

CURRENT FAMILY LAW

Volume 13, Number 3

August 2008

LAW ON THE MOVE	121
-----------------------	-----

CHILD SUPPORT ON THE MOVE	127
---------------------------------	-----

ARTICLES

Opportunities knock or opportunities lost? Reviewing the consequences of relationship contributions by a de facto partner – Geoff Monahan

There has been an interesting development in the assessment of the contributions made by a de facto party which are to the detriment of that party's skills development and career advancement. This article considers the concept of interpreting "lost opportunity" as a relationship contribution in any division of property between de facto partners. This interpretation has implications for New South Wales, Victoria, South Australia and the Northern Territory as their respective legislative regimes omit any reference to prospective considerations that would enable a court to take account of a party's "future needs". This interpretation may also have implications in a traditional family law dispute to ensure that a "lost opportunity" argument does not become lost in any final determination as to whether a further adjustment for property division due to the s 75(2) factors is needed. 129

Emerging trends in relation to the treatment of contributions in property adjustments – Greg Shoebridge

There is very little in the practical application of Pt VIII of the *Family Law Act 1975* (Cth) that could be described as a precise science. Within this environment of uncertainty, it seems that some areas are even less precise than others. The assessment of contributions by competing parties to a Pt VIII application has to be considered as one of those areas. For the past 30 years, that area has, as much as any other Part of the Act, perhaps benefited most (or suffered the most, depending upon your perspective) from the generous and broad ambit that is afforded to the trial judge in the course of an exercise of discretion. The purpose of this article is to compare a range of judicial considerations of contributions in property adjustment proceedings, in various scenarios. The paper is split into cases dealing with short marriages, long marriages, disproportionate initial contributions and cases involving larger than usual pools of assets. At the conclusion of each section, a summary of the cases reviewed attempts to identify the parameters of that generous ambit afforded to trial judges in the various types of case. 137

CASENOTES –

Harris v Smith (Interim orders, Legislative pathway of Pt VII)	149
Christian v Donald (Property, Children, Litigant in person)	152
Gilshannon v Giles (Parenting orders, Rice and Asplund principles)	158
Rush v O'Leary (Relocation of parent)	160
Besser v McCoy (Delay in publishing reasons for judgment)	162
Hilton v Hilton (Long marriage)	166
Oates v Crest (Interim spouse maintenance, Injunction for personal protection)	169

Guidelines for Contributors

Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Current Family Law*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to cfl@thomson.com.au, for forwarding to the Editor. Licence agreements can be downloaded via the internet at http://www.thomson.com.au/support/as_contributors.asp. If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 4,000 words for articles. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- Contributors have the option of having their articles peer reviewed prior to acceptance and publication. Each peer-reviewed article will be reviewed in its entirety by a suitably qualified expert who is independent of the author. Reviewers are not given the names or firm details/institutional affiliations of authors and authors are not given the names or firm details/institutional affiliations of reviewers.

Style

- 1 **Levels of headings should be clearly indicated (no more than four levels).**
- 2 **Cases:**
 - Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
 - Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
 - “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
 - Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
 - For international cases best references only should be included.
- 3 **Legislation should be cited as follows:**
Trade Practices Act 1974 (Cth), s 51AC. The full citation should be repeated in footnotes.
- 4 **Books should be cited as follows:**
Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
 - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
 5. Austin, n 4, p 56.
- 5 **Journals should be cited as follows:**
Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.
Wherever possible use official abbreviations not the full name for journal titles.
 - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
 7. Sheehy et al, n 6 at 221.
- 6 **Internet references should be cited as follows:**
Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit <http://www.thomson.com.au/legal/> or contact the Production Editor.

SUBSCRIPTION INFORMATION

The *Current Family Law* journal comprises four parts per year.

Customer service and sales enquiries:
Tel: 1300 304 195 Fax: 1300 304 196
Web: www.thomson.com.au/legal/p_index.asp
Email: LRA.Service@thomson.com

Editorial inquiries:
Tel: (02) 8587 7000

HEAD OFFICE
100 Harris Street PYRMONT NSW 2009
Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 1037-6631

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW