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SUPERVISION IN FAMILY LAW PROCEEDINGS

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If you are a litigant in a family law dispute involving children, you will often be told by a lawyer that there is a proposal that you spend time with your child or children, supervised either through a private supervisor, a family member, or a contact centre/supervision service.

This is a brief explanation for you about why the family law world at times creates conditions for time being spent between you and your child.



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What is Supervision?

Supervision is basically a colloquial way of explaining time with a child through a court order or parenting plan that imposes a condition of being observed by a third party.

Very often, people opt for commercial supervision in the community or supervision with a trusted family member or friend.

Supervision can be in large blocks of time or short periods of time and is often used with young children (children under the age of 10), where there are concerns raised by one or another parent of the child.

Why should I be supervised?

The reasons why people are supervised vary.

In most cases, being supervised is consensual – that is, both people agree to it, often with lawyers advising them to do this.

Some of the reasons why people are supervised include (but are definitely not limited to):

1. There is a risk factor asserted by one or both parties, such as:
 - a. Issues with drugs;
 - b. Issues with alcohol;
 - c. Mental health issues;
 - d. Family violence issues;
2. There is a need for objective evidence as to a child's interactions with a parent by someone independent, typically where one party asserts that the child is not comfortable around the parent and the other party asserts that is not the case.
3. Reintroduction – in circumstances where one parent (the supervised parent) has not spent a significant amount of time with a child.
4. Protection from allegations for the party being supervised and the mental health of the other party and the child – this is typically in circumstances where there are serious allegations made about a child's interactions with a party (whether these allegations stem from abuse concerns raised by a child to one or either party or concerns raised by either party).



Does being supervised affect my perception as a parent?

You should seek legal advice as to whether supervision is appropriate for you.

When matters of this nature are determined by a Court, at an interim stage – before hearing of evidence and before cross-examination – the Court will determine matters based on the objective evidence available at the time of a hearing and on the basis of the inferences capable of being drawn on that evidence.

Generally, supervised time is looked at as a “stop-gap” measure used to ensure that a child is protected and safe (and that parents are protected and safe) whenever they spend time with a parent.

It is typically not a measure that is put in place “forever”, though the circumstances of a case may be that supervision is the best way to protect everyone until a court determines what should happen for a child in the future and at a final hearing.

I am a lawyer. What do I do about supervision?

Very often, lawyers are put in a position where they must advise a client about what is the best thing to do for a child in specific circumstances.

We receive clients as they are. That means that they have faults and they have positive aspects.

More often than not, the clients you meet as a lawyer have been able to create a parenting regime they think is appropriate in the circumstances of their situation.

At times, the clients you meet do not know what to do. Those are the more difficult situations as your advice will affect their life, their capacity to parent and their relationship with the other parent. You must not treat this as routine or as a factory-style approach to law. Your job in these cases is important because it affects a client, their children and the generations of families to come from that advice.

Remember that after clients leave you, and when the case is determined, they will usually have many years into the future of co-parenting with another person.

The tone you set will determine what life a child has with both parents and, by extension, what life their own children have with them. This is a really important role because that child will grow up and live a life with the trauma of what they experience when you are involved in their life, and the trauma they experience after you are no longer involved in their life.



There are very few cases where a child no longer has a relationship with both parents. Those cases are the saddest and most difficult.

The first question a lawyer must ask is, what does my client see ultimately as the likely outcome for a child's life?

If your client sees a situation where the child has a life with both parents actively involved in said life, then the starting point is to consider how exactly you achieve that outcome for your client.

The second thing to consider is whether that should be relayed to another party. What is the relative harm in relaying to the other party that, ultimately, your client sees a situation where there is an amicable and suitable co-parenting arrangement with the other parent? Even if, at the time you are presented with your client and the situation that your client faces, it is impossible until certain things take place.

The second question to ask is: What issues are raised by either party?

Whenever a party raises risk issues, they are typically traumatic issues for everyone involved. Two happy, well-adjusted people do not necessarily need lawyers involved in determining what to do with a child – often they will come to you with what they want to do with a child, and your job is to advise on whether that's a good or bad idea given what you have been told.

Usually, you will be told horrific stories of family violence, drug addiction, alcohol addiction, mental health concerns (diagnosed or otherwise) and your job in those circumstances is to consider what methods are available to mitigate these risks.

Are there methods available to either party that may be deployed to protect a child from these various risk issues?

a. If there are drinking concerns, do we need an interlock system? Do we need a CDT Test? Is supervision a suitable arrangement until we get past this issue?

b. If there are drug-taking concerns, do we need a hair-follicle or urinalysis test or blood test to confirm the nature of the drug issues? Is supervision a suitable arrangement until we get past this issue?

c. If there are mental health issues, do we need a psychiatrist or psychologist to start treating someone or to prepare an expert report about their mental health (this could be your client or the other party).



d. If there are violence concerns, are restraints appropriate? Injunctions as to violence are as powerful as ADVOs or intervention orders.

Supervision is not a last resort: It is a sensible, helpful and appropriate way at times to get rid of concerns because it presents parties with their children in a confined, defined way to give all parties, the children and the court an understanding of what exactly a child's interactions with a party is and what exactly a party's interactions with a child is.

Supervision often, but not always, shows happy children in a happy environment thoroughly enjoying their time with their parent – it creates a parenting realm that is devoid of reality. Many practitioners have never had children nor realised that children very much test the patience and mental fortitude of a good parent. Many practitioners do not realise that children can be difficult and hard to raise – even “happy families” – whatever that may mean – have days where everyone in a household cannot stand one another; cannot fathom the thought of being around each other but eventually that subsides.

We must be honest with ourselves. No-one, has ever been raised by a perfect parent but many of us have been raised by parents with their own interpersonal issues who got us to where we are regardless of how happy or sad we were throughout childhood on any day that we had that parent in our lives and for many of us we still look up to those imperfect people, and love those people, if we are lucky.

If we are terribly unlucky we were raised by people who were terrible parents and terrible people to be around and our lives would have been better without them – it's important for all of us to remove ourselves from that lived experience and focus, objectively on the particular family we are dealing with, without transposing upon that family, our own lived experience.

People have serious foibles and deficiencies in their character and personality that may never change. These problems exist in families living in one home and are likely to exist in families living in separate homes.

It is rare that a human being will ever change if they have lived most of their lives being who they are.

Your job as a lawyer is to reality-test the outcome – be honest with your client.

What are the chances that someone who has personality dysfunction, such that it has caused the fracture of a relationship, will change who they are?



If the answer to that question is low, ask yourself a more important question: What are the chances that a human being, functioning in a modern society, bound by a court order, is likely to behave in accordance with the requirements of said court order on pain of penalty? If the answer to that is high, then that's the start of what to do.

There's a tendency in family law world for people to be process-driven without forward planning. Forward-planning is aiming for a goal and reaching it, and then retrofitting to that goal the steps and mechanisms for a client to get to that point.

It is not the job of a lawyer to retrofit on a family the idealistic world of what a perfect family should have; there are no perfect or "normal" families – there are just families that we must assess as against an objective standard of safety and security and that we must help reach their ultimate goal.

My client is not perfect. What do I do?

Well, no client is perfect.

They are often traumatised by a relationship that has not worked out by the time they reach your door.

Many of them may suffer from various and complex symptoms of undiagnosed mental health issues that have come about largely because of a relationship filled with myriad difficulties and complexities or have been exacerbated by that relationship.

Clients do all sorts of things that make no sense – sometimes clients come to you saying the kids should be supervised, but we have been separated for years, and they have been spending unsupervised time with the other party.

Your job even here is to work out what works for that family and what safety concerns are raised, such that you can implement the various tools needed to assist a family, but you must always aim for the goal of what your client wants.

And you must do that honestly and to the best of your ability.

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