

## WHEN DOES SOLE PARENTAL RESPONSIBILITY OCCUR?

In determining parenting arrangements, the Family Law Act operates on the presumption that both parents have "shared parental responsibility". However, this presumption may be rebutted in certain circumstances, for example where family violence or child abuse is a factor, or if it would not be in the child's "best interests" for the parents to have shared parental responsibility.

Parental responsibility is defined in the Act, but broadly speaking it refers to decisions made about long-term issues for the child including health, religion, education, culture, name and place of residence.

The Court will consider an Order for sole parental responsibility where parents cannot communicate effectively, and they have strong, conflicting views on important issues – such as, religion, health or education. In these cases, the Court may grant sole parental responsibility to one parent. The Courts reasoning behind this is that it is clear the parents will not only never agree, but that they will also not communicate their decisions on these issues to the other parent. The high importance of religion, education and health to a child's upbringing means that this uncertainty and conflict will not be in the child's "best interests".

These issues were addressed recently by the Court.

### THE FACTS:

- The mother and father had an Australian/ Lebanese background. They had an arranged marriage in 2006 and separated in 2009.
- They had one child, who was 3 at the time of trial.
- Both the father and mother were Muslim. Following separation, the mother became less conservative, and stopped wearing her hijab.
- The mother accused the father of physical and emotional abuse, particularly after separation.
- The father said the mother was not a fit parent, as she had physical and mental health problems. The mother denied these claims.
- There was evidence that the father had forbidden the child from playing with non-Muslim children.

### THE COURT FOUND:

- The father gave contradictory evidence and was found not to be a reliable witness.
- The child was primarily attached to the mother.
- The parents would not be able to cooperate in anyway, and were therefore not in a position to make decisions in the child's best interests.
- The father lacked insight into the mother-child relationship, did not understand the child's developmental needs and would denigrate the mother in front of the child.

## **COURT ORDER:**

- The mother have sole parental responsibility.
- The child live primarily with the mother, and spend time with the father on alternate weekends, and one day during the alternate week.
- The father to attend a post-separation parenting course.

It is an unfortunate fact that many separated couples have poor communication patterns. This does not mean that the Court will always grant sole parental responsibility. Only in certain circumstances will the Court deem it necessary to rebut the presumption of shared parental responsibility.