the relevant Section 60CC matters. The Full Court found that the Federal Magistrate did correctly apply the process set out in *Goode & Goode* and canvassed the competing proposals in accordance with that Full Court decision. The Full Court approved of the approach the Federal Magistrate took. The Federal Magistrate had first considered, without regard to the relocation proposal of the mother, whether it was in the child's best interest to spend equal time with each parent. The Full Court found that once the Federal Magistrate had concluded that it was not in the best interests of the child to spend equal time with each parent, it was not necessary for him to consider whether equal time was reasonably practicable. However the Full Court found that a better way for the Federal Magistrate to approach the next step would have been to, in considering the option of substantial and significant time, also consider the reasonable practicability of such an arrangement. The Full Court indicated that such an approach may have provided a more logical path for the Federal Magistrate to consider the competing relocation proposals. The Full Court found that since the new amendments the relocation proposal does need to be determined in some way as a separate and distinct matter. That is because the court is required to assess the matters in Section 65DA - that is the question of equal time or substantial and significant time without regard to the relocation proposal but that then the relocation proposal will be balanced against each option at the same time as the normal consideration of whether such an arrangement is reasonably practicable.

Let's move on to some property cases now. The first is *Gitane and Velacruz*, which deals with the interesting issue of implied consent of one of the parties to the variation of section 79 orders. What were the facts here, Wendy?

The parties had been married in 1989 and separated in February 1997. In August 1998 they entered into Consent Orders which provided that the husband pay to the wife the sum of \$120,000.00. There were effectively two main assets being two properties. After the consent orders were made one of the properties was sold pursuant to an Order. The net proceeds of the sale were paid to the wife in partial reduction of the \$120,000.00 owed to her by the husband. Sometime later the wife voluntarily transferred her interest in the other property to the husband. She did not specify that she still expected the balance of the \$120,000.00 to be paid by the husband and she took no steps to secure her interest in the property being transferred as security for the monies owed by her.

What was the procedural history with this case?

The matters didn't come to a head until some three years later when the wife applied for Orders permitting the child of the marriage to travel with her to South America. The wife mentioned in that affidavit that she was still owed money by the husband. Six months after that she filed an Enforcement Summons seeking payment of the balance of the monies owing to her. The husband brought an Application, primarily relying upon Section 79A (1A) that the court set aside the original Orders on the basis that the consent of all of the parties had been obtained. The husband relied not on the explicit consent of the wife but her implied consent by virtue of her conduct in allowing the transfer of the property to the husband.

What must an applicant show in order to set aside section 79 orders and obtain new ones?

To successfully rely upon Section 79A(1A) the husband had to firstly establish that the Application was made by a person affected by the Order. There was of course no problem with that in this case.

Secondly the court must make a finding that there has been or is the consent of all of the parties to the proceedings in which the Order was made to vary or set aside the original Order. Thirdly the court may exercise its discretion to vary or set aside the Order. Fourthly the court may then, if it considers appropriate to do so, make another Order under Section 79 in substitution.

On what basis did the Court find that there was implied consent by the wife?

The husband has telephoned the wife seeking her consent to the transfer of the property into his sole name. The husband had tape recorded that conversation. It had taken place in Spanish and had been translated for the purposes of the trial before His Honour Justice Rose. His Honour found that during that telephone conversation the wife had given her qualified consent to a variation of the orders to the effect that the husband was no longer liable to pay her the balance of the monies to her. It was qualified because during the telephone conversation the wife said that she wanted to speak to her lawyer about the arrangements. His Honour then found that that qualified consent was converted into an unqualified consent once she had received legal advice and acted upon it. She signed the Transfer, made it available to the husband, she didn't oppose the registration of the transfer and at no stage did she give any verbal or written notice to the husband of her intention to possibly seek payment from him of the balance of the monies at any future time.

What was the result in the case?

His Honour exercised his discretion to vary the original Consent Orders to discharge the husband's liability to pay any further monies to the wife. His Honour was critical of the wife's failure to take any steps to either notify the husband that she still expected to be paid the money for some three years and that she did not take any steps to preserve her interest in the Consent Orders at the time she transferred the property to the husband. His Honour set aside the original Orders and then exercised his discretion to make fresh Property Settlement Orders. Unfortunately for the husband, upon the re-exercise of his discretion His Honour found that, at least up until the third step of the property division process, the husband would be in a position of paying to the wife \$51,000.00, some \$20,000.00 more than was owing under the original Consent Orders. In exercising his discretion under step 4 of the property division process His Honour, perhaps kindly, decided that it would not be just and equitable for the husband to pay a higher amount and Ordered that he pay the balance of the monies owing to the wife pursuant to the original Orders.

Worsnop and Worsnop (No 2) is a case involving property orders with a difference: it involved the Commissioner of Taxation. What were the facts here?

The parties had been living together for a period of about 14 years. There were four children of the marriage. The wife had been primarily engaged in home duties during the course of the relationship. The husband was engaged in his own business activities which involved primarily the purchase from the United States of electronic parts and systems which were shipped to Australia for assembly and resale. However at some stage during the marriage the husband set up an offshore company and began diverting income to a bank account in the Isle of Mann. At around the time that the wife applied for a property settlement in the Family Court the husband made a voluntary disclosure to the Australian Taxation Office. By the time of the trial the assessment of income tax owing by the husband was over 12 million dollars. That well outweighed the net asset pool of about 5 million dollars. The major asset of the parties was the matrimonial home valued at about 4 ¾ million dollars.

How did the Court deal with the competing interests of the Commissioner and the wife in this case? What were the applicable principles?

His Honour made a finding that the wife did not know and should not have known about the husband's non-disclosure of income or funds held by him offshore. It was the case for the husband and for the intervener the Australian Taxation Office that irrespective of actual or imputed knowledge of the wife of the husband's non-disclosure, an Order should still be made for the sale of the matrimonial home and that all of those funds ought to be applied in partial satisfaction of the husband's tax debt. His Honour did not include the husband's tax debt in the matrimonial pool available for division. He determined that pursuant to Section 79(4) the appropriate distribution on the

basis of contributions was an equal division. His Honour found that although the tax debt of the husband was not included in the asset pool, he was required pursuant to Section 75(2)(ha) to take into account the effect of any proposed Order on the ability of a creditor of a party to recover that debt. His Honour found that taking into account that sub section he was not prepared to make any further adjustment in favor of the wife for 75(2) factors. His Honour applied the Full Court's judgment in Biltoff that there is no particular rule of priority as between a creditor and a spouse. The rights of the creditor need to be balanced in relation to the rights of the spouse.

What was the outcome?

His Honour found that an equal division of the assets between the husband and the wife was the just and equitable outcome

Our next case, the Full Court decision in Johnson and Page involved child sexual abuse allegations. Can you explain the background to this appeal, Wendy?

The mother and father had cohabitated briefly. They separated when the child was 1 ½ months old. The child was six at the date of the hearing before the Trial Judge. After separation the mother remarried and there was a child of that relationship. When the child was about 2 ½ years old Final Orders were made by consent providing for contact between the father and the child on a two weekend out of every three weekend cycle with that changing to alternate weekends upon the child turning three years old. When the child was about five years of age the mother made an allegation that the child had been sexually assaulted by the father. Contact was initially suspended and then reinstated on a supervised basis only. At trial the mother sought Orders that the father spend no time with the child on the basis that unsupervised time with the father exposed the child to an unacceptable risk of sexual abuse.

What conclusions did the trial judge reach on the mother's application and the other applications made?

Whilst the Trial Judge found that there was a risk of sexual abuse, having accepted the evidence of the mother that the statements about disclosures were made by the child, he found that the risk was not unacceptable.

The first issue the Full Court considered was the meaning of the term "unacceptable risk". What was the Court's view on this?

A major question was the difference between a Trial Judge being asked to make a positive finding that abuse had occurred as opposed to the Trial Judge's determination of whether or not there was an unacceptable risk of harm to the child if the child spends time with the father. There was approval for a seven point summary of the unacceptable risk test which was set out by His Honour Justice Fogarty in a paper. He stated that the decisive issue is always the best interests of the child. Unacceptable risk involves an evaluation of the nature and degree of the risk and whether with or without safe guards it is acceptable. Justice Fogarty said that where past abuse is alleged it is usually not necessary or desirable to reach a definitive conclusion on that issue. If the past abuse isn't proved it doesn't mean that those circumstances are not capable of being relied upon to determine whether or not there is an unacceptable risk.

The next issue was the burden of proof imposed on the mother. What conclusion did the Court reach on this issue?

The burden of proof to be applied is Section 140 of the Evidence Act that imposes the civil burden being the balance of probabilities but also goes on to say that in taking into account whether it is satisfied on the balance of probabilities the court must take into account the nature of the cause of action, the nature of the subject matter of the proceedings and the gravity of the matters alleged. The Full Court found that the Judge did appropriately apply the burden of proof to the mother and that he had not applied an excessively high test.

The final issue we'll cover here is the mother's appeal in relation to the injunction on certain contact between her daughter and her current husband.

The Judge granted injunctions which effectively restrained the mother from leaving the child alone with her husband or from permitting him to be in anyway involved with the dressing, undressing, bathing, showering or toileting of the child irrespective of whether or not the mother was present. The Trial Judge made no adverse findings about the mother's new husband associated with the sexual abuse allegations and he specifically noted that the injunction was not to be seen as a criticism of the wife's husband but simply as reflecting the need to remove the anxiety between the parties and as a means of protecting him from any further insinuation or allegations. The Full Court found in favor of the mother on this point and the injunction was discharged.

Our final case this month is B & B, which deals with the question of whether cost certificates under the Federal Proceedings (Costs) Act 1981 can be granted where the appeal is resolved by consent without a hearing.

The husband had appealed against parenting orders and also against property settlement and other financial orders. In the week preceding the hearing of the appeal the parties resolved the appeal matter and Orders were made by consent setting aside the original orders and substituting them with fresh orders. Both parties applied for Costs Certificated pursuant to the Federal Proceedings Costs Act and that matter was held over to be determined by the Court of Appeal. Importantly a Costs Certificate may be granted by the Court of Appeal where a Federal Appeal succeeds on a question of law. The wording of the two sections of the Federal Proceedings Costs Act that are relevant in this matter specifically refer to a court having 'heard' the appeal. The question was whether an Order made by consent between the parties constituted the Full Court having heard the appeal.

What has the practice of the Full Court on this issue been in the past?

The traditional approach up until 2002 was that the Full Court would not usually grant Costs Certificates where an appeal was resolved by consent. This was the case even if Orders were made after the Full Court had heard full argument in relation to the appeal but hadn't yet delivered judgment. However in 2002 in the matter of Brown where Costs Certificates were granted in circumstances where the matter had been called on for the appeal, there had been some discussion in open court to the effect that it appeared that the appeal would be likely to succeed and the appeal then being allowed by consent. Similarly in two subsequent cases the matter had actually been called on for appeal on the day it was listed but was resolved that day on the basis of general agreement that the appeal was likely to be successful. This case of course can be distinguished from those others because the matter was consented to and Orders were made by a single Judge of the Appeal Division some day prior to the date on which the appeal was actually listed.

The Court was guided by Justice's Kirby's judgment in Cramer and Davies. What principles did His Honour lay down in that case?

Justice Kirby preferred a broad interpretation of the necessity to hear the appeal. He did so because if a narrower construction was taken it might force parties to go through the charade of a formal hearing even though it was plain that the appeal would succeed, that the court did in fact hear the appeal in the sense that it heard and granted the application in that case for special leave and had the appeal listed before it and thirdly the general objective of the Act is remedial and that a broad construction of the word heard would advance the attainment of those objectives.

What conclusion did the Court reach in the present case?

The Full Court adopted Justice Kirby's judgment in Cramer & Davies and took a broad view of what constituted hearing the appeal. They further found that the question of whether or not an appeal settled by consent succeeded on a question of law will depend upon the material which the court has before it. In this case they had the benefit of the husband's pre-argument statement which elaborated on a number of issues which the Trial Judge had omitted from her judgment and thus the Full Court was satisfied that the appealed had succeeded as a matter of law.

Wendy, thank you for reviewing this very interesting group of cases this month. Wendy Kayler-Thomson is from Forte Family Lawyers.

© 2008 Television Education Network Pty Ltd and Wendy Kayler-Thomson, Forte Family Lawyers