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LawTalk Blog



Children, religion and Family Law

Date: Wednesday December 27, 2017

Australia's increasing multi-cultural society is resulting in a rising diversity of religion factions within our country. Accordingly, our [Family Law](#) jurisdiction has been subject to a cumulative volume of court applications regarding parents in conflict over what religion their child should ascribe to.

Often, a parent will try to argue that the freedom afforded by the Australian Constitution (s116) in making religious choices prevents the other parent from refusing a child to have involvement with a particular faith. This is incorrect. A Full Court decision in the case of **Firth** held that:

"If a Court decides that it is detrimental to the welfare of children for them to be brought up adhering to a particular faith, this does not constitute a breach of s116 of the Constitution".

Therefore Constitutional arguments will not prevent the Family Court from being able to make decisions regarding a child's religion. While the court cannot make decisions about the parents' religious preferences, they can do so for a child.

What does the Family Law consider when determining issues around a child's religion?

This then leads into questions about what the Family Court then take into consideration when examining conflicts over children and religion.

First and foremost, the court look to the governing principle that must be considered in all children's matters: "[what is in the best interests of the child?](#)".

This principle has an overarching prevalence throughout the consideration of the entire matter. The court will also look at other factors such as the impact of religion on the child's identity, the structure of the religion itself and whether the religion poses any threat to the safety and wellbeing of the child (both physical and psychological).

"The Family Court have taken a varied approach to religious matters."

The Family Court have taken a varied approach to religious matters. There have been diverse decisions by Judges such as (among others):

- The Judge refusing to put an injunction in place that limits the child from exposure to a religion;
- The Judge putting an injunction in place that does prevent a child from being exposed to a particular religion;
- The Judge making an injunction that controls the amount/type of exposure that a child can have to the religion in question.

Each matter is decided on a case-by-case basis. This means that the individual facts of each matter are very important as the court do not base their decision on a pre-conceived notion derived from other cases.

If you have concerns regarding your child being exposed to a particular religion by the other parent, it is very important that you seek legal advice. In lieu of the parents of the child being able to agree on a religious faith for the child to adhere to, it may be necessary for the court to make that decision.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.