

When Do 'Friends with Benefits' Become a De Facto couple ?

The effective merging of the property settlement entitlements of married and de facto couples in 2009, has spawned a flurry of litigation around the question of what constitutes a relevant de facto relationship.

In **Allenby & Kimble [2012] Fam CA 614** Justice Murphy observed that community perceptions of what might amount to a de facto relationship including the perceptions of individuals who are parties to such relationships do not determine whether or not the law regards certain arrangements as constituting de facto relationships for the purposes of the Family Law Act.

While this particular case may not be the most controversial of those which have considered the issue, it provides a helpful illustration of the considerations the Court will take into account.

The Court held that on balance the following factors did satisfy the legal description of a de facto relationship of at least two years for the purpose of enabling the Applicant to pursue a property settlement claim in the Family Court:

- living together and for the most part sharing a bedroom for five years of their ten year relationship;
- attending family events together and spending time with each other's family; and
- travelling together on various holidays during that period.

In reaching this conclusion the Judge discounted the significance of the following contra-indicative factors:

- no sharing of ownership of any property;
- no pooling of their financial resources; and
- false declarations (by implication) in making Commonwealth benefits claims to which the Applicant would not otherwise have been entitled by omitting any reference to being in a de facto or domestic relationship with the Respondent during the period under consideration.

The Judge granted an Evidence Act certificate to the Applicant against self incrimination in relation to the evidence given in the Family Court proceedings concerning the false completion of the benefits claim to which the Applicant had clearly not been entitled while in a de facto relationship with the Respondent as alleged.

Such a certificate does not amount to an indemnity from criminal prosecution, rather it means that what has been deposed to in the course of the Family Court proceedings cannot be used in a subsequent prosecution.

Accordingly such false or at the very least contradictory claims, lurking in the past should represent a significant consideration to potential de facto claimants as the combination of criminal penalties and reparation to the Commonwealth can be onerous.

Potential claimants are presumably being advised to assess the associated risks and rewards in these circumstances on the basis that the Family Court seems inclined to cast the de facto relationship net fairly widely.