



TIS THE SEASON TO BE HEALTHY, WEALTHY & WISE

FAMILY LAW AND HOLISTIC THERAPIES

To all of our loyal readers, the team at Calley Family Lawyers wishes you a Merry Christmas and a Happy New Year.

Many of our clients experience significant stress and emotional trauma when their marriage or de facto relationships end. For some, the uncertainty of negotiating a possible 'legal minefield' is ever present whereas others may have difficulty finding a way forward knowing that their relationship with a long term partner is at an end.

There can be an inability to sleep, focus or function as a consequence of feeling overwhelmed by the major change of managing children and finances or being alone.

There are many reasons why relationships end and in cases where break-ups have been unexpected or riddled with sadness, clients may carry an emotive burden.

Common reactions include confusion, grief, anger, anxiety, depression or a combination of these effects. Some clients may have a sense of relief after many years of indecision however others present with guilt for making what seems like a 'selfish' yet necessary choice. Low self esteem and disempowerment from years of emotional or physical abuse may also manifest.

At Calley Family Lawyers we take an empathetic approach with our clients and recognise that one size does not fit all. As expert family lawyers we are able to provide clients with tailored advice and strategies aimed at dealing with the legal aspects of separation in a dignified and considered manner.

As is the case with modern medical practice where patients are encouraged to explore complementary treatments, holistic therapies

may benefit a number of individuals experiencing the effects of a relationship breakdown.

A number of clients undertake counselling and psychotherapy with suitably-credentialed practitioners to assist them to deal with their stress and trauma in a discussion-based environment.

The key to this process is trust and an inter-personal connection between the treatment provider and the client.

A recent trend has seen spiritual-based practices such as reiki, holistic counselling, mediumship and techniques to alter belief systems drawing in an increased number of participants. Many clients are seeking more introspective and philosophical approaches to managing change in their lives.

Angela McMahon of Angel Road Healing is an experienced intuitive healer, psychic and medium who has assisted many separated parties over a number of years. She explains that "the aim is to settle down the adrenaline or scattered and fear energy and to give practical tips and healings to help gain clarity, strength and a sense of empowerment. The ability to function by taking one step at a time is important for an individual as they work through the many changes and decisions".

For some separated parties, walking, meditation or even a gym workout can help clear the mind and give the body the opportunity to release nervous energy.

Carmen Jordan of Spiritual Discovery, a life coach and medium also notes that clients in the throes of a relationship breakdown are seeking clarity arising from a loss of purpose.

Many separated parties opt for life coaching services to re-focus on their goals and aspirations which may have changed as a result of their separation. Ms Jordan states, "achieving peace of mind is important for many. Clients are seeking re-assurance for the future." In some cases this may involve simple steps such as receiving encouragement to re-enter the dating scene whereas for others this may entail more targeted self-reflection.

Every case is different and reactions to separation reflect this. Parties should consult with a medical practitioner, counsellor, accountant or family



FAYE DOWBER AND VIC RAJAH OF CALLEY FAMILY LAWYERS WITH CARMEN JORDAN OF SPIRITUAL DISCOVERY AT THE THINK BODY SUMMER LOVE EVENT.

lawyer for advice about areas of concern to assist in gaining some control via knowledge. This will often pave the way for the right courses of action to follow.

Parties should also consider recording their thoughts in a diary or journal. Once written down, the stress of retaining that information in the mind dissipates. The nervous system will invariably settle and this can prove cathartic in releasing worries.

A journal may also act as a "new best friend" – a trusted source with whom personal thoughts and feelings can be shared without having to disclose these details to a person for the fear of betrayal.

As advised by Ms McMahon, separating parties should "try to take one day at a time rather than looking to the future which in the early days can be overwhelming. Don't be in a rush to fix things A big change such as a relationship breakdown is a time of grieving and change so it is best to surrender to the process."

Calley Family Lawyers was recently involved with the Think Body and Love Summer event facilitated by divorce blogger, 'The Divorce Go To Girl' aka Renee Catt. As the platinum event sponsor, Firm Principal, Vic Rajah spoke to the audience about the importance of getting legal advice early in the separation process.

The theme of the evening was about empowerment and Mr Rajah's message emphasised that being knowledgeable about one's rights and entitlements worked hand in hand with resolving all aspects of one's separation quickly and quite often amicably. All the best for happy and healthy 2016.



HOW ARE NAME CHANGES FOR CHILDREN DETERMINED?

A NAME IS AN IMPORTANT PART OF A PERSON'S IDENTITY AND CAN INDICATE TO OTHERS THAT THE PERSON BELONGS TO A PARTICULAR CULTURE OR HAS A PARTICULAR RELATIONSHIP WITH ANOTHER INDIVIDUAL, FOR EXAMPLE A SIBLING OR A PARENT.

Following a relationship breakdown a parent may seek to change a child's surname for various reasons, including e.g. that the child shares the mother's maiden name or the name of her new partner. Domestic violence or reputational issues could also prompt a parent to seek to change their child's surname for the protection of the child. Conversely, a parent may seek an order restraining the other parent from changing the child's surname.

Unless deceased, both parents registered on the child's birth certificate must consent to the name change for a child under the age of 18 years. If consent is not provided a parent can apply to the Family Court for an order to prevent a name change, reverse a name change or have the court declare the appropriate name for the child.

Regardless of either parent's wishes, before making an order the court must be convinced that the order is in the best interests of the child. In deciding this, the court will consider various factors including:

- the short and long term effects on the child;
- the advantages of the name change for the child;
- any confusion of identity resulting from the name change;
- the effect of frequent name changes;
- any embarrassment to the child if their name is different from their primary carer;
- the parent's wishes;
- the degree of identification with each parent or step-parent and any other child;

- the level of contact the child has had, or is likely to have, with the non-primary care parent; and
- the effect of the change on the parent who shared the child's name during the marriage.

After a Court order is made, the name change must be registered in accordance with the law of the relevant State or Territory. Each case will be decided on its own facts. The team at Calley Family Lawyers has experience and a proven track record in advising clients who are keen to effect a name change and those who are seeking to oppose the potential name change.



STAMP DUTY AND RELATIONSHIP BREAKDOWN

FOLLOWING A RELATIONSHIP BREAKDOWN, PARTIES TO A MARRIAGE OR DE FACTO RELATIONSHIP WILL USUALLY DIVIDE THEIR INDIVIDUAL AND JOINT PROPERTY TO EFFECT A PROPERTY SETTLEMENT. THIS MAY RESULT IN ASSETS AND LIABILITIES BE

Transfers of certain property including real estate, motor vehicles, shares and assets belonging to companies and trusts can result in the person who receives the asset having to pay a stamp duty tax imposed by the relevant State or Territory government.

Stamp duty legislation vary from State to State and it is important to note that the stamp duty regime applicable to the particular transfer is determined by the location of the asset being transferred rather than the State or Territory where the parties to the transfer reside. For example, a resident of Victoria who acquires an investment property in Sydney will be governed by the requirements of the New South Wales stamp duty legislation to determine whether stamp duty will be payable on the transfer. The calculation of stamp duty varies but is generally calculated as a percentage of the purchase price or the market value of the

property, whichever figure is higher. There are also other variables which can affect the amount of stamp duty payable including whether the buyer is a foreign purchaser and any concessions or exemptions that are available.

The good news for separating couples is that the various stamp duty regimes, including in Victoria, exempt the payment of stamp duty where it can be shown that the transfer of the asset occurred solely as a result of a property settlement following a relationship breakdown. Properly documenting the terms of the property settlement is a crucial step to satisfying the relevant revenue authority that the stamp duty exemption should apply.

There are a number of avenues available to document the terms of a property settlement to attract available stamp duty exemptions. Where parties are unable to reach agreement, the Family court can determine the appropriate allocation of assets and liabilities between the parties and issue a court order to document that decision. Alternatively, the parties can agree to final property orders by consent and apply to the court to finalise the order. A transfer occurring in accordance with a court order is exempt from stamp duty.

If the parties prefer to settle the matter outside of the court, they may choose to negotiate a financial agreement to divide the property of the relationship between themselves. A properly drafted financial agreement should be sufficient to demonstrate to the relevant revenue authority that the transfer contemplated is a consequence of a relationship breakdown and that stamp duty should not be imposed.

Parties opting to document the terms of settlement are required to consult with a lawyer to ensure that the financial agreement complies with the technical requirements of the Family Law Act.

Although stamp duty may not be payable in connection with a properly documented settlement, other matters must also be considered before agreeing to a settlement. This includes amongst other things, Capital Gains Tax implications, impacts on Income Tax and eligibility for government benefits following the acquisition of an asset.

At Calley Family Lawyers, we regularly advise clients about their property settlement needs and are able to draft settlement terms which take note of any applicable duty and taxation issues.

