SUPREME COURT OF QUEENSLAND

CITATION:	*Currey v Gault* [2010] QSC 27
PARTIES:	**CURREY, Andrew Patrick** (applicant) v **GAULT, Lester Moon and ALLEN, Timothy Gerard as Executors and Trustees of the ESTATE OF RAYLEE BAULF CURREY (DECEASED)** (respondents)
FILE NO/S:	SC No 4046 of 2008
DIVISION:	Trial Division
PROCEEDING:	Originating application
ORIGINATING COURT:	Supreme Court, Brisbane
DELIVERED ON:	8 February 2010
DELIVERED AT:	Supreme Court, Brisbane
HEARING DATE:	16 and 17 November 2009
JUDGE:	Margaret Wilson J
ORDER:	
CATCHWORDS:	SUCCESSION – FAMILY PROVISION AND MAINTENANCE – JURISDICTION – PERSONS IN WHOSE FAVOUR ORDER MAY BE MADE – CHILDREN – STEPCHILDREN – where testatrix died in 2007, leaving an estate then worth approximately $3 million – where testatrix was a widow with no natural descendants and one step-child, the applicant – where by her will she appointed her sister and her accountant, the respondents, as her executors – where principal beneficiaries of estate are her nephew and niece – where testatrix made no provision for the applicant – where applicant seeks provision out of the estate – whether testatrix left the applicant without adequate provision for his proper maintenance and support – whether provision should be made for him out of the estate *Succession Act* 1981 (Qld), s 40, s 41(1) *Bosch v Perpetual Trustee Co*. [1938] A.C. 463, cited *Ellis v Leeder* (1951) 82 CLR 645, cited *Freeman v Jaques* [2006] 1 Qd R 318, considered *Goodman v Windeyer* (1980) 144 CLR 490, cited *Graziani v Graziani*, unreported, Supreme Court of New

South Wales Equity Division, Cohen J, Eq 2678 of 1985, 20 February 1987, considered
Grey v Harrison [1997] 2 VR 359, cited
In re Allen (decd); Allen v Manchester [1922] NZLR 218, considered
Lee v Hearn [2005] VSCA 127, cited
McKenzie v Topp [2004] VSC 290, considered
Powell v Monteath [2006] 2 Qd R 473, cited
Re estate of Dickason (dec'd); Keets v Marks [2005] VSC 172, cited
Re estate of Fuller (dec'd); James v Day [2004] VSC 290, cited
Singer v Berghouse (1994) 181 CLR 201, considered
Vigolo v Bostin (2005) CLR 191, considered

COUNSEL: A P J Collins for the applicant
P F Mylne for the respondents

SOLICITORS: Quinn & Scattini for the applicant
Davidson & Sullivan for the respondents

[1] **MARGARET WILSON J:** Raylee Baulf Currey ("the testatrix") died on 14 November 2007, leaving an estate then worth approximately $3 million. She was a widow with no natural descendants and one step-child - Andrew Patrick Currey ("the applicant"). By her will made on 28 February 2007, she appointed her sister Lester Moon Gault and her accountant Timothy Gerard Allen ("the respondents") as her executors. The principal beneficiaries of her estate are her nephew Michael Reginald Tait Gault and her niece Angela Margaret Davies. She made no provision for the applicant.

[2] In this proceeding the applicant seeks provision out of the testatrix's estate pursuant to Part 4 of the *Succession Act* 1981.

Background

[3] The testatrix was born in New Zealand on 24 August 1942. She became a competent secretary/bookkeeper and a skilled seamstress. Her first marriage ended in divorce.

[4] The applicant was born in 1969, the only child of Patrick and Thelma Currey. Neither of his parents ever had a child by any other relationship. They lived in Moranbah, where Mr Currey was employed by a mining company as a mechanical co-ordinator. When the applicant was about seven years old his parents separated, and he and his mother moved to Brisbane.

[5] On 24 August 1979 the applicant's father and the testatrix were married in Moranbah. He was about three years older than she, and they were happily married until his death on 9 July 2003. They remained in Moranbah where they both worked until about 1987, when they both received redundancy payments. Then they moved to Toowoomba where they established themselves as successful small business operators. Through a company Vanrace Pty Ltd as trustee for the Paray

Investment Trust, they operated milk runs, Mr Currey and several drivers attending to the distribution of the milk, and the testatrix attending to the bookkeeping. They had other investments (real estate, shares and superannuation) and the testatrix had part time jobs bookkeeping for a hardware business, in a bookstore and in her own sewing business. The testatrix brought modest contributions into their asset pool - her share of the proceeds of the home she had shared with her first husband in Sydney and about NZ $25,000 from her mother's estate (in about 1980). It was common ground that they contributed equally though in different ways to the accumulation of their global matrimonial assets.

[6] Patrick Currey and the testatrix made wills on 24 May 1993. Mr Currey left his whole estate to the testatrix. His will contained a default provision: if she did not survive him, then the estate was to pass to such of the applicant and Michael Reginald Gault (described in the will as "my nephew") as survived him and attained the age of 28, and if more than one, in equal shares as tenants in common. The testatrix's will of that date was not in evidence, but it was accepted to have been in complimentary terms, leaving her estate to her husband if he survived her, and otherwise to Michael Gault and the applicant.[1]

[7] On the death of Patrick Currey the testatrix was the sole beneficiary of his estate, which was valued at $578,893.55. They had held their real estate investments as joint tenants, and so she succeeded to his interest in those investments by survivorship – the matrimonial home at Golf Course Drive, Toowoomba and a unit at the Gold Coast, as well as two other properties in Toowoomba which she subsequently sold for $47,000 and $800,000 respectively. She was also the beneficiary under his superannuation fund, from which she received $467,000.

[8] In 2005 Vanrace Pty Ltd sold the milk run it then held, inclusive of stock and plant, for $320,000.

[9] In 2007 the testatrix inherited NZ $10,000 from her sister Sharon's estate.

[10] After her husband died, the testatrix made two new wills - one on 8 August 2003 and the other on 28 February 2007. Both wills were principally in favour of her nephew and her niece; the applicant was not named as a beneficiary under either.

The testatrix's estate and her will of 28 February 2007

[11] The assets and liabilities of the testatrix's estate as at the date of her death were as follows:

Assets	
Residence at Golf Course Drive, Toowoomba	$ 821,000
Unit at Gold Coast	$ 325,000
Share portfolio	$ 122,271
Vanrace Pty Ltd as trustee for Paray Investment Trust - cash	$ 27,361
Motor vehicle	$ 45,000
Superannuation	$1,690,753
TOTAL ASSETS	$3,031,385

[1] See transcript of proceedings on 16 November 2009 at 1-9.

Liabilities	
Taxation	$ 2,404
Rates, electricity, phone	$ 3,081
Credit cards	$ 14,553
Funeral and family travel costs	$ 20,900
Professional fees	$ 3,575
TOTAL LIABILITIES	$ 44,513
NET ASSETS	$2,986,872

[12] The testatrix left her estate as follows –

$ 50,000	to her sister Lester Moon Gault
$ 50,000	to Timothy Gerard Allen
Jewellery	to her sister Lester Moon Gault
Unit & contents	to her nephew Michael Reginald Tait Gault
Share portfolio	to her niece Angela Margaret Davies
Expenses of attending funeral	to her brother Peter Reginald Davies, her sister Lester Moon Gault and her nieces and nephews
Residue	to her nephew Michael Reginald Tait Gault and her niece Angela Margaret Davies.

Questions for determination

[13] Section 41(1) of the *Succession Act* 1981 provides -

> "**41 Estate of deceased person liable for maintenance**
>
> (1) If any person (the **deceased person**) dies whether testate or intestate and in the terms of the will or as a result of the intestacy adequate provision is not made from the estate for the proper maintenance and support of the deceased person's spouse, child or dependant, the court may, in its discretion, on application by or on behalf of the said spouse, child or dependant, order that such provision as the court thinks fit shall be made out of the estate of the deceased person for such spouse, child or dependant."

A step-child is a child for these purposes.[2]

[14] There are two questions for determination -

(i) the jurisdictional question whether the testatrix left the applicant without adequate provision for his proper maintenance and support; and

(ii) if the answer to the first question is "yes", what provision should be made for him.[3]

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2 *Succession Act* 1981, s 40.

3 *Goodman v Windeyer* (1980) 144 CLR 490 at 502; *Singer v Berghouse* (1994) 181 CLR 201 at 208-211.

[15] The first is a question of objective fact to be determined by the Court, although it involves making value judgments. The second requires the exercise of the judicial discretion.[4] What is involved in each question was explained by Mason CJ, Deane and McHugh JJ in *Singer v Berghouse*[5] as follows -

> "The first question is, was the provision (if any) made for the applicant 'inadequate for (his or her) proper maintenance, education and advancement in life'? The difference between 'adequate' and 'proper' and the interrelationship which exists between 'adequate provision' and 'proper maintenance' etc. were explained in *Bosch v Perpetual Trustee Co*.[6] The determination of the first stage in the two-stage process calls for an assessment of whether the provision (if any) made was inadequate for what, in all the circumstances, was the proper level of maintenance etc. appropriate for the applicant having regard, amongst other things, to the applicant's financial position, the size and nature of the deceased's estate, the totality of the relationship between the applicant and the deceased, and the relationship between the deceased and other persons who have legitimate claims upon his or her bounty.
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> The determination of the second stage, should it arise, involves similar considerations. Indeed, in the first stage of the process, the court may need to arrive at an assessment of what is the proper level of maintenance and what is adequate provision, in which event, if it becomes necessary to embark upon the second stage of the process, that assessment will largely determine the order which should be made in favour of the applicant. In saying that, we are mindful that there may be some circumstances in which a court could refuse to make an order notwithstanding that the applicant is found to have been left without adequate provision for proper maintenance. Take, for example, a case like *Ellis v Leeder*,[7] where there were no assets from which an order could reasonably be made and making an order could disturb the testator's arrangements to pay creditors."

[16] In *In re Allen (decd); Allen v Manchester*[8] Salmond J sought to explain equivalent New Zealand legislation by reference to concepts of moral duty and moral claim. In an oft quoted passage he said –

> "The provision which the Court may properly make in default of testamentary provision is that which a just and wise father would have thought it his moral duty to make in the interests of his widow and children had he been fully aware of all the relevant circumstances."

But the utility of concepts of moral duty and moral claim has proved controversial,[9] as is readily apparent from the various judgments in *Singer v*

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4 *Singer v Berghouse* (1994) 181 CLR 201 at 211.
5 *Singer v Berghouse* (1994) 181 CLR 201 at 209 – 211.
6 [1938] A.C. 463 at 476.
7 (1951) 82 CLR 645.
8 [1922] NZLR 218 at 220 – 221.
9 as Mackenzie J observed in *Powell v Monteath* [2006] 2 Qd R 473 at 478.

Berghouse[10] and the later High Court case of *Vigolo v Bostin*.[11] The concepts of "proper provision" and "adequate maintenance and support" were discussed at length in *Vigolo v Bostin*.[12] Keane JA summed up the authorities pithily in *Freeman v Jaques*[13] when he said –

> "It is clear from the authorities that the resolution of the jurisdictional issue necessarily involves an evaluative balancing of relevant considerations.[14]"

[17] The applicant claims against the estate of his deceased step-mother in circumstances where the whole of the estate of his natural father had earlier been left to his step-mother. Of course, all of the facts must be considered in determining whether the jurisdictional question should be answered in the affirmative. But in such circumstances the Court may well conclude that it should be. See, for example, the remarks of Keane JA in *Freeman v Jaques,*[15] and this passage from the judgment of Nettle J in *McKenzie v Topp*[16]-

> "…just as community attitudes are the touchstone of adequate provision, so too are they the criterion of responsibility to provide. Other things being equal, right thinking members of society are likely to accept that the needs of the widow of a second marriage should rank in priority ahead of the claims of the children of a first marriage; although of course it is always a question of fact. But equally, upon the death of the widow, and as it were in the event of a surplus, most would surely say that the children of the first marriage should rank for their fair share. For once the widow is gone, and therefore no longer in need of provision, her needs no longer warrant that the children rank behind her or thus her chosen successors.
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> Of course that is to speak in terms of broad generality and upon the assumption not only of an estate of sufficient value to provide for the children of the first marriage but also of a need for their provision. Furthermore, although the question for present purposes is confined to the first or jurisdictional aspect of the inquiry - of whether children of the first marriage may be regarded as persons for whom the widow of the second marriage has a responsibility to provide - the size of the estate and the circumstances of the children may be critical to the answer. But the need to look forward to the second stage of the inquiry in order to complete the first is endemic to most of the considerations listed in s. 91(4). It is the consequence of defining the class of eligible plaintiffs in terms of persons for whom a testator or testatrix has a responsibility to provide. The first stage of the inquiry is now informed as much by the answer to be given to the

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10 (1994) 181 CLR 201 at 209 per Mason CJ, Deane and McHugh JJ.
11 (2005) 221 CLR 191 at 202 – 205 per Gleeson CJ; 218 per Gummow and Hayne JJ; 228 and 230 per Callinan and Heydon JJ.
12 (2005) 221 CLR 191 at 197 – 205 per Gleeson CJ; 212 – 219 per Gummow and Hayne JJ; 226 – 231 per Callinan and Heydon JJ.
13 [2006] 1 Qd R 318 at [29].
14 *Vigolo v Bostin* (2005) 221 CLR 191 at 197, 200 – 201, 202, 204, 205, 218 – 219 and 228.
15 [2006] 1 Qd R 318 at [40].
16 [2004] VSC 290 at [58] – [61].

> second stage as the second stage will be informed by the answer that is given to the first. But there are still two stages.
>
> That said, the point of principle for present purposes is one of modest proportions. If children of a first marriage have stood aside in order that their father might make adequate provision for the widow of a second marriage, and upon her death there are assets in her estate, the amount left by their father to the widow may be relevant to the question of whether she is responsible to provide for them."

In *Graziani v Graziani*[17] Cohen J said that in the case of an applicant who was a step-child of the deceased the factors which the Court should consider include the closeness of the relationship, that is whether it is one which might properly be described as parent and child, whether the applicant was brought up as a permanent member of the family, the age of the applicant when he or she became a member of that family, and the extent to which the applicant was supported by the deceased, whether it be financially, educationally or emotionally. Referring to the evaluative balancing of relevant considerations, Keane JA said in *Freeman v Jaques*[18] -

> "The more exiguous and distant the familial relationship between the deceased and a claimant, the greater must be the need of the claimant for maintenance or support if it is to give rise to the obligation, postulated of a wise and just stepmother,[19] to make adequate provision for the proper maintenance or support of the claimant. Similarly, the greater the extent to which a step-parent's estate reflects her own contributions and efforts, the greater must be the need in the claimant for maintenance or support if a stepmother is to be regarded as subject to a moral claim to make adequate provision for proper maintenance and support."

See also *Re estate of Dickason (dec'd); Keets v Marks*[20] and *Re estate of Fuller (dec'd); James v Day*.[21]

The applicant

[18] After his parents separated, the applicant lived in Brisbane with his mother. He spent time with his father and the testatrix at Moranbah during school holidays. His father paid $20 per week maintenance for him. He was educated to year 12 at Iona College in Brisbane. Coincidentally he left school at about the same time as his father and the testatrix moved to Toowoomba. His mother moved to Tasmania to care for her parents when he was about 18, but he remained in Brisbane. She

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17 Unreported, Supreme Court of New South Wales Equity Division, Cohen J, Eq 2678 of 1985, 20 February 1987.

18 *Freeman v Jaques* [2006] 1 Qd R 318 at [29].

19 *Vigolo v Bostin* (2005) 221 CLR 191 at 200, 202 - 204, 213 - 214, 227 - 231. As Callaway JA said in *Grey v Harrison* [1997] 2 VR 359 at 365, the touchstone of what a wise and just testatrix would have thought to be her moral duty "supplies the norm that the legislature left unexpressed". See also *Lee v Hearn* [2005] VSCA 127; No. 4163 of 2001, 20 May 2005 at [4].

20 [2005] VSC 172.

21 [2004] VSC 290.

returned to Brisbane after their death. By then the applicant was about 21. Shortly after her return his mother became ill, and he cared for her.

[19] The applicant's mother died in August 2002, when the applicant was almost 33. He had cared for her in her final illness. She left him her house at Valencia Street, Loganlea, which was unencumbered.

[20] The applicant entered the workforce soon after leaving school, finding employment at Mad Barry's, the RACQ and then a metal shop. He enrolled in a TAFE course, but could not afford to pursue it. Then he had a few months' work in the catering industry, where the hours were very long. When he was about 22, he started working for the Parliamentary Catering Division and Stores, and a couple of years later he transferred to Parliamentary Security as a security officer. He still works there. He does 12 hour shifts, two days on followed by two days off. For the last 12 years he has been second in charge of a crew. His employment is secure, but he has little prospect of promotion. He earns approximately $1100 gross per week.

[21] When the applicant was about 19, his father gave him a lump sum payment of $6,000, by way of arrears of maintenance. There is no evidence that he received any subsequent financial support from his father, or that he asked for any.

[22] After his mother died, the applicant mortgaged the house at Loganlea. He spent the money he borrowed on home improvements, a motor vehicle and a motorcycle and, following his father's advice to travel if he ever had the chance, on an overseas trip of about 8 weeks.

[23] Since about July 2004 the applicant has been in a stable de facto relationship with Carmel Aslette. They do not have any children, and are not planning to have a family. Ms Aslette is about six or seven years older than the applicant. She works as a medical receptionist.

[24] The couple live modestly. Their combined income is a little over $2,000 gross per week. They live in the house at Loganlea which the applicant inherited from his mother; it is worth about $370,000 and subject to a mortgage to secure a debt of approximately $150,000. The applicant also has an investment house at Crestmead, worth about $260,000 and subject to a mortgage to secure a debt of about $165,000. Their household effects, which are jointly owned, are worth about $100,000. His superannuation entitlement is about $160,000. He has motor vehicles worth about $50,000 and Ms Aslette has a motor vehicle worth about $10,000. Apart from the mortgage debts, their only liabilities are modest credit card debts.

[25] The applicant's great-aunt Rose Harriett Thomson died in New Zealand in about 2005 leaving an estate worth approximately NZ $695,000. She left a life interest in her residuary estate (the bulk of her estate) to her sister, who is still alive. The applicant has a 1/14 interest in her residuary estate.

[26] The applicant has expressed a wish to purchase a residential property at Daisy Hill or Mt Cotton for between $400,000 and $500,000.

The applicant's relationship with his father

[27] In the early years of their life in Toowoomba, the applicant's father and the testatrix were very busy establishing themselves. They were a happy, loving married couple

who both worked hard. At the same time the applicant was a young man in his late teens and early twenties, with jobs which entailed long and irregular hours.

[28] I accept that the applicant used to telephone his father and to visit him and the testatrix in Toowoomba from time to time.

[29] For some years after he acquired milk runs, the applicant's father used to deliver milk himself. At one point he had three vans: he drove one himself and employed people to drive the other two. Towards the end of his life he ceased delivering milk himself, although he continued to be involved in managing the business on day to day basis and from time to time doing mechanical repairs on the vans. The testatrix continued to attend to the bookkeeping associated with the milk runs.

[30] From when he was about 19, when the applicant visited his father in Toowoomba, he would go out with him delivering milk. This occurred about once every four to eight weeks. It was not that his father needed his assistance in the business in order for it to be viable, but rather an opportunity for interaction and bonding between father and son. The applicant was not paid for his assistance. In 1989 the applicant's father had his 50th birthday, and there was a party in Toowoomba to mark the occasion. The applicant, who was aged about 20, did not attend the party because of the long hours he was then working in the catering industry. At the hearing counsel for the respondents was critical of his non-attendance, and contended that it reflected poorly on the applicant in terms of his attitude to his father. I do not accept that submission. As I observed during the hearing, the importance attaching to such celebrations varies from family to family. There is no evidence that Mr Currey was hurt by his son's non-attendance, or that he bore any ill-will towards him as a result of it.

[31] In later years, after Mr Currey ceased delivering milk himself, the applicant visited him in Toowoomba about once a month. He recalled helping his father work on the fuel pump of one of the milk vans in the shed in the last year of his life.

[32] In about 2002-2003, towards the end of his father's life, the applicant had a girlfriend in Toowoomba, and he would visit his father when he went to Toowoomba to see her.

[33] The applicant's father was a very private man who did not talk freely about his family and personal affairs. Mr Raymond Carns, who worked on his milk runs from about 1988, knew him and the testatrix for several years before finding out that he had a son. He recalled coming upon him and a young man working in Mr Currey's shed. Mr Currey proudly introduced the applicant as his son. Mr John Dowson, a neighbour of the Curreys in Toowoomba, said that Mr Currey mentioned his son a few times, and that in his dying days he spoke well of him. Others who knew the Curreys in both Moranbah and Toowoomba (Mr and Mrs Alloway, Mr Ryder and Mrs Marr) attested to Mr Currey's affection for and pride in his son.

[34] Mr Currey was terminally ill with prostate cancer in the weeks leading up to his death. He did not reveal his illness to anyone outside a very narrow circle which included the testatrix and people such as Mr Carns who assumed his role in running the milk distribution business and Mr Carns' partner, Ms Julie Koning.

[35] The applicant was unaware of his father's illness until after his death. He saw his father for the last time a few weeks before he died, and apart from a limp put down to an injury sustained in getting off his truck, his father seemed his usual self. A few days after his father's funeral, the applicant telephoned to speak with him about arrangements to go out together at the weekend. In cross-examination he recounted –

> "I rang up on the Friday night to talk to dad and Raylee [the testatrix] said, 'You can't, you fool. He's dead.' I just hit the kitchen floor. I was like – she goes, 'We buried him,' and I'm like, 'Why didn't you tell me?' and she goes, 'I left you a message,' and I said, 'I got no message,' and I said, 'I'll come up and see you tomorrow,' and she goes, 'You do that,' and I hung up, fell apart."

The next day he travelled to Toowoomba to see the testatrix. She told him that she had arranged for someone to get a message to him, and that a message had been left on his answering machine. However, he did not have an answering machine. I am satisfied that the testatrix had deliberately withheld the fact of his father's death from him.

The applicant's relationship with the testatrix

[36] During his father's life, the applicant had not been conscious of any antipathy the testatrix may have felt towards him (her step-son). Often when he phoned to speak to his father, she told him that his father was busy, and not to call him after certain times. He accepted this as normal: he knew his father as a hardworking man, who had to be up very early in the mornings to attend to the business of the milk runs. When it was put to him in cross-examination that his relationship with his step-mother had never been close, he said –

> "Close enough. She was my stepmum. As close as any stepmum, I suppose. Is there a scale?"

He insisted that he did not think any less of her because of her failure to tell him that his father had died: he was grief-stricken and he appreciated that she was, too.

[37] I am satisfied that in fact the testatrix felt no warmth or affection towards the applicant, despite maintaining a façade of cordiality. A number of witnesses (Ellie Dowson, Julie Koning, Olga Marr and Colleen Alloway) swore to her ill will towards him. The applicant did not learn of this until after she died and he discovered that she had excluded him from her will. In cross-examination he described how he found out in these terms –

> "Sir, after Raylee died we got everybody together. I went around and started talking to everybody and Raylee kept everybody – in little boxes, little boxes. She'd tell one person one thing, one person something else, and she never had anything bad to say about me…"

In light of his other evidence, I interpret his saying "she never had anything bad to say about me" as meaning that she never had anything bad to say about him to his face. While the applicant's account of what he was told is not evidence that the

testatrix in fact behaved that way, I conclude from the evidence of Ms Dowson, Ms Koning, Ms Marr and Ms Alloway that it was indeed how she behaved.

[38] The applicant visited the testatrix on a number of occasions after his father's death, when they talked about family matters quite amicably. Ms Aslette had an apparently good rapport with the testatrix, too.

[39] After the testatrix died, the applicant attended her funeral.

Evaluation of relationships

[40] There is an awkwardness and want of confidence in the applicant's manner, which tend to obscure his true character. His relationship with his father has to be evaluated in the context of the failure of the marriage between his father and his mother, his being brought up in Brisbane by his mother, and his father living in Moranbah where he remarried and subsequently in Toowoomba. After he entered the workforce, the applicant had to make his own way in life, and it would be unfair to criticise him for not finding more time to spend with his father, especially when there is a dearth of evidence about any positive steps taken by his father to foster the father-son relationship. His father was a very private man, as I have already observed, and I infer one not given to outward displays of emotion. As I have already observed, his father did not provide him with any financial support once he reached adulthood. I am satisfied that the relationship between the applicant and his father was one of genuine mutual love and respect.

[41] The applicant's relationship with the testatrix has to be evaluated in the same context. It is pertinent to remember that he had an obviously close relationship with his mother. He respected the testatrix's position as his father's second wife, and he acknowledged and respected the mutual love and affection between his father and the testatrix. I accept his evidence that he did not alter his opinion of her because of her failure to inform him of his father's death and the arrangements for his funeral. Indeed he subsequently visited her on a number of occasions. In all the circumstances the applicant was a dutiful and respectful step-son.

The beneficiaries

[42] The testatrix had two sisters and a brother. One sister, Sharon Davies, died in February 2007. The testatrix was close to her other sister Lester Gault, to whom she left a modest bequest.

[43] Michael Gault, to whom the testatrix left her unit at the Gold Coast and half the residue, is the son of Lester Gault. He was born in December 1973. He has negligible assets, and is establishing a small business as a fitness instructor. His partner is pregnant with their first child.

[44] Angela Davies is the daughter of the testatrix's brother. She is an accountant. She and her partner live in rented accommodation with their young child. Her partner is not in paid employment; he cares for the child.

[45] The testatrix's sister Sharon Davies had a modest home unit in Auckland, New Zealand. By the terms of her will, her companion, an elderly woman, has the right to live there for the rest of her life, but on her vacating the property or dying, it is to pass to Michael Gault and Angela Davies in equal shares.

[46] Timothy Allen, an accountant, acted for the late Mr Currey and the testatrix. He is one of the executors of her will.

The jurisdictional question

[47] The testatrix's estate is a substantial one, the product of the joint endeavours and careful management of Mr Currey and her. She had no children of her own and no other dependants. The applicant's relationship with his father had been one of mutual love and respect, and he was a dutiful and respectful step-son to her. There is no evidence that she was particularly close to the principal beneficiaries Michael Gault and Angela Davies. The applicant was in a quite modest financial position, with no real prospect of advancement.

[48] In all the circumstances, I am satisfied that the testatrix was under a moral duty to make provision out of her estate for the applicant to enable him to discharge his liabilities, purchase a house at Daisy Hill or Mt Cotton and have some money in the bank to allow him to meet any unexpected expenses. That would have been adequate provision for his proper maintenance and support. She breached that duty by making no provision for him.

What provision should be made?

[49] I have come to the conclusion that the applicant should be paid $900,000 out of the residue of the estate. That amount would be sufficient to satisfy the provision the testatrix ought to have made for him, and there is no reason not to make such an award.

[50] I will her counsel on the form of the order and on costs.