

THE 17TH ANNUAL FAMILY LAW CONFERENCE

The Assessment of Initial Contributions Over Time

The Role of Kennon in Property Settlements: Is it Time to Move On?

Defences to Equitable Claims in Family Property Disputes

Trusts in Family Law – A Trustee’s Perspective

Running Interim Spousal Maintenance Claims in FCFCOA

Saying Goodbye to ‘Shared Parental Responsibility’

Safety Concerns and Parental Capacity

Contravention applications in the FCFCoA

Managing Limitation Periods and Applications to Proceed out of Time

Managing and Responding to Defective Applications in Family Law Proceedings

A Hitchhiker’s Guide to Implementing Financial Agreements

Managing Valuation Issues in a Volatile Market

A Two-day Conference

Thursday 10 and Friday 11 August 2023

Gold Coast Convention & Exhibition Centre, Broadbeach

Feedback from last year’s conference:

- “The topics were absolutely relevant to my every day practice. The oral presentations were structured, well prepared and engaging. The papers were erudite and a good resource for the conduct of matters.”
- “Superb conference and well organised.”
- “After a 2 year hiatus, you delivered excellence in spades thank you.”
- “Very good conference - learnt a lot and speakers were excellent.”



Leaders in online CPD for Lawyers & Accountants

DAY 1 - THURSDAY 10 AUGUST 2023

CHAIR: THE HONOURABLE RODNEY K BURR AM, RETIRED JUSTICE, FAMILY COURT OF AUSTRALIA, ADELAIDE, SA

MORNING THEME: PROPERTY SETTLEMENT MATTERS

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: From Erosion to Springboards: The Assessment of Initial Contributions Over Time

The approach of the Court to the assessment of initial contributions and the weight that ought to be properly placed on initial contributions at trial has changed over time. From early arguments of erosion to later discussion of springboards – the language employed when discussing how the Court should assess initial contributions is vital, as use of an incorrect term could arguably lead the court into error. To assist practitioners, this session will explore:

- The arguments surrounding the appropriate assessment of initial contributions in property settlement matters
- The current views within the profession as to the 'erosion' and 'springboard' arguments and the preferred approach to assessing the relevance of the impact of time to initial contributions
- The scenarios in which a just and equitable outcome may arguably call for an assessment of initial contributions that merits 'special' recognition

Speaker: Phillip Sorensen, Barrister, Brisbane, Qld

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: The Role of Kennon in Property Settlements: Is it Time to Move On?

It is rare these days to run a Kennon argument. The evidence required coupled with the further trauma experienced by the victim-survivor giving that evidence does not usually outweigh the minimal adjustment which may be ordered if the Court accepted a Kennon argument. This raises the question of whether a new approach is required to ensure that the impact of family violence on a parties' property settlement is just. This session will examine:

- What is required to successfully run a Kennon argument and practical issues practitioners and clients face when attempting to run Kennon arguments
- When allegations of violent or abusive conduct don't meet the Kennon test – what are the pros and cons of including them in affidavit evidence – fault by the back door?
- Acting for the alleged perpetrator – what can you do
- What are the cases over the last few years telling us about the Kennon claim – are there any trends
- Legal remedies which may exist outside the Family Law Act, including tortious claim for damages, and how such claims may affect and be dealt with as part of a family law property settlement

Speaker: Cathie Blanchfield, Principal, Blanchfield Nicholls, Sydney, NSW

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

DAY 1 - THURSDAY 10 AUGUST 2023

11.25am - 12.10pm

Session 3: Defences to Equitable Claims in Family Property Disputes: Time for the Strategy

In a post *Thorne v Kennedy* landscape, equity can often be seen by an aggrieved party as a way in which to ensure 'fairness' prevails in property settlement matters. The equitable doctrine has underpinned property settlement matters and can be pivotal to the alteration of property interests in family law. This session focuses on what happens when the other side is seeking an equitable claim in a family law property settlement. What defences are available and how are these best run? This session explores:

- The presumption of advancement post the High Court's decision in *Bosanac*:
 - the guidance provided by the High Court as to when a voluntary transfer of property may lead to the imposition of a resulting trust
 - how a resulting trust may impact family law property settlement proceedings
- Arguing fault and misconduct by the claiming party:
 - laches and acquiescence - how they have been dealt with by the courts in recent years and how to articulate this defence in family law litigation
 - lack of clean hands
 - damages being an adequate remedy

Speaker: Monique Robb, Partner and Accredited Family Law Specialist, Lander & Rogers, Sydney, NSW

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.05pm

Session 4: Trusts in Family Law – A Trustee's Perspective

Trusts are relatively common in property settlement proceedings. But should you approach the matter differently when you are acting for the Trustee? This session focuses on the strategic and practical implications of running a property settlement case involving a third-party trust from the perspective of acting for the trustee and will explore the following:

- When - and when not to - intervene if you are acting for a trustee and when (and how) a third party may be joined
- Obligations of the trustee - in equity, corporations law and in family law proceedings
- Common scenarios where trustee's obligations conflict with family law
- Responding to requests for information, documents and subpoenas on behalf of trustee
- Role of the trustee in disclosure, valuation of a trust and its underlying assets

Speaker: Monique Robb, Partner and Accredited Family Law Specialist, Lander & Rogers, Sydney, NSW

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

2.15 - 3.00pm

Session 5: Show Me the [Interim] Money: Running Interim Spousal Maintenance Claims in FCFCOA

It is no secret that a primary goal of the FCFCOA is to encourage dispute resolution and reduce the time of parties to resolve their dispute whether by settlement or following a contested trial. However, for many the new case management pathways and procedures have not resulted in more expedient resolution. This raises the question of what happens in the meantime? This session will explore how interim issues in property settlement matters ought to be managed and will discuss:

- The difference between the intention and the reality of the new pathways and what lies ahead in the future
- Whether interim spousal maintenance claims have a role to play in the new system and how practitioners should navigate this
- Steps that practitioners could take to assist the Court reduce the number of procedural hearings required in a matter
- The Court's view in relation to interim property settlement applications in the new system

Speaker: Jacky Campbell, Partner and Accredited Family Law Specialist, Forte Family Lawyers, Melbourne, Vic

3.00 - 3.10pm Panel Comments and Questions

DAY 1 - THURSDAY 10 AUGUST 2023

AFTERNOON THEME: PARENTING MATTERS

3.10 - 3.55pm

Session 6: I fought the law and I won?: Contravention applications in the FCFCoA

The enforcement of parenting orders has always been problematic in family law. Despite the rule in *Rice v Asplund*, it is common for contravention proceedings to be treated by some parties as an attempt to relitigate and there is a perception that this trend has increased following, and may be facilitated by, the new approach to contraventions in the FCFCoA. This session will take a deeper dive into these issues, including:

- The new contraventions list and related court procedures under the new FCFCoA and different approaches to managing such matters across registries
- The current status of the principle in *Rice v Asplund* and whether that principle remains good law and/or has a place in the current court practice and procedure
- How to manage 'repeat offenders' and how they may be dealt with by the court in the first and subsequent contravention proceedings
- Guidance and tips for practitioners when faced with this scenario

Speaker: *Richard Galloway, Barrister, Brisbane, Qld*

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

Session 7: Safety Concerns and Parental Capacity: Revisiting 'Re Andrews' in Light of Keane

The 'Re Andrews principle' suggests that the capacity of a parent to provide care to their child is impaired when that parent raises safety concerns from the child spending time with the other parent and the court subsequently orders this to occur. In recent years, the application of this principle has been expressed in a variety of ways creating confusion and inconsistency across the profession. This session will examine the following:

- The cases which have applied the Re Andrews principle and analyse the relevant facts which impacted the application of the principle in each case
- How the issue was discussed, and the guidance provided, by the Full Court in *Keane & Keane* [2021] FamCAFC 1
- Practical tips and insights into what practitioners should do when faced with this scenario in their matters including what to do when a judge appears to be incorrectly applying the principle

Speaker: *Rachell Davey, Partner and Accredited Family Law Specialist, Lander & Rogers, Melbourne, Vic*

5.10 - 5.20pm Panel Comments and Questions

DAY 2 - FRIDAY 11 AUGUST 2023

MORNING THEME: COURTROOM PROCEDURES

9.00 – 9.05am

Introduction and welcome

9.05 - 9.50am

Session 8: Saying Goodbye to 'Shared Parental Responsibility': Are Better Days Ahead?

The Family Law Amendment Bill 2023 introduces sweeping changes to the way in which parenting matters are determined by the Court. This practical session explores the key changes and how they will impact future parenting matters, including:

- Prioritising children's safety concerns in parenting matters
- Ending the presumption of 'shared parental responsibility'
- Understanding the new factors – what do they mean in practice?
- How will a child's views be given greater prominence?
- The ongoing role of independent children's lawyers

Speaker: The Hon. Justice Suzanne Christie, Federal Circuit and Family Court of Australia, Sydney, NSW

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: How Late is Too Late? Managing Limitation Periods and Applications to Proceed out of Time

Limitation periods and applications to proceed out of time are critical issues in family law proceedings. Missing a limitation period can have severe consequences, including the loss of important rights and entitlements. At the same time, it can be challenging to determine when an application to proceed out of time is appropriate and how to effectively manage such applications. This practical session explores the key strategies and best practices for managing limitation periods and applications to proceed out of time, including:

- How late is too late? And does it matter why? The legal requirements of s.44 of the Family Law Act and the circumstances in which the court has authority to consider out of time applications
- Consequences of missing a limitation period for you and your client
- The factors the court considers when deciding whether to grant an application to proceed out of time
- Evidence that should be presented in support of an application to proceed out of time
- Practical and strategic guidance on running (and defending) out of time applications in practice
- How the law has been applied in recent cases, focusing on the facts in matters which supported a finding of hardship in favour of the applicant

Speaker: Adam Cooper, Principal, Cooper Family Law, Brisbane, Qld

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2 - FRIDAY 11 AUGUST 2023

11.15 - 12.00pm

Session 10: Managing and Responding to Defective Applications in Family Law Proceedings

The management and response to defective applications in family law proceedings can present significant challenges for family lawyers. Such applications can be time-consuming, expensive, and can cause unnecessary delays in the court process. At the same time, the consequences of failing to respond appropriately to defective applications can be severe, leading to adverse outcomes for clients. This practical session outlines how practitioners can maximise the benefits from the extensive range of tools and mechanisms available in family law when they are served with a defective or incomplete application. It covers:

- The rules and court procedure of summary disposal and strike out applications and when it may (or may not) be appropriate to run them
- Tips for how to successfully run (and defend) a strikeout application in the family law courts
- Suggestions for drafting pleadings to protect against such applications
- A guide on what to do when faced with a defective application filed by your client
- Minimising the impact of such applications on clients

Speaker: Glenn Thompson OAM, Director and Accredited Family Law Specialist, Newnhams Solicitors, Sydney, NSW

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: CHALLENGES IN PRACTICE

1.10 - 1.55pm

Session 11: Untying the Knot: Validity and Enforcement of Financial Agreements

Financial agreements play a pivotal role in determining the division of assets and financial responsibilities between parties, offering a degree of certainty and security. However, their validity and enforceability may be subject to attack if certain legal requirements are not met. This session explores various strategies for challenging the validity of financial agreements, as well as essential drafting techniques to enhance their enforceability and safeguard the interests of parties involved. It covers:

- Key considerations and best practices to maximise the validity, enforceability and longevity of agreements
- Identifying potential vulnerabilities: common grounds for attacking the validity of financial agreements, including:
 - technical flaws
 - duress and unconscionable conduct
 - adequacy of disclosure
 - contractual and equitable flaws
- Lessons from recent cases
- Tips and common traps

Speaker: Ian Kennedy AM, Senior Partner, Kennedy Partners, Melbourne, Vic

1.55 - 2.05pm Panel Comments and Questions

2.05 - 2.50pm

Session 12: When the Price is not Right: Managing Valuation Issues in a Volatile Market

The stress of family law property settlement litigation can bring out the worst in parties at the best of times, let alone when the economic climate is uncertain. This often leads to disputes about the value of assets and how declining value should be treated by the courts and addressed in final property settlement orders. This session will explore:

- Issues impacting valuations, including timing to trial and valuation methodologies
- How expert witnesses approach valuation of property and businesses when valuations fluctuate
- Strategies for managing uncertainty in terms of the asset pool during family law litigation and settlement negotiations and in final orders

Speaker: Joseph Box, Partner and Accredited Business Valuation Specialist and Forensic Accounting Specialist, Grant Thornton, Brisbane, Qld

2.50 - 3.00pm Panel Comments and Questions

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference and conference papers. Refreshment breaks and lunch on both conference days.

Conference Papers

TEN will not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

CPD

Lawyers (except WA): 11 CPD units for attending the conference (all substantive law).

WA Lawyers: 6 CPD points (substantive law). WA practitioners can claim 6 CPD points for attending the conference (being the maximum allowable by the LPBWA per event). TEN is an accredited CPD provider.

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

The Conference Venue

Gold Coast Convention & Exhibition Centre
Cnr T E Peters Drive and Gold Coast Highway, Broadbeach, Qld

Conference Delegate Accommodation

THE STAR GOLD COAST

The Star Gold Coast (joined to the Gold Coast Convention Centre by a walk bridge – approx. 6 minute walk) is pleased to offer our delegates 25% off the best available rate at time of booking at Star Grand or 15% off best available rate at time of booking at Star Residences (2 night minimum length of stay applies).

Promo Code: EVENT

Bookings can be made directly via the Star Gold Coast website https://www.star.com.au/goldcoast/?utm_medium=organic&utm_source=gmb&utm_content=listing&utm_term=GC-organic&utm_campaign=the-star-gold-coast or by calling hotel reservations on 1800 074 344

DORSETT GOLD COAST

Dorsett Gold Coast is located 90 seconds away from The Star, and you can also walk to the Convention Centre over the walk bridge.

Dorsett is offering delegates attending the conference a 20% discount on the best available rate at time of booking.

Bookings can be made directly using this URL: Dorsett Gold Coast (book-secure.com)

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

Conference Dress

Smart casual attire is suitable (note: the temperature in the conference rooms can vary depending on where you are sitting so it is advisable that you bring a jacket/long sleeved top in case you need it).

TERMS AND CONDITIONS

1. In these terms,
 - a. "TEN" means Television Education Network Pty Ltd
 - b. "you" means the person who has registered to attend or the person or persons who attend[s] the conference (if different from the person registered)
 - c. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
 - d. "live conference" means a conference other than a recorded conference.
 - e. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
 - f. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
 - g. "face to face" in relation to a conference means a conference held in an external venue where you view the conference in the conference room

General – all conferences

2. TEN may change the program for a live conference as described in the brochure you have downloaded or in the TEN website without notice to you in any manner and at any time.
3. The information and opinions of presenters at the conference are not necessarily those of TEN and are in the nature of general information and not professional advice and you rely on these at their own risk. TEN is not responsible for the accuracy of the information or the correctness of the opinions offered by presenters at the conference.
4. TEN is not responsible for any financial or other losses incurred by you or for injury or damage to persons or property which occur at or in connection with the conference.

Conversion of face to face conferences to live online conferences

5. If the conference is being held face to face or face to face AND online, TEN reserves the right to convert the conference on no less than 24 hours' notice to a solely online conference or to cancel the conference or to postpone the conference to a later date if TEN determines that it is unable to hold the conference face to face on the date/s advertised for any one or more of the following reasons:
 - a. State or national border closures
 - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
 - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
 - d. In its opinion, it is unsafe to hold the conference face to face for any reason.
6. If TEN converts the conference from face to face only or to face to face and online to online only or postpones the conference or cancels the conference, TEN will not be responsible for any loss or damage you suffer as a result including any travel costs relating to the conference.
7. If TEN converts the conference from face to face to online or postpones the conference and as a result you are not able to attend you will be entitled to a full refund of registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

Copyright

8. The copyright in materials prepared by presenters at a conference and made available to you by TEN is and remains the property of each presenter.
9. You are entitled to use those materials for private study and research only.
10. The copyright in the live stream and in any recording of a conference offered online is the property of TEN.
11. You are entitled to watch a conference for private study and research only.

Conference cancellation by TEN – all conferences

12. TEN reserves the right to cancel a conference for any reason.
13. If TEN cancels the conference, you will be entitled either to a refund of the registration fee you have paid or to a credit equal to that fee which you can use to purchase another TEN product within 12 months of the first day of the cancelled conference.

Cancellation by You – all conferences

14. Refunds for registration cancellation by you other than under Clause 6(b):
 - a. If notice of cancellation is actually received by TEN more than 10 days before the first day on which the conference is to be held, 85% of the registration fee you have paid
 - b. Otherwise, no refund.

Governing Law – all conferences

15. The agreement between TEN and you is governed by the laws in force in the State of Victoria and the courts and tribunals of that State have sole jurisdiction to determine disputes arising in relation to it.

