

**August 2007**

## INDEX

Expansion of our Family Law Department – Peter Szabo.....	1
How to Split a Large Superannuation Pension.....	1
Jail – and throw away the key: Contempt of Court.....	2
Compulsory Mediation Before Commencing Court.....	3

This month's Family Law briefing introduces a new "star recruit" to our Work Group – Peter Szabo. We also:

- describe the complexity of dealing with a large superannuation pension;
- tell of a husband who discovered the Court, far from being a toothless tiger, actually roars; and
- set out the new pre-litigation procedures for children's cases involving Family Dispute Resolution Practitioners.

Please call us with all your clients' family law needs.

## EXPANSION OF OUR FAMILY LAW DEPARTMENT – PETER SZABO

Peter Szabo has recently commenced with us as a principal in our Family Law Department. Peter, Stephen Winspear and Catherine Weir are the 3 principals who now head our 12 member department. Peter is an acknowledged leader among family lawyers throughout Australia and is well known around the country for representing clients in high profile cases, writing family law text books and addressing financial advisors, accountants and family lawyers about family law, taxation, complex financial and children's matters.

I first met Peter at the Family Court in about 1987 where he was conspicuous by the mobile phone in his ear or, more correctly, on his shoulder. He was of course the only person at Court who had one because they were brand new technology and they were larger than house bricks and nearly as heavy. In addition to being a brilliant family lawyer, Peter has always been a technology guru and is never seen without his laptop.

More than 30 years of dealing with the emotional factor in family law equips Peter to sensitively pinpoint the particular needs of each client, which is essential in providing proper, rounded family law and financial planning advice. That advice is then implemented by Peter assisted by the appropriate expert such as a financial planner, accountant or tax lawyer as the case may be.

For all your clients' family law needs, please give Peter or any of our other family lawyers a call.

**Stephen Winspear**  
Principal  
Family Law

## HOW TO SPLIT A LARGE SUPERANNUATION PENSION

A recent case involving Mr and Mrs Jarman involved the division of their house, cars and inheritances totalling \$380,000.00 plus superannuation. Each of them had modest lump sum superannuation entitlements. The wife was working and earning about \$40,000.00 per annum. The husband was a retired teacher (retired from ill health) receiving a superannuation pension of \$52,000.00 per annum; this created the biggest problem for the court in this case. The complex family law formula indicated that while this pension entitlement was in the growth phase (before his retirement) it was worth \$407,000.00. Eight months later after he had retired it was worth \$865,000.00.

The Court understandably said that this valuation had a note of artificiality about it because there was no lump sum of that amount, just an income stream. Furthermore, the wife had an income stream too but it was just her salary and there was no way you could validly value that as a lump sum.

This was a 27 year marriage which in most cases would pre-dispose the Court to start with the assumption of a 50/50 division. They would then usually make adjustments depending on the relative needs of the parties.

In the end the Court decided that the wife should keep the house and a \$10,000.00 payment which effectively gave her 82% of the "hard assets". She kept her own modest superannuation (a lump sum entitlement of \$45,000.00) and her husband's superannuation pension was not otherwise touched.

Both parties appealed and the Full Court said that it was a reasonable result in the circumstances and dismissed the appeals.

It is a little surprising that the Court did not choose to split the superannuation pension (which it has the power to do) and give the wife a share of that pension, even a small share.

The case indicates the difficulties of handling large superannuation pensions.

## JAIL – AND THROW AWAY THE KEY: CONTEMPT OF COURT

Mr Myers unfortunately was a bit too clever for his own good. His property case started in the Family Court in March 2001 and the Court made an order that month (to remain in force until further Court order) restraining him from disposing of or borrowing against his house.

The case came up for final hearing in September 2003 and final orders were made in November 2003. The Court ordered the husband to pay the wife \$393,000.00 (and various other orders were made).

It subsequently was discovered that between the trial in September and the judgment being given in November the husband had set about re-organising his affairs. He heavily mortgaged the home (which he was still prohibited from doing) and sent about \$450,000.00 out of the country.

He also tried to leave the country at about the same time and was prevented because there was an order in place at the airports preventing his departure. This didn't stop him trying again because he then bought a yacht and tried to sail out of the country. He was caught because the wife had access to his credit card statements!

He was charged with contempt of Court, in particular by borrowing money against the property contrary to the Court order and then disposing of the money out of the jurisdiction. The Court ordered that he be imprisoned for an indefinite term with him not to be released without a further Court order.

He appealed on the basis that the imprisonment was excessive. The Appeal Court wasn't impressed with that argument pointing out that he always had the option to re-apply to be released once he had "purged his contempt" by paying the wife what was owed. He could re-apply on various other grounds as well.

The moral of the story is that the Family Court will act severely when people seriously challenge the authority of the Court and ignore orders of the Court.

## COMPULSORY MEDIATION BEFORE COMMENCING COURT

On 1 July 2007 the provisions of the *Family Law Act* came into force which make it compulsory to attend mediation (now called "Family Dispute Resolution", previously called "Counselling" - watch this space for what it is called next!) before taking a children's case to Court.

Whenever there is a dispute relating to children and a new Court application is to be commenced, the parties must attend a Family Dispute Resolution Practitioner ("FDRP") to try to sort out their differences. This includes the well known, government funded counselling and mediation organisations, as well as a number of specifically authorised solicitors and others.

There are of course some exceptions. You can avoid going to an FDRP if one of the following applies:

- (a) urgency;
- (b) abuse or family violence or risk of abuse or family violence;
- (c) the case is a contravention of order application;
- (d) a children's order has been made within the past 12 months;
- (e) it is not practical (eg physical incapacity or geographic remoteness); or
- (f) it is an application for a consent order.

The FDRP is required to give a certificate to show that the parties have "had a go" at mediation. Certificates will also show if one party has refused to turn up. When you issue your Court application you either have to file such a certificate or you have to file an affidavit describing why you weren't able to attend an FDRP.

Unless the Court makes a mistake(!), they won't issue your application without a certificate or an affidavit setting out the reasons why you should be allowed to go to Court.

If you have a client and it looks likely that they will finish up in Court it may be best to start early in making an appointment with an FDRP. It can take a number of weeks to get in.

If you settle the dispute before you get to the appointment it is then an easy matter to cancel the appointment.

Please contact us with any queries about these matters.

---

### The Moores Legal Family Law Team

We have a range of practitioners who are able to assist with any minor queries or major issues you may have. If you require further information, please contact a member of our Team

**Stephen Winspear**  
Accredited Family Law Specialist (1989)  
Head of our Family Law Team

**Catherine Weir**  
Over 20 years experience and Principal  
with our Family Law Team

**Peter Szabo**  
Accredited Family Law Specialist and  
Principal with our Family Law Team

**Margaret Carney**  
Senior Lawyer and Accredited Family  
Law Specialist

**Sheryl Barker**  
Broad experience in Family Law and  
General Litigation

**Ellie Delafield**  
Broad experience in Family Law

**Micheil Paton**  
Broad experience in Family Law

**Katie Waldron**  
Broad experience in Family Law

---

**DISCLAIMER:** This Family Law Briefing is of a general nature only. Specific legal advice should be sought rather than relying on this Briefing.

If you would like to receive the Family Law Briefing electronically please forward your e-mail address to Lee Newnham, Marketing Manager, at [lnewnham@mooreslegal.com.au](mailto:lnewnham@mooreslegal.com.au)

Page 3 of 3