



# When Violence Comes Home: A Family Law Case Study

When a relationship breaks down in the shadow of family violence, it shapes not only who the children live with, but also how the family's property gets divided. The following case study, drawn from a composite of matters typical in our practice, illustrates how the Family Law Act treats these issues — and why getting early, informed advice matters so much.

## The Scenario

Sarah and Michael were married for twelve years and have two children, aged nine and six. Michael ran a small electrical contracting business, and Sarah worked part-time assisting with admin for Michael's business, while managing most homemaking tasks and the parenting of the children.

Over the course of the marriage, Michael's behaviour became increasingly controlling: he monitored Sarah's phone, restricted her access to the family's bank accounts, and on several occasions was physically intimidating during arguments, including punching a hole in a wall near where Sarah was standing. The children witnessed some of these incidents.

Sarah eventually left the family home with the children and obtained a police-issued apprehended domestic violence order against Michael. She then needed

to resolve two separate but connected issues: parenting arrangements for the children, and division of the property, which included the family home, the business, and superannuation.

## Parenting: Safety Comes First

Since amendments to the Family Law Act which commenced in May 2024, the legislation no longer starts from a presumption of equal shared parental responsibility. Instead, the court's sole guiding star is what arrangement is in each child's best interests, assessed against a list of factors in section 60CC. Those factors place real weight on the need to protect children from harm,

including harm from exposure to family violence, alongside each child's safety, their developmental needs, and the benefit of a meaningful relationship with both parents where that is safe.

Where family violence has occurred, the court scrutinises the nature and pattern of that violence carefully. A single, isolated incident is treated differently from an ongoing pattern of coercive control, and the court considers whether the violence was directed at the other parent, the children, or both, and whether it is likely to continue or escalate. In Sarah and Michael's case, the documented pattern of controlling behaviour and the children's exposure to intimidation



were central to the parenting outcome: Michael's time with the children was structured to be supervised initially, with a pathway to unsupervised time contingent on him completing an accredited behaviour change program.

This is also where family dispute resolution becomes complicated. Practitioners are required to screen for family violence before recommending mediation, and in many cases involving serious or ongoing violence, mediation is assessed as unsuitable, meaning the matter proceeds directly to court rather than through the usual pre-filing requirements. The reality is, however, that a perpetrator of violence is far more likely to continue their control and abuse through court proceedings, than in the context of a contained and safe mediation.

## Property: The Kennon Principle

Family violence can also affect how property is divided under section 79 of the Act. Ordinarily, the court assesses each party's financial and non-financial contributions to the relationship, then considers future needs, before arriving at a just and equitable division. But where one party can show that violence occurred during the relationship and that it had a discernible, identifiable impact on their ability to contribute — financially or otherwise — the court may uplift the contributions-based assessment in that party's favour. This is often referred to as the Kennon principle, named after the 1997 Full Court decision that first articulated it and which is now codified in the legislation. Family violence is a relevant factor both in terms of contributions-based percentage entitlements and adjustments made for future needs, especially if there is ongoing impact as a consequence of historical violence.

It is not enough simply to prove that violence occurred. Sarah's lawyers needed to demonstrate a clear link

between Michael's conduct and its effect on her, such as periods where her ability to work or study was undermined by his controlling behaviour, or where her financial contributions were diminished because he restricted her access to money. This evidentiary burden is significant, and the principle is applied only in a relatively narrow band of cases rather than as a general rule.

In the final settlement, Michael kept his business and his superannuation, and the family home was sold with the proceeds divided such that Sarah received a cash amount which represented 65% of the total net asset pool, to account for both parties' contributions over the marriage and Sarah's future needs as the primary carer of two young children, with a modest adjustment reflecting the impact of Michael's conduct on her financial position during the relationship.

## Why Early Advice Matters

Family violence cases sit at the intersection of safety, parenting, and finances, and decisions made early — about evidence gathering, interim arrangements, and whether mediation



is appropriate — can shape the entire trajectory of a matter. If you or someone you know is navigating separation in the context of family violence, getting tailored legal advice as early as possible is one of the most protective steps you can take, both for your safety and for your children's wellbeing.

*If this raises concerns for your own safety, support is available through 1800RESPECT (1800 737 732), which operates 24 hours a day.*



*Fiona Reid is the Managing Director of Reid Family Lawyers, a boutique specialist family law firm with offices in Brookvale and Surry Hills. She is supported by a team of expert family lawyers. The firm has a wealth of experience in all facets of family law including complex property matters, parenting matters, child support and spousal maintenance issues, relocation, de facto and same sex issues, surrogacy and adoption.*

## FREE 20 Minute Consultation

Fiona is offering a FREE 20 minute consultation to prospective clients who mention this article when they make an appointment for their initial conference. Call Fiona on **9091 0221** or email [fiona@reidfamilylawyers.com.au](mailto:fiona@reidfamilylawyers.com.au).

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