

Giving Up Career For Family – What Recompense Is There If The Marriage Falls Apart?

As has now been reported widely*, the saga of **X v X** is over following an out of court settlement after six years of fierce litigation.

The focus of this article is Mrs X's claims for an increased share of the relationship property because she gave up her career to support the career of Mr X.

The rise and rise of Mr X

Mr and Mrs X were both promising accounting students when they met in Auckland. In 1982, after they were married, they moved to the United States, where Mr X was studying for an MBA at Harvard. Mrs X was offered places in MBA courses at Berkeley and UCLA, but she did not accept either of them. Instead, she worked in a temporary capacity while Mr X continued his studies. Once he finished, they moved to London and both worked there. In 1989, they decided to move closer to New Zealand and start a family. Mrs X stopped working and the couple moved to Sydney, where Mr X's salary continued to sky rocket. Mrs X managed the household and raised the children. At separation, the children were aged 10 and 13.

For the last five years of the marriage Mr X was earning about \$1.5m a year. After the separation, Mr X continued to earn at least \$180,000 a year, whereas it was held that Mrs X could only reasonably expect to earn \$65,000 a year while she re-entered the workforce and developed her skills.

Mrs X claims compensation for giving up her career

The question was whether Mrs X was entitled to compensation under section 15 of the Property (Relationships) Act 1976. This section allows the Court to award one party more than half the relationship property. The Court has to be satisfied that Mr X's income and living standards post-separation were likely to be significantly higher than Mrs X's because of the division of functions in the marriage.

Mrs X initially claimed \$1.5m for economic disparity but this was later reduced to about \$400,000.

Six years of litigation

In the first decision, given in November 2005 the Family Court held that Mrs X had no valid claim for economic disparity. Mrs X appealed. In March 2007 the High Court allowed her appeal. Justice Rodney Hansen said:

"[This] is the classic case of a man being given full rein to develop his career and maximise his earning potential while his wife puts her career on hold. The causal link between economic disparity and the division of roles in the marriage could not be clearer."

The High Court Judge then set the formula for determining the award Mrs X should receive, but left the amount of the award to be determined by the Family Court. The next Family Court hearing took place in August and September 2007. In March 2008, the Family Court awarded Mrs X \$240,000 out of a total relationship property pool of \$7.5 million. Mrs X received 3.2% compensation for economic disparity, on top of her \$3.75m 50% share – a total of 53.2% of the relationship property.

Mr X appealed, saying the award was too high; Mrs X cross-appealed saying the award was too low. The parties were off to the Court of Appeal on another issue anyway, so this part of the litigation was also heard in the Court of Appeal.

The end result

The Court of Appeal agreed with the High Court that this was a classic case to which section 15 was intended to apply. However, having looked at the income and living standards of the parties, and considering whether there would be significant disparity, the Court agreed with the amount of compensation assessed by the Family Court judge and dismissed both the appeal and the cross-appeal.

Formula for assessing economic disparity

The approach taken by the Court of Appeal to reach this result was:

The value of any economic disparity claim is to be determined once it is known what each party is going to take from the relationship property pool under the Act's other provisions then:

- (a) calculate the "but for" income of the wife from employment had she not stopped her career to have and care for the children. In this instance, the Family Court held that Mrs X would have been earning \$220,000 a year had she not left the workforce. Deduct tax;
- (b) work out the wife's actual and expected income from employment over a period from the date of the wife's return to the workforce following separation. Deduct tax. In this case, a ten year time period was applied, starting with an estimated income of \$50,000 a year in Mrs X's first year back in the work force fulltime, \$55,000 a year in the second year, an average of \$85,000 a year in years three to five, rising to a plateau of \$140,000 a year by year ten;
- (c) subtract (b) from (a) for the relevant period, giving a disparity of \$170,000 gross in year one, reducing to \$80,000 by year ten. After tax was deducted, the disparity was reduced to \$103,700 in the first year and to \$48,000 in the years during which Mrs X was projected to earn \$140,000 a year;
- (d) apply a discount for the time value of the money the wife will receive in advance by way of compensation. This is a diminishing percentage multiplier attached to each year's compensation, representing the value of the wife's immediate receipt of the award sum;
- (e) add the total cumulative figure for the applicable period after deductions for tax and the diminishing time value factor. In this instance, the total was \$363,838; and
- (f) discount for contingencies. In this case a one-third discount was applied by the Court of Appeal, giving a final result of \$242,558. This was very close to the award arrived at by the Family Court Judge of \$240,000.



Was it worth it?

The question being asked now by commentators is, what's the point of making an application under this section? If a very wealthy woman, who gave up her promising career for more than 20 years, cannot obtain more than 3.2% of the total relationship property pool under this section, what hope is there for "normal" couples? By the time Mrs X paid her legal fees, she may not have improved her financial position much (if at all) by pursuing her economic disparity claim so far.

How you view this result depends on your view of the facts. From the point of view of a money-earning spouse, this would most likely be a reasonable result; he would assert that he had all the money-making talent, and a wife who was not much interested in a career anyway. However, the stay at home spouse would be disappointed because from her point of view, she gave up a stellar career for her husband and children, only for her marriage to end and to have to rebuild that career after 20 years out of the workforce.

Whatever your view, **X v X** is likely to set the benchmark for some time to come as few couples will have the funds to argue the point to the Court of Appeal and back. And, with more couples opting for the male partner to be the children's primary caregiver, future application of this section could have a twist.

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* *Sunday Star Times, 11 April 2010 "Extra career compo unlikely in wake of landmark divorce ruling" and The Business Herald, 16 April 2010 "Divorce – it's bigger than the law".*

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