

## Article Information

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## Super Trustee decision draws on social media

**The impact that social media and other commentary has on this process.**

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The Superannuation Complaints Tribunal in Determination No. D17-18\191 [2018] SCTA92 reviewed the Trustee's decision to pay superannuation proceeds to the claimed spouse.

A brief background:

- The Trustee determined to pay the entire superannuation benefits to the claimed spouse who was 20 years of age at the time of the deceased member's death.
- There was evidence that the claimed spouse moved in to live with the deceased member at his grandparent's house. They subsequently lived in a caravan at the back of the claimed spouse's parent's property.
- The deceased member nominated his brother as the preferred beneficiary when his membership commenced.
- The deceased member died intestate and letters of administration were granted to the father.
- The parties provided substantial material to the Tribunal and this included copies of text messages, Facebook messages, email messages, copies of photographs and statutory declarations.
- Whether all of this material, especially the text messages and Facebook messages, were provided in the claim staking process is unknown.
- The Trustee concluded that the claimed spouse resided with the deceased member at two separate residences.

### ***The Legal Personal Representative's Submissions***

- The Tribunal allowed the LPR to be legally represented and submissions were made at a very legalistic level.
- The LPR argued that there was only evidence of cohabitation for a period of 26 days, there was no evidence of a mutual commitment to a shared life, that text messages exchanged between the deceased and the claimed spouse were irrelevant, the inclusion of the word "permanent" as part of the definition of "spouse" demonstrated an intention that the couple must do more than cohabit together and a period of at least two years, as considered for defacto relationships, should be the benchmark for determining permanency.
- They argued for funds to be paid into the estate.

### ***The Trustee's Submissions***

Some of the main points made by the Trustee were:

- The brother was not financially dependent on the deceased member at the date of death and is not someone to whom any benefit can be paid under the Trust Deed or relevant law.
- The entire benefit should be paid to the claimed spouse as a "defacto" and if that is not the position she is the only person who can be considered to be in an interdependent relationship.
- She was living with the deceased member at the date of death and had been living with the deceased member for approximately nine months at two separate residences.
- There was evidence of a close personal relationship that went to personal and domestic support, financial support, a degree of mutual commitment and support and to plan a life ahead.
- That the financial dependency of a potential beneficiary is a paramount consideration and is in line with the relevant legislative requirements and the Trust Deed.

### ***The Tribunal's Findings***

The Tribunal determined as follows:

- The question of relevance or otherwise of material provided is a question for the Tribunal; the Tribunal's view of the material provided is that "the language used, the reason for communicating, the type of communication and the frequency of communication all assist the Tribunal to gain insights into the relationships shared by the parties in communication".
- No specific timeframe needs to be considered in order for an individual to establish that they are a spouse or were in an interdependency relationship and spousal relationships vary from couple to couple.
- They preferred certain evidence of the basis of the relationship that favoured the claimed spouse especially in relation to their living arrangements.
- They concluded that given both the deceased member and claimed spouse were each working they shared all bills, not an uncommon scenario.

In relation to certain communications it is interesting to note some specific details that the Tribunal took into account. They concluded that text message communications between the two were evidence that the claimed spouse and the deceased member were exploring the possibility of purchasing household items together and that it was in preparation for their move to live together in the caravan. One text message exchange related to the opportunity to purchase a stainless steel refrigerator and discussion between the couple about its size, suitability etc was accepted as evidence of an intention to move in together.

Another text message exchange noted as relevant was:

*"I am very proud of you my dovely" (the word "dovely" a term of endearment).*

The response, *"Its just exciting cos its one step closer to us building our own future and hopefully buying a house very soon. ...as long as there is enough income for us both then I will be happy."*

Emailed communications between the claimed spouse and deceased member indicated to the Tribunal that *"they communicated to each other in a loving way, used terms of endearment when communicating with each other and made plans and arrangements for dinner and meeting friends"*.

The Tribunal also cited and referred to condolence notes and messages on Facebook from work colleagues of the deceased member where there was an acknowledgement by friends that the deceased member loved the claimed spouse "so much".

Statements made in the eulogy were accepted as providing evidence of the close personal relationship and commitment to each other. The mother of the deceased member stated in her tribute that she was so happy to see her son in a relationship with the claimed spouse by words *"I know he was looking forward to a future with you which hopefully would have included children"*. The Tribunal accepted that the sentiments expressed by the mother at the funeral best described the nature of the relationship the deceased member shared with the claimed spouse and not later attempts by the mother and/or family to downplay that.

A similar tribute by the father whereby he included the claimed spouse as one of the people that loved and supported the deceased as being relevant.

The Tribunal concluded that the tributes in the eulogy suggested that the claimed spouse was more than just a girlfriend of the deceased member.

Another factor taken into account by the Tribunal was that the claimed spouse retained 1/3 of the deceased member's ashes, the other 2/3 being shared equally between the mother and father.

The Tribunal concluded that the Trustee's decision was fair and reasonable and upheld it.

### ***What impact does this decision have for Superannuation Trustees?***

Some questions for consideration:

1. Should a Trustee, as part of its claim staking process, ask for all relevant social media and other communications between parties to be provided to it when trying to establish a claimed relationship?
2. How far should a Trustee go in relation to this, if at all?
3. How far does a Trustee want to go in ensuring that relevant parties are aware that social media commentary and other forms of communication between parties may be relevant and should be provided.