



Who owes a duty to beneficiaries?

This month, the High Court of Australia in *Badenach & Anor v Calvert* [2016] HCA 18 rejected earlier decisions of the Tasmanian Courts.

A Solicitor had received instructions from a client to prepare a will by which the entirety of his estate – namely, two properties – was to pass to the son of his long-term de facto partner, Mr Calvert. Following the client's death, his daughter from a previous marriage brought Court proceedings and was successful in obtaining an order making a provision for her out of her father's estate.

Mr Calvert then commenced proceedings in the Supreme Court of Tasmania where he argued the Solicitor had been negligent in failing to advise his client of the possibility that his daughter may make a claim and the potential avenues available to him to reduce or extinguish his estate to avoid such a claim.

At first instance it was held that the Solicitor did owe the client a duty of care to enquire as to the existence of any family members and to advise of the risk associated with his daughter making a claim for his estate.

On appeal to the Full Court of the Supreme Court of Tasmania, it was similarly held that the Solicitor's duty extended to advising the client of the possible steps he could take to avoid the risk of exposing his estate to a claim. The Court also stated that the Solicitor owed a similar duty of care to Mr Calvert.

However, on further appeal to the High Court, it was decided that a Solicitor could not owe the same duty to both the client and Mr Calvert as their interests were not necessarily in harmony.

The orders of the Full Court of the Supreme Court of Tasmania were set aside. Solicitors across Australia are now breathing sighs of relief.