

The Imprecise Science of Valuing Marital Financial Contributions

In **Lovine v Connor** [2012] Fam CAFC 168 the primary issue for the Family Court was the weighting to be attributed to various financial contributions introduced from outside the relationship in circumstances where the Trial Judge had otherwise assessed both parties' financial and non financial contributions during the ten years of their relationship to have been of equal value.

One party introduced two particularly interesting and substantial financial contributions:

- an initial contribution of assets worth \$3.3M at the commencement of the relationship to which could be attributed a current value of \$7.5M; and
- the residuary assets of two testamentary trusts worth \$1.4M established by the Will of that party's father who had died during the relationship.

The trusts were intended for the benefit of and were controlled by the related party.

The other's introduced financial contribution amounted to about \$300K.

At the trial and initially on appeal Senior Counsel for the beneficiary party had argued that the trusts' assets should not be included in the matrimonial asset pool that was otherwise worth about \$12M and that the trusts' assets were a financial resource relevant only to a consideration of the respective "future needs" of the parties.

However on appeal Senior Counsel abandoned that submission and with the Full Court's apparent approval conceded that as his client controlled the assets of the residuary trusts that property should be included in the divisible matrimonial pool.

Senior Counsel then focused instead on what weight should attach to this \$1.4M contribution by his client which alone represented more than 10% of the adjusted asset pool.

Unfortunately in attributing a percentage weighting of 75/25% to the overall contributions by the respective parties neither the Trial Judge nor the Full Court attempted to specify how the disparate introduced financial contributions had been taken into account in reaching that conclusion particularly by comparison with the breadwinner, parent and homemaker contributions.

In refusing to interfere with the Trial Judge's assessment of the respective 'contributions', the Full Court was content that he had considered the various contributions and it did not consider the failure to provide a precise analysis of how those factors had been taken into account to be appellable.

However other aspects of the Trial Judge's decision including his reasons for making a 'future-needs' adjustment of 15% in the wife's favour were considered appellable and the case was remitted for rehearing so the parties could do it all again.