

LEGAL STUDIES: *FAMILY LAW*

Achieving justice for those involved in a relationship breakdown.

The law can be both effective and ineffective in achieving justice for those involved in a relationship breakdown, specifically couples and any children they may have. Breakdowns in marriages and de facto relationships affect the people involved in the relationship and their children. The law attempts to achieve justice for each party through the Family Law Act and its amending acts. The law and the courts system must handle the separation of property and the implications of the breakdown on the children, and its effectiveness in dealing with both varies in effectiveness.

The separation of property can be a major factor in any relationship breakdown, and the law must attempt to be as fair and equitable as possible. Under the Family Law Act 1975 (Cth), the law outlines that there is 'no set formula' for the division of property, but rather many factors are taken into account (length of relationship, earning capacity, number of dependent children, etc.). The case of *C and M (2006)* highlighted the ineffectiveness of this approach. The couple C and M, were divorcing. The court's decided property division left 20% of the overall estate to the wife – the court did not take into account the husband's superior earning capacity, and hence, the wife was severely disadvantaged as a result. Hence, it is evident that the law does not always achieve justice for those involved in relationship breakdowns.

Another fault in the law in regards to relationship breakdown was publicised by the Sydney Morning Herald earlier this year. The article "De factos tell all in property disputes", involved a relationship breakdown of a supposed de facto couple. One person involved in the relationship maintained that a "genuine, domestic" relationship had occurred, whereas the other did not. The law and the courts system had no definitive way of defining whether there was in fact a de facto relationship, resulting in justice not being achieved for one party. Confusion in the definition of a 'de facto relationship' can lead to the above result, and thus the law may not achieve justice for all involved in a relationship breakdown.

Another consequence of the law is its unwillingness to recognise polygamous marriages, resulting in disadvantageous outcomes for those involved in breakdowns in polygamous relationships. The article "Polygamous marriages should be recognised" (SMH, June 2008), highlighted the negative effects of not recognising polygamous marriages. The article states that, especially in the Islamic community where polygamous marriages are the norm, women in these relationships are not given the same legal rights and protections as those in a marriage. The 'wives' after the first official wife are not legally recognised and therefore do not obtain the same legal rights and protections as they would if they were married, especially as it pertains to circumstances of a relationship breakdown. The law however does recognise the children born outside the marriage. Under the Status Act 1996 (Cth), the law defines that ex-nuptial children are given the same rights and protections as children born in a marriage. The definition under the Marriage Amendment Act 2004 (Cth) defined that marriage is between "one man and one woman to the exclusion of all others", a direct exclusion of polygamous relationships. Hence, although the law achieves justice for children involved in the breakdown of a polygamous relationship, it does not do the same for the women in the relationship.

The care and protection of children is of paramount concern in regards to relationship breakdowns. The Convention on the Rights of the Child (1989), outlines that the "child's interests are paramount". The Family Law Amendment (Shared Responsibilities) Act 2006 (Cth), implemented two primary considerations when dealing with children in a relationship breakdown: their safety, and the ability to maintain a 'meaningful' relationship with both parents. The latter consideration posed problems with the former, as many children were often forced to spend time with abusive parents in order to maintain a meaningful relationship. The amendment also instated cost orders for false allegations of abuse, and outlined that parents who reported abuse were 'uncooperative'. An article published by the Sydney Morning Herald in 2008, "She once escaped a killer – under today's law she would still be trapped", highlighted this issue, where a mother who escaped with her child from an abusive

partner, would still have been trapped under today's 'shared responsibility' laws. Another case, Collu & Rinaldo (2010), also exposed the consequences of this legislation, where the courts ruled that a four-year-old child was to travel monthly from Sydney to Dubai to maintain a 'meaningful relationship' with both parents. Auspiciously, in 2010, the amendments were repealed with the Family Law Amendment (Family Violence) Act 2010 (Cth), which established a greater importance for child safety over meaningful relationships with both parents, and also revoked all disincentives for the reporting of violence. Unfortunately, this law caused irreparable damage, as in 2007 alone, it was reported that 152 children, under the care and protection of Community Services, were killed by their abusive parents. This law evidently did not achieve justice for children involved in relationship breakdowns.

It is evident that the law can be both effective and ineffective in achieving justice in family breakdowns. De facto relationships and marriages are burdened by inconsistent and inequitable separation proceedings, and polygamous marriages suffer due to the lack of legal recognition. The protection of children is especially paramount, and ineffective legislation led to thousands of cases of abuses and deaths. It is evident that the law can improve its effectiveness in achieving justice in relationship breakdowns.