

***Napier & Hepburn* (2006) FLC 93-303; (2006) 36 Fam LR 395; [2006] FamCA 1316 (5 December 2006) – Full Court of the Family Court of Australia**

‘Contact’ – ‘Risk’ – ‘Unacceptable risk’

Proceedings: Appeal against residence and contact orders.

Facts: The proceedings involved competing applications for residence and contact to the child of the parties. The mother made allegations that the father sexually abused the child. While no finding of abuse was made, the Trial Judge did make a finding of unacceptable risk. On appeal, the father challenged the orders made for contact, in particular, the requirement that the contact be supervised.

Issue/s: The trial judge provided inadequate reasons supporting his finding of unacceptable risk of abuse.

Reasoning/Decision: Although this case did not relate to family violence, the Court made observations relevant to the assessment of unacceptable risk. Bryant CJ and Kay J held at [84] that:

‘There remained an obligation on the trial judge to not only evaluate the harm that might befall the child if there is a future act of abuse, but to also evaluate the prospect of such an act occurring. This is not a search for a solution that will eliminate any prospect of serious harm. It is a search to balance the harm that will follow if the risk is not minimised and the harm that will follow if a normal healthy relationship between parent and child is not allowed to prosper’.