



# The Hazard of Minimising Family Provision Claims

Vol 26 No 6

The following three court decisions, given between March and October 2014, are a snapshot of the type of claims regularly made for court ordered provision from a deceased's estate.



## Former Spouse

In March in 2014, the Supreme Court ordered \$200,000.00 to be paid from a deceased's estate to a person who had not received any benefit under the deceased's Will. The applicant was the deceased's former wife. Her application had been made more than five months after the time allowed for making family provision claims, which is 12 months. The estate had been fully distributed. And the deceased had remarried and had two children in the 18 years or so since separation.

The Court made the order because the former spouse had never received a property settlement after separation from the deceased. It was for that very reason that "former spouse" was included in the category of persons who could bring family provision claims.

This case highlights the need for care with estate planning if there are former spouses, especially if there has never been a court-sanctioned property settlement.



## Former de facto spouse

Between 1973 and 1981, Joe Morris lived



in a de facto relationship with Yvette Grady. Thereafter they went their own ways but kept in contact. Morris re-partnered. At his death in 2011 he left a widow and two children. Morris made significant wealth from business ventures in the 1990's. And when Ms Grady fell on hard times in about 2006, he provided substantial assistance to her including rent-free accommodation and gifts totalling almost \$50,000.00.

Morris left nothing for Grady in his Will. However she'd been a member of the same household as him and dependent on Morris, and was therefore eligible to seek family provision from his estate. Although the claim was made late, the Court considered that it was meritorious and should be allowed. The Court awarded Ms Grady \$350,000.00 from Morris' estate.



## Daughter-in-law

The categories of relationship that can produce family provision claims are wide and flexible. Accordingly, a daughter-in-law has recently succeeded in such a

claim. Now not all daughter-in-laws can succeed. Every situation is different. However, in October 2014 the Supreme Court found that the following circumstances were sufficient.



Initially, the daughter-in-law lived in a house which was part of a motel complex. She lived there with her husband. The husband's father and step mother lived in an adjacent part of the complex. Later, when the parents-in-law moved to a rural property, the daughter-in-law made seasonal visits to her parents-in-laws' farm and during those visits was predominantly responsible to look after the house, to wash, clean, cook and prepare all the meals for the household while the men tended to the farm work.

The court considered that these circumstances allowed the daughter-in-law to fit within the category of relationships where a family provision claim could be made. She was then awarded \$100,000.00 from her father-in-law's estate.



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