SUPREME COURT OF QUEENSLAND

CITATION:	*Yeomans v Yeomans & Anor* [2011] QSC 344
PARTIES:	**ROBYN JOY YEOMANS** **(applicant)** **v** **ROBYN JOY YEOMANS and GREGORY EARLE SMITH (as executors of the will of Gregory Edward Stanley Smith deceased)** **(respondents)**
FILE NO:	BS899 of 2010
DIVISION:	Trial Division
PROCEEDING:	Originating application
DELIVERED ON:	22 November 2011
DELIVERED AT:	Brisbane
HEARING DATE:	22 August 2011
JUDGE:	Mullins J
ORDER:	**1. That further provision be made for the proper maintenance and support of Robyn Joy Yeomans (the applicant) out of the estate of Gregory Edward Stanley Smith deceased by the transfer to the applicant of the deceased's interest in the furniture and household chattels that were used by the applicant with the deceased in their Forestdale home and in the Millard Horizon caravan, and the payment of a lump sum of $50,000, and the bequest of a vehicle under the deceased's will to the applicant should be exonerated from this order.** **2. It is directed that the applicant file and serve any written submissions on the issue of costs of the proceeding on or before 30 November 2011 and that the respondent file and serve any submissions on the issue of the costs of the proceeding on or before 6 December 2011.** **3. The issue of the costs of the proceeding be determined on the basis of the parties' written submissions, unless either party gives notice to the other party and to the Associate of Mullins J that a hearing to argue costs is required.** **4. Liberty to either party to apply on one day's notice in writing to the other party.**
CATCHWORDS:	SUCCESSION – FAMILY PROVISION AND

MAINENTANCE – FAILURE BY TESTATOR TO MAKE SUFFICIENT PROVISION FOR APPLICANT – WHETHER APPLICANT LEFT WITH INSUFFICIENT PROVISION – CLAIMS BY SPOUSE – where applicant was the de facto partner of the deceased for 23 years until the deceased's death – where deceased survived by two adult children from his first marriage – where the applicant and the deceased has owned the home in which they resided as tenants in common in equal shares – where the deceased had made a binding death nomination in respect of his superannuation account which resulted in the applicant receiving $43,000 on his death – where the deceased's adult children were not in needy circumstances at the date of the deceased's death – where under the deceased's will the applicant was given only a motor vehicle valued at $38,000 – where the net value of the deceased's estate at the date of death was about $450,000 – whether applicant left without adequate provision for her proper maintenance – what provision ought to be made for the applicant

Succession Act 1981, s 41

Bladwell v Davis [2004] NSWCA 170, considered
Luciano v Rosenblum (1985) 2 NSWLR 65, considered
Manly v Public Trustee of Qld [2008] QCA 198, considered
Marshall v Carruthers [2002] NSWCA 47, considered
Singer v Berghouse (1994) 181 CLR 201, followed
Vigolo v Bostin (2005) 221 CLR 191, followed

COUNSEL: G R Dickson for the applicant
C J O'Neill for the respondents

SOLICITORS: Crilly Lawyers for the applicant
Bennett & Philp for the respondents

[1] Mr Gregory Edward Stanley Smith (the deceased) died in June 2009. He was survived by the applicant who was his de facto spouse and two children from an earlier relationship, Mr Gregory Smith (Mr Smith) and Mrs Shirley Thacker (Mrs Thacker). The deceased had made a will on 24 July 2003 in which he named the applicant and his children as the joint executors. Probate of that will was granted to them on 20 January 2010.

[2] When the applicant filed her application for further and better provision from the deceased's estate, all executors were named as the respondents. It appears that the solicitors acting for the respondents initially took their instructions from Mr Smith and Mrs Thacker. Mrs Thacker died in September 2010. I therefore ordered that Mrs Thacker be removed as a respondent in the proceeding and that the title of the proceeding be amended accordingly.

[3] Under the will the applicant was given the deceased's motor vehicle of her choice. She chose the Nissan Navara which was valued at $38,000. The deceased directed that the sale of his principal place of residence be deferred for up to six months and

his interest in that residence fall into residue. The rest and residue of the deceased's estate was left to Mr Smith and Mrs Thacker in equal shares.

[4] The applicant pursued her application for provision from the deceased's estate on the basis that she was left with insufficient assets to secure a house of her own with sufficient income for her to live in the style to which she had become accustomed during her 23 years as the deceased's spouse, and specifically was seeking a sufficient sum to enable her to purchase a dwelling in the area of Karalee where her daughter resides, and to provide her with additional income and a buffer against contingencies. She therefore seeks three-quarters of the net value of the deceased's estate. The respondents' attitude to the application was that adequate provision was made for the applicant by the deceased when account was taken of the benefits given to the applicant by the deceased during his lifetime, both directly and indirectly, and that the application should be dismissed.

Relevant background

[5] The applicant was born in 1949. She was married to Mr Yeomans, but they divorced in 1985. She has a son and daughter from that relationship.

[6] The deceased was 70 years old when he died. He was married, but he and his wife divorced in 1984. There were three children of that relationship, one of whom predeceased the deceased. Mr Smith was born in 1962. Mrs Thacker was born in 1963.

[7] The deceased was a truck driver and met the applicant in 1980. They started seeing one another in 1985 when the applicant was renting a unit by herself. She was injured in a motor vehicle accident and, on her discharge from hospital in December 1985, went to live with the deceased at his home at Salisbury. The tenancy of her unit ended in April 1986 and she moved her furniture into the deceased's house. By that stage Mr Smith and Mrs Thacker were independent of the deceased.

[8] Both the applicant and the deceased were in paid employment. They did not operate a joint bank account, but they divided up the household accounts which they paid. The deceased paid for electricity, rates and insurance and the applicant paid for food and medical expenses. They were in the habit of placing cash in a safe that was used for large household expenses, but most (if not all) of that cash was contributed by the deceased. They shared household tasks.

[9] Apart from any wages of the applicant, other sources of funds that enabled her to make financial contributions to the relationship with the deceased were her divorce settlement ($20,000 received in 1986), personal injury pay out from the 1985 car accident ($10,000) and inheritance from her father received in 1999 ($20,000).

[10] In 1988 the deceased and the applicant purchased a property at Warana for their retirement. The applicant paid the deposit of $10,000 and they borrowed the balance of the purchase price. The property was rented by them. The property was sold in May 2002 for a net amount of $212,617.63 of which $76,531.26 paid out the mortgage and the balance of $141,086.36 was split equally between the deceased and the applicant. The deceased purchased an investment property at Currimundi in about 1998 which was negatively geared. It sold in 2002 for about the amount required to pay out the mortgage.

[11] In April 2002 the deceased and the applicant consulted RetireInvest Pty Limited about financial strategies for their retirement. Both had retired due to health problems. The applicant was suffering back pain. The deceased was receiving an insurance protection policy benefit of $1,135 per week that was due to expire in April 2003. A personal financial plan dated 18 September 2002 was prepared for them. The plan stated that their objectives were to receive a net income of $40,000 per annum, maximise Centrelink benefits, minimise taxation liabilities from their investments and increase the capital value of their investments. At that stage the deceased had about $147,000 in superannuation and the applicant had about $40,000 in superannuation. It was recommended that they invest $370,000 into superannuation, and the particular products and allocation of funds to those products were recommended. It was recommended that the deceased commence an allocated pension fund in respect of his superannuation of $147,000 and that the applicant's superannuation be increased to $223,000 by the deceased's making a spouse contribution of $183,000.

[12] The recommendations were implemented by the deceased and the applicant. The applicant rolled her superannuation over into a superannuation fund with ING Custodians Pty Limited (ING) in November 2002 and at the same time a bank cheque for $53,000 was deposited to that fund (which the applicant concedes came from the deceased to assist him in qualifying for a pension) together with a cheque for $3,000 drawn on the deceased's account. The deceased paid $97,000 into the applicant's fund on 21 July 2003. Deposits of $20,000 each were made by the deceased to the applicant's fund on 10 March 2004, 21 March 2005, and 17 May 2007. The deceased had withdrawn a further $10,000 on 17 May 2007 that was used towards the couple's living expenses.

[13] The deceased became eligible for the age pension in July 2003 and the applicant was eligible for a partner's allowance. According to the financial adviser for the deceased and the applicant, the strategy they were using was to maximise the amount of the age pension that the deceased received by having the deceased contribute to the applicant's superannuation, as she was below pension age and funds invested in her superannuation did not count towards the Centrelink income and assets test.

[14] The respondents tendered letters from ING to the applicant that verified payments made from the applicant's superannuation fund to her credit union account. It seems in respect of each of these payments prior to the deceased's death, an amount was first transferred from the deceased's allocated pension fund to the applicant's superannuation fund. The relevant letters were included in exhibit 2 and show the following withdrawals from the applicant's superannuation fund:

Date	**Amount**
18 April 2006	$10,000
14 October 2006	20,000
3 November 2006	20,000
5 December 2007	15,000
20 March 2008	35,000
4 April 2008	12,000
29 April 2008	12,000
	$124,000

[15] Apart from the withdrawal on 3 November 2006 which went towards the purchase price of the Millard Horizon caravan and the withdrawal on 20 March 2008 which was for the purchase of a new car, the other transactions were for the purpose of making available to the deceased and the applicant funds for their living expenses. Although these amounts passed through the applicant's superannuation fund, they were immediately withdrawn, and should not be treated as contributions by the deceased to the applicant that have been kept by the applicant, but as contributions by the deceased to the living expenses of the applicant and the deceased.

[16] The deceased and the applicant purchased a home at Forestdale which was their new residence as tenants in common in equal shares in February 2003 for $320,000. The purchase was funded by a bridging loan of $247,000 and the balance was contributed to by the deceased and the applicant from the proceeds of sale of the Warana property. The sale proceeds of the Salisbury property were used to pay out the bridging loan in March 2003.

[17] The deceased suffered from vascular problems in his legs during the period of 18 months prior to his death and was diagnosed with depression in about October 2008. He was diagnosed with pancreatic cancer in March 2009 and underwent chemotherapy treatment for that condition.

[18] In December 2008 Mrs Thacker was diagnosed with breast cancer for which she had surgery and underwent chemotherapy and radiation treatment between January and June 2009.

[19] About two weeks before the deceased's death, he made a binding death nomination in relation to his superannuation account, as a result of which each of Mr Smith and Mrs Thacker received 30 percent ($29,944.26) and the applicant received 40 percent ($43,155.97).

[20] The applicant never had a close relationship with Mr Smith and Mrs Thacker. They challenge the closeness and caring aspects of the relationship between the applicant and the deceased. For most of that time the deceased's children were not privy to the daily activities of the deceased and the applicant, as they were leading their own lives. As the deceased's health worsened towards the end of his life, there were strains on his relationship with the applicant that were observed by others, including Ms Fanning who was a friend of both of them, but the applicant remained supportive of the deceased. The faults that Mr Smith and Mrs Thacker perceived in the applicant's interactions with the deceased which they say they observed reflected their negative attitude to the applicant. It is incontrovertible that the applicant and the deceased were in a de facto relationship for 23 years that did not end until the death of the deceased.

[21] Mr Smith has been married for over 20 years and he and his wife have two children born in 1991 and 1995. Mr Smith works as a truck driver and his wife works as any accountant. Mr Smith has not endeavoured to show that when the deceased died he was in need of financial assistance from the deceased's estate. Mrs Thacker married in 1982 and she and her husband had two children born in 1984 and 1989. At the date of the deceased's death, their main asset was their house that was unencumbered (valued at between $300,000 and $350,000), Mrs Thacker's superannuation in the vicinity of $40,000 and the prospect that Mr Thacker would be able to access a significant amount of superannuation on his retirement.

[22] Both Mr Smith and Mrs Thacker as children of the deceased were in the category of beneficiary for whom it was natural to expect benefits under the deceased's will. Their lack of need for support from the deceased meant that they did not have competing claims for support with the applicant, although naturally they wished to preserve their father's wishes in how he disposed of his estate.

The deceased's estate

[23] At the date of his death, the deceased had a one-half interest in the Forestdale home. The deceased's estate received the sum of $344,510 which was half of the net sale proceeds. That figure is indicative of the value of the deceased's interest in the Forestdale home at the date of death. That makes the deceased's assets at the date of death:

Half share Forestdale property	$334,510
Shares (Asciano Ltd, Toll Group Ltd, Virgin Blue Ltd)	10,000
MECU Account	1,800
Money in safe	32,650
Nissan Navara	38,000
Holden Commodore	1,400
Half share caravan	20,000
Stacer boat and trailer	7,000
Quintrex boat and trailer	12,500
Box trailer	2,500
Gun collection	nil
Coin collection	unknown
Model truck collection	unknown
Furniture and chattels	unknown
	$460,360

[24] The applicant, Mr Smith and Mrs Thacker divided up the cash in the safe, so that $10,026 was applied to funeral and estate expenses, $124 spent on curtains for the Forestdale property and each of them took the sum of $7,500. Both parties' submissions at the hearing were made on the basis that the total amount of cash in the safe belonged to the deceased. Although Mr Smith obtained an appraisal of $625 from a firearms dealer in August 2011 in respect of a list of the deceased's weapons, it does not seem appropriate to give any value to these guns, as they were taken away by the police.

[25] The respondents contend that the household furniture and chattels in the Forestdale home were owned by the applicant and the deceased as tenants in common and not jointly and the deceased's share should be included in the estate assets. It has been placed in storage, but not valued, pending the resolution of this proceeding. As second hand furniture, the applicant estimates that it has a value of no more than $15,000. Although the respondents sought to rely on the insurance certificate that was produced by the applicant for the furniture, I accept the applicant's explanation that the furniture has been insured for replacement value which does not reflect its depreciated value. As the furniture's value at the time of the deceased's death was in the fact that its existence meant that those items were available to be used instead of purchasing other furniture, it is artificial to treat them as having a value that is distributable, even if the estate has a half interest in the furniture.

[26] The liabilities of the estate at the deceased's death were largely met out of the cash in the safe. I will therefore treat the liabilities as in the vicinity of $10,000 at the date of the deceased's death.

The applicant's circumstances at the deceased's death

[27] Upon the deceased's death, the applicant had the following assets:

Half-share Forestdale property	$334,510
Superannuation	148,500
Tatts Group Ltd (2295 shares)	5,600
Half share caravan	20,000
Furniture and personal effects	unknown
	$508,610

[28] The applicant owned the shares in Tatts Group Ltd with the deceased jointly and succeeded to the entire ownership of those shares on his death. When the applicant's share of the deceased's superannuation that she received on his death of $43,000 is added to the rest of her assets, her total assets exceeded the value of the assets in the deceased's estate.

[29] Since the deceased's death the applicant has received the widow's pension. The applicant has also withdrawn a total amount of about $75,000 from her superannuation fund which she has used towards her legal fees for this proceeding and legal expenses.

[30] When the deceased died, the applicant still suffered from back pain and was also taking medication for cholesterol and depression, although she described herself as otherwise in relatively good health.

[31] From July 2009 the applicant was assisting her daughter who has two children and suffers from erythema nodosum which produces huge painful lumps on her legs. The applicant's daughter lives at Karalee. Since Christmas 2009, the applicant has relocated to her daughter's property and resides on that property in the caravan that belonged to both the applicant and the deceased.

[32] When the applicant filed her first affidavit in this proceeding, her complaint about the deceased's will was that the motor vehicle that she received represented 8.4 per cent of the estate and no legacy had been provided for her to meet any unforeseen contingencies. The applicant asserted in that affidavit that her share of the sale proceeds of the Forestdale home was not sufficient to buy another residence and provide funds for a hip replacement or any other contingency and that her only financial resource was the widow's allowance from Centrelink. The applicant did not disclose in her first affidavit her superannuation fund with a balance as at the deceased's death of about $148,500.

[33] In February 2010 the applicant traded in the Nissan Navara which she received under the deceased's will for about $36,000 and purchased a Mitsubishi Lancer vehicle which left her about $7,000 which she spent on living expenses and legal expenses.

[34] The applicant wishes to purchase a suitable home for herself in the Karalee area so that she can be close to her daughter and grandchildren. She identified available properties containing four or five bedrooms listed for between $560,000 and

$620,000. When I asked the applicant during the hearing why she needed to live in a four or five bedroom house, she stated:

> "I don't need to live in that, but that's mostly of what the homes are around Karalee. There's nothing, as such, in three bedroom much. There are older, older homes and there's nothing in two bedrooms, but I would like to have something that I have for resale, as in not a two bedroom home."

The jurisdictional question

[35] Section 41(1) of the Act provides:

> "(1) If any person (the 'deceased person') dies whether testate or intestate and in 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 dependent, 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."

[36] The two stage process that provisions such as s 41(1) of the Act require the court to undertake was explained in the joint judgment of Mason CJ, Deane and McHugh JJ in *Singer v Berghouse* (1994) 181 CLR 201, 208-209 (*Singer*):

> "It is clear that, under these provisions, the court is required to carry out a two-stage process. The first stage calls for a determination of whether the applicant has been left without adequate provision for his or her proper maintenance, education and advancement in life. The second stage, which only arises if that determination be made in favour of the applicant, requires the court to decide what provision ought to be made out of the deceased's estate for the applicant. The first stage has been described as the 'jurisdictional question'."

[37] The two stage process was confirmed by the High Court in *Vigolo v Bostin* (2005) 221 CLR 191 at [5], [37], [74], [82]-[83].

[38] What is involved in the jurisdictional question was described in *Singer* at 209-210:

> "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."

[39] The jurisdictional question is one of objective fact determined at the date of the hearing, even though it involves the making of value judgments on whether the applicant has been left without adequate provision for his proper maintenance, education and advancement in life: *Singer* at 210, 211.

[40] The second stage of the process involves similar considerations to the jurisdictional question, but also an exercise of discretion: *Singer* at 210-211. Section 41(1A) of the Act becomes applicable:

> "(1A) However, the court shall not make an order in respect of a dependant unless it is satisfied, having regard to the extent to which the dependent was being maintained or supported by the deceased person before the deceased person's death, the need of the dependant for the continuance of that maintenance or support and the circumstances of the case, that it is proper that some provision should be made for the dependant."

Was the applicant left without adequate provision?

[41] Although the gift of a motor vehicle to the applicant under the deceased's will was extremely modest, the adequacy of the provision made for her must be considered in the context of all the circumstances, including the financial benefits conferred on the applicant by the deceased during his lifetime or otherwise arising out of their relationship.

[42] The applicant and the deceased had been in a de facto relationship for over 23 years, so that the applicant should essentially be regarded as the deceased's widow. The applicant relies on general nature of a widow's claim as summarised by Powell J in *Luciano v Rosenblum* (1985) 2 NSWLR 65, 69-70 (*Luciano*):

> "It seems to me that, as a broad general rule, and in the absence of special circumstances, the duty of a testator to his widow is, to the extent to which his assets permit him to do so, to ensure that she is secure in her home, to ensure that she has an income sufficient to permit her to live in the style to which she is accustomed, and to provide her with a fund to enable her to meet any unforeseen contingencies."

[43] Such a general statement about a category of applicant for family provision cannot undermine the approach to family provision applications that was analysed and explained in the joint judgment in *Singer*. There is a danger of not applying properly the two stage process with the different considerations that are required to be examined at each stage, if there is recourse to general statements such as that made in *Luciano*. Similar observations about caution in applying Powell J's general rule about widows have been made in *Marshall v Carruthers* [2002] NSWCA 47 at [74], *Bladwell v Davis* [2004] NSWCA 170 at [18] and *Manly v Public Trustee of Qld* [2008] QCA 198 at [38].

[44] Because of the implementation by the deceased and the applicant of the financial advice they obtained in 2002, the deceased's estate is modest in size and the applicant was already set up by the deceased with superannuation of $148,500. It had to be in contemplation of the deceased that the applicant would need to purchase her own home on the sale of the Forestdale property, a car and access to funds, so that she was able to live above subsistence level. Arguably these needs were met by the applicant's access to her half share of the proceeds from the sale of the Forestdale property, the bequest of a car and the level of superannuation held by the applicant, as supplemented by her share of the deceased's superannuation. Whether the applicant was left with adequate provision has to be considered, however, in the context that the two other persons with legitimate claims on the

deceased's bounty were not in need of the deceased's financial support when he died. No doubt the deceased was conscious that his children would stand to benefit only from his estate, as the applicant was unlikely to contemplate making them beneficiaries under her will, when she had her own children to consider.

[45] The applicant's desire to live in a much larger home than is adequate for one person, due to the nature of the properties in the proximity to her daughter's home shows that she has misconceived the purpose of this proceeding. The inquiries undertaken by Mr Smith of real estate available in suburbs within easy driving distance of Karalee confirm what is plain that a dwelling can be purchased by the applicant with her share of the proceeds of the Forestdale property. The applicant is of an age where she is not likely to return to paid employment, but could easily live for another 20 years. She has some health problems. In the absence of competing claims, the applicant has shown a need for a modest additional buffer above her superannuation (as supplemented by her share of the deceased's superannuation). The jurisdictional question should be answered in the applicant's favour.

Should further provision be made for the applicant?

[46] At the date of the hearing, the applicant's assets were:

Description	**Amount**
Suncorp Bank account including her share proceeds of sale of Forestdale property	$334,412
Interest accrued on proceeds of Forestdale sale	10,700
Mitsubishi Lancer	17,000
Half share caravan	20,000
Savings account	91
Tatts Group Ltd shares	5,164
Superannuation	134,986
Personal effects	10,000
	$532,353

[47] The applicant continues to receive the widow's pension which is $519 per fortnight. She estimates that her expenses are $547 per fortnight, but that includes $200 for groceries on the basis that she and her daughter take turns in buying the groceries for the household and that the cost is $200 per week. That is balanced by the fact that the applicant's daughter allows the applicant to live in the caravan parked in the property's front yard without payment of rent.

[48] The respondents' arguments opposing the application were directed at the jurisdictional question. Submissions were therefore not made on what would be appropriate further provision for the applicant, if she were successful on the jurisdictional question.

[49] The starting point is the current value of the deceased's estate:

Proceeds from sale of Forestdale property	$334,412
Interest accrued on proceeds of sale	9,678
Shares	8,463
MECU account	4,049
Half share in caravan	20,000

Stacer boat and trailer	7,000
Eqintrex boat and trailer	12,500
Box trailer	2,500
Holden Commodore	1,400
Cash remaining from deceased's safe that was distributed to Mr Smith and Mrs Thacker	5,800
	$405,802

[50] Mr Smith deposes to the respondents' solicitors incurring unbilled legal costs and disbursements of about $35,500 plus GST for the general administration of the estate and that the respondents' unbilled legal costs and disbursements for this proceeding are approximately $64,000 plus GST with anticipated further fees of about $15,000.

[51] Even without considering whether the estate will be bearing the applicant's costs, the legal costs incurred by the respondents have dramatically reduced the available funds in the estate. The friction between the applicant, on the one-hand, and Mr Smith and Mrs Thacker, on the other hand, increased the amount of legal work in connection with the administration of the estate and in relation to this proceeding.

[52] There is no doubt that the applicant's lack of candour about the existence of her superannuation at the outset of this proceeding caused the respondents to incur costs in undertaking their own inquiries to check the details of the applicant's superannuation and the transactions between the deceased and the applicant from 2002 until the deceased's death. Other matters however were pursued by Mr Smith and Mrs Thacker because of their suspicions of the applicant that have not resulted in any material benefit for the estate, such as the lengthy correspondence about taking inventory of the items at the Forestdale property.

[53] The applicant subsequently provided all information about her superannuation. In all the circumstances, I do not consider that her initial failure to disclose her superannuation disentitles her to the benefit of an order.

[54] In considering what modest additional buffer should be provided to the applicant, the nature of the assets in the deceased's estate are relevant. It would assist the applicant in setting up her own home to have the furniture and household chattels that she used at the Forestdale property, so that the deceased's interest in those items should be transferred to the applicant. The applicant has also made use of the estate's interest in the caravan since the deceased's death. It therefore seems appropriate that the deceased's interest in that item also be transferred to the applicant. In the circumstances, adequate provision for the applicant entitles her to a further modest sum. The applicant received the amount of $7,500 from the deceased's cash in the safe which means that she has had an advance on any further sum that is ordered to be paid to her from the estate. Bearing in mind that the sum of $7,500 will need to be deducted from the lump sum, I consider that the need that the applicant has shown for further provision from the deceased's estate will be satisfied by a lump sum of $50,000.

Orders

[55] The following order will be made in relation to the applicant's further provision:

> 1. That further provision be made for the proper maintenance and support of Robyn Joy Yeomans (the applicant) out of the estate of Gregory Edward Stanley Smith deceased by the transfer to the applicant of the deceased's interest in the furniture and household chattels that were used by the applicant with the deceased in their Forestdale home and in the Millard Horizon caravan, and the payment of a lump sum of $50,000, and the bequest of a vehicle under the deceased's will to the applicant should be exonerated from this order.

[56] On the publication of these reasons and the making of the above order, I will invite the parties to make written submissions on costs and, unless the parties seek an oral hearing, I will dispose of the question of costs on the papers.

[57] I make the following further orders:

> 2. It is directed that the applicant file and serve any written submissions on the issue of costs of the proceeding on or before 30 November 2011 and that the respondent file and serve any submissions on the issue of the costs of the proceeding on or before 6 December 2011.
>
> 3. The issue of the costs of the proceeding be determined on the basis of the parties' written submissions, unless either party gives notice to the other party and to the Associate of Mullins J that a hearing to argue costs is required.
>
> 4. Liberty to either party to apply on one day's notice in writing to the other party.