

***Baranski & Baranski* (2012) 259 FLR 122; [2012] FamCAFC 18 (10 February 2012) – Full Court of the Family Court of Australia**

‘Children’ – ‘Procedural fairness’ – ‘Property settlement’ – ‘Where the court was not persuaded that the learned federal magistrate erred in his approach to the wife's claim for a 'kennon type adjustment’ – ‘Where undisturbed findings of fact made by the learned federal magistrate amply supported the conclusion he reached in relation to this issue’ – ‘Whether the learned federal magistrate impermissibly relied upon extrinsic material and failed to accord the parties procedural fairness’

Appeal type: Appeal against parenting and property orders.

Facts: The parties had twins. Serious incidents of family violence occurred during their relationship and after separation. At the hearing of the trial, the father was in prison having been convicted of aggravated assault on the mother. Mother granted sole parental responsibility and the children to live with her. The father was to have supervised time (these orders were interim). Property – 25% adjustment re *Kennon*.

Issues: In making findings regarding family violence and its effect on the mother and children, did his Honour impermissibly take account of extraneous material? Did his Honour err in making a “*Kennon* type adjustment”?

Decision/Reasoning: The Court held that despite including reference to the mother’s conduct in the courtroom when faced with the father and the discussion about a report, the passages of which were included and relied upon in *Re: L (Contact: Domestic Violence)* [2000] 2 FLR 334, a decision of the England and Wales Court of Appeal (Civil Division). They were on the public record and so “materially different from matters appearing in reports” which have not yet undergone judicial consideration. While this alone does not guarantee that procedural fairness is achieved in circumstances where the parties were not on notice about the report and did not have opportunity to cross-examine accordingly, the Full Court held that “anything said in *Re: L* was not necessary to establish the relevance of the findings” made by the Federal Magistrate.

Regarding the property settlement and the “*Kennon* type adjustment”, the Full Court found that while it represented the “top of the range” it did not “exceed the bounds of a reasonable exercise of discretion”. Regarding the violence that was perpetrated post-separation, the Full Court held it was correctly included by the Federal Magistrate and was a relevant consideration in determining whether the mother’s contributions as a whole were more arduous.