

**Secret Lovers, Assault by Oyster and Greedy Children:
the Range of Human Behaviour in Family Provision Litigation**

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1. It is an honour to be asked to give this lecture today. I am saddened to note the recent death of Sir Ninian. He was an outstanding jurist, but also a man who dedicated his life to the maintenance of the rule of law internationally. He remains an example to lawyers everywhere of the important ethic of public service and our ability to effect change beyond the four corners of legal practice.
2. Often when we think of equity law, we think of serious, high-faluting matters, of sober men and women in dark suits; we think of trusts and equitable remedies and injunctive relief; we think of commercial law. As equity practitioners, we are inheritors of a proud English legal tradition that jealously guards equity's exclusive remedies. Attempts by judges to contaminate equity with common law remedies are branded with the 'F' words of "fusion fallacy", and are met with fierce resistance.
3. The fervour with which equity practitioners protect this doctrinal purity is best illustrated by its chief guardians, the editors of *Meagher, Gummow and Lehane*, who accuse those guilty of fusion as creating "some new jurisprudence conceived by accident, born by misadventure and nourished by sour but high-minded wet-nurses".¹
4. Equity is also known as a unique practice area for barristers and a special jurisdiction. Historically, it has been known as "the whispering division",

¹ R P Meagher, J D Heydon and M J Leeming, *Meagher Gummow and Lehane's Equity, Doctrines and Remedies* (Butterworths LexisNexis 4th ed, 2002) 54 [2–105].

presumably in contra distinction from the grandstanding advocacy of common law! When teaching baby barristers the art of equity practice, emphasis is given to the mild-mannered skill of “marshalling documents”,² rather than the rhetorical flourishes of the Common Law list.

5. But the ordered world of quiet, controlled advocates with well-marshalled documents couldn't be further from the cases which are often heard within that other face of equity, hidden in the brutalist bastion of Macquarie St – the Supreme Court's Hospital Road Court Complex³. The Family Provision List sees the whole messy breadth of human experience: with all its tragedy and injustice. When you drill down into the core of equity in this at the heart of this aspect of Supreme Court jurisdiction, you find that it is about real people, with real family conflict, tragedy and very real emotions. This brings me to explain the genesis of what I'm sure you are thinking is the bizarre title of this speech. Believe it or not, but 'secret lover', 'assault by oyster' and 'greedy children' represent the themes of each of the fascinating and bizarre cases in the Family Provision List in 2017 that we will explore today.

Family Provision Applications in NSW

6. First, a basic primer on the legal framework underpinning these cases: under the Succession Act, the two main contested elements of family provision claims are first, the question whether the plaintiff is an eligible person, and the sub question of what sort of eligible person is he or she, and secondly whether any provision the plaintiff has received is adequate and if not, what is adequate provision.
7. In three of the cases we look at today, the claimant did not fall into the categories of eligibility whereby he or she claimed as of right - that is he or she was not the legal or defacto spouse, or the child, of the deceased.⁴ Rather, the claimants in these cases claimed under the second limb of eligibility, as, variously, a former defacto spouse, a dependant person or someone with whom the deceased was living in a 'close personal relationship'. This inevitably led to a close examination of their personal circumstances, often a hotly contested matter.⁵
8. In deciding whether to make a discretionary order for further provision, a judge must have regard to at least 15 factors listed under s 60(2), which have been described as a 'multifactorial list'⁶ of equal significance.⁷

² Geoff Lindsay, 'Equity: Principles, Practice and Procedure' (Bar Practice Course Paper, New South Wales Bar Association, 25 November 2003) 33.

³ Remembering, of course, as Robert Newlinds SC said during his 2017 Bench and Bar speech, "It's not a 'Complex', it's just a building!"

⁴ *Succession Act 2006* (NSW) s 57.

⁵ *Succession Act 2006* (NSW) s 56.

⁶ *Andrew v Andrew* (2012) 81 NSWLR 656, 665 [37] (Basten JA).

⁷ [2016] NSWSC 780, [242].

However, the concept of financial need is often decisive in family provision applications, as the impecuniosity of a plaintiff at the date of the trial will guide the assessment whether their inheritance is adequate and whether their circumstances demand that further provision is made. It also explains why plaintiffs in dire financial circumstances who have been estranged from the testator for many years or have committed otherwise disentitling conduct are nonetheless awarded substantial sums.⁸ This is because the ‘mandatory legislative imperative’ driving the ultimate outcome in family provision litigation centres on inadequacy of provision in those particular circumstances.⁹

9. This approach aligns with equity’s focus on *in personam* remedies, whereby justice in the individual case is prioritised over a broadly prescriptive approach. As we shall see, such an approach is the only viable option for a judge facing unique and often bizarre family circumstances in the context of claims for family provision.

Assault by Oyster: *Wilson v Porada*¹⁰

10. Our first case truly belongs in a BBC crime drama. The scene is set in the bucolic Eden Valley in the south coast of NSW. In the opening scenes we see Mr Porada, a shy, solitary son of Polish immigrants who has worked as a diesel mechanic at the local chip mill for nearly 40 years. He is the host of a barbeque there to celebrate the 50th birthday of his ex-fiancée and sometimes-lover Ms Wilson, with whom he had had an off-on-off live-in relationship over many years.¹¹ Mr Porada was happily chatting with the party guests before he suddenly stumbled, keeled over and died from a heart attack while his friends and family watched on in horror.¹²
11. As is the case for those who die intestate, long-lost family members and spurned lovers emerged from the woodwork to see if they were eligible for anything. Poor Mr Porada had only just been buried when Ms Wilson used the key she had been entrusted with to enter her ex-fiancé’s farm and take a decidedly odd collection of items: mundane things like a guitar and books along with chainsaws and even a pizza oven.¹³ She of course denied this at trial and accused Mr Porada’s brother Manfred of ransacking the house first. Manfred, and the other siblings stood to inherit under the rules regulating intestacy.¹⁴ Alas, the path of succession never did run so smooth, because

⁸ See, eg, *Towson v Francis* [2017] NSWSC 1034 where the plaintiff was estranged from her mother at death and did not attend her funeral, but her incapacity to work and onerous medical expenses convinced Hallen J to award her \$60,000.

⁹ *Hughes v Sharp* [2017] NSWSC 962, [111] (Hallen J).

¹⁰ *The Estate of Peter Wolfgang Porada, late of Pericoe* [2017] NSWSC 818 (*‘Porada’*).

¹¹ *Porada* [2017] NSWSC 818, [122].

¹² *Ibid* [119].

¹³ *Ibid* [143].

¹⁴ *Succession Act 2006* (NSW) s 129(1).

Ms Wilson made a family provision application for half the estate on the basis that she was Mr Porada's de facto spouse.

12. Of course, it wouldn't be a good BBC drama or even a good succession case for that matter if it didn't contain an allegation of a secret will. In this case, Ms Wilson swore that Mr Porada disclosed his testamentary intentions to her and no-one else; which conveniently entitled her to all of his substantial superannuation entitlement.¹⁵ This is where the similarities to standard succession cases, however, ends. The history behind their relationship and Ms Wilson's circumstances move us out of quaint BBC drama and into real Shakespearean tragedy.
13. It starts typically enough; Mr Porada was Ms Wilson's brooding neighbour who helped her with jobs around the house, and they soon fell in love. But this is when the first touch of tragedy struck – Mr Porada was already in a long-term relationship with another woman, who was so heartbroken by his betrayal that she committed suicide. Wilson and Porada became engaged, but their romance was severely disrupted by their horrific discovery of the murder-suicide of the local Bell family, with whom they were personally close.
14. Another intriguing element of this case was the small-town dynamic – gossip and the inevitable busybody. For example, the key piece of evidence supporting the breakdown of the de facto relationship was given by the owner of the local general store, who professed to know everybody's business, and who said (amongst many other gratuitous character assessments) that Mr Porada had come in one day and told her not to let Ms Wilson use his store credit anymore.¹⁶
15. This signalled that the Farmer wants a Wife story had become less fairy-tale and more Brothers Grimm. The evidence was that Ms Wilson was prone to violence after a couple of drinks, and as was corroborated by a neighbour, had had an argument one night with Mr Porada and she had smacked him in the head with a bag of oyster shells, causing him to bleed quite badly.¹⁷
16. While Justice Slattery ultimately found that Ms Wilson's defacto claim was not made out as the de facto relationship had ended five years before Mr Porada's death, Ms Wilson was awarded \$75,000 after being found eligible as a prior dependant member of his household during their six-year relationship. This sum was awarded so that she could pay off her mortgage, having struggled to get by with her disability pension.¹⁸ This emphasises my previous point that if eligibility can be proven under any of the categories, an

¹⁵ *Porada* [2017] NSWSC 818, [48].

¹⁶ *Ibid* [77].

¹⁷ *Ibid* [72].

¹⁸ *Ibid* [231].

impecunious plaintiff will have a good chance of success in family provision even if they have committed pretty egregious disentiing conduct (such as assaulting their fiancé with oysters).

17. This case really had it all: crime, heartbreak, small-town voyeurism and random acts of violence. The fallout from Mr Porada's sudden death clearly could not be assessed according to steps in an equity practice note. It required the judge to confront a truly tragic factual matrix and process the conflicting accounts of emotionally-invested witnesses. A bare 'multi-factorial list' is clearly not enough, and the need to do justice in each case requires judges to squarely engage the human element laid bare before the court.

Greedy Children: *Hughes v Sharp*¹⁹

18. Now, imagine getting a call from the executor of your deceased mother's estate and being told that your inheritance under her will was a grand total of \$25. I have come across many cases where a child receives nothing in an estate, but there's a different kind of sting in receiving such a derisory sum. It really does make you wonder when you think about a parent sitting down to write their will and leaving someone just enough money to buy two iced lattes in a Sydney café.
19. As you can probably gather, the available testamentary bounty in this case was hardly of Hancock/Rinehart proportions. Nonetheless, the sum of \$470,000 meant a lot to the defendant, the deceased's grand-daughter, who was a young music teacher who stood to inherit most of it and the family house. Beyond the monetary amount in dispute, it was clear that the parties were seeking to vindicate some deep-seated family tensions. You know it must have been highly charged when the judgment commences with the word: "there is little doubt that emotion has played a real part in the contest before the court".²⁰
20. While I don't deny the very real desires of both parties to legally vindicate their claims, the "relentless and remorseless" resolve of a father and daughter to proceed to a contested hearing was undoubtedly detrimental to them both. Justice Hallen bemoaned the need for the already-impecunious plaintiff and defendant to suit up with a junior *and* senior counsel; creating legal costs of \$145,000 that would have to be borne by the estate. So, what family dispute could be so important as to cause these people to squander the bulk of the estate on legal fees?

¹⁹ [2017] NSWSC 962.

²⁰ *Ibid* [8].

21. To find out we must change channels from the BBC to a salacious A Current Affair style exposé on Australians caught with drugs in Thailand. Our plaintiff was caught at Bangkok airport in early 1985 attempting to smuggle heroin back to Australia. Apparently, his mental state seemed so deranged that Thai police originally committed him to a hospital rather than prison.²¹
22. His parents were not affluent people, but they immediately mortgaged their only asset, the family home, and spent their whole life savings in efforts to secure his return home. This involved making continuous applications to the King of Thailand for a royal pardon over a period of eight years, and travelling back and forth to ensure their son was not being mistreated in his Thai prison cell.
23. You might be starting to suspect why the plaintiff's mother left only \$25 to her son – she and her husband had already expended around \$100,000 on him during their lifetime. And that was just the cost of the Thai legal battle – they also raised his infant daughter and provided for her in every way throughout her life.
24. As I said, it wouldn't be a true family provision case if it didn't involve someone coming forward to assert *they* had as-yet-undisclosed knowledge of the deceased's testamentary intentions. This case was no exception. A friend of the deceased claimed she had sighted a letter from the plaintiff to his mother from prison cell, which he said "please do not leave me anything when you die as I have gotten more than my fair share from you while I was in prison".²² There was also evidence the deceased sought to hide this letter for safekeeping, so it could be reproduced in case of exactly the kind of squabble over the estate that eventuated.²³ It didn't matter that the letter was never found because the plaintiff admitted to writing it, but said the court could not take seriously the word of a man who believed he would rot in prison and never get his hands on the inheritance anyway!
25. I'm sure we're alike in where our sympathies intuitively lie. But, as emphasised by Justice Hallen, doing justice is not the remit of the *Succession Act*. Rather, the "mandatory legislative imperative" to which we must have regard is the inadequacy of provision. The Court has noted on numerous occasions that this discretion is not to be exercised according to "idiosyncratic notions of what is thought to be fair",²⁴ as troubling as this may be for other very deserving members of an inheritance, such as the grand-daughter in our case.

²¹ Ibid [64]–[66].

²² Ibid [75].

²³ Ibid [75]–[76].

²⁴ Ibid [133] quoting *Pontifical Society for the Propagation of the Faith v Scales* (1962) 107 CLR 9, 19 (Dixon CJ).

26. The particular financial need identified by the plaintiff in this case was — in a turn of dark irony — his lack of superannuation or retirement money due to his long absence from the workforce. Yes, it's shocking what a stint in a Thai prison and a criminal record can do to one's superannuation account!
27. Justice Hallen eventually rejected the plaintiff's claim for 50% of the whole estate, but did award him the not-insubstantial sum of \$70,500 in order to account for his 'negligible' prospects at improving his own material circumstances.²⁵ While he did well to improve \$25 to \$70,500, one can't help but feel his daughter was being punished for her ability to have succeeded despite her own difficult circumstances; as the reason her inheritance was reduced was because her father was so much worse off financially than herself. (In a troubling footnote with a distributable estate of \$615,000, the agreed costs were almost a quarter of the estate.)
28. In the wash up of this case, we can see that it's impossible to set about resolving these cases armed with maxims and keen to deny justice to those with unclean hands. This case involved an abandoned child with a genuine entitlement to the estate of her grandparents who acted in *loco parentis* her whole life and who expressly endowed her with everything they owned. On the other side, we have a troubled ex-criminal whose own actions were the cause of great heartache and financial stress to his elderly mother, but who clearly was in great financial need and had another family to support.
29. You can't squeeze this sad and emotionally charged family matrix into a clean solution. These cases require judges and barristers to be both compassionate and objective in their attempt to understand the dynamics of a family dispute, and try to achieve the greatest degree of fairness in the unique circumstances.

Secret Lovers # 1: *Calokerinos, Executor of the Estate of the late George Sclavos v Yesilhat; Yesilhat v Calokerinos, Executor of the Estate of the late George Sclavos* [2017] NSWSC 666

30. Of course, the stakes are much higher when there is a \$6 million estate. To set the scene for our first 'secret lovers' case: Mr Calokerinos was a quiet old bachelor who had been running his pharmacy in Leppington for over 30 years and prudently investing his money in a substantial property portfolio. He left this, along with his life savings, to his two nieces by way of an informal will written on a pharmacy notepad, before he had a heart attack.
31. Word on the street was that — while a committed bachelor — Mr Calokerinos was a bit of a ladies' man. There was even evidence before the court that he would tell risqué jokes in front of his nieces and over share details about his

²⁵ [2017] NSWSC 962, [229].

sexual exploits with women.²⁶ So you can imagine everyone's surprise when Mr Yesilhat, a regular customer of the pharmacy, came forward to claim he had maintained a same-sex relationship with the deceased for the past 14 years!

32. On this basis, he made a family provision application for at least half the estate on the basis of that he was the deceased's de facto partner. And, to cover all his bases, he also claimed that the will written on the pharmacy notepad was fabricated by the deceased's greedy niece (who was a lawyer and obviously could not be trusted), who had also destroyed the now-ubiquitous 'secret will', in which everything had been left to him.
33. It doesn't take much emotional intelligence to realise that this case dug up some very personal issues, as it forced everyone involved to question what they thought they knew about a loved one. It is rare to hear a judge so openly concede the emotionally fraught nature of proceedings in the way that Slattery J did in this case. In commenting on the difficulties of having to decide between the competing versions of facts placed before the Court, he noted that:

The narrative contains at times confronting findings about individuals. But this case represented an unusually spirited contest about the way of life of the deceased and the quality of his relationships.... In such a contest it is not possible to do justice without actually expressing findings that may at times seem harsh to some parties and some witnesses.²⁷

34. We can sense Justice Slattery's discomfort at having to confront the almost impossible task of deciding whether two openly heterosexual people were just friendly acquaintances or engaged in a secret same-sex affair. While this case required the parties to reveal material about themselves that most would prefer to remain well hidden from public view, because the parties did not privately resolve their conflict, the burden was shifted onto the judge to make decisions on deeply personal matters.²⁸
35. Let us review that burden and delve into the mess of competing accounts Justice Slattery was forced to assess. The basis of the claim was that Mr Yesilhat and Mr Calokerinos conducted an intimate, secret sexual relationship in the back room of the pharmacy.²⁹ The plaintiff claimed that even if they weren't de facto partners, the two spent so much time eating and effectively living together out the back of the pharmacy that this constituted 'sharing a household'.

²⁶ Ibid [166].

²⁷ Ibid [13].

²⁸ Ibid [20].

²⁹ Ibid [15].

36. A ‘minor’ complication to the claim was that Mr Yesilhat had two wives throughout the 14-year period of the alleged tryst. His answer was that he had concocted an elaborate alibi (involving membership of a poker club and non attendance at poker nights to cover his nocturnal visits to the deceased) to fool his wife. The judge was scathing of this evidence.³⁰
37. Now, Justice Slattery wasn’t being polite when he said he had to make some ‘unfavourable observations’ about the witnesses. Without exaggeration, this is some of the most thorough discrediting of a witness by a judge I have come across. He called the ‘poker club alibi’ “barely worthy of credit”, and went on to comment that the fact Mr Yesilhat was prepared to “parade such studied trickery... without a flicker of shame” raised the inference that he would also “practise such deceit” on the Court. This may seem harsh, but, the entire basis of the case rested on absolutely irreconcilable testimonies, meaning that coming to a clear position on the witness’s credibility was essential.
38. Beyond the material credibility of Mr Yesilhat’s claims, Justice Slattery also formed a strongly unfavourable view of his character generally. He even pulled out that classic cinematic line and commented that the plaintiff was: “cold, very cold”, when describing the “stilted and colourless oral evidence” that was at odds with the affection he claimed to profess for Mr Calokerinos.³¹
39. This “dishonest inventive capacity” led Justice Slattery to unequivocally reject the existence of a same-sex relationship.³² I don’t doubt that this judgment was well-founded. However, I wonder at the adequacy of the means judges have at their disposal to assess the existence of such relationships. I know he was the classic villain of this case, but I think it was at least minimally necessary to give attention to Mr Yesilhat’s claim that shame and negative cultural stigma forced him (and by implication the deceased) to conceal any same-sex attraction or relationship.
40. To Justice Slattery’s credit, he carefully and thoroughly explained that he did not make any *a priori* judgments about the sexuality of the deceased and the plaintiff; and recognised that “on a question as beguiling as that of human sexuality”,³³ it was impossible to deny its existence simply because both parties had engaged in other, heterosexual relationships.
41. Nonetheless, evidence of other relationships is exactly what the court relied on in its assessment. For example, there was a very odd piece of evidence

³⁰ Ibid [29].

³¹ Ibid [27].

³² Ibid [25].

³³ Ibid [181].

that Mr Calokerinos met a prostitute and “kept her”³⁴ (as though she was an item for sale) in his house for a couple of months, as well as evidence he had several long-term relationships with women. Equally, Mr Yesilhat’s boss gave evidence that he had seen him take women into discrete rooms of his tire business and pull the blinds down for a few hours³⁵... . I don’t know what it is with these businesses but their productivity would probably be improved if they removed the mysterious back-rooms!

42. Equally, it seems a bit incongruent to expect some public indicia of an avowedly secret relationship; seen when Justice Slattery pointedly wondered why no one caught the two in an intimate moment,³⁶ or saw them express any words of endearment.³⁷ A sense of the need for secrecy was ironically provided in the course of the hearing; as when Mr Yesilhat was giving an account of his alleged same-sex physical activity with the deceased, Mr Calokerinos’ niece openly wept in court.³⁸ This was seen in a good light by the trial judge, and not as an inappropriate expression of distaste for same sex relationships, which was in my view an interpretation which was open. I doubt this same level of distress would have been invoked by an account of a heterosexual encounter between two consenting adults.
43. I don’t mean to diminish the very complex task confronting Slattery J in deciding this case and I accept that the weight of the evidence suggests that the plaintiff was making an opportunistic grab at \$6 million. I just wonder whether the boldness of the plaintiff’s claim, such as his allegations of a false will, assertions that Mr Calokerinos only pretended to love his nieces, and ‘cold demeanour’ may have inhibited a more nuanced consideration of the valid reasons why two people might go to extraordinary lengths to conceal same-sex relationships due to fear and stigma.
44. I’m told that an appeal has been lodged but not yet heard.

Secret Lovers #2: *Estate MPS* [2017] NSWSC 482 (*‘Estate MPS’*)

45. For our final case I take you back to the heady days of the 1970s, where everything was apparently more sexually liberal, and ‘secret lovers’ abounded. At least, this is the picture painted in a case in which I was recently involved, *Estate MPS*; in which the relationship between the plaintiff and deceased was, he claimed, first forged in a threesome involving the plaintiff, the deceased and her defacto husband. They parted ways after

³⁴ Ibid [215].

³⁵ Ibid [257].

³⁶ Ibid [258].

³⁷ Ibid [260].

³⁸ Ibid [33].

about 6 months, and the plaintiff commenced a long-term same-sex relationship. The plaintiff and the deceased did not see each other until a chance meeting 30 years later, when she was recently widowed and suffering from terminal cancer and he was recently bereaved and down on his luck.

46. Tragically, two and a half years later she died alone in a motel room in squalid circumstances, riddled with untreated cancer, malnourished and covered in bedsores.
47. Her estate comprised a property portfolio in Sydney's northern beaches that was conservatively estimated as being worth around \$2.5 million. She died intestate, but given that she had inherited from her mother's and brother's intestate estates, the court inferred that her failure to prepare a will could be explained by her familiarity with the general nature of intestacy, and her expectation that her only living relative, her brother would inherit her estate.
48. The plaintiff claimed that, in spite of the state she was found in at her death, he was her carer. Beyond that, he maintained that the two of them had resumed their sexual relationship, which initially he claimed continued until her death. To adopt the diplomatic phrase of Justice Lindsay: "a natural scepticism about that cannot but be noticed".³⁹ You can imagine my relief when the plaintiff withdrew his claim of a *de facto* relationship so I was excused from having to cross-examine about the logistical details of this arrangement, particularly given the histories of the parties – he had a long term homosexual relationship and in prolix statements before the court give evidence which could only be interpreted as asserting a strong preference; she was 10 years older than him, and quite infirm, including in the last year of her life suffering from untreated breast cancer and enduring terrible bed sores.
49. The basis of the plaintiff's claim as it developed at trial was that he was living with the deceased in a close personal relationship with the deceased, and was financially maintained by her until her death. Our response was to argue that the substantial sums paid to the plaintiff should be characterised as payments for his service as a carer, and that intermittently visiting her paid accommodation to provide sub-par care could not be characterised as living together in a 'shared household'.
50. One of the troubling issues this case was the way that the mental health of the plaintiff and to some degree the deceased, was dealt with by the court. There was scant medical evidence, and most of it was either inadmissible or (in my view) otherwise unsatisfactory. Notwithstanding the absence of this type of expert evidence, the plaintiff was found to be

³⁹ *Estate MPS* [2017] NSWSC 482, [18].

suffering from a “mental health mental disability” which was said to ‘manifest’ in his manner of giving evidence: especially his “rambling, unresponsive... rapidly delivered answers and ... unabashed defence of misleading statements”, to use the words of the judge.⁴⁰ This characterisation was drawn on throughout the judgment to rationalise the plaintiff’s “obsessive... manipulative personality which had a tendency to take refuge in an imagined privacy about the nature of personal relationships”, including a publicly projected fantasy of the deceased and himself as aunty and nephew⁴¹ and ultimately, in my view, was a significant factor behind the generous award to the plaintiff.

51. Of course, I don’t presume here to deny the existence of a mental health disability and its effect on this man’s relationships and self-perceptions. But, the task in the proceedings was to decipher whether the plaintiff was eligible and in particular whether the plaintiff and the deceased “lived together” (despite not living *together* in any single address) and, separately, whether such care as he did provide was done for reward. As identified by the trial judge, an important factor, and one which had the result of limiting the insight into the lives of the deceased and the plaintiff was the deceased’s morbid fear of publicity; she was intensely private in her relationships – keeping her life “compartmentalised” and secret. Her brother, who had maintained a relationship with her despite living on the other side of the country, did not know about her long term (recently deceased) partner, and only knew the plaintiff as her occasional helper.
52. Given that the plaintiff’s state of mind was so central to the outcome determination, I would think that the evidential burden of establishing a mental health problem that could explain away all the inconsistencies in a case should be more rigorous.
53. This is particularly true given the nature of the plaintiff’s claims on the estate, which could not be described as modest. When asked whether one of the Northern Beaches apartments (worth about \$500,000) could satisfy his claim, the plaintiff (who claimed to be homeless) refused; and said that he required a stand-alone Federation style house, with a surrounding garden with grass, due to his “psychological boundary problems” apparently caused by his mother.⁴² I think Justice Lindsay summed it up perfectly when he noted that:

to judge th[e] objectively unusual relationship without taking into account the peculiar nature of the landscape they occupied would be to misjudge the facts and ... impose a form of judgemental thinking they did not share... it is no easy task to stand in the shoes of either

⁴⁰ Ibid [67].

⁴¹ Ibid.

⁴² Ibid [87].

the plaintiff or the deceased, as the Court must endeavour to do to understand them.

54. Ultimately, the plaintiff was awarded \$550,000 (plus the usual interest after judgment and costs). The evidence was that his resumed relationship had endured for little more than 2.5 years. An appeal has been argued and the decision of the Court of Appeal is reserved.

Conclusion

55. I have no doubt that the bizarre world of oyster assaults, covert pharmacy trysts and secret elderly lovers is a world away from the stereotypical usual equity fare. However, the cases we have looked at today are just as close to the core of equity as those about breach of trust duties.
56. Family provision cases are at heart concerned with the core ideal of equity's concept of *in personam* remedies and justice fashioned to the demands of each case. They require an excoriation of embarrassing details; they involve drama and heartache and force the judge to become very well-acquainted with the complex dynamics and conflicting evidence of real human relationships.
57. Such cases are in many ways a mirror for all of us. They are the heart of equity.

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