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Contribution of pre-marriage skills and experience

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"Special" contributions are out, but how much recognition should pre-marital skills and experience be given? This issue was considered in *Pfenning & Snow*[1]. The husband unsuccessfully sought a 40% disparity in the outcome of the alteration of the parties' property interests, based on an assessment of his financial contributions by reference to his working life over the decades prior to the commencement of the marriage. The husband argued that he built up qualifications and expertise prior to the marriage, which increased his contribution-based entitlements. He sought to distinguish these contributions from "special" contributions which were rejected in such cases as *Hoffman & Hoffman*[2], *Kane & Kane*[3] and *Fields & Smith*[4].

Kent J said there was no evidentiary basis for concluding that an apprenticeship in toolmaking undertaken in the 1960s gave the husband any relevant qualifications and experience in pursuing the business he first commenced 20 years later, 2 years prior to the commencement of the relationship. The same could also be said with respect to his later employment. Kent J said that:

> "Pre marriage acquired skills, experience or training of a party can only be relevant to evaluating contributions made during the marriage rather than in and of themselves comprising a contribution of a relevant kind."[5]

The husband relied on *SL & EHL*[6] where the husband had qualified as an accountant, and then as a chartered accountant and had earned significant income in that capacity as well as in managing property investments. Warnick J in *SL & EHL* **rejected** the proposition that the husband had, prior to the commencement of cohabitation:

> "…laid down a base of qualifications and experience which in a direct and significant way produced wealth during the subsequent cohabitation …"[7]

Although the husband had completed a substantial part of his accountancy studies before marriage, he did not qualify until after the marriage and then pursued the further studies necessary to be admitted as a chartered accountant.

Kent J agreed that there needed to be a nexus between the qualification and its use:

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[1] [2016] FamCA 29
[2] (2014) FLC 93-591
[3] (2013) FLC 93-569
[4] (2015) FLC 93-638
[5] (at para 241)
[6] [2005] FamCA 132
[7] (at para 218)

> "It is trite that to practice and earn income as a professional accountant, medical practitioner, engineer, lawyer or the like a person must undertake specific studies/training to qualify for that occupation. Moreover it can readily be seen that there is an obvious nexus between obtaining the qualification and using it to earn income. That was the context of the statement made by Warnick J."[8]

The marriage in *Pfenning & Snow* lasted 25 years and produced two children. Kent J found that the wife's homemaking and parenting contributions freed the husband to pursue his business interests. The wife made other contributions, including by undergoing IVF.

Kent J referred to "… the many and varied counter-weighting factors in favour of the wife"[9], but found that there was a weighting in the husband's favour, although not to the extent contended for by the husband.

Kent J concluded, in rejecting the husband's argument that his pre-marriage contributions of his skills and experience should be given significant weight (at para 263):

> "In my judgment, only an undue and narrowly focused emphasis upon the early years of this marriage, and upon direct financial contribution without proper consideration of all relevant contributions (by both parties) pursuant to s 79(4)(a), (b) and (c) could result in the extent of disparity contended for by the husband."[10]

The contribution-based entitlements were held by Kent J to be 55% / 45% in favour of the husband. In a net pool of about $17.45 million, the disparity was around $1.745 million. No s 75(2) adjustment was justified.

In *SL & EHL* and *Pfenning & Shaw*, single judges of the Family Court accepted that the pre-marital acquisition of skills and experience might be dealt with as a contribution to the assets of the parties at the end of the relationship. However, in both cases, the judges rejected the argument that these were cases where the contribution-based entitlements were affected. The circumstances, if any, in which a party can rely on pre-marital skills and experience to increase contribution-based entitlements remain unclear.

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[8] (at para 235)
[9] (at para 282)
[10] (at para 263)