Family Violence and its impact upon Family Law Proceedings

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Family violence and domestic violence are terms used interchangeably with the difference between the two being the nature of the relationship. However, what conduct constitutes family violence or domestic violence is predominantly the same.

In Australia, family violence is defined in section 4AB of the Family Law Act 1975 as violent, threatening or other behaviour by a person that coerces or controls a member of the person's family, or causes the family member to be fearful. In light of this definition, family violence can be broadly categorised as including physical abuse, sexual abuse, verbal abuse, emotional abuse, psychological abuse or other behaviour which is coercive and controlling.

Family violence has implications in both property and parenting matters.

Implication on Property Settlement

When it comes to making an Order as to property settlement, the Court is required to take into account a myriad of considerations being financial contributions, non-financial contributions, contributions as 'homemaker' and other considerations including those contained in section 75(2) of the Act including section 75(2) O which gives the Court the power to have regard to any other circumstance that it thinks is relevant.

This section allows the Court to make a property adjustment against the offending spouse in favour of the other spouse where the Court is satisfied there has been violent conduct by one spouse towards the other, and where such conduct has had:

1. a significant adverse impact upon the party's ability to contribute to the family, or
2. has meant that the contributions that were made were more arduous, (more difficult to make) because of the conduct of the other party.

The onus is on the victim to establish an evidentiary link between the violence and its impact on the victim's ability to make contributions.

Implication in parenting matters

Family violence is more frequently relevant in the context of parenting matters. This is due to the Family Law Act providing that family violence must be considered when making orders relating to children.

When the Court is tasked to craft orders in the best interests for the child, the Court is required to consider the primary and additional considerations provided under section 60CC of the

Family Law Act. The paramount consideration the Court is to consider is whether there is a risk posed to the child by the parent and, if so, how and if such risk can be ameliorated.

When it comes to parental responsibility, the Family Law Act provides that there is a presumption that parents hold Equal Shared Parental Responsibility (being joint long-term decision making for the child/ children) for their children.

This presumption does not apply in circumstances where a parent has engaged in abuse of the child, or engaged in family violence.

If you or someone you know requires assistance with an issue related to domestic violence, contact one of our Family Law lawyers on 9635 7966 or through the contact options on this website.