



## Significant Income-Earning Disparity Between Separating Couples Does Not Rule Out a 50/50 Split of Assets

### Court considers contributions by husband and wife equal despite income-earning disparity

In the recent Family Court case of *Lane* [2015] FCCA 173 (4 February 2015), the parties were married for sixteen years, and had two children. The wife's first language was not English and she was studying at the time of the trial. The pool of assets consisted of the proceeds of the home worth around \$500,000.00 and \$268,000.00 in superannuation, and the husband's income was \$560,000.00 per year. The wife sought all of the non-superannuation assets to reflect the large difference in future income earning capacity, and that during the co-habitation she was accustomed to not having to worry about household budgetary concerns.

### Background

According to the Court, neither party had obtained any significant assets when they commenced living together. After returning to Australia the husband started a business while the wife performed home duties and did administrative work during the relationship. Since separating in 2011 the wife commenced living with the younger of the two children, and her income consisted of child support, spousal maintenance, and government benefits.

### Considerations

The Court found that the husbands' financial contributions during the marriage far outweighed that of the wife, and he used this income for joint family purposes. It was further found that the marriage was "one of equals" and that the parties combined their respective incomes into the household, with the wife undertaking paid employment in the husbands' business for approximately three years. The court also considered the wife's legal expenses, and unlike the husbands' legal fees, the wife's legal fees were still outstanding, and she did not have any form of income to pay these expenses. Therefore in the context of the parties' positions, her fees must be considered significant, and the Court considered it needed to factor this into its deliberations.

### Contributions

As to the parties' contributions, because of such a relatively long marriage involving children the Court commented that contributions to a marriage tend to even out, and found it was appropriate to determine what each party contributed 50 per cent to the parties' pool of assets for the purpose of section 79(4) of the *Family Law Act 1975* (the "Act"). This was especially because the husband accepted the fact that the wife would be largely dependent on him financially and that the wife would largely be performing home duties, plus her future income would be modest at best.



### **Superannuation**

In relation to the superannuation contributions by the parties, the wife was only able to make “modest contributions” at best as she was only employed for a short time, and was primarily confined to taking care of the family, whereas the husband has made significant contributions over many years. The Court found that factors arising out of section 79(4) of the Act should be taken into account to find the superannuation contributions to also be equal.

### **Concluding Remarks**

The Court considered as relevant the cost of appropriate housing for both parties, the need for financial considerations regarding independent living; the parties’ current level of superannuation, and the husbands’ superior earning capacity for arriving at the 50/50 clean split.

The implications of Court’s decision are that despite the disparity of income between couples in a marriage or de facto relationship, the courts are tending to lean towards an equal split of the assets by taking the non-financial contributions into greater consideration.