

# Relationship property: not always 50/50

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The recent case of *Bowden v Bowden*<sup>1</sup> has brought to light the circumstances in which the court will order an unequal division of relationship property under section 13 of the Property (Relationships) Act 1976. Section 13 provides the court with a discretion to order an unequal division of relationship property if extraordinary circumstances exist so as to make equal sharing repugnant to justice.

Where such extraordinary circumstances exist, the share of each spouse is generally determined according to their respective contributions to the relationship.<sup>2</sup>

An assessment under section 13 requires a three-stage approach:

- 1 Do extraordinary circumstances exist and, if so, what are they?
- 2 Why do those circumstances make equal sharing repugnant to justice?
- 3 Given the parties contributions, how should the property be divided?

The test under section 13 is a stringent one which requires a high threshold to be met. The types of factors the court will give consideration to in making its assessment can be broadly summarised into three categories.

## Significant disparity in contributions

A gross disparity in contributions is necessary in order to meet the threshold under section 13.<sup>3</sup> The court will, in making its assessment, give consideration to the expectations of each party during the relationship and their conduct in meeting those expectations. A significantly one-sided effort by one spouse will ordinarily need to be demonstrated.

The contributions in *Bowden v Bowden*<sup>4</sup> were such that the man brought almost all the assets into the relationship and paid the majority of outgoings. Whilst the court held this to be a sufficient disparity in contributions, the court's assessment was coupled with many other factors, including the short duration of the relationship, the couple's age and the fact that no assets

were acquired jointly.

In *Venter v Trenberth*<sup>5</sup> the High Court took into account the vastly greater financial contributions made by the man, as well as the fact that the parties did not have any children, the relationship was of relatively short duration and the woman had received the benefit of residing rent free.

The above case law demonstrates a mere disparity in contributions will not meet the threshold under section 13. A truly gross disparity is required and, often needs to be coupled with other factors, in order to make a successful section 13 claim.

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## Short relationship/length of the relationship

In general terms, the longer a relationship lasts, the more difficult it will be to rely upon financial contributions as constituting extraordinary circumstances<sup>6</sup>. The reason being, longer relationships are more likely to involve situations where both parties have made significant contributions of varying types over the years.<sup>7</sup>

In *Bowden v Bowden*<sup>8</sup> the relationship lasted for three years and two months. The court ultimately ordered an 80:20 division, however, the duration of the relationship was not the only factor considered by the court. The fact that the woman had provided care to the man in the final months

of his life and the fact that she had given up a state tenancy were not sufficient to counter the section 13 claim.

The case of *Bowden* can be compared to *Sydney v Sydney*<sup>9</sup> where the court ordered a 60:40 division, even though the relationship lasted for a similar period of time to *Bowden*. This simply highlights the fact that each and every case is determined and assessed on its own specific facts.

## Negative or minimal contributions by one partner

Negative or minimal contributions by one partner may be sufficient to meet the threshold under section 13. For example, circumstances where one spouse has spent all their income on alcohol and/or gambling may be sufficiently extraordinary to render equal sharing repugnant to justice under section 13.<sup>10</sup>

In *D v D*<sup>11</sup> the wife had a mental illness and required residential care for the majority of the parties' 24-year marriage. The court awarded a division of 80:20 in favour of the husband on the basis that the wife only contributed to 20% of the marriage partnership.

Whilst the above categories provide guidelines as to the kind of circumstances which must exist in order to make a successful section 13 claim, given the stringency of the test, often more than one of these factors must be present. The court does not view these factors in isolation and makes its assessment in light of all the circumstances which exist at the time.

- 1 [2016] NZHC 1201, [2017] NZFLR 56.
- 2 Property (Relationships) Act 1976, section 13.
- 3 *Lyford v Lyford* (1992) 10 FRNZ 143.
- 4 [2016] NZHC 1201, [2017] NZFLR 56.
- 5 [2015] NZHC 545; [2015] NZFLR 571 at [21].
- 6 *Dalton v Dalton* [1979] 1 NZLR 113.
- 7 Compare *Bilger v Bilger* (1979) 2 MPC 18, 19 which involved a marriage of 29 years.
- 8 [2016] NZHC 1201; [2017] NZFLR 56 at [50] to [52] per Mander J.
- 9 [2012] NZFC 2685.
- 10 *Bevan v Bevan* [1977] 1 MPC 23 (SC) and *Johansen v Joseph* (1992) 9 FRNZ 643, [1993] NZFLR 248 (High Court).
- 11 (1997) 15 FRNZ 302, [1997] NZFLR 424.

