

DETERMINING A PROPERTY SETTLEMENT WHERE THERE IS A HIGH INCOME

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For most couples it is not uncommon that one spouse will earn more than the other, particularly when that lower income earning spouse has taken on the homemaker role. In a recent case, the court had to consider whether an adjustment should be made to the property division in the wife's favour, since the husband earned almost 10 times more than the wife had been earning during the marriage and after separation.

The Facts:

- The husband, aged 58 and wife, aged 57 were married for 30 years and had one adult child.
- The property pool was valued at \$1.5 million.
- The husband was the main income earner and the wife was the homemaker.
- The wife had a business for 8 years and it was valued at \$44,749. The husband claimed that the wife earned \$112,000 per year from her business, which the wife denied. The wife said her average income was \$35,000 per year when her business was operating well.
- The husband had a yearly income of \$320,000. He said that the wife excessively spent and had large credit card debts during their marriage and he had increased the mortgages to consolidate the debts.
- During the 2 years after separation the wife's father had provided the wife with \$54,000 to support her living expenses.

Court Found:

- Even if it was accepted that the wife had the capacity to earn \$112,000 per year, that level of income had never been achieved during the time she had the business.
- The wife would have been unable to support herself from her income during the marriage as well as after separation.
- The wife was entitled to a 12% adjustment in her favour since the husband had a significantly higher earning capacity over a long marriage.

Court Order:

- The wife receive 62% of the property pool and the husband 38%.