

THE QUEENSLAND LAWYER

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ARTICLE

Vigolo v Bostin: Is the concept of "moral duty" still relevant to a family provision application? – Barbara Hamilton

The recent High Court decision of *Vigolo v Bostin* (2005) 79 ALJR 731; 213 ALR 731; [2005] HCA 11 makes clear by a majority decision that the concepts and terminology of "moral duty" and "moral considerations" are still relevant to the determination of a family provision or TFM (testator's family maintenance) claim. This is important given a majority obiter statement from *Singer v Berghouse* (1994) 181 CLR 20; 68 ALJR 653; 123 ALR 481; 18 Fam LR 94; [1994] HCA 40 suggested that references to "moral duty" and "moral obligation" were a "gloss" on the statutory language, which should be avoided. The whole court, however, dismissed the appeal. The High Court has sent the message that wealthy applicants for family provision need to be very cautious about making claims, when they can well provide for themselves, and compared to the actual beneficiaries are in a financially advantageous position

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Tel: 1300 304 195

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Web: www.lawbookco.com.au

Email: LRA.Service@thomson.com

Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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