

## **EASTLIFE MAGAZINE**

### **Care of Children following separation of Parents**

#### **PUTTING YOUR CHILDREN FIRST**

The period immediately following separation of partners has to be one the most stressful events in the lives of those affected by the separation.

When you separate, there are a lot of issues to sort out, but the most important is your relationship with your children. Your children need you to put them first.

It is a principle of family law that irrespective of whose decision it was to separate, matters such as the care of children and division of property should be dealt with in such a manner as to cause the least further distress to all concerned.

Your relationship with your partner may be changing, but your role as a parent is for life. Therefore the arrangements you make for your children in these circumstances should receive priority.

Provided there are no safety concerns for the children it is advisable for partners to reach interim agreements themselves.

Partners could apply jointly for the counselling services offered by the Court. Alternatively, I would recommend that both partners should try to seek the assistance of a family lawyer as soon as possible. Many people take advice from friends or others who have been through the process. I would suggest that you do not take legal advice from such friends as each person's circumstances could be different.

#### **REACHING AGREEMENT**

The best decisions for your children are where:

- You both co-operate with each other
- You and your children (when they are old enough to tell you what they think) work together to sort out arrangements for their future
- You reach agreement without fighting and arguing
- You encourage your children to express their feelings and be involved in the plans – this will help them adapt to their new lives
- You both stick to the arrangements, but are flexible and co-operate if they need to be changed for your children's sake
- There are as few as possible changes to other parts of your children's lives

#### **WHAT IS BEST FOR YOUR CHILDREN?**

Your children need both of you, regardless of the issues in your relationship. They also need to keep connected with family and whanau (grandparents, uncles and aunts and cousins) and friends.

**Maintaining these relationships is important for their** Self-esteem and mana; Emotional development; Ability to deal with difficult times; Ability to adjust to your separation and extended family relationships.

The separation is difficult for you. Do not underestimate just how difficult it is for the children. Children should not be made to take sides.

Children are not able to see things in an adult way. A child's perspective is mostly self-centred and this may sometimes seem hurtful and unfair, but you need to respect it.

## **MAKING A PARENTING AGREEMENT**

Parents or guardians can make a **parenting agreement** simply by writing down the arrangements they have agreed to about how each will contribute to the care of the children, and what they have agreed about other important matters concerning the children. The agreement doesn't have to cover every possible situation, but it should at least cover interim day-to-day care.

One type of parenting agreement is a **parenting plan**. A Parenting Plan booklet is available free from your nearest Family Court or on the Family Court website ([www.justice.govt.nz/family](http://www.justice.govt.nz/family)). You can use this booklet as a guide to help you sort out arrangements for your children.

It may be helpful to talk to a family lawyer about a parenting agreement as they will have a good idea of the kind of things it might be sensible to include. Also, they can help in writing it all down in a clear way.

Parenting agreements do not give legal rights that can be enforced in the Courts. In this way they are different from commercial contracts and other agreements about property and money.

Only a Parenting ORDER can be enforced through the Courts.

A Parenting Order can only be obtained by formal application through the nearest family court.

## **The Law**

The Care of Children Act 2004 makes the **welfare of the child** the most important priority. It also emphasises that children should be consulted about decisions that affect them, and that decisions affecting a child should be made and carried out within a timeframe that fits with the child's sense of time. The Act also shifts the focus away from parents' **rights** towards parents' **responsibilities**.

The Act emphasises that the **welfare and best interests of the child** is the first and most important issues in any dispute about them.

It sets out some key factors that the Court must consider when it is deciding what is best for the children-

- The child's parents and guardians should take the main responsibility for looking after them and making arrangements for their care, development and upbringing.

- There should be continuity in the arrangements for the child’s care, development and upbringing.
- Links between the child and their whanau or other wider family group should be preserved and strengthened.
- There should be co-operation between parents, guardians and others who are involved in looking after the child.
- The child must be kept safe and protected from all forms of violence; and
- The child’s identity, including their culture, language and religion, should be preserved and strengthened.

A parent who doesn’t have day-to-day care of the children will be encouraged to have **contact** with them. This used to be called **access**.

The Act replaces custody orders and access orders with **parenting orders**.

The Act also emphasises that parents’ responsibilities are **ongoing**. When parents have separated, both should continue to have a significant role in their children’s upbringing, even if one of them is no longer living with the children.

## **ENCOURAGING PARENTS TO MAKE THEIR OWN ARRANGEMENTS FOR THE CARE OF THEIR CHILDREN**

The Act encourages parents to co-operate and agree on arrangements for the care of their children. It’s usually much better for everyone involved – especially the children – if parents can reach workable arrangements themselves. Parents will need to ask the Family Court to intervene only if the parents disagree about the care of their children and cannot sort out the disagreement by themselves or with the help of counselling arranged by the Court.

## **COURT HEARING – A LAST RESORT**

If neither counselling nor mediation works, the last resort is a formal Court hearing. At the end of the hearing the Court can make a **parenting order**. The order can deal with who will have the day-to-day care of the children and when, and if only one parent is to have day-to-day care, when and how the other parent will have **contact** with the children.

## **Proposed New Changes**

The Family Court bill was released last week with a number of amendments to the current law. It will change the law as we know it and certainly it would change from the experiences of your friends.

Therefore it may be necessary to consult a family lawyer immediately following separation to take the guesswork out of the situation and to be pointed in the appropriate direction.

Justice Minister Judith Collins says the reforms will “clarify the court’s processes and rules, providing greater certainty for users, and making it easier for them to understand and navigate the court system”.

Law Society Family Law Section’s views currently are that the changes will mean the pre-court Family Disputes Resolution process and changes to the Family Court processes will create a more complex system than we currently have and they say it will be extremely difficult for ordinary New Zealanders to navigate.

The Law Society is hoping to work with Ministry of Justice with the hope of creating an accessible family justice system, which will be “truly responsive to children and vulnerable people”.