



## EVERSOL'S weekly law

Contributed by Melissa Swain

### Are Court Proceedings Really in the Best Interests of the Child?

The Family Court answers questions on a daily basis as to what is in the best interests of children. It is usually as a result of an application made by one of the parents, or a person concerned with the care, welfare and development of the child. Often the questions relate to who the child should live with, how much time they should spend with the other parent, or even which school the child should attend.

However in the recent Family Court decision of *Delvan & Hoogley* [2010], the Court recognised that there are times when the Court should not get involved; that is, that the continuation of proceedings in respect of the children would be plainly detrimental to the children.

In that case, there was a long history of the matter being before the Court. Orders were first made on 16 February 2007. In the three years following that date, each of the parents continued to make applications to the Court for parenting orders.

Subsequent to both parties filing Applications, there was a history of either or both parties failing to comply with Directions of the Court, such as not filing certain documents, failing to attend appointments with family consultants, and even failing to attend Court.

The Family Court ultimately held that all Applications by either party in relation to the children be struck out, as to continue the proceedings in respect of the children would be detrimental to the children. Any Applications in future in respect of the children would first need leave of the Court.

In coming to this decision the Court noted that there were already Orders in place, which provided for the children to live with the mother. Further, whilst contact with the father had been sporadic and limited to telephone contact, the children were now 17 and 11 ½ respectively and were "at an age where they can, within the confines of their respective maturity, instigate time with their father."

What this decision highlights is that in making any Application to the Court for parenting orders, regard must be had not only to whether the proposed Orders would be in the best interests of the children, but also whether making any Application at all is in the best interests of the children.

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