

forte family law

December 2008

WELCOME BELLE LANE

Belle Lane started with Forte Family Lawyers in mid 2008, initially for a few months. We are very pleased to announce that she is staying with us.

Belle initially worked as a solicitor in Melbourne until she joined the Victorian Bar. She later moved to Perth in 2001 in search of better weather. She worked in a boutique family law firm and then went to the Western Australian Bar in 2003.

Belle travelled to the United States and Canada to undertake further professional development. She attended Harvard University to study negotiation and attended further training in Collaborative Practice in Toronto.

Whilst Belle's skills as a barrister are extremely useful at Forte, she is interested in alternate methods of helping people resolve their disputes. She joins Wendy and Jacky to be Forte's third collaboratively trained lawyer. There are only about 70 in Victoria. She joins Jacky as our second qualified arbitrator and Wendy as our second trained mediator.

Belle says, "While some disputes will always require a decision of a Court, my experience is that most clients find litigation very costly in terms of emotion, stress, time and money. Litigation rarely helps improve relationships between parties, many of whom have many years of parenting children ahead of them."



DE FACTO PROPERTY RIGHTS

New Commonwealth Law

The *Family Law Amendment (De facto Financial Matters and Other Measures) Act 2008* ('the Act') gives partners in de facto heterosexual and same sex relationships similar rights to partners who are married. These rights include the division of property and maintenance claims in the event of breakdown of a relationship.

Once the Act comes into effect de facto property disputes (except in South Australia and Western

Australia) will be heard in the Family Court or Federal Magistrates Court rather than in the state courts.

There is no clear definition of a de facto relationship. The court must look at the circumstances of the relationship including:

- the length of the relationship
- having a common home
- degree of financial dependence between the partners
- the arrangements for financial support and care and support of children

An application for the adjustment of property interests or spousal maintenance must be made within 2 years of the end of the de facto relationship. The court's permission may be sought outside this period.

When determining de facto property disputes, the court must take into account:

- the financial and non-financial contributions of the parties
- the contributions made by a partner to the welfare of the family, including homemaker and parent contributions

The court will consider other relevant matters such as the age and state of health of the partners, income and earning capacity, care of the children of the relationship and the effect and duration of the relationship on a partner's earning capacity. The court must make orders that are just and equitable.

A de facto partner can apply for spousal maintenance. One partner must maintain the other only to the extent that the partner is reasonably able to do so and only if the other partner is unable to support themselves adequately.

The Act must come into effect by 21 May 2009. It is expected to start on 1 March 2009. The Act will apply to all states and territories, except South Australia and Western Australia. The Act will not cover relationships that breakdown before the commencement of the Act. These relationships will be covered by the relevant State or Territory law. In Victoria, this is the *Relationships Act 2008 (Vic)*.

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New Victorian Law

The *Relationships Act 2008* (Vic) (*'Relationships Act'*) deals with the division of property in the event of a breakdown of a domestic relationship if court proceedings are commenced on or after 1 December 2008.

The *Relationships Act* introduced a register for domestic relationships. Persons in a domestic relationship may apply to register their domestic relationship.

Domestic partners who have lived in a domestic relationship for 2 years or more, or have a child together, or have registered their domestic relationship can apply under the *Relationships Act* for their property to be divided and, in some circumstances, for spousal maintenance.

When determining the division of property between domestic partners, the court considers:

1. The financial and non-financial contributions made directly or indirectly by or on behalf of the domestic partners
2. The contributions, including contributions made in the capacity of homemaker or parent, made by either of the domestic partners to the welfare of the other domestic partner or to the welfare of the family
3. The nature and duration of the domestic relationship
4. Other relevant factors, including:
 - (a) The age and state of health of the domestic partners
 - (b) Income and earning capacity of the domestic partners
 - (c) The responsibility of either party to support any other person

The *Relationship Act* allows a court to make orders for spousal maintenance between domestic partners if a domestic partner is unable to support themselves adequately because of some circumstance connected to

Any application must be brought within 2 years after the day on which the relationship ended.

What can we do?

We can provide you with the following assistance:

- advise you on your rights and obligations
- advise you which is the most appropriate law for your circumstances
- advise you of alternative methods of dispute resolution, such as mediation
- prepare a 'relationship agreement' or financial agreement to document the agreement reached with your partner for the division of property before the relationship commences, during the relationship or at the end of a relationship
- represent you at court if proceedings are necessary

Please contact Jacky Campbell or Wendy Kayler-Thomson on 9248 5800 or enquiries@fortefamilylawyers.com.au

COLLABORATIVE LAW IN PRACTICE

Resolving legal disputes in a collaborative way is fairly new to Australia. Forte Family Lawyers is pleased to be able to offer clients the choice of 3 collaboratively trained lawyers.

Collaborative law is an ideal alternative for parties who are concerned about the emotional stresses and impact on their relationship of court proceedings.. Respectful communication is encouraged.

The focus is on meeting the interests of both parties. The lawyers help parties find options and resolve the dispute themselves.

If you want to lean more about the process, please contact wkaylerthomson@fortefamilylawyers.com.au or icampbell@fortefamilylawyers.com.au or blane@fortefamilylawyers.com.au.

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CHILD SUPPORT AGREEMENTS

Parents can use a child support agreement to set out the agreed financial obligations of a parent for the payment of cash child support expenses. The agreement can specify the amount of child support to be paid, or vary elements of the assessment made by the Child Support Agency. Expenses which may be covered by an agreement include health insurance, medical expenses and school fees. Parents are able to choose how child support is paid and what expenses are paid.

From 1 July 2008 there are two types of child support agreements:

- Binding Child Support Agreement
- Limited Child Support Agreement

Binding Child Support Agreements

Binding Child Support Agreements are signed by both parents and offer more certainty than Limited Child Support Agreements. Each parent is required to obtain independent legal advice before entering into a Binding Child Support Agreement. An agreement is intended to be long term as the terms cannot be varied, but can be terminated, or in limited circumstances, set aside. The agreement should cover any changes in circumstance that are likely to arise.

A Binding Child Support Agreement can only be varied by entering into a new agreement or by court order.

A Binding Child Support Agreement can be set aside if:

- a party's agreement was obtained by fraud or a failure to disclose material information
- a party to the agreement or someone acting for a party, exerted undue influence or duress in obtaining that agreement or engaged in unconscionable conduct
- exceptional circumstances, relating to a party to the agreement or a child who is the subject of the agreement, have arisen since the agreement was made and the applicant or the child will suffer hardship if the agreement is not set aside

Limited Child Support Agreements

A Limited Child Support Agreement must be in writing and signed by both parents. Legal advice about the effect of entering into a Limited Child Support Agreement is not required, although we recommend it.

Parents can end a Limited Child Support Agreement by agreeing to do so, or by entering into a new agreement. The court can also set the agreement aside. If the existing agreement has been in effect for more than 3 years, written notice can be provided by the parent who wants to end the agreement. A Limited Child Support Agreement may be terminated if the administrative assessment calculated by the Child Support Agency varies by more than 15% from the previous assessment and one parent wishes to end the agreement.

A Limited Child Support Agreement can be set aside if:

- a party's agreement was obtained by fraud or a failure to disclose material information
- a party to the agreement or someone acting for a party exerted undue influence or duress in obtaining that agreement or engaged in unconscionable conduct
- a significant change in the circumstances of one of the parties to the agreement, or a child who is the subject of the agreement, it would be unjust not to set aside the agreement
- the agreement provides for an annual rate of child support that is not proper or adequate, taking into account all the circumstances of the case, including the financial circumstances of the parties to the agreement

PRIVACY

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If your name, address, email address or telephone number have changed, or if you think that the information we hold is inaccurate please contact us. We will remove your name from our mailing list if you ask us to do so. You can contact us on 9248 5800 or email to enquiries@fortefamilylawyers.com.au.

DISCLAIMER

This newsletter is a general summary only. You should not rely upon it as a substitute for professional advice about your particular case.