

UNCOVERING "PARENTAL RESPONSIBILITY"

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When the Court uses the term “parental responsibility” – what does it actually mean? The Family Law Act states that parents (of a child) have “parental responsibility” and that it means, “all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.”

But what comes under this notion of “parental responsibility”? and under what circumstances would the Court take the responsibility away?

WHAT IS "PARENTAL RESPONSIBILITY?"

The purpose of “parental responsibility” is to allow the child to achieve their full potential as a person by the involvement of both of the children’s parents in that child’s life. How do the parents fulfill that responsibility? The parent is expected to maintain the child until they reach 18 and until that time a parent has the authority to make decisions regarding the child’s major long-term issues, including:

- Name
- Education
- Religious and cultural upbringing
- Health
- Living arrangements

As well as making decisions in respect of the child’s day-to-day care, welfare and development, which includes:

- The child’s manner of dress
- The child’s diet
- The child’s discipline
- The people the child associates with
- What the child can view on TV, bed time, etc

DOES IT APPLY TO BOTH PARENTS?

Since 2006, the Family Law Act has provided a “presumption” that both parents have “shared parental responsibility”. This means that, when parents separate, neither parent has any greater “parental responsibility” in respect of the child’s upbringing. When the Court makes a parenting Order, the ‘starting point’ is that both parent’s have equal “shared parental responsibility”. This is not to be confused with the determination that the Court must then make in regards to whether the time that the child spends with each parent should be, “equal time” or “significant and substantial time”.

The “shared parental responsibility” presumption will exist unless the Court is satisfied that it should not, or a statutory “exception” exists, i.e. one of the parents is found to have:

- abused the child; or
- been the perpetrator of Family Violence

If the exception applies, then when determining a child's living arrangements the Court does not have to proceed to consider the steps of "equal time" or "significant and substantial time", but simply exercises its own discretion in light of the child's "best interests".

WHEN DOES IT STOP APPLYING?

If there are extenuating or complex circumstances in a family, then the Court may Order that one parent has "sole parental responsibility". Unless the Court Orders otherwise, parental responsibility continues until the child attains 18, the child is adopted or the child marries younger than 18. It should be noted that certain responsibilities no longer exist when a child is sufficiently mature and has a level of understanding to make a decision on issues for themselves.