

I Te Kōti Mana Nui

Between **Nigel David Rimmer** and **Nicola Rimmer**
Appellants

And **Carolyn Mary Wilton (as administrator of the
estate of David Rimmer)**
Respondent

Respondent – outline of oral arguments

17 March 2026

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May it please the Court,

1. Introduction

2. Preliminary Comments

- (a) Attacks on Ms Wilton personally.
- (b) Issues arising on appeal from the way in which this case has been advanced.

3. Alleged “unfairness” in this case (“double dipping”)

4. Election under s 61 of the PRA

- (a) Appropriate election for s 21 Agreement – Option A or Option B? [if required]
- (b) Understanding what the election is a *choice between*.
- (c) Option B: survivor can receive both sets of entitlements (s 21 agreement and inheritance).

5. Legislative history supports this approach:

- (a) Working Group: recommendations and rationales.
- (b) Section 76, PRA: addresses ‘double recovery.’
- (c) Law Commission: recommendations and rationales.
- (d) NZLS position: no election required.

6. Intestacy regime

- (a) Core of appellants’ grievance is with quantum of distributions.
- (b) Regime binary in application by design.
- (c) Remedies are available to ameliorate ‘bluntness’ of distributions.

7. This Agreement: evidence of intention to contract out of intestacy regime?

- (a) No evidence of factual matrix (as per *Bathurst*).
- (b) Words of Agreement – do not evidence intention to contract out.
- (c) Context of Agreement – does not support intention to contract out.
- (d) *Warrender* line of cases distinguishable.
- (e) No evidence of intention to contract out – sufficient to determine appeal.

8. “Contracting out” incompatible with the Administration Act [Ms McGuigan]

- (a) Text and purpose of AA: prescriptive rules affecting grant, administration and distribution; s 77 “must” mandatory: change from original 1969 Act (“shall”) to must by AAA 2001; *Fukofuka v R* [2013] NZSC 77; entitlements defined by legal status; statutory exceptions to s 77: ss 77A-C; s 61 PRA; Family Protection Act?; s 81 disclaimer.
- (b) Parliamentary history: amendments to ss 77 and introduction of ss 77A-C part of Matrimonial Property Amendment Bill – closely tied; March 2001, vol 591, NZPD: Anne Tolley at 7; Hon Tony Ryall at 8; David Carter at 12; Anne Tolley at 14; Supplementary Order Paper No 25 at 42; Law Commission Succession Law Report: [64], [65], R.75, [10.50]: no blanket ability to contract out; only former partners through separation agreement.
- (c) Policy considerations: *Warrender* wrong; plenty of policy considerations (certainty; predictability; know and apply the law); freedom of contract does not bite with particular force: CA at [62]; *Banks v Goodfellow*; just make a will; Law Commission: 2.4 – 2.7; 2.102; 7.12 – 7.17; obligation to support family members: 2.107 and Prof Peart Ethel Benjamin lecture at 4; will be hard cases but will avoid blanket rules 100% of the time; *Re Rist* and other authorities only say have regard to public policy; no modern authority; *Public Trustee v Sheath* [1918] NZLR 129; *Re Trotter* not distinguishable and later decisions do not take the Court any further: *O’Donoghue v Comia* (no ability to apply under s 21 H) and *Baker v Storm* (reaffirmed administrator’s obligations under s 77).

9. Concluding comments – contracting out of intestacy regime

- (a) Focus is on workability of rules.
- (b) Appellants’ approach introduces further ambiguity into process.
- (c) No problem to fix.

10. Subsidiary construction arguments [if required]

- (a) Not appropriate for determination – raised for the first time here, no evidence to aid interpretation.
- (b) Clause 4.2 of Agreement – applies on separation and death.
- (c) Clause 4.4 of Agreement – provides an additional benefit on death.

(d) Life interest expires on death (not sale of property).

11. Guidance required from Court

(a) Focus on making matters clear and simple in application.

(b) Within limits of this case, and the law as it stands today.

S Elliott / J McGuigan

Counsel for the respondent

Having made appropriate enquiries, counsel for the respondent certify that, to the best of their knowledge, these submissions do not contain any suppressed information and are suitable for publication.