



# THE INTERPLAY BETWEEN FAMILY LAW INJUNCTIONS AND PRIVATE CHILDREN PROCEEDINGS

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# FAMILY LAW INJUNCTIONS

- S.42 of the Family Law Act 1996: Non-molestation Orders:

(5) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—

(a) of the applicant. . . ; and

(b) of any relevant child.

# FAMILY LAW INJUNCTIONS CONTINUED

- Options for resolution:
  - Non-molestation order made on no admissions no findings basis
  - Undertakings or
  - Contested final hearing

# PRIVATE CHILDREN PROCEEDINGS

- Governed by Section 8 of the Children Act 1989:
  - Child Arrangements Orders:
    - Lives with order
    - Spends time with order
  - Specific Issues Orders:
    - Return of child(ren)
    - Relocation
    - Holiday arrangements
    - Change of school
    - Medical treatment
  - Prohibited Steps Orders

# WHICH APPLICATION SHOULD BE MADE FIRST?

- Chicken or Egg?
- Case dependent on the circumstances of the Applicant
  - Is the need for protection in the form of a NMO greater than the need to make a Section 8 application?
  - Is a NMO required or would undertakings suffice?
  - Are undertakings appropriate in the circumstances?
  - Would findings of fact in a NMO assist in the Section 8 application?

# CONSOLIDATION OF PROCEEDINGS

- Should both the NMO application and Section 8 application be made at the same time?
  - Again, case dependent on the issues of each application
- If proceedings are issued at the same time, should they be consolidated?
- Where a Specific Issues Order for the return of the child is sought, this application should be made as soon as possible
  - Failure to do so may result in this application failing at the first hurdle

# FINDINGS OF FACT

- Are findings of fact necessary in Family Law injunction proceedings to assist with private children proceedings?
- Any findings of fact made in Family Law injunction proceedings are the starting point within any private children proceedings
- Consolidating proceedings, where necessary, can assist in dealing with both matters as swiftly as possible

# PRIVATE CHILDREN PROCEEDINGS

- What happens if the need for a non-molestation arises during private children proceedings?
  - Make an NMO application as soon as possible within the private children proceedings
  - The two matters can be consolidated and dealt with at the the same time



# CASE STUDY 1

- Mother (M) and Father (F) have an informal agreement on contact, where the children spend alternate weekends with the F.
- The F retained the children and refused to return them to the M, due to alleged neglect on the part of the M. She would like the children returned to her care.
- The Mother has received abusive messages from the Father and he has turned up to her property on a number of occasions and refused to leave; therefore, she would also like a non-molestation order
- Which application should be made first?
- How should matters be resolved?

## CASE STUDY 2

- Mother (M) and Father (F) have an informal agreement on contact, whereby the F spends time with the child 2 weekdays afterschool and alternate weekends;
- There is a history of domestic abuse in the parties' relationship previously;
- The F has been verbally abusive to the M via social media and text;
- There is an incident at the child's school where the F allegedly attacks the M and the child is caught in the cross fire;
- Which application should be made first?
- Should proceedings be consolidated?

# CASE STUDY 3

- Mother (M) and Father (F) have a final child arrangements order made in June 2022
  - Shared care order for the children to live with both parents
  - Holidays split equally between the parties
- M makes an enforcement application due to alleged breaches of the order by the F
- During proceedings the M receives numerous abusive messages from the F; the F approaches various members of the maternal family and verbally abuses them about the M
- How should the M deal with the abusive messages from the F?
- Should a NMO application be made?
- Should proceedings be consolidated?
- How should the court deal with these matters?