INTERVENTION ORDERS

IN VICTORIA

RIGOLI LAWYERS

YOUR PROBLEM + OUR EXPERIENCE = STRESS FREE SOLUTION

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INTRODUCTION

Thank you for downloading this E-book.

If this is a difficult time for you, we want to equip you with the right information to ensure you know what to do.

Whether you have been served with an intervention order/application or wish to make one for your protection or the protection of your children, we can provide you with advice on the process and how to best deal with it.

Please contact us, should you need further assistance.

All first legal consults are free of charge.

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INTERVENTION AND PROTECTION ORDERS

There are two types of Intervention Orders for personal protection:

1. Family violence
2. Personal safety

Family violence orders or Intervention Orders are applied for in situations which have involved actual violence or the threat of family violence.

Personal Safety is applicable to situations where stalking, harassment or similar behaviour is involved.

You can apply for either of the above at your local Magistrates Court. Alternatively, the police may choose to make an application on your behalf if they become involved.

An intervention order will specify conditions to be observed by the party who the intervention order is against.

These conditions are broadly based on three areas of control:

- Distance provisions
- Property damage provisions
- Family violence provisions
- Harassment provisions

Note also that firearms may be ordered to be surrendered by the party who the intervention order is granted against.

OPTIONS AVAILABLE

The options available to parties to an intervention order matter are as follows:

- You can consent to an order without admitting the allegations
- The applicant can withdraw his/her application
- You can agree to attend mediation
- You can consent to an undertaking or promise
- You can contest the matter

STAGES OF AN INTERVENTION ORDER APPLICATION (APPLICANT)

1. File the application -an interim intervention order may be granted at this stage at the discretion of the Court on an ex parte basis (without the other party being aware) in cases of extreme emergency.

2. Receive your first return court date.

3. Attend your first return date at court where the matter will be examined by the Magistrate and an interim intervention order may be granted at the courts discretion.

4. Alternately, the Magistrate may decide that the application has no merits and the application/interim intervention order be dismissed.

5. Sometimes the respondent may request that further and better particulars are given to be provided to clarify the application.

6. If the above does not happen, and the matter does not settle by consent or one of the earlier options explained earlier, then a second court date for directions will be given.

7. Attend your directions court date.

8. If the matter does not settle by consent or one of the earlier options explained earlier, then a third court date for a contested hearing of the matter will be given. The Magistrate will ask if there are to be any witnesses at the contested hearing and how many. Generally, a maximum of 3 witnesses will be allowed to attend the hearing for each party to the matter. Further, an approximate length of time for the contested hearing will be determined e.g. half a day or a full day.

9. Attend your contested hearing date, with any witnesses you intend to rely on.

10. If the respondent has legal representation at the contested hearing, they will be able to cross examine any witnesses you bring. Like wise your legal representation can cross examine the other party and their witnesses Without legal representation the respondent cannot cross examine the applicant directly. This is because the law provides for added protection for victims so that they do not get into a position of being possibly further harassed by having the perpetrator cross examining them. It is advisable that you attend the contest hearing represented by a solicitor or barrister.

11. The Magistrate will make a determination as to granting the intervention order or not, based on evidence heard at the contested hearing. The length of period of time for any intervention order granted, and its conditions will also be determined at this time by the Magistrate.

There are serious penalties for breaching an intervention order.

APPEALING AN INTERVENTION ORDER

CAN A FAMILY VIOLENCE INTERVENTION ORDER BE APPEALED?

If an Intervention Order was made against you (or you wanted one made against the other party but were not successful) you can appeal that Magistrates Court decision but you need to ensure that this is done within 30 days of the Intervention Order or dismissal of case being made.

You can appeal the following:

- the making of an intervention order
- the conditions of an intervention order
- the court's refusal to make an intervention order; or
- the court's refusal to impose certain conditions in an intervention order.

WHAT IF AN INTERVENTION ORDER WAS MADE AGAINST ME?

Either party can appeal the intervention Order.

The appeal would be heard in the County Court of Victoria.

EXTENDING, VARYING OR REVOKING AN INTERVENTION ORDER

The court may make an order to:

- extend the duration of an intervention order;
- vary the conditions of an intervention order;
- revoke (cancel) an intervention order;

An application to extend, vary or revoke an intervention order may be made by any party to a family violence intervention order proceeding. You must arrange to serve the relevant parties.

If you are seeking to vary or revoke an intervention order, you must seek leave from the Court to lodge your application. You would need a legal reason to do so.

WHAT TO DO IF YOU ARE SERVED WITH ONE

Breaching an intervention order is a criminal offence, with a maximum penalty of 2 years imprisonment or a fine up to $24,000, or both.

Many intervention order matters will arise out of a related assault (or other) charge, a family law dispute or ongoing neighbour dispute.

Complaints for an intervention order can and often do include a history of alleged previous incidents and assaults and/or a course of conduct over a long period, particularly in circumstances where a marriage or long relationship has broken down.

At the first mention date, this is the time to get in and commence negotiations to see if the matter can be resolved without a hearing. Usually, the first date will be for this purpose and if it does not resolve, then a fully contested hearing date will be fixed for a later date. But you will need to check your paperwork thoroughly to make sure that it is a mention date and not the fully contested hearing date. A lawyer can help you with this.

Most Magistrates' Courts have services provided by local community legal centres for unrepresented parties. You will need to find out whether the other side is being represented by the police, a legal centre, duty service at the court, private lawyer or just by themselves. The sooner you can speak to someone from the other side, the sooner you can determine how the matter is likely to proceed.

If there is already a current interim intervention order against you then you will not be able to speak directly to the other party and may need to make enquires with the court or police to find out who is representing them. Alternatively, you may engage a lawyer to communicate to the other party on your behalf. Do not however rely on a verbal communication only if you are speaking with the other side's representative; it may be prudent to have something in writing if you are promised an adjournment or some other agreed course of action or offer to settle.

When there are related family law proceedings to be considered in relation to an intervention order, you should get advice from an experienced family lawyer as to any implications of an intervention order being made or the matter proceeding to a hearing. It could well affect your rights in relation to spending time with your children or living with them even if the intervention order application does not list the children.

If the dispute is between neighbours, or non-family related parties, most Magistrates' Courts have a mediation service available. Most Magistrates will strongly suggest that the parties avail themselves of this service before a matter is booked in for a contested hearing. Make sure you find out if such a service is available at the court where your matter is listed and that you have canvassed mediation before attending at court. The reality usually is that if the matter can settle without the need for a hearing it could well be in your interests to engage in whatever mediation and negotiation is available.

If you are agreeable to stay away from the other party and are happy to give the court an undertaking (promise) to do so, this could be a way to resolve the matter without an actual intervention order being in place. The undertaking can be given whilst at the same time denying the allegations so there are no actual findings of fact made by the Magistrate. The benefits and detriments of providing such an undertaking should be first discussed with a lawyer experienced in this jurisdiction, particularly when other family law rights are also an issue.

Costs are generally borne by each respective party and costs orders are difficult to obtain against the other party if you successfully defend intervention order proceedings even if you have legal costs. However, in some cases where it is clear to the Magistrate that the other party has brought the proceedings without any grounds to do so/ solely to advance another agenda, there may be the possibility of a costs order being against that party being considered but you should consult a lawyer about making such application.

Intervention Orders are a serious matter given that they can be enforced by police and also because any proven breach of them gives rise to a criminal offence.

SOCIAL MEDIA IN FAMILY LAW CASES

Use (and abuse) of social media is becoming more prevalent in court cases including in family law cases as well as crimes family violence cases.

EVIDENCE IN COURT CASES

Evidence obtained via social media is becoming increasingly common in family law proceedings. Evidence obtained from sources such as Facebook and Twitter can sometimes provide beneficial (and conversely sometimes very damaging) evidence for parties. Whilst this form of evidence is predominately used in parenting proceedings, financial proceedings and child support proceedings can also be assisted by social media evidence. Here are some examples of how social media can be used for you or against you.

SOCIAL MEDIA REVEALING SOMEONE'S TRUE FINANCIAL POSITION

In family law property disputes, a party may post messages and pictures on social media in relation to asset purchases such as real property, vehicles, jewellery or extravagant holidays. In circumstances where a party asserts they have limited financial resources to pay maintenance or child support, or as property settlement consideration, social media evidence may be used in an attempt to convince the court otherwise.

If one party claims a reduced capacity to earn an income due to limited employment opportunities, posts on sites such as LinkedIn may be useful. However, relying on the LinkedIn profile alone may not be enough. The LinkedIn profile may be presenting a rosier picture of the employability of the party than the reality of the situation. It may just show they are good at exaggerating their abilities rather than show they have a good job and good income.

BAD BACKS AND OTHER REASONS NOT TO WORK CAN BE CAUGHT OUT

If one party asserts they are in poor health which limits their ability to earn an income and posts social media pictures and posts demonstrating a contradictory lifestyle such as sport and physical activities, this may be used to attempt to rebut the party's claims of poor health.

The party claiming ill health may however be able to rebut these claims by producing medical reports which, as sworn evidence, would most likely hold more weight than the sometimes exaggerated postings people make on social media. These sorts of issues are relevant to not only property claims but spousal maintenance claims in the family law courts.

ADVANCE WARNING OF RELOCATING CHILDREN OUT OF THE STATE

If one party is intending to relocate with the children without the consent of the other party, it may come to the attention of the non-relocating party through a social media post. Or if one party is intending to breach orders by not returning children to the parent with whom they live, this may also be disclosed on social media. Such evidence however needs to be taken in the full context of the user's posts overall when shown to a judge.

EVIDENCE OF BAD PARENTING

Denigrating the other party or other people relevant to the child and/or the proceedings on social media unfortunately continues to happen a lot. If one party uses social media to denigrate the other parent, that evidence is often used against them as evidence of the authors own unsuitability or lack of insight.

If one parent's lifestyle puts into question their suitability to parent evidence of this may be sourced from social media. Drug consumption or excessive alcohol consumption may be evidenced on social media and put before the court as evidence of suitability.

Threats against the other party (or their family) posted on social media may be used both in family law and intervention order proceedings.

IS THERE SUCH A THING AS PRIVACY?

Short answer is no, not if you are posting online about yourself. It is exceedingly difficult (some may say impossible) for social media to ever truly be private.

If you are in the middle of a separation or divorce it is important that you do not in any way discuss on social media- your family law proceedings or documents filed in the proceedings, or make any comments about the Judge, the Family Report writer, the other party or their legal representation or any other people involved in the case. Once it is posted, it's in the social media universe and can be difficult to control and can be extremely damaging to your case.

FAMILY VIOLENCE IN FAMILY LAW CASES

When it comes to family violence, the Court takes these allegations seriously. When making parenting orders, the Court will consider the best interests of the child. The Family Law Act prioritises the safety of children in parenting matters by giving higher priority to the protection of children from harm when determining what is in their best interests. Let's explore this in more detail.

WHAT IS FAMILY VIOLENCE?

The term 'family violence' is used to describe violent or threatening behaviour by a person inflicted on a family member. In 2011, the definition of family violence in the Family Law Act was expanded to incorporate notions of intimidation and control (which are not always accompanied by physical violence or threats, for example financial control/economic abuse).

The Family Law Act contains a range of provisions designed to protect parties and children from family violence. The Courts recognise that there is a close connection between family breakdown and violence, and the negative impact on both adult victims and children living with family violence.

Ensuring the safety of all people involved in the family law system, including when attending Court, is a high priority for the Courts.

FAMILY VIOLENCE ORDER

A family violence order is an order made under a prescribed law of a state or territory to protect a person from family violence. Such orders may forbid one party from coming within a set distance of another party or stalking or harassing them.

While they are always described as family violence orders, these orders are called different things in different states such as:

- Protection Orders (QLD)
- Apprehended Domestic Violence Order (NSW)
- Intervention Orders (VIC & SA)
- Violence Restraining Orders (WA)
- Family Violence Order (TAS)
- Domestic Violence Order (ACT & NT).

Sometimes the Family Court or Federal Circuit Court will make a family law parenting order or an injunction that is not consistent with the state or territory order. If needed the family violence orders can still allow parties to meet each other for a few reasons such as:

delivering or collecting a child who is spending time with a parent or other person (as provided by the Family Law Act), or
enabling parties to attend family counselling, family dispute resolution, a family consultant meeting or other court events during family law proceedings.

WHEN CHILDREN ARE INVOLVED

Children can sometimes be included on family violence orders made for a parent but there are also child protection orders which are different to family violence orders. These orders are made by a state Children's Court when it is believed that a child needs protection.

EXAMPLES OF FAMILY VIOLENCE

The Family Law Act recognises that family and domestic violence takes many forms. These can be physical, sexual, emotional, or psychological and even financial. The courts have adopted this description of the elements of violence:

Some examples of behaviour that can be classified as family violence include:

- an assault; or
- a sexual assault or other sexually abusive behaviour; or
- stalking; or
- repeated derogatory taunts; or
- intentionally damaging or destroying property; or
- intentionally causing death or injury to an animal; or
- unreasonably denying the family member the financials that he or she would otherwise have had; or
- unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
- preventing the family member from making or keeping connections with his or her family, friends, or culture; or
- unlawfully depriving the family member, or any member of the family member's family, or his or her liberty.

COMMON FORMS OF VIOLENCE IN FAMILIES INCLUDE:

- spouse/partner abuse (violence among adult partners and ex-partners)
- child abuse/neglect (abuse/neglect of children by an adult)
- parental abuse (violence perpetrated by a child against their parent), and
- sibling abuse (violence between siblings).

FAMILY VIOLENCE CAN AFFECT NOT ONLY A PERSON'S SAFETY, BUT ALSO:

- their readiness to take action in a family law matter
- their willingness to come to the courts
- their ability to participate in court events, and/or
- their ability to achieve settlement of their dispute through negotiation.

An experienced family lawyer or family law specialist can guide you through the principles that the Family Law Courts use to decide what happens in parenting disputes where there has been family violence. Often as is the case a Notice of Risk will need to be filed if it is assessed by a party or their lawyer that there is a risk of abuse.

GETTING EQUAL TIME WITH YOUR CHILDREN

A common question I hear from family law clients is:

I have recently separated from my partner and I wish to have equal time with the children. How do I get equal care of the children?

It is not an “automatic right” of the parent to get equal care. rather it is a right of a child to have a meaningful and safe relationship with each parent, if it is in fact is in their best interests. This sometimes leads to equal shared care but other times not.

HOW THE COURTS DECIDE

Generally, the Courts will consider following factors when deciding on equal care:

1. Is there a history of both parties contributing actively towards the parenting? For example, if you are a parent that has traditionally taken the children to sports and extracurricular activities, this may assist your argument. If you were the main breadwinner that works long hours and was not there a lot to partake in the children’s regular routine activities, your argument could be complicated.
2. Do the parties reside close to each other? This is an important consideration because if you have for example separated from your spouse and have moved to the other side of the city it would be difficult for you to argue that you can see the children half the time as their schooling, social network and the like could be severely interrupted given the distance and logistics with transport and organisation. Would you be able to take the children to and from school?
3. The children’s ages/maturity. If the children are young, the argument for shared care could be problematic. If the children are too old the argument could equally be complicated. Young children require routine and stability whilst older children can have many commitments and need flexibility.
4. The children’s preference. Generally, if they are at a mature age, the children get a say in the parenting arrangements. Note however that the children’s say is only one of the components when deciding what is best for the children, not the sole deciding fact.

There is no “one size fits all”. Therefore, in order to receive accurate legal advice that is tailored to your specific circumstances- you should always consult a lawyer experienced in conducting family law cases.

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ABOUT US

Rigoli Lawyers are your trusted experts in family law. With over 30 years of experience helping Australians through the difficulties of separation and divorce, we know the right solution for your legal problem. Our team are headed by an Accredited Family Law Specialist, which means we've devoted extra time to gain knowledge and experience regarding family law matters. If you need us to help in the process, you know you'll get the best outcome with us.

While our experience gives us the confidence of knowing what to expect… we know that this is all new to you, which is why we support and guide you through every step of the way.

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WHAT TO DO NEXT?

If you want to know more, please contact us on (03) 8742 3199 and take advantage of our free half hour legal consults. They can be done in person, via Skype or telephone conference. You will be surprised how much can be accomplished in this time and how easy it will make it for you to decide on what to do next – having a plan is the key to getting the right outcome.

Warmest Regards,
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Principal Lawyer and founder of Rigoli Lawyers

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