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ECONOMIC DISPARITY—UPDATE

Economic disparity is the provision in the Property Relationships Act 1976 (“the Act”) which allows the Court to compensate a party upon the breakdown of a marriage or de facto relationship where as a result of the divisions of functions in the marriage or relationship one party’s income and living standards is significantly higher than the other’s.

Since the economic disparity provision was introduced in 2002 the Court’s have found applying the principle somewhat problematic especially where Parliament has not assisted in giving a mathematical formula to apply which must result in a specific sum of money being awarded.

The recent High Court decision of *Jack* has clarified the criteria that the Court’s will use in applying the *economic disparity provisions*. In particular:

- The Court’s are not to be bound by any mathematical formula in calculating compensation. The Court at all times reserves its discretion to use a *broad brush* approach. It is noteworthy that no mathematical calculations had been prepared as part of the evidence in *Jack* and the Court simply awarded a percentage after listening to all the available evidence;
- Compensation will be paid where one party has placed their own career on hold in order to undertake the domestic requirements of the marriage or relationship (e.g. childcare);
- The High Court has emphasised

that it is a matter of looking at what the parties agreed to as opposed to what they could have undertaken. Since 2002 a number of parties have argued that it would have been cheaper to employ a nanny as opposed to compensating the other party for staying home and undertaking childcare. The nanny argument has now been kicked for touch;

- Compensation will also be payable where one party undertakes a supporting role which results in the other party’s career being enhanced. This would include childcare assistance, undertaking all domestic duties to free up the time of the other party who pursues and develops their career.

The big point in summation is that the Court’s are not bound by any mathematical formula. The Court reserves the discretion at all times to apply the principles set down in the S15 after looking at all the evidence in each individual case. This means the Court will award compensation without any mathematical evidence as to how that compensation should be calculated.

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