

Australian Law Reform Commission (ALRC)

Review of equal recognition before the law

and

Legal capacity for People with Disability

Submission of: Ms. June Walker

Without Prejudice

[REDACTED]
15th of January 2014.

Sabina Wynn
Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Dear Ms. Wynn,

Re: 1: Safeguards

2: The financial exploitation of people with disabilities

3: Guardianship Tribunal Abuse/Scams

4: Substitute Decision Making.

5: Capacity

I welcome the opportunity to provide a submission to your review of the Equal Recognition before the Law and Legal Capacity for People with Disability and I have added points 2 and 3 to the above as they relate to points 1, 4 and 5 and they expose serious issues which are never raised in Government Inquiries in relation to the rights, welfare and protection of people with disabilities who become involuntary subjects of Guardianship or Financial Management Orders.

My reclusive late father had a long term mental disability and he was in the early stage of dementia when he became an involuntary subject of 'financial management order' applications to the NSW Guardianship Tribunal (then Board) in [REDACTED] 1994 and at this time he was a 'hidden victim' of prior financial exploitation via a 'friend's' interference with his wills.

The will interference resulted in the 'friend' and others known to him standing to gain various shares of my father's estate which, had the will interference remained 'hidden', would have amounted to between **\$800.000 and \$1 million dollars.**

2.

Although I have lived in Victoria since 1980, I was the only family member who maintained contact with my father yet regardless of three expert Tribunal members being aware that I totally distrusted the 'friend' and his associates, one of whom was his solicitor friend who for then unknown reasons, had become my father's solicitor, the quasi 'legal process' resulted in the 'friend', who covertly triggered the guardianship action when he had a 'genuine concern' for his hidden financial interest in my father's estate, was placed as my father's 'private financial manager'.

This legal decision resulted in the 'friend' being protected from scrutiny and as I had no other option than to take Supreme Court action which I was unable to do because of the costs involved, I was robbed of the opportunity to investigate his past financial and legal dealing with my father until after he passed away in 2002.

An almost three year NSW Equity Court 'will dispute' with the 'friend' followed my father's death and during this legal process, sworn evidence of the financial exploitation and the friend's covert involvement in the Guardianship action, were exposed.

Although the 'friend' agreed to my father being legally represented at the Guardianship hearing of ██████████ 1995, the issue of my father's 'capacity' to instruct a solicitor 2½ months prior to this hearing, was the reason for the 'will dispute'.

Details of the NSW Equity Court action are covered under point 5 'capacity'.

Since my father's 1995 Guardianship hearing, I and many others who have suffered at the hands of these Tribunals have contacted various NSW Guardianship Presidents and various past Federal and NSW Ministers for Ageing and Disabilities regarding the lack of effective safeguards, the lack of interest in determining the truth and the total lack of accountability by the Guardianship decision makers however, our concerns have been trivialized and ignored.

We have also provided submissions to various Government inquiries and reviews of Guardianship laws and these included the NSW Social Issues Committee 2009 inquiry into Substitute Decision Making for People Lacking Capacity and the 2006-2007 House of Representatives Standing Committee on Legal and Constitutional Affairs (LACA) inquiry into Older People and the Law which looked into **the adequacy of current Government regimes the adequacy of current legislative regimes in addressing the legal needs of older Australians in specific areas, two of which were fraud and financial exploitation** however, regardless of our submissions clearly showing that Guardianship Tribunals cannot adequately protect people with disabilities in these specific areas, our submissions were classified as 'confidential' therefore they were not published and our concerns were once again, ignored.

3.

Just as the hierarchy of the Churches ignored the victims of pedophile priests for years, regardless of Guardianship Tribunals, Public Guardian/ State Trustees now falling under the jurisdiction of Attorneys Generals, those in power continue to practice 'willful blindness' and by not acknowledging the problems exist, they don't have to fix the problem.

Family members who have serious concerns regarding Guardianship Tribunals, Public Guardian/State Trustees are intimidated and threatened with huge financial penalties if they identify the 'person concerned' until after they die.

This action is supposedly meant to protect the 'person concerned', when in reality it protects these unaccountable regimes.

It is evident to people with personal experience with these regimes, that the protection of these regimes is far more important to both sides Government than the rights and protection of the vulnerable, involuntary people with disabilities who because of their disabilities, are unable to speak for themselves and they are the reason these regimes exist.

As long as the following circumstances are permitted to continue, Guardianship Tribunals will effectively be adding to the increasing problem of the financial exploitation of people with disabilities by enabling hidden or other financial predators to use their free 'legal services' as a means of gaining financially by deception:

- Their independence has developed historically **as a safeguard against the possible misuse of influence by Members of Parliament.**
- They are not accountable to anyone.
- They are not bound by the rules of evidence.
- They do not have the jurisdiction to determine whether wrongdoing occurred prior to an application being made.
- As they are so easily satisfied that applicants have a 'genuine concern' for the 'person concerned' anyone who falsely claims to have a 'genuine concern' for the subject of an application can use these Tribunals for their own hidden or other best financial interest.
- Regardless of it allegedly being an offence to provide false or misleading information in applications, applicants can and do provide false or misleading information in applications without any consequences.

4.

- It is not the role of the Tribunal to determine the truth or otherwise of all evidence or allegations before them, all evidence or allegations are not rigorously or otherwise tested.
- As they do not have the resources to carry out ad hoc or monitoring of the welfare of the 'person concerned' or the actions of 'guardians' or 'private financial managers' after an 'order' has been placed, these Tribunals are incapable of protecting the 'person concerned' from abuse, neglect or exploitation after hearings are finalized.
- Regardless of being bound by the rules of Natural Justice, Tribunal members can and do discriminate between parties to proceedings.
- All professionals are seen as credible and reliable witnesses while the concerns of family members are seen as lacking credibility and are dismissed.
- Getting through their increasing workload in a 'timely manner' is more important than the rights and protection of their involuntary clients.
- All these Tribunals have to do is to determine whether the person concerned is capable of managing their own finances and if not, they then need to determine who to place as the guardian or financial manager.

All of the above show that the rights and protection of people with disabilities are not 'important enough' for the Government to provide them with effective safeguards or real justice and that the 'mock justice' they are subjected to provides them with no protection whatsoever as the decision makers are making legal decisions with the 'lights out' and the vulnerable subjects of applications who are incapable of protecting themselves, **are losing their basic human rights in a totally unacceptable manner.**

I am providing this submission in the hope that the issues I am raising will be taken seriously and result in reforms being made to Guardianship Tribunal laws as, while the long standing legislation provides strong safeguards to protect these regimes, their members, staff and applicants who shouldn't need protection, there are there are no effective safeguards in place to protect people with disabilities and there are also no strategies in place to identify hidden or other financial predators who falsely claim to have a 'genuine concern' for the 'person concerned' and this situation needs to be reversed.

5.

To show you that this problem is not confined to NSW, prior to providing a submission to a VLRC's Review of Guardianship laws in Victoria, I contacted a Victorian Guardianship Tribunal information officer and ask him the following questions:

1. How would the Tribunal know if the subject of an application was a hidden victim of prior financial exploitation or if an applicant was a hidden perpetrator of this crime and he replied **"We wouldn't know because we don't have a crystal ball"**.
2. I then asked if all professionals involved were all seen as reliable and credible witnesses and he replied **"Yes, it's called hierarchy credibility; you can look that up on the internet under Howard S. Thomas Becker 1967"**

An Internet search for the above revealed the following:

- For Becker, those at the top (of an organization or a society) are seen to be more credible, those at the bottom less so.
- Indeed, the 'underdogs' may be completely discredited and pathologized, and often **do not have a voice at all.**

As you will see from my father's 'case study' hierarchy credibility exists in NSW Guardianship matters while family members or other 'underdogs' who oppose claims made by 'professionals' or dare to suggest that a 'professional' person may be involved in wrongdoing in connection with a person with a disability, are looked down upon and their concerns are seen as lacking credibility and not being relevant to decisions the Tribunal has to make.

1. Safeguards:

In a submission provided by the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) to a Victorian Law Reform Commission (VLRC) review of Guardianship legislation in Victoria, the VEOHRC submission responded to questions **regarding safeguards** as per below:

- The Commission agrees with the VLRC that the current safeguards in section 26 G&A Act **are seriously inadequate and need strengthening in new guardianship laws.**
- Whilst not outlining any specific safeguards, **the Commissions reiterates the importance of safeguards for all forms of decision-making under new guardianship laws to protect individuals from abuse, neglect or exploitation by supporters, co-decision-makers or substitute decision-makers.**

6.

Question: What safeguards do you think are necessary to protect supported people from abuse?

- Whether it is founded on principles of supported or substituted decision-making, **any legal regime that permits one person to influence or make critical life decisions for another, requires significant safeguards.**
- The architects of the CRPD were aware of this, and made sure they included such safeguards in Article 12(4): States Parties shall ensure that **all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.**
- **Such safeguards** shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, **are free of conflict of interest and undue influence**, are proportional and tailored to the person's circumstances, apply for the shortest time possible and **are subject to regular review by a competent, independent and impartial authority or judicial body.**
- The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
- Whilst these safeguards have been taken as applying to substituted decision-making, they are a good starting point in a legislative approach that provides for a continuum of decision-making options from supported, through co-decision-making to substituted.

The Commission's approach in its initial submission to the Guardianship Information Paper did not articulate a definite framework of safeguards but rather identified broad principles or requirements that needed to be considered and addressed in any such framework.

These included:

- **Preventative safeguards;**
- **Automatic and ad-hoc monitoring;**
- **Monitoring and review of substantive decisions and the decision-making process; and**
- **Resources and support.**

The Commission refers the VLRC to its previous submission **but reiterates the importance of safeguards for all forms of decision-making under new guardianship laws to protect individuals from abuse, neglect or exploitation.**

7.

- The Commission does agree, however, with OPA (Office of the Public Advocate) having a role in the training and monitoring of supported and co-decision-making arrangements, **including investigating allegations of abuse or misuse of the role of supporter or co-decision-maker and conducting regular reviews of how such arrangements are going.**
- In order to carry out these additional functions, **OPA needs to be sufficiently resourced and have appropriate administrative arrangements in place to avoid any potential conflicts of interest.**
- The most important thing is to establish a framework in new guardianship laws that emphasises an obligation to adhere to supported decision-making, except where to do so is otherwise reasonably justified.
- **This framework needs to be supported by appropriate resources and support as well as a strong and multi-faceted range of safeguards.**

The following information is taken from a Human Rights Book titled **Monitoring the Convention on the Rights of Persons with a Disability.**

- Given the abuse that persons with disabilities have suffered in institutions and through services which nominally should serve them, such health institutions, article 16 on **“freedom from exploitation, violence and abuse” specifically requires States to monitor facilities and programmes:**
- In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall insure that **all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.**

8.

During the 2009 NSW Social Issues Committee's Inquiry into Substitute Decision Making the Committee Chair the Hon Michael Veitch and a former NSW Guardianship President the following question:

- **What safeguards are in place during tribunal hearings to minimize the opportunity for people to exploit persons lacking capacity by having them-selves appointed in the substitute decision-making role?**

Part of the answer was:

- **I guess the safeguards come from the fact that we are undertaking a legal process.**

There were far too many questions and answers for me to list here however, further questions and answers in regard to above are available on the internet.

2. The financial exploitation of people with disabilities

Between 2006 and 2007 the House of Representatives Standing Committee on legal and Constitutional Affairs (LACA) conducted an Inquiry into Older People and the Law and the terms of reference were **to investigate and report on the adequacy of current legislative regimes in addressing the legal needs of older Australians in specific areas, two of which were:**

- **Fraud and Financial exploitation**

During this Inquiry the LACA Committee held public meetings throughout Australia and at a public meeting in Hobart on the 5th of June 2007 the Committee Chairman spoke with the Chairperson of the Australian Guardianship and Administration Committee (AGAC) Ms. Anita Smith who made the following statements:

- The reason we have an interest in an inquiry into older people and the law is that in each state and territory, of the numbers of people who become the subject of an application for guardianship or administration, in the order of 70 per cent are people over 65. That is often because of the consequences of dementia and related illnesses. As a Guardianship and Administration Committee we are not strictly about people who are ageing, but it tends to have that effect.

9.

- To give you an understanding of guardianship and administration-in some states it is called 'financial management'-we always need proof that a person coming before us has a disability and that that disability has affected a person's decision making capacity. **So we only deal with adults, generally; who have experienced some sort of loss of ability to make reasonable judgments.**
- If that should be proven on the evidence, then we might look at whether there need to be any decisions made on their behalf and appoint a guardian or an administrator to make those decisions on their behalf, should they need to.
- **If done incorrectly, it has the potential to be a fundamental breach of human rights** because you are taking away people's ability to make their own decisions in their own lives, so we always adhere to the principles of finding the course of action that is least restrictive of the person's freedom of decision and action, looking for a decision that is in their best interests, and one that reflects as far as possible their wishes.

Ms. Smith also provided examples of financial exploitation, the following of which coincides with the financial exploitation of my late father.

Interference with wills:

Undue pressure to make new wills or gifts:

- Elderly people can fall prey to relatives or strangers who will suddenly befriend them after the onset of dementia.
- Playing upon the paranoid aspects of the symptoms of dementia, they can encourage negative attitudes ["they are only interested in your money"] about the members of the person's traditional support network in favor of themselves, usually to their own financial advantage either by gift, testamentary gift or appointment under an EPA.

10.

Proof of financial exploitation of older people with or without cognitive disabilities:

Regarding the above the AGAC Chair, Anita Smith stated:

- A major concern is that elder abuse is so rarely addressed in the criminal justice system because proof of crimes is so difficult when the principal witness/victim's memory is significantly impaired by dementia.
- The Guardianship and administration system can respond by preventing further abuse, **but frequently applications for the appointment of a guardian or administrator occur after the abuse has been perpetrated and all that is left to be protected is the elderly person's future entitlement to Commonwealth benefits.**
- An administrator or financial manager might report financial abuse to the Police or attempt civil proceedings for recovery, but success of such actions is rare.

My comments on Ms. Smith's statements:

It is also 'extremely' difficult to prove suspected financial abuse/exploitation, when:

- Members of a 'legal' Tribunal, who are meant to 'protect' people with decision making disabilities from this 'crime', ignore concerns that should raise a 'RED FLAG' to the possibility of prior financial exploitation and then place a 'suspected perpetrator' in the position of the suspected victim's 'private financial manager', where he was 'protected' from scrutiny until the suspected victim died.
- The suspected victim is being 'controlled' by the suspected perpetrator.
- The suspected victim's legal documents are held by a suspected perpetrator's solicitor friend, who blocked attempts to investigate matters.
- The suspected victim's GP, who was influenced to become an 'applicant' in the Guardianship matter by the 'suspected perpetrator, refuses to provide information that may incriminate the suspected perpetrator or himself.
- Like the 'expert' Tribunal members, two family members who until six weeks before lodging a 'financial management order' application, had not contacted the victim (their father) for over 18 years, were also 'blind sighted' by the automatically perceived 'integrity' and 'good community standing' of the suspected perpetrator and rather than have me placed as the private financial manager, they agree to the 'friend' being placed in that position.

11.

During a Canberra public hearing the LACA Committee Chairman stated:

- **The Committee has received numerous complaints regarding the NSW Guardianship Tribunal, which if true, would make your hair stand on end.**

At a Sydney public hearing, a witness advised the Committee:

- **Anybody can front up to the NSW Guardianship Tribunal and make any allegation they wish and then the Guardianship Tribunal basically rolls on that and makes orders as it sees fit, not in the way it should discern according to law.**
- **That is a basic problem that we have, we have no transparency and no accountability in these processes and this is the main reason we have so much difficulty with this.**

The unacceptable outcome of my father's case supports the above claims.

After my late father's NSW Guardianship hearing, case I was advised by a member of the NSW Police Force and two separate NSW Solicitors:

- **Anyone in the know can use the Guardianship Tribunal for their own purposes.**
- **The more lies you tell the Tribunal the more likely you are to be believed.**
- **The Tribunal gives preferential treatment to professionals involved.**
- **The Tribunal judges applicants on the presentation of their applications, like going for a job interview.**

In an **Australian Institute of Criminology (AIC)** report titled **Fraud and Financial Abuse of Older Persons** which was published in October 1999 the author states:

- In some cases, older persons who suffer from dementia and are unable to communicate effectively **may not be aware that they have been defrauded and may die without the crime ever being discovered or investigated.**

Other reports into the financial exploitation of older people state:

- **Often the exploitation is not discovered until after the victim dies and by then evidence may have been destroyed or disposed of.**

12.

One of the principles guiding the NSW Guardianship Tribunals is:

- **To take the person's views into consideration.**

The AIC report shows that without rigorously testing claims made by the 'person concerned' or others involved, Guardianship Tribunals could be making legal decisions concerning the rights, welfare and protection of people with disabilities, who may be acting under the undue influence of another person, when the 'person concerned' may be a hidden victim of prior financial exploitation and not be aware of it.

Reports also show that people with disabilities who are dependent on others, will claim that people are looking after them, when in reality, they are not and this occurs because the person with a disability is fearful of abandonment or other repercussions if they complain.

Example:

My late father suffered from a mental illness for over 50 years. He lived in isolation in absolute squalor for over 30 years and among other issues, his Department of Veteran Affairs Psychiatrist had diagnosed him as being narcissistic, schizoid, delusional and an odd eccentric isolate with little hold on reality.

My father told the Tribunal and anyone else who would listen that **his 'friend' was looking after him. He also falsely claimed that his doctor was taking good care of him** and the three expert Tribunal members accepted this claim without rigorously or otherwise testing it.

The attached Case Study contains a Hospital Occupational Therapist's report of my father's living conditions and a DVD which shows these conditions will be sent under separate cover, both totally refute my father's claims.

13.

3. Guardianship Tribunal Abuse/Scams.

The following article was published in an American newspaper in 2007 and because of the lack of safeguards, this unacceptable situation has been occurring in Australia for many years.

Guardianship Abuse:

- Senior adults have been targeted as easy victims in a number of different scams for the last two decades now and it's only getting worse.
- Instead of just stealing money from them or ripping them off, con artists are now actually stealing Guardianship of many senior adults.
- Some criminals have figured out that they can assume Guardianship of elderly individuals just by telling a judge they are no longer mentally stable.
- When approaching a judge, these crooks don't have to do anything to prove that they are related to the individual they are trying to assume Guardianship of.
- Courts are so busy and over-packed with cases they just don't have the time or resources to make sure that the person making the claim is on the up and up.
- There is no easy way to find out when this occurs, so family members often have no idea that someone is stealing Guardianship of their parents and simply have no recourse in the event that it happens.
- Usually the ruling happens quickly and the victims have no idea when it happens.

Self-financial gain is a great motivator and every week we hear or read about of people of all ages and professions who don't have disabilities, being defrauded by people they trust. The perpetrators include family members, friends, neighbors, professionals including solicitors, Police, financial advisors, accountants, bank staff, taxi drivers, doctors, paid carers etc.

These predators see people with cognitive or other disabilities as easy targets for exploitation as they often live alone, have little or no family contact, have valuable assets which can include mortgage free homes, savings, investments, superannuation, compensation payments etc.

Guardianship Abuse is endemic in America as well as other countries and evidence of this is available on the internet via an organization titled **STOP GUARDIANSHIP ABUSE.**

14.

Example 1:

As stated previously, my late father was a hidden victim of prior financial exploitation when he became an involuntary subject of 'financial management order' applications to the NSW Guardianship Tribunal (then Board) in late 1994 and regardless of the three expert Tribunal members being aware that I totally distrusted the friend and his solicitor friend, who for then unknown reasons had become my father's solicitor, as the friend was a prominent professional and the holder of an OAM, my concerns were seen as lacking credibility and not being relevant to decisions the Tribunal had to make.

During the hearing the 'friend', was treated like a '**celebrity guest**' and it was obvious the Presiding legal member was very impressed by his exceptional professional qualifications.

In their findings the Tribunal members concluded:

- **Mrs. Walker has expressed some distrust in her correspondence to the Board as to the actions and motivations of Mr. X, but he seemed to this Board to be open, forthright and a most suitable person to be appointed because of his long term relationship with [REDACTED] and [REDACTED] obvious reliance and trust in him.**
- **Mr. X has indicated his willingness to act. The Board accepted that he could interact with [REDACTED] so that [REDACTED] within the limits of his dementia disability which has led to this management order may be able to influence the broad directions of the management of the estate.**
- **The Board thought that Mr. X could bring to the task of management an ingredient of affection and friendship which can add to the task of management. A long knowledge of the person and his interests may contribute to the task of management.**

The attached Case Study shows that the above conclusion is totally false.

The 'Board' also falsely concluded:

- **The Board is confident that it has given 'due weight' to all of the evidence before it when exercising its power to appoint a manager for [REDACTED] estate and throughout the Board has been concerned to achieve the best interests of [REDACTED] himself.**

My comments on the above:

- I am confident the Board failed to achieve the best interest of my father, failed to give due weight to all of the evidence before them and they denied me natural justice.

15.

Proof of the financial exploitation of my father:

As stated previously, an almost three year NSW Equity Court 'will dispute' with the 'friend' (Mr. X.) followed my father's death in 2002 and during this 'legal process' sworn evidence was provided by witnesses on both sides of the dispute, which exposed the following:

- The reality of Mr. X's alleged 'long term' friendship with my father.
- The reason Mr. X's solicitor friend became my father's solicitor.
- The will interference which occurred between 1988 and late 1989.
- Mr. X's covert involvement in the triggering of the Guardianship action against my father.
- His responsibility for influencing others of use to him to approach the Tribunal for 'financial management orders and
- His responsibility for the false and misleading allegations of 'missing monies' from my father's accounts, which both applicants in the Guardianship action directed at me.

Example 2:

On more than one occasion an Australian Current Affairs TV programs have screened a story about a Muslim Sydney taxi driver known as 'SAM' who makes a habit of befriending older customers with or without disabilities for his own self-financial gain.

- In late 2006 a story of Sam befriending an elderly legally blind Mrs. Francis J. was shown.
- This story revealed that Sam regularly drove Mrs. J. who lived alone and had no nearby relatives, to her hospital and medical appointments.
- **The reporter stated that Sam had acquired either 'guardianship or financial management' of Mrs. J.**
- When Mrs. J. was on her deathbed in hospital, Sam arrived with a witness and a pre-typed will and other documents for Mrs. J. to sign.
- Although Mrs. J. was legally blind the documents were signed and this resulted in:
- Sam acquiring full ownership of Mrs. J's mortgage free home after her death and
- Mrs. J. changing her religion from Catholic or Anglican to Muslim which resulted in her body being wrapped in a cloth and being buried without a casket.

16.

Example 3:

A more recent story showed that a female Bendigo Bank Manager had a habit of befriending her elderly, wealthy customers.

- In one instance the victim was a Mrs. H. who was in her late 80's or early 90's and lived alone in her home which was located close to the Bank where the Manager worked.
- Shortly after befriending Mrs. H. the Bank Manager arranged for a friend of hers to become Mrs. H's paid carer.
- Without the prior knowledge of Mrs. H's family, **with the assistance of a solicitor known to the Bank Manager, these two women became Mrs. H's guardians and or financial managers.**
- Locks were frequently changed on the doors of Mrs. H's home to prevent family members from gaining access.
- On one occasion Mrs. H's daughter arrived at her mother's home to hear her mother calling out that she was on the floor and couldn't get up.
- As the daughter didn't have access to the house, she called the Police who broke into the home.
- The mother had been on the floor in pain for some time. She was in a filthy state and subsequently, had to be hospitalized.
- After accessing her mother's home the daughter came across documents exposing the improper actions of the Bank manager and the paid carer.
- Over time these two women had become recipients of monies in three of Mrs. H's wills.
- The 1st will left the two women a small amount of money each.
- A 2nd will left them a larger amount of money.
- A 3rd and final will left them the entire estate of around \$1.5 million dollars.

17.

- Mrs. H. had been diagnosed with dementia and while she was in hospital a solicitor arrived with the bank manager for the purpose of getting Mrs. H's signature on legal documents which would have given the Bank Manager Power of Attorney, however an alert staff member prevented them from doing this.
- After Mrs. H's death it was discovered that over \$500,000 had gone from her accounts.
- **The Police were and possibly still are involved in this matter.**

Example 4:

A different and alarming scenario was shown on another Current Affair segment which involved a Manager of an Aged Care Facility and the South Australian State Trustee's.

This TV segment was titled '**Aged Care of No Escape**'

- A middle aged daughter in South Australia was caring for both of her elderly parents when her father became seriously ill and was hospitalized.
- During this time the daughter placed her mother who was in the early stages of dementia, in an Aged Care Facility for a period of 20 days for respite care.
- After being advised by hospital staff that her father's health had deteriorated and he was close to death, the daughter went to the Aged Care Facility to take her mother to the hospital to visit her father for possibly the last time.
- On arriving at the Aged Care Facility the daughter was confronted by the Facility Manager who advised she could not see or remove her mother from the facility as **he was her mother's guardian and the State Trustees had taken over her mother's financial affairs.**
- The daughter was told to leave the premises immediately as she was trespassing.

The segment went on to show the daughter arriving back at the Aged Care Facility with a reporter from the A Current Affair TV program.

18.

When the daughter returned to the Aged Care Facility with a Today Tonight reporter, the Facility Manager repeated his statement of being the mother's 'guardian' and that the daughter was not permitted to see or remove her mother from the facility however, with the reporter's support, the daughter was able to remove her mother from the facility and she returned to live with her daughter.

After being released from the 'Aged Care Facility', the mother told the reporter and her daughter that **staff at the facility had put papers in front of her and asked her to sign them and she also stated that she did not understand what she was signing and she was too frightened not to sign them.**

Example 5.

This story is copied from an Australian blog.

I have been driven to the point of ... well I don't really want to say as I respect life too much. I have endured days without sleep, feeling frustrated, and indignant.

I moved back to the family home with my two children to care for my mother at her request after she had 2 knee replacements, a hip replacement and chronic COPD- she also had incontinence and dermatitis.

I owned my own home, worked full time as a high school teacher and did not live with my mother for my own benefit. After my father's death – my parents being in their 70's and unwell- the family home had fallen into disarray. 110 years old it was quite dilapidated.

I borrowed against my house to renovate and repair my family home. I am an only child. The family home is dear to us all.

I have been under enormous stress for over a period of 2 years and to seek some support I asked my daughter to apply for formal financial guardianship of my mother's financial affairs. I discussed this both with my mother and daughter.

My mother has onset dementia -she cannot understand complex financial arrangements but she can understand basic things like 'who she wants to pay the bills and look after her personal financial affairs.

19.

My daughter applied for a financial management of my mother's affairs- with my mother's full support, my full support and my son's full support. Both my son and daughter have University degrees in Accounting and Finance – my son being a Financial Manager at a University and my daughter having worked at Major Investment banks.

I am under stress due to misrepresentations by brokers and bank representatives that placed me in a tenuous position – but I have legal counsel advising that I have a case in law against the perpetrators of my situation. I am in the process of dealing with this all.

I felt that since my children are capable and now in their late 20's they would be better suited to manage Mum's affairs- which include a humble house and her pension account only .She has no other assets or accounts. I am tenant in common with my mother as my parents were divorced some time before my father's death.

Instead of appointing my daughter or son as financial managers the Tribunal appointed the Financial Guardianship to the NSW trustee-without giving reason.

We live in this 'estate"- i.e. the family home. We are the sole beneficiaries to the Estate. We have lived together for 17 years and Mum could not be in a better place and with better care surrounded by her loved ones.

We do not want an external body handling our family affairs. There is no dispute between us or any need for the Trustee.

The worse thing about it is the irony- There is an implication that by the external appointment it would seem that we are deemed as unable to act for the best interests of my mother- our lives revolve around her – despite her dementia – she expressed moments of clear wisdom- and she wants her grandchildren to take responsibility for her Financial Affairs- **the tribunal has totally ignored her wishes, the wishes of the family members and her carers.**

Does anybody know what I can do – besides the 'client' being able to manage their affairs, on what grounds can an order be removed. Mum won't be able to manage her financial affairs.

I am happy to support any action against this Tribunal.

20.

The examples I have given you are just the tip of the iceberg as there are many more 'horror' stories out there and they don't all represent people with dementia.

The Public Guardians and State Trustees also need to be made accountable to an 'independent party', as they too don't always work in the best interest of their involuntary clients.

On the 28th of March 2013 the following story was televised on Australian Current Affairs.

- **Unfair System. Public Trustee Poverty Victims Story.**

People under the Public Trustees may have million in accounts that is supposed to make their lives liveable and fulfilled after accident compensation or other reasons of reward for damages, yet the money is being milked by a system of corruption and high fliers in private investment groups linked to the Government Trustees.

The following link will give you the full details of this story.

http://www.youtube.com/watch?feature=player_detailpage&v=UKyQfe22q8g

Then following link tells the story of 89 year old George Tostee who hated being in the Aged Care Facility he was placed in by the Queensland Adult Guardian who denied George his dying wish to return to his home with his son.

George passed away shortly after this distressing video was taken otherwise his son would not have been permitted to expose the situation.

<http://au.news.yahoo.com/today-tonight/latest/article/-/19026545/aged-care-investigation/>

4. Substitute Decision Making.

As per the Case Study I will refer to my late father's substitute decision maker as Mr. X.

When a Financial Manager is appointed, be it a family member, a friend or the Public Guardian, among other unfair practices, they have the power to deny family members the right to continue their normal relationship with the 'person concerned' and they can also be prevented from having any say in the ongoing care of the 'person concerned'.

They can place the 'person concerned in an Aged Care Facility and instruct staff there, that certain family members are not to visit the 'person concerned'.

21.

The actions of the appointed 'substitute decision maker' while under the 'normal supervision' of the Office of the Protective Commissioner (OPC) now Public Guardian/State Trustees.

- Having secured their separate financial interests, Mr. X. and daughters Mrs. C. and Mrs. K. ceased visiting the subject of their 'urgent' financial management order applications.

18 months after Mr. X was placed as the 'private financial manager' under the 'normal supervision' of the Office of the Protective Commissioner (OPC):

- The clothing I purchased for my father prior to the Guardianship involvement had worn out or no longer fitted him as he had put on weight.
- Hostel staff were providing him with cast off clothing belonging to other hostel residents, as those who were seen as having a genuine concern for his welfare, failed to take any interest in providing for his on-going personal needs.
- On becoming aware of my father's need for new clothing and being unable to travel to Sydney in person, I contacted a local department store and arranged to have a staff member visit him at the hostel to take his measurements and then provide for his clothing needs.
- Over a year after he vacated his home, my father was still receiving electricity and water accounts, as Mr. X. failed to have these services terminated.
- My father's personal mail, much of which came from overseas as a result of his work [REDACTED], were being redirected to the dead letter office.
- Taps on the property and in the house were left running.
- Anything of value was stolen from the property i.e. gates, windows, fencing, doors, door fittings, light fittings, furniture, tools and guttering etc.
- What wasn't stolen was smashed.
- Derelicts were using the property for shelter.
- Locals were using the property as a rubbish dump.
- As the property was a 'fire hazard' the local council placed an order over it to have it cleaned up, however, this order was ignored for well over 12 months.

22.

As a result of the above, in around September 1996, I wrote a letter of complaint to the OPC and provided them with a video showing them the state of the property, however:

- **This resulted in Mr. X. going to see my father and making him upset and angry with me for complaining to the OPC.**

When visiting my father shortly after the Guardianship hearing, I spoke to his GP who was influenced to lodge a 'financial management order' to the NSW Guardianship Tribunal by Mr. X. and as the GP had advised the Tribunal that 'it had been reported to him that over \$20,000 had gone from my father's accounts since I gained Power of Attorney via a new solicitor' and this allegation proved to be untrue, I asked him for the name of the person responsible for this false allegation..

- The GP advised me that Mr. X. was the person responsible for misleading him.

As Mr. X. failed to respond to my phone calls, I wrote to him on numerous occasions asking him to explain **(a) why he needed to influence the other's to approach the Guardianship Tribunal when he could have done that himself and (2) why he deliberately misled the GP in regard to 'missing monies'**.

As Mr. X. failed to reply, I contacted the OPC on numerous regarding this and I was condescendingly told to **"take it up with the private financial manager"**.

I also asked the OPC to tell me what will, if any, had the private financial manager provided them with and I was very condescendingly told **"we can't tell you that, it would be an invasion of privacy"**.

In around 1998, while he was in hostel care, my father fell and broke his hip and he then required a hip replacement.

After the operation, during which time my father died and had to be revived twice, the OPC asked Mr. X. to provide them with my father's last will.

- **Subsequently Mr. X. provided them with the will of the 14th December 1989 and not the last will of the 2nd December 1994.**

Regardless of the fact that the existence of the will of the 2nd December 1994 was well documented in the NSW Guardianship findings of which the OPC received a copy of, **this deception by Mr. X was unobserved by the OPC.**

23.

Property sale Number 2: (Property sale 1 is discussed in the Case Study)

Owing to unpaid Council Rates [for many years] and mounting land Taxes; my father's property was placed on the market in around 2000.

When learning of the impending property sale, I advised the OPC that I did not want Mr. X's solicitor friend (S.J) to be involved in the property sale.

- **My request was ignored and solicitor S.J acted with Mr. X in relation to the property sale.**

As I was concerned that Mr. X may have sold the property to a company he was involved in or to a relative or friend, after the 'sale' I contacted the OPC and asked them what supervision Mr. X was under during the property sale and I was very condescendingly advised:

- **" We don't supervise private financial managers, we trust their integrity".**

On contacting case managers at the OPC, I was treated like **I was an interruption to their day.**

In order to get any information regarding my father's affairs when Mr. X. was the Private Financial Manager, I had to resort to complaining on numerous to the then NSW Attorney General, who arranged for me to obtain 'limited' information.

As indicated previously, after my father's GP advised me Mr. X. was responsible for his false and misleading claim of 'mossing monies' he directed at me in his 'financial management order' application, I wrote numerous letters to Mr. X. over time and asked the following questions:

- **Why he mislead my father's GP in relation to missing monies from the accounts?**
- **Why he and Mrs. T. mislead Mrs. C. by advising her that a large amount of money had gone from my father's accounts since I began managing his affairs.**
- **Why he needed to influence my father's GP and Mrs. C. to approach the Tribunal when he could have done that himself?**

I also wrote to Mr. X's solicitor friend (S.J.) and among other matters, **I asked him to explain to me why he didn't advise Mr. X. to approach the Tribunal himself.**

24.

As I was confident in 1995 that Mr. X. would contest the will of the 2nd December 1994 after my father's death, I was not surprised to receive confirmation of this in a letter dated 8th October 2002 from the solicitors acting on behalf of Mr. X and solicitor S.J. who was then acting as a consultant with these solicitors in this matter.

As well as advising me of Mr. X's intention to contest the will of the 2nd December 1994 in favor of the will of December 1989, the letter stated:

- **We are the solicitors acting on behalf of Mr. X. and solicitor S.J. who formerly owned this practice.**
- **We are instructed that over time you wrote letters to our abovementioned clients making various allegations of fact and law.**
- **We are instructed to deny all allegations set out in your correspondence.**

The following are some claims my father's GP made during the 'will dispute' regarding Mr. X's involvement in his application to the Guardianship Tribunal/Board.

The GP was Mr. X's (the Plaintiff) 'star witness' during the 'will dispute' and he stated in a sworn affidavit that **in about November 1994, Mr. X. contacted him and said:**

- **"██████ is selling his property. He saw the agency agreement and it appeared to him that he was selling it for much less than it was worth".**
- "He was concerned about this".
- **"He had checked ██████ bank account and it appears there is a great deal of money missing from it".**
- **He said he thought it would be a good idea if the Guardianship Board were approached to have a financial manager appointed for him.**

The GP also stated:

- He and Mr. X. spoke further about the application and he agreed to make the application as he and Mr. X. agreed **it would be best made by him as he was his treating doctor and Mr. X. and he thought that would hold some weight in favor of the application.**

25.

The GP also stated:

- **Mr. X. had always shown his concern for [REDACTED] to him directly by raising the issues of Garth selling his property for much less than its value and of the alleged missing monies from his accounts.**
- After a discussion with the defendant Mrs. C. she subsequently made an application and he subsequently withdrew his application as he considered that Mrs. C's application would cover it.
- **He recalled being pleased that Mrs. C. had recognised [REDACTED]'s vulnerability and the need to protect him from any undue influence.**

Although this GP withdrew his application, information he provided was used during the hearing and this GP who was acting under the 'undue influence' of Mr. X. and his solicitor (SJ) was seen as a "credible and reliable witness' by the Guardianship Tribunal/Board.

5. Capacity:

As stated previously, when Mr. X. covertly triggered the Guardianship action against my father in mid-November 1994, he and others known to him stood to gain shares of my father's estate which would have amounted to between **\$800.000 and \$1 Million dollars.**

As a result of me arriving in Sydney in late August 1994 after finding out that my father had been hospitalized in mid-July 1994, my father and I discovered that his last will of around 1992, was missing. (Further details of this are covered in the attached Case Study)

After the Guardianship action was triggered, on the **2nd December 1994**, my father drew up a 'new will' via a new solicitor without the knowledge or 'permission' of Mr. X.

- This will left the entire estate equally divided between my two sisters and me and **it left nothing to Mr. X. and his colleagues.**
- This will named my two sisters and me as executors and initially my sisters and I were all given Power of Attorney however, prior to the solicitor leaving my father's room, my father changed his mind and he named me as the sole Power of Attorney.
- On the [REDACTED] February 1995, which was just two weeks prior to the Guardianship hearing, my father **changed the executors of this will to Mr. X. and he also changed his Power of Attorney to Mr. X.**

26.

During the 'will dispute' information and documents provided by solicitor [REDACTED]. revealed that on the 3rd February 1995 when he arrived at my father's hostel room to make the changes the executors and P of A's:

- Mr. X. and his secretary/companion Mrs. T. were in my father's room and
- Mrs. T. had witnessed and signed the codicil which was added to the will.

The attached 'case study' shows that at a time I had joint P of A with Mr. X in September or October 1994, Mr. X's solicitor friend (SJ) refused to provide me with a copy of the will he was holding on behalf of my father.

- He was to later claim that **my father had instructed him that this will was not to be released to me.**

My father advised me that he hadn't spoken to solicitor (SJ) and he subsequently rang him, verbally abused him and instructed him to release the will to me.

People with disabilities being legally represented at Guardianship hearings.

Mr. X. had the opportunity to object to my father being legally represented at the Guardianship hearing of the [REDACTED] 1995 however, **as he needed the Tribunal members to accept my father's false claim the he was looking after him, he agreed to my father being legally represented.**

The 'will dispute':

After my father's death in March 2002, Mr. X. contested the will of the 2nd December 1994 on the following grounds:

- **My father lacked the capacity to instruct a solicitor on the 2nd December 1994.**
- **My father did not know or approve of the contents of the will of the 2nd of December 1994.**
- **Mr. X. also used the fact that a 'Financial Management Order' was placed over my father on the [REDACTED] 1995 to support his claims.**

27.

He also claimed:

- **He didn't think my father understood what was going on at the Guardianship hearing. He seemed to understand some of it but not all of it.**

In reality, Mr. X. was the only person at the hearing who knew what was really going as the three expert Tribunal members, the solicitor representing my father, my sister Mrs. C and I didn't know what **was' really going on'** at the hearing.

Mr. X. delayed the matter for over 12 months prior to lodging documents for probate with his excuse being that he was delayed by his counsel.

As he was the 'plaintiff', Mr. X. provided the first sworn affidavit and on reading the contents of this document, it was evident that he had provided 'verifiable' false and misleading information in his affidavit.

As I was under the impression that the provision of false and misleading information in a sworn affidavit was a 'criminal offence', I contacted the solicitor who represented me regarding this matter and I was shocked when I was verbally advised:

- **The judge won't be interested in the fact that people provide false or misleading information in their affidavits.**
- **We expect people to lie in these matters.**
- **The judge will only be interested in whether or not your father had the capacity to instruct a solicitor on the 2nd December 1994.**
- **It's not the person telling the truth who wins, it's the person who plays the game best, who wins.**
- **The plaintiff can play this game right up to the steps of the Court and then offer to settle out of Court.**

28.

Obtaining favorable reports regarding 'capacity' from 'medical expert witnesses'.

The 'plaintiff' Mr. X., who provided false and misleading information in his sworn affidavits, was able to obtain three favorable reports stating that my father lacked the 'capacity' to instruct a solicitor on the 2nd December 1994.

is very evident that when 'expert witnesses' make judgments on a person's 'capacity' by viewing evidence which could be based on false and misleading information, without sighting the evidence of the opposing side of the argument, the opposing parties requesting the expert opinions, will achieve favorable reports supporting their opposing claims.

Opinion 1:

One of Mr. X's experts was a Geriatrician who is also [REDACTED].

Mr. X., [REDACTED], had spoken to the geriatrician prior to my arrival in Sydney, during my father's hospital stay.

She had also been contacted by my father's GP in late 1994 for the purpose of the Guardianship action.

This geriatrician had attended to my father who was unconscious on his admission to hospital in mid-July 1994 and during his combined 7 week hospital and rehabilitation stay, she saw him for approximately **10 minutes twice a week.**

That would work out to be 20–30 minutes a week which would total around **3½ hours** when he was conscious yet, regardless of her not being aware of what occurred to my father after his release from hospital in mid-September 1994 and the time he drew up the will of 2nd December 1994, after sighting claims made by Mr. X. and possibly his claims made by the GP, she stated:

- My father wouldn't have used particular words in his will,
- He wouldn't have been able to work out percentages and
- He **lacked the capacity to instruct a solicitor on the 2nd December 1994.**

29.

My comments on the geriatrician's claims of the previous page:

- My father had been a [REDACTED], therefore he needed to have excellent mathematical skills to perform these duties
- The 1989 will was divided into 20th's, the 1992 will was divided into 10th's and the will of the 2nd December 1994 was equally divided between my two sisters and me.
- There are words in my own will and in sworn affidavits I provided during this dispute, that I wouldn't normally use and wouldn't have known what they meant, had I not looked them up or asked.

Opinion 2:

In 2004, Mr. X. also acquired the services of an 'expert Forensic Psychiatrist' who had never met my father.

Based on the 'evidence' he was provided with by Mr. X. he supported Mr. X's claim that my father lacked 'capacity' on the 2nd December 1994.

Opinion 3:

My father's GP:

As indicated previously, a few months after the Guardianship hearing of early February 1995, I spoke to the GP who was with my father at the hostel when I arrived to visit him and asked him to name the person responsible for misleading him in relation to his claim in his 'financial management order' application of "It has been reported to him that over \$20,000 has gone from the accounts....."

The GP advised me that Mr. X. was the person responsible for the allegations he directed at me.

I subsequently wrote to the GP and asked him to provide me with this information in writing however, regardless of my many requests for this information, the GP failed to reply.

I then wrote to the AMA and advised them of the GP's failure to respond to my request for him to provide me in writing, with the name of the person responsible for the false allegations he directed at me in the Guardianship matter.

30.

The AMA subsequently contacted the GP who provided them with the following information in a letter dated [REDACTED] 1999:

- “As you are aware, she (June Walker) wrote me a letter which **essentially asked me to please explain, why I stated that \$20.000 was missing from her father’s accounts.**
- I have discussed this with the Guardianship Board who apparently have had extensive communications with her regarding this matter. They left it open with me as to what I should do.
- I have discussed this with [REDACTED] in a very general sense and **he has directed me not to communicate with his daughters as to his affairs.**
- **I do have concern about his cognitive ability to make such a decision, but he was adamant about this.**

As I already was aware of ‘why’ the GP made the false allegation of missing monies’ in his financial management order application, I would hardly be asking him that question therefore, **his evasive answer clearly shows how determined he was to protect himself and Mr. X.**

Further to this my father was totally unaware of the GP’s and Mr. X’s involvement in the Guardianship action therefore; **my request had nothing to do with my father or with his affairs.**

As Mr. X’s ‘star witness’ for the purpose of the ‘will dispute’ this GP stated:

- **My father lacked the capacity to instruct a solicitor on the 2nd December 1994.**

Considering the above it is interesting that rather than provide me with the name of the person responsible, **he was prepared to take directions from my father 4½ years after the Guardianship hearing.**

31.

Further in his reply to the AMA, the GP stated:

- I am upset that June was implicated and upset. **I am also aware that the information fed to me by her sister Mrs. C. her father and Mr. X. could have been false and misleading.**
- I understand that despite her not living in Sydney that she is the only one who visits her father and her son who lives in Sydney will visit on a regular basis.
- **June appears to have pleasant memories of her father.**

As I never discussed my memories of my father with this GP and if I had discussed them, they wouldn't have been pleasant, it is evident that this GP was confusing me with Mrs. C. who was the only other family member he spoke to.

The defendants Medical expert:

In contrast with the plaintiff's three medical experts, our medical expert concluded:

- Our father had the capacity to instruct a solicitor on the 2nd December 1994.

The fact that the expert 'medical witnesses' are not provided with two sides of the argument regarding 'capacity', is a total waste of time and money as I have demonstrated above.

This is something that needs to be changed.

In around November 1994, Mr. X. offered to 'settle' out of court and as we lacked the funds to pay a 'senior counsel' in advance and I was advised (A) Taking the matter to Court would have cost the estate more than accepting Mr. X's financial demands, and (B) If I didn't agree to settle, I would more than likely have to pay all of the costs involved, the matter was settled out of court and it cost the estate between \$400,000 and \$500,000.

I was also advised that if I wanted to pursue the matter of Mr. X. committing perjury, I could take action via the Police after settling however, on speaking to the Police regarding this, I was advised that they couldn't take any action because I had agreed to settle out of Court.

And they say that Crime Doesn't Pay!

Attachment 1

Case Study

**This Case Study shows
how a hidden victim of financial exploitation
lost his basic human rights
in the best financial interest of a hidden and other financially interested parties
as a result of becoming an involuntary subject of
'financial management order' applications to the NSW Guardianship Tribunal.**

Case Study

For the purpose of this case study I am referring to the friend **as Mr. X.** to his secretary/companion as **Mrs. T.** and to Mr. X's solicitor friend as **solicitor S.J.** and to my two sisters as **Mrs. C. and Mrs. K.**

My late father [REDACTED] matched the description of a person who was a high risk candidate for financial exploitation for the following reasons:

- [REDACTED] His mental problems began in 1940 when he was employed as a [REDACTED]
- When he became an involuntary subject of applications for 'financial management orders' in late 1994, he had suffered from a severe mental illness for over 50 years and he was in the early stages of dementia.
 - Prior to this time his Veteran Affairs Psychiatrist (DVA) had described him as **narcissistic, delusional, schizoid, depressed and an odd eccentric isolate who had little hold on reality.**
 - He was isolated from family and the community.
 - He lived in squalor as a recluse for over 30 years.
 - He ran a [REDACTED] on his 8½ acre property and these animals also lived in his house.
 - He told some people he had no family and told others of his family, but claimed he had no family contact.
 - As his involvement with the [REDACTED] was the subject of many TV interviews, many magazine and newspaper articles were written about him over the years, anyone he associated with would have had a good knowledge of his work and his interests.
 - When the Guardianship action was triggered in late November 1994, while his house was unfit for human or animal habitation and needed to be demolished, **his 8½ acre property on the outskirts of [REDACTED] was valued at around \$2 Million dollars.**

His family situation:

- My parents divorced in 1976 and my mother and two sisters **Mrs. C. and Mrs. K.** ceased contact with him at this time.
- They also ceased contact with me when I was divorced in 1972.
- I had a very difficult relationship with my father because of his mental problems; however I maintained contact with him mainly via telephone as I moved to Victoria in 1980.
- He discussed his wills with me in the late 1980's and early 1990's.
- He talked about a 'new friend' assisting him to draw up two of these wills however, although I was aware of the 'new friend's occupation, he wouldn't reveal the name of this person.
- At that time I thought this 'new friendship' was very strange as over the years my father had expressed extreme hostility towards this person and a colleague of his.

2.

Mr. X's involvement with my father:

- During the 'will dispute' Mr. X. initially claimed in a sworn affidavit that **he had been my father's friend for over 30 years.**

As the above claim was negated by other sworn witnesses during the 'will dispute', in a further sworn affidavit, he changed his initial sworn claim to the following:

- He and a colleague had provided free professional services to my father in relation to the [REDACTED] for some years; however, **he became more of a 'friend' to my father in the late 1980's.**

The will interference began in late 1988 and it involved:

- The downfall of my father's existing will under which Mr. X. and others known to him received no financial or other benefit.
- Solicitor S.J. became my father's solicitor for the purpose of drawing up a new will and because of frequent disagreements with my father, it took over 12 months to complete and it was not finalized until the 14th December 1989.
- This very complicated 15 page will divided the estate into 20ths and Mr. X. and others known to him stood to gain varying shares of the estate which, had the 'will interference' remained hidden, would have amounted to between **\$800.000 and \$1 Million dollars.**
- Mr. X. was named as the sole executor and the sole trustee of a substantial trust fund for the ongoing care of my father's animals.

The missing will:

- In around 1992 my father's [REDACTED] were released from his property under suspicious circumstances.
- As the animals were no longer in his care the trust fund was no longer necessary.
- Shortly after the release of the animals, my father drew up a further will once again, with the assistance of his 'friend' Mr. X.
- This will was divided into 10ths and under the terms of this will **Mr. X, received a much lesser amount and his associates received nothing.**
- After my father's hospitalization in mid July 1994 (see following page) he insisted that his personal copy of this will was on a large bulldog clip in his kitchen with his other 'important papers' and that solicitor S.J. had the original in his care for safekeeping, however, while the other important papers were on the bulldog clip, **the copy of the will of around 1992, was missing.**

3.

- Solicitor S.J. was to later deny any knowledge of the existence of this will and **both he and Mr. X. resolutely claimed that the will of the 14th December 1989, was my father's last will although my father adamantly claimed it wasn't.**
- In Late August 1994, Mr., X. and Mrs. T. advised me that prior to my arrival in Sydney, they had gone through my father's house and had removed some items for 'safekeeping'; however, **they refused to tell me what these items were.**

My father's hospitalization:

In mid-July 1994, a nearby caravan park attendant called the Police after becoming concerned when my father had not called in for his newspapers for a few days. Subsequently the Police broke into my father's putrid, ramshackle house and found him unconscious on the floor. They admitted him to hospital where he remained for seven weeks.

At this time, he had no wearable clothing and no decent bedding. The single bed mattress he slept on was filthy and saturated in urine and the two toilets in the house were blocked and overflowing with human excrement. His house was infested with rats, mice and white ants had totally demolished some of his furniture. His home was unfit for human and animal habitation.

Hospital records acquired after my father's death in 2002 revealed:

- Staff estimated that he had been unconscious in his home for 3 or 4 days.
- They also estimated that he had not bathed or changed his clothing for well over 2 years.
- He was described as an odorous old man and had to be soaked in a bath for over two hours to remove the dirt from his body.
- His toenails were like claws.
- He was diagnosed to be in the early stages of dementia and he had Parkinson's disease.

Note:

At this time my father's local GP had not diagnosed that he was suffering from Parkinson's disease and this shows how little time the GP spent with my father.

Hospital records subpoenaed during the will dispute revealed that Mr. X. advised a social worker:

- **He had arranged for cleaning contractors to clean out my father's home so that he could return to live in it.**
- **He had paid a plumber \$400.00 from my father's accounts to have one toilet unblocked.**

4.

Mr. X's plan to have my father return to his house failed as a result of a Hospital Occupational Therapist visiting his property and seeing that it was unfit for human or animal habitation.

During the 'will dispute':

- Mr. X. admitted paying a plumber \$400.00 from my father's accounts, to unblock one toilet.
- **He denied ever suggesting that my father should return to live in his house.**
- **He denied my claim that he advised me to hire a high pressure hose to hose the house out so that my father could return to live in it.**

A Hospital Occupational Therapists report of my father's living conditions:

General background:

- Patient lives alone in own home which is almost fully paid off. (Mr. X. or my father provided this information)
- Patient's 'friend' (Mr. X.) reported that patient had not allowed anyone inside the house for a long time. (This was not true)

Back and front yard:

- Very Overgrown.

Laundry:

- Was outside unused and rusted.
- Filled with cobwebs and animal excretion.
- Patient's clothes were unwashed and very soiled.

Bathroom:

- One bathroom had a bath in it that was leaking.
- Bath filled with rubbish.
- Shower had had an animal living in it.
- Sink very dirty.
- Medicine cupboard was filled with empty medicine bottles and tubes of cream.
- Another shower at back of kitchen but was full of objects and obviously never used.

Toilet:

- Two toilets.
- One at the back of the kitchen was blocked and very dirty.
- The other, near the other bathroom was blocked and full of human feces.
- Patient had obviously been flushing toilet and it had been running over by the mess on the floor.

5.

Kitchen:

- Sink full of clutter.
- Water still running.
- Phone there but not on.
- Stove dirty and unused.
- Filth all over floor. (Animal excreta)
- Patient apparently nursed sick [REDACTED] on kitchen floor.
- Tables were covered in rubbish.
- Patient had dropped his trousers just outside kitchen door and they were soiled.
- Patient was obviously(unable to read this comment)

Bedroom:

- Very cluttered.
- Dark and damp.
- Bed was unmade and rotting obviously from the many times the patient has been incontinent.
- Linen piled on bed was putrid.
- Some clothes were on the floor and were also putrid.
- Bedroom door would not open properly and was falling to bits from white ants.
- White ants had eaten some of the furniture.
- Access very limited due to clutter in room.
- Patient was using the bush for a toilet.

Lounge room:

- Completely cluttered.
- A few large arm chairs that had objects sitting on them.
- The upholstery had been destroyed.
- Empty meals on wheels trays were stacked in the corner (many of them).
- The floor throughout the house was covered in straw, animal droppings and dirt.
- Fireplace full of ashes.
- Fridge in lounge room had beer and chocolate in it.
- Electricity still on.
- Cobwebs all throughout the house on ceilings and walls.
- Mildew on walls and ceiling.

Overall:

- The house was very dirty, filled with cobwebs and animal excrement.
- There had been rats, but they had gone.
- **It is amazing that the patient survived for so long living in such conditions.**

6.

The rats and mice were still in residence in September 1994 and not mentioned was the abhorrent odor that permeated throughout the house.

I became aware of my father's hospitalization through the local meals on wheels organization after I had been unable to contact him by phone on his birthday on the [REDACTED] in 1994.

I had spoken to them on other occasions when I was unable to contact him. **They had my contact details but they failed to advise me about his hospitalization and instead they advised Mr. X. who had instructed them that he was the person to contact if there was a problem.**

After speaking to hospital staff, I drove to Sydney in late August 1994 and I initially expected to be there for one week, however, because of his many personal needs, I spent 4 weeks in Sydney and during this time I provided for his needs and arranged for his placement into hostel care in a Retirement Village without any assistance from other family members who knew of our father's hospitalization and lived locally.

During my time in Sydney Mr. X and his associates subjected me to various 'mind games' which are described further on page 15 of the enclosed 'case study'.

The mind games resulted in me speaking to my Father's GP who advised me to approach the Guardianship Tribunal/Board. This was when I became aware of this Tribunal.

As I wasn't comfortable taking this step I sought advice from the NSW Fraud Squad as I believed Mr. X. and his associates were involved in wrongdoing in connection with my father's wills, however, this move proved to be futile as the person I spoke to advised me to:

- **Spin my father a story and get some money out of him myself.**

I also raised my concerns with staff at the hostel and was advised:

- **We see this happening all the time and we can't do anything about it.**

I then advised a Chamber Magistrate of my concerns and he advised me that if I should attempt to locate the 'missing will' otherwise the earlier will of the **14th December 1989** would be seen as my father's last will.

I then realized that the mind games Mr. X. was subjecting me to were aimed at having me approach the Guardianship Tribunal (Board) to secure the will of 1989 as my father's last will.

7.

After speaking to the Chamber Magistrate in late September 1994, I asked my father to give me Power of Attorney so that I could obtain a copy of the will solicitor S.J. was holding his behalf.

My father agreed but insisted that Mr. X. was to have joint Power of Attorney with me. At this time he appeared to be frightened not to involve Mr. X.

By late September 1994, Mr. X. had a 'genuine concern' for the security of the will of the 14/12/1989 for the following reasons:

- My father's hospitalization resulted in him losing sole control of him.
- My arrival in Sydney in late August 1994 to assist my father with his many personal needs was not welcomed by Mr. X., who, during my four week stay, played various mind games with me and with my father.
- His persistent interrogation of me to find out what I knew of the contents of my father's wills resulted in him finding out that my father had discussed his wills with me and I was aware the will of 1989 had been negated by the will of around 1992.
- After I revealed what I knew regarding my father's wills, **Mr. X. angrily advised me that the will of the 14th December 1989 was still valid and he added "you girls are well provided for"**.
- **He initially told me that he didn't know who my father's solicitor was and he added vaguely that he thought he was in Sydney.**
- When the solicitor's name was required to enable my father to be admitted to hostel care in a Retirement Village, **he reluctantly gave me the name of solicitor S.J. and then revealed that this solicitor was also his own solicitor.**
- He was aware I disapproved of solicitor S.J. having become my father's solicitor.
- **He and solicitor S.J. strongly disapproved of me acquiring joint power of attorney with Mr. X. in late September 1994.**
- The fact that I acquired joint power of attorney with Mr. X. resulted in my father becoming aware that as well as his personal copy of the will of around 1992 having disappeared from his home, the original of this will, which he adamantly claimed was in solicitor S.J.'s care, was also missing.
- Mr. X and solicitor S.J. were aware I was suspicious of them and they both had a 'genuine concern' that armed with the power of attorney; I could expose the fact that they were involved in wrongdoing in connection with my father's wills.

8.

Mr. X's concerns increased when shortly after I returned to Victoria in late September 1994; my father received a letter dated 9th October 1994 from estranged daughter Mrs. C.

- Among other lies, this letter falsely advised him that daughter Mrs. K. was about to become homeless, faced life living on the streets and may commit suicide.
- Mrs. C. and Mrs. K. who prior to this time, hadn't contacted their father or me for over 18 years, then began visiting him for the purpose of taking him to the bank to withdraw funds for Mrs. K. who, at that time was getting divorced and had told her estranged husband that **she had a few tricks up her sleeve to enable her to buy his share of the marital home out.**

A copy of the letter from Mrs. C. was provided to the Guardianship Tribunal by me; however, **like my father the Tribunal members believed all of the claims Mrs. C. made in this letter.**

In November 1994, Mr. X was aware of the letter from Mrs. C. and of the subsequent visits and frequent trips to the bank to make withdrawals for the allegedly soon to be homeless Mrs. K.

How Mr. X. covertly triggered Guardianship action against a person with a disability, for his own best hidden financial interest

Step 1:

He created a genuine reason to prompt Guardianship action.

I can't substantiate this information as it was provided by my father after the Guardianship hearing however, comments made to me by Mr. X. at my father's funeral (which I arranged) supports my father's claims.

In mid-November 1994, my father who prior to this time was adamant his property would not be sold until after his death, yet in mid-November 1994 he suddenly placed his property on the market with a reserve price of **\$1 Million dollars which was less than half of its value.**

For some time after the Guardianship hearing he consistently and adamantly claimed:

- Mr. X told him to sell his property to help his family.
- Mr. X. told him that placing a low reserve price on the property would attract more interest and have people fighting over it like bees around a honey pot.
- Once the Guardianship action was put in place and prior to the date of the hearing Mr. X. instructed my 'very easily influenced' father to take the property off the market and this action left my father in a very confused and angry state.

9.

Step 2:

He influenced others of use to him to approach the Tribunal for a ‘financial management order’.

As soon as the property was ‘on the market’ Mr. X, who had joint P of A with me at this time, influenced others of use to him into approaching the Tribunal for a ‘financial management order’.

Applicant 1 was my father’s GP.

Mr. X. contacted the GP and advised him that he was concerned about my father as:

- He was selling property in an irrational manner.
- **Since one daughter had gained power of attorney via a new solicitor, over \$20.000 had gone from his accounts.**
- Discussions between Mr. X and the GP resulted in it being decided that the GP should approach the Tribunal as **it would hold more weight as he was the treating GP.**
- **Solicitor S.J., who was being kept up to date with the proceedings by Mr. X, also contacted the GP** to obtain a written opinion of my father’s ability to handle his own affairs and without my or my father’s knowledge and the GP dutifully obliged.

This GP took over the local Medical Practice in late 1989 and as he would not have known anything about my father’s financial or legal dealings, his opinion would have been contaminated by Mr. X’s opinion.

- This letter was provided to the Guardianship Tribunal by solicitor S.J.

During the will dispute Mr. X. claimed:

- **He didn’t know who my father’s solicitor was.**
- **He knew solicitor S.J. had done a will for him, but he didn’t think he was his usual solicitor.**

10.

After lodging his application dated [REDACTED] 1994, which the Tribunal didn't receive until the [REDACTED] 1994, **on the 14th December 1994, the GP wrote to Mr. X. and advised him:**

- Under the direction of the local ACAT team including a prominent Geriatrician who was responsible for his care in hospital and two of his daughters (Mrs. C. and **June**), he had approached the Guardianship Board.
- In view of your power of attorney and as the executor of his will in this case and also **your close friendship, I am sure that the Guardianship Board would contact you in the near future.**

Note:

At this time the GP was confusing me with my sister Mrs. K., as I was in Victoria and prior to being contacted by the Tribunal in late 1994, I knew nothing about the action occurring in my absence.

Applicant 2 was formerly estranged daughter Mrs. C.

After learning of the impending 'property sale' for less than its value, my sisters Mrs. C. and Mrs. K., who until six weeks prior to lodging a 'financial management' order' application, hadn't contacted their father or me for over 18 years, **had a 'genuine concern' for their inheritance.**

- Mrs. C. initially contacted the GP who without mentioning the source of his information **advised her that over \$20,000 had gone from the accounts since I gained power of attorney via a new solicitor.**
- The GP then gave her the name and contact details of her father's 'friend' Mr. X.
- Mrs. C., who until that time had no prior knowledge of Mr. X. and no knowledge of his real interest in our father, rang Mr. X. and initially spoke to **Mrs. T. who told her that a large amount of money had gone from the accounts since I took over our father's affairs.**
- **Mr. X. confirmed Mrs. T's claim of large amounts of moneys having gone from the accounts..... and he advised Mrs. C. to approach the Guardianship Tribunal for a 'financial management order'.**

11.

In her subsequent 'financial management order' application, Mrs. C. advised the Tribunal:

- Of the GP's claim of over \$20,000 having gone from the accounts.....
- A large amount of money had gone from the accounts since my sister June took over her father's affairs.
- When she visited her father on the 5th November 1994 he had \$26,000 in his bank account.
- When she visited him again on the 26th November he only had \$10,000 in his bank account.
- My sister June was not provided for in our mother's will and no doubt, she is angry about that.
- My sister June was involved in a past property dispute with our mother and me, and we won.

Note:

When the OPC took over my father's finances after the Guardianship hearing there was just over \$19,000 in the accounts.

What Mr. X. achieved by influencing GP and Mrs. C. to approach the Tribunal.

- As he had to ensure I wasn't placed as the 'private financial manager' where I would have the power to investigate his past financial and legal dealings with my father, **he drew attention away from himself and successfully demonized me in the eyes of the GP, Mrs. C. and the Tribunal members.**

Past NSW Guardianship Presidents have stated in their annual reports, that once a 'financial management order' has been placed over a person; **it is very difficult to prove capacity.**

- By influencing the GP to take Guardianship action Mr. X. and solicitor S.J. obtained a written report of the GP's opinion of my father's ability to handle his own affairs and as this GP wouldn't have known anything about my father's ability to look after his own affairs, Mr. X's opinion would have contaminated the GP's opinion.
- Daughter Mrs. C. was influenced to take Guardianship action in order to strengthen any future claim Mr. X. would have on my father's 'capacity', should he draw up a further will after this time.

After loading the gun and influencing the GP and Mrs. C. to fire the bullets, all Mr. X. had to do was sit back and wait for the Tribunal to contact him.

12.

Step 3:

Only tell the Tribunal what you want them to know and what you know they want to hear.

The Tribunal Investigation Officer's telephone contact with Mr. X:

As Mr. X. was 'falsely' described as **'the person who had frequent contact and took a personal interest in my father's welfare, without payment'** by the GP and Mrs. C. [REDACTED] the Tribunal Investigation Officer who also had no idea as to what is really going on, contacted Mr. X. who claimed:

- He didn't know how the property came to be put up for sale.
- **He had been very active** in ensuring the property was not sold for less than its true value.
- [REDACTED] showed him a letter he had signed agreeing for the property to be sold for **\$1 Million.**
- He told [REDACTED] not to sell the property for this amount.
- He also saw a letter from the Agents saying that an offer had been received for this amount.
- He had contacted agents in the area and was told the property would be worth \$1.5 Million to \$2 Million dollars.
- The agents stated that if it was sold for \$1 million it would be 'regarded as a steal'.
- Owing to the fact that [REDACTED] was **'very easily influenced by whoever spoke to him'** and the **conflict within the family, it would be preferable for an 'independent person' to manage his affairs.**

Contradictory evidence regarding Mr. X's claims of above:

- After the Guardianship hearing, my father adamantly denied writing any letter of acceptance of an offer for \$1 Million dollars.
- He did not possess a writing pad.

13.

Documents subpoenaed from the Estate Agents during the 'will dispute' revealed:

- My father had received and **refused an offer of \$1 Million dollars.**
- He had also refused a **subsequent offer of \$1.2 Million dollars.**
- He had advised the Agents that he wanted the property to be auctioned, **but he wanted to speak to an (unnamed friend) and his solicitor first.**

Other relevant information:

- Mr. X did not provide the 'alleged' letter of acceptance of the offer of \$1 Million dollars as evidence to the Guardianship Tribunal in February 1995 and he was unable to provide it as evidence during the NSW Equity Court 'will dispute', **because no such letter ever existed.**
- Mr. X had no need to contact agents regarding the property value, **as he was well aware of the value of the property.**
- During the 'will dispute' **solicitor S.J. was 'conveniently' unable to locate the notes he made in connection with the drawing up of the will of the 14th December 1989.**

My father's telephone calls to Guardianship Investigation Officer:

While in an extremely confused and agitated state he made numerous calls to above officer:

On the 6th February 1995 he rang the Investigation officer and he stated:

- He did not require a financial manager. It was only after Mrs. C. found out about the reserve that she started to doubt my ability.
- I think I cancelled the Power of Attorney that I gave Mrs. Walker.
- Mr. X. may have Power of Attorney. I think I gave it to him. I'm not sure.

As stated previously on the 3rd February 1995 which was just two weeks prior to the Guardianship hearing of the [REDACTED] 1995, Mr. X became the sole executor of the will of the 2nd December 1994 and he also became the sole Power of Attorney.

14.

The solicitor who represented my father at the Guardianship hearing was also responsible for the drawing up of the will of the 2nd December 1994 and **he made the changes to the executors and power of attorneys on the 3rd of February 1995.**

During the 'will dispute' with Mr. X. this solicitor provided us with documents which exposed the fact that:

- **Mr. X. and Mrs. T. were in my father's room at the time the changes to the executors and powers of attorney were made.**
- **Mrs. T. witnessed and signed the codicil which was added to the will.**

On the 9th February 1995 my father rang Investigation Officer and stated:

- **I would like to nominate Mr. X. [he quoted X's name and prominent position].**
- **I would like Mr. X to help me in every way possible.**
- **I don't want to sell never, never, not during my life.**

In regard to my father's calls to the Tribunal investigation Officer:

- I witnessed Mr. X and Mrs. T. exerting undue influence over my father who at this time was the sole occupant of a hostel room.
- At this time I was in Victoria and Mrs. C. and Mrs. K. had ceased visiting him.
- This gave Mr. X and Mrs. T. who would only speak to my father alone, behind a closed door ample opportunity to deliberately anger and confuse him, turn him against others and instruct him as to what he was to say or not say to the Guardianship Tribunal.
- My father fully blamed Mrs. C. for the Guardianship action and he was extremely angry and hostile towards her.
- Like me at that time, he was not aware of Mr. X or the GP's involvement in the Guardianship action and if he had known of their involvement, he would have been angry and hostile towards Mr. X. and he wouldn't have wanted him to manage his affairs and as Mr. X. was to later claim that my father lacked capacity on the 2nd of December 1994, it is interesting that he was able to locate dial the correct number to speak to the Tribunal Investigation Officer.

I firmly believe Mr. X. and Mrs. T. were behind the call my father made to the investigation officer on the 9th February 1995.

15.

The blind leading the equally blind in Guardianship matters:

The GP took over the local medical practice in 1989 and he had no prior knowledge of my father, therefore he wouldn't have known what occurred prior to that time.

- In his 'financial management order' application he stated that **my father's 'closest friend' and 'former solicitor' S.J. want the Guardianship Tribunal involved.....**

The GP, was aware of my father's self-neglect and inhumane living conditions and didn't have access to my father's bank accounts at any time, **mislead the Tribunal in his application by placing Mr. X's name under the heading of:**

- **Does the person have a close friend or relative who has frequent contact and takes a personal interest in the person's welfare, without payment''.**

The GP placed the names of Mr. X. and a Hospital Geriatrician who is also a [REDACTED], under the heading of:

- **The Tribunal will need one or more doctors or other reports about the person's ability to manage their personal or financial affairs.**

Mr. X. only told the Tribunal what suited his hidden purposes and the ACAT team and the prominent Geriatrician wouldn't have had any idea as to what was 'really' going on at this time.

As my two sisters hadn't contacted our father for over 18 years prior to mid October 1994, they were unaware of Mr. X's existence or of his real interest in our father therefore, they accepted the GP's claim of Mr. X's 'friendship and concern' for our father, without question.

Mrs. C and Mrs. K. had seen our father's squalid living conditions prior to the Guardianship hearing yet, Mrs. C. also misled the Tribunal by placing Mr. X's name under the heading of:

- **Does the person have a close friend or relative who has frequent contact and takes a personal interest in the person's welfare, without payment''.**

The expert Tribunal members were aware that Mrs. C. had been estranged from our father for 18 years prior to her lodging an application six weeks after she regained contact with him, yet, neither she or the GP were placed under scrutiny as to what Mr. X. had been doing for our father or how they knew he wasn't in receipt of any payment.

16.

After the Guardianship hearing of the [REDACTED] 1995, Mrs. C. wrote to the GP and made the following statements:

- I am very pleased by the decision of the Guardianship Tribunal to appoint Mr. X. to be father's financial manager and glad to see that the decision did not cause father any distress.
- My sister June wrote several letters to the Tribunal which astounded me as they were full of lies....
- She went too far, however, when she wrote a three page letter to the Tribunal full of accusations, and no doubt lies, about Mr. X. his secretary Mrs. T. and solicitor S.J.
- I think father is extremely lucky to have Mr. X. for a friend and have no doubt that his financial affairs will be managed from now on.

As Mr. X. became the 'sole executor of the will of 2nd December 1994 on the 3rd February 1995, Mrs. C. rang him a few days after our father's funeral and as she and Mrs. K were in a hurry to get 'their inheritance' she asked Mr. X. when he would be putting the will in for probate.

She was shocked when he angrily advised her:

- **"Get yourself a good solicitor because I will be putting the will of the 14th of December 1989 in for probate and I am contesting the will of the 2nd of December 1994 on the grounds that "Your father lacked the capacity to instruct a solicitor and he didn't know of approve of the contents of the will....."**
- **"You will have a hard time proving that he did have capacity"**

Mrs. C. then had to approach me and ask for my assistance in the 'will dispute'.

As Mr. X's 'star witness' for the purpose of the 'will dispute' the GP provided Mrs. C's letter praising Mr. X. and demonizing me as evidence on Mr. X's behalf for the following reasons:

- To promote Mr. X's claim of his 'friendship' and concern for my father.
- To have me seen as an unreliable witness.

17.

The Tribunal relies on relevant and credible information:

I put my concerns in writing regarding both, my sister's actions after our father's hospitalization and Mr. X, Mrs. T and solicitor S.J.'s involvement with my father and these concerns included:

- Over the years my father had discussed his wills with me.
- I was unable to locate his last will. (the missing will)
- Mr. X initially advised me that he didn't know who my father's solicitor was.
- He later advised me that his own solicitor was also my father's solicitor.
- Mr. X and Mrs. T had gained access to my father's bank accounts.
- They also held books of blank cheques which my father had pre-signed.
- They were evasive when questioned regarding their access to the bank accounts.
- During conversations with Mr. X. he frequently mentioned my father's will.
- He questioned me to ascertain if I was aware of the contents of my father's will.
- He told me that there was a 'trust' in the will and that my father had provided for his family.
- He is or was a beneficiary in my father's will, and is or was a trustee of a trust which he claimed was still valid, although my father insisted it wasn't. (A missing will)
- It appeared strange to me that Mr. X. appeared to know more about the contents of my father's will than my father did.
- Mr. X objected to me having joint power of attorney with him.
- On receipt of the power of attorney, I organized for the local solicitor to have my father's will sent to him to keep with the original power of attorney for safekeeping. I intended taking a copy of this will to my father to ensure that what he thought was in it, was correct.
- I fully expected there would be a problem obtaining this will and I was correct.
- When I went to collect it there was a letter there saying that my father had instructed solicitor S.J. that the will was to stay with him.
- I told my father I felt solicitor S.J. had something to hide as he did not want me to see what was in the will.
- My father rang solicitor S.J. and I then collected a copy of the will without further problems.
- On returning to my father's room, I found it to be the will with the trust in it of which I already had a copy.
- My father once again said that this was an old will and he had done a much easier one.
- During my father's hospitalization, in Mr. X's presence, Mrs. T was overheard instructing him: "If you go to see your solicitor Garth, you go alone and don't take June".
- My father was happy to have me around while he was in hospital; however, he became different after visits from Mr. X and Mrs. T.
- All of these goings on have done nothing to alleviate my concerns and with my father telling me that he would sign anything Mr. X. put in front of him without reading it, I feel I have reason to be concerned.
- Mr. X has too much control over my father and as much as he insists he only has his best interest at heart and is not doing anything for financial gain, **I don't believe him.**

18.

Regardless of my concerns containing information which should have raised a **RED FLAG** to the possibility of prior financial exploitation by Mr. X. i.e. a change of solicitor to Mr. X's own solicitor, access to bank accounts and pre-signed cheques, evasiveness when questioned regarding this access, the missing will etc., regardless of the allegations of 'missing monies' directed at me, being false and misleading, **the three expert Tribunal members saw my concerns as lacking credibility and not being relevant to legal decisions they had to make and they subsequently falsely concluded:**

- **Mrs. Walker has expressed some distrust in her correspondence to the Board as to the actions and motivations of Mr. X, but he seemed to this Board to be open, forthright and a most suitable person to be appointed because of his long term relationship with [REDACTED] and [REDACTED] obvious reliance and trust in him.**
- **Mr. X has indicated his willingness to act.** The Board accepted that he could interact with [REDACTED] so that [REDACTED] within the limits of his dementia disability which has led to this management order may be able to influence the broad directions of the management of the estate.
- The Board thought that Mr. X could bring to the task of management an ingredient of affection and friendship which can add to the task of management. A long knowledge of the person and his interests may contribute to the task of management.

In their subsequent findings the Tribunal/Board members also falsely concluded:

- **The Board is confident that it has given 'due weight' to all of the evidence before it when exercising its power to appoint a manager for [REDACTED] estate and throughout the Board has been concerned to achieve the best interests of [REDACTED]. himself.**

In response to the above, I am confident:

- **The Board failed to give 'due weight' to all of the 'evidence' before it and I firmly believe that in order to be seen as a credible and reliable witness, I needed to have a 'professional standing' which was equal to or superior to that of the GP, the prominent Geriatrician and Mr. X. [REDACTED]**
- **The Board members failed to abide by the laws of natural justice as they blatantly discriminated between parties to the proceedings.**
- **The Board members made legal decisions with reckless disregard for my father's basic human rights, his welfare and best interests.**

19.

The hearing of the [REDACTED] 1995:

Those present at the hearing were:

- My Father was driven to the hearing by Mr. X. and this gave him at least an hour to instruct him what to say and what not to say.
- I attended; however, in order to do this I had to lodge an application.
- My two sisters Mrs. C. and Mrs. K.
- Mr. X. [REDACTED] was invited to attend by the Tribunal as a result of him being falsely described by the two applicants as 'the person who had frequent contact and had a 'genuine concern' for my father, without payment'.
- The solicitor who represented my father at the hearing, also acted on behalf of my father in respect to the property sale.

Prior to the hearing beginning Mr. X. asked me if the two women sitting nearby were my sisters and after advising him that they were, he introduced himself to them and Mrs. C. then showed him a copy of the letter I had written to the Tribunal regarding my concerns about him and his associates actions.

On returning to sit with me Mr. X. quietly stated in a threatening manner **"I am warning you June, I am not a man to mess with"**.

What evidence or allegations were tested during the hearing?

The only evidence/allegation tested at the hearing of the [REDACTED] 1995, was the GP's allegation of "over \$20,000 having gone from the accounts since I gained power of Attorney via a new solicitor"

As the GP withdrew his application after he became aware that Mrs. C. had lodged an application, he didn't attend the hearing; however the information he had provided in his application was used as evidence.

20.

When the Tribunal members discovered that “over \$20.000 had not gone from the accounts’, instead of contacting the GP who had stated that “it had been reported to him that over \$20.000 had gone.....” **to determine the name of the person responsible for this false allegation, they simply concluded:**

- **We are satisfied that the GP was under a misapprehension regarding the missing \$20.000 or so.**
- **He may have been confused by the amount of money withdrawn to pay for [REDACTED] admission to the Retirement Village.**

Mr. X. sat in silence while this allegation was being ‘tested’ and no doubt, he was also very satisfied with the false conclusion reached by the three expert Tribunal members.

During the hearing the solicitor representing my father advised all present:

- He had drawn up a ‘new will’ on behalf of my father on the **2nd December 1994.**
- The estate was equally divided between my two sisters and me.
- My two sisters and I were all named as executors.
- My two sisters and I were initially all given power of attorney, however, prior to the solicitor leaving my father’s hostel room on that day, he change his mind and made me the sole power of attorney.

He also stated:

- On the **3rd of February 1995** he returned to my father’s hostel room to make changes to the executors and the power of attorney.
- **These changes resulted in Mr. X. becoming the sole executor and the sole Power of Attorney.**

Mr. X. sat in silence while this matter was being discussed.

Documents obtained from this solicitor and information he provided, revealed that when he made the changes to the executors and Power of Attorneys on the 3rd February 1995, **Mr. X. and Mrs. T. were present and Mrs. T. signed the caveat which was added to the will.**

21.

As changes to wills, executors, powers of attorneys etc. are signs of possible financial exploitation, instead of placing the solicitor under scrutiny at this time, the expert Tribunal members concluded:

“We are satisfied that [REDACTED] was acting in an irrational manner when he had changes to his executors and powers of attorneys”.

During the ‘Will Dispute’ Mr. X. claimed in a sworn affidavit:

- **He didn’t know of the existence or contents of the will of the 2nd December 1994 until after [REDACTED] died in 2002.**
- **He didn’t know the contents of any other will that [REDACTED] made.**
- **He didn’t know who had his will or where it was located.**

Note:

As mentioned in the information I provided to the Tribunal:

- **In September 1994, he had angrily advised me that “the will of the 14th December 1989 was still valid and you girls are well provided for”.**
- **Documents subpoenaed from wildlife authorities revealed that in around mid-1989 prior to the will of December that year being finalized, he advised them that he had been left money to care for the animals if anything happened to my father.**

22.

My father's situation after the Guardianship hearing:

Having secured their separate financial interests, Mr. X. and daughters Mrs. C. and Mrs. K. ceased visiting the subject of their 'urgent' financial management order applications and 18 months after Mr. X was placed as the 'private financial manager' under the 'normal supervision of the Office of the Protective Commissioner (OPC):

- The clothing I purchased for him prior to the Guardianship involvement had worn out or no longer fitted him.
- Hostel staff were providing him with cast off clothing belonging to other hostel residents, as those who were seen as having a genuine concern for his welfare, failed to take any interest in providing for his on-going personal needs.
- On becoming aware of my father's need for new clothing and being unable to travel to Sydney in person, I contacted a local department store and arranged to have a staff member visit him at the hostel to take his measurements and then provide for his clothing needs.
- Over a year after he vacated his home, my father was still receiving electricity and water accounts, as Mr. X. failed to have these services terminated.
- My father's personal mail, much of which came from overseas as a result of his work with [REDACTED] being covered in various newspaper and magazine articles were being redirected to the dead letter office.
- Taps on the property and in the house were left running.
- Anything of value was stolen from the property i.e. gates, windows, fencing, doors, door fittings, light fittings, furniture, tools and guttering etc.
- What wasn't stolen was smashed.
- Derelicts were using the property for shelter.
- Locals were using the property as a rubbish dump.
- As the property was a 'fire hazard' the local council placed an order over it to have it cleaned up, however, this order was ignored for well over 12 months.

As a result of the this, in round September 1996, I wrote a letter of complaint to the OPC and provided them with a video showing them the state of the property, however, this resulted in Mr. X. going to see my father and making him upset and angry with me for complaining to the OPC.

The 2002-late 2004 NSW Equity Court 'will dispute'.

As I was under the impression that it was an 'offence' to provide false or misleading information in a sworn affidavit and Mr. X, Mrs. T. solicitor S.J. and others involved provided verifiable false and misleading information in sworn affidavits, I brought this to the attention of the solicitor who represented my two sisters and me in this matter and I was advised verbally:

- The judge won't be interested in the fact that people lie in sworn affidavits.
- We expect people to lie in these matters.
- The judge will only be interested in whether or not your father had the capacity to instruct a solicitor on the 2nd of December 1994.
- It's not the person telling the 'truth' who wins, it's the person who plays 'the game' best who wins.

This enabled Mr. X. to play 'the game' for almost three years at the expense of my father's estate prior to him offering to settle out of Court.

Attachment

2

Responses from a former NSW Guardianship Tribunal President and former

Ministers for Ageing and Disabilities

regarding my complaints of improper practices of

NSW Guardianship Tribunal members.

1.

The responses from a former NSW Guardianship Tribunal President and past Ministers for Ageing and Disabilities in relation to my complaints of improper practices of Guardianship Tribunal members.

For some years after my father's hearing I raised concerns with the NSW Guardianship Tribunal regarding the improper actions of the three expert Guardianship members and these concerns included the following:

- Failure to abide by the laws of natural justice by discriminating between parties to proceedings.
- Failure to test the evidence/allegations made by all parties to the proceedings.
- Failure to abide by sections 105 and 106 of the NSW Guardianship ACT of 1987 which states it is an "offence" to provide false or misleading information in an application. Penalty up to \$500.00.
- The Tribunal members fabricating an excuse which had no bearing on reality or the truth, on behalf of an applicant who provided false and misleading information and didn't attend the hearing.
- Failure to give due weight to evidence I provided which should have raised a 'red flag' to the possibility of prior financial exploitation by the person they placed as a my father's private financial manager.
- Failure to be fair to all parties to the proceedings.

I was initially advised "**You have no right to question the Tribunal's reasons for decision**".

My further complaints resulted in a former NSW Guardianship Tribunal President advising me in writing:

Thank you for your letter of the 18th May 1999 in which you complain of the conduct of the hearing of the Guardianship Board (as it was then) which was convened on the [REDACTED] 1995.

Your concerns seem to relate, among other things, to:

- **Your inability to refute allegations made about you in the course of hearing the application in relation to your father, [REDACTED], and**

2.

- Your dissatisfaction of the management of your father's affairs.
- I have read the correspondence sent to you in answer to your letter of the 6th April 1999.
- I confirm the information provided to you on that occasion that **the Tribunal is required to satisfy itself as to whether a person is incapable of managing their affairs, and if not, who should be appointed manager if there is a need for a formal order.**
- I appreciate you are distressed that allegations have been made against you in the context of determining an application before the Tribunal.
- Evidence before the Tribunal is exempt from proceedings under the Defamation Act so **as to ensure the interests of vulnerable people are protected.**
- **It is not the role of the Tribunal to determine the truth or otherwise of allegations made before it,** but rather to consider whether a person is incapable of managing their finances and whether there is a need for a formal order.
- **I do not propose to initiate action with regard to the provision of 'false and misleading Information' against parties to the application involving your father.**
- With regards to the actions of the appointed financial manager, **a private financial manager is supervised by the Office of the Protective Commissioner.** If you do not consider the manager is acting in the best interests of your father, you can seek a review of their appointment.
- I note the appropriate application was previously forwarded to you. I enclose another copy for your information.

My response to the comments of the former Tribunal President:

As the only allegation 'tested' at the hearing was the GP's allegation of **"over \$20.000 has gone from the accounts...."**, proved to be false and misleading, I wrote to the former Tribunal President and asked him to explain:

- Why I needed to refute allegations made against me, when the only allegation tested at the hearing was the GP's claim of over \$20.000 having gone from the accounts since I gained P of A via a new solicitor and this allegation proved to be false and misleading?

3.

- As it is an offence to provide false or misleading information in an application, why wasn't the person responsible for providing false and misleading allegations against me, contacted and placed under scrutiny?
- Why didn't the applicants I directed allegations against, need to refute the allegations I made?
- Is it legal for the Tribunal members to fabricate an excuse on behalf of an applicant who provided false and misleading information in an application and didn't attend the hearing?

The former Tribunal President failed to reply to my questions.

My complaints to the OPC regarding the 'private financial manager' resulted in them very condescendingly advising me to **"take it up with the private financial manager"** which proved to be futile as he failed to respond to my phone calls or to my letters.

The claim of evidence/allegations made before the Tribunal by applicants being exempt from proceedings under the Defamation Act **is to ensure that the interests of vulnerable people are Protected**, is absolutely ludicrous as the only people this protects are the applicants.

As the principles which underpin the responsibilities of Guardianship Tribunals clearly dictate that the welfare and interests of the person with a disability are given paramount consideration by the Tribunal and they are also meant to protect them from abuse, neglect and exploitation, **surely determining the truth or otherwise of allegations made in applications, would be paramount to ensuring that legal decisions are made in the best interest of the 'client' and not in the best interest of applicants.**

- Sections 105 of the NSW Guardianship Act of 1987 states **'It is an offence to provide false or misleading information in an application.**
- **Section 106 of the NSW Guardianship Act of 1987 states 'Penalty up to \$500.00'.**

While the above appears to provide some form of protection to the subjects of applications, the fact that **it is not the role of the Tribunal to determine the truth or otherwise of allegations made in applications** and the former NSW Guardianship Tribunal President's comment of **"I do not propose to initiate action with regard to the provision of false and misleading information against parties..** clearly shows that sections 105 and 106 of the NSW Guardianship Act of 1987 provide no protection whatsoever to the vulnerable people who become involuntary subjects of 'financial management order' applications.

4.

Further to the above a **penalty of up to \$500.00** for the provision of false or misleading information is an insult to the subjects of applications and it is hardly a deterrent when **unscrupulous individuals stand to gain large amounts of money, shares, properties etc.**

Regarding me seeking a 'review' of Mr. X's placement as the private financial manager', the only option I had at that time was to take Supreme Court Action and like most working class Australians, I didn't have the funds required to take this action.

I've shown you Mrs. C's opinion of the claims I made regarding Mr. X., Mrs. T. and solicitor S.J's involvement with our father, her appreciation of his 'friendship' with our father and her approval of his placement as the private financial manager therefore, as Mrs. C. and Mrs. K. wouldn't have supported me at this time, any attempt I made to have Mr. X. [REDACTED] replaced as the 'private financial manager' would have been futile.

As the former NSW Guardianship Tribunal Presidents statement of "**It not being the role of the Tribunal to determine the truth or otherwise of allegations made before it**" opposes the Tribunal's role of protecting their clients and making legal decisions that are in their best interest, I again complained to the former NSW Guardianship President, who provided me with the following explanation of his previous comment:

Your letter stresses the comment made in my previous letter concerning **the establishment of the truth or otherwise of allegations made to the Tribunal**. However, perhaps some further explanation is warranted **given your interpretation of what was previously stated**.

- In a number of cases before the Tribunal, a range of allegations get made that are not directly relevant to the role of the Tribunal.
- The role of the Tribunal, as has been pointed out before, is to determine whether a person is able to manage their own affairs or make their own life decisions and if not, whether there are decisions that need to be made on their behalf and if a substitute decision-maker should be appointed for them. The Tribunal then needs to determine who should be appointed to make decisions on their behalf.
- Where allegations are made that are **not directly relevant** to the Tribunal determining those legal questions of disability, incapacity and need, **it is not the role of the Tribunal to determine the truth or otherwise of those allegations**.
- **The Tribunal does take account of allegations that have been made that are relevant decisions it has to make.**

5.

- **Whilst it does not have the jurisdiction to determine whether wrongdoing occurred**, the Tribunal takes evidence in relation to those allegations to the extent appropriate for it to determine who should be placed as the substitute decision maker.
- Whilst I appreciate you still have ongoing and unresolved concerns, **the Tribunal will not be pursuing the concerns that you have raised in your letter.**

Responses from former NSW Ministers for Ageing and Disabilities:

Note:

At no time did I ask any of the following Ministers to 'interfere' with decisions the Tribunal made.

I raised my concerns re improper practices of the NSW Guardianship Tribunal with the NSW Attorney General and Ministers for Ageing and Disabilities and at no time did I ask them to 'interfere' with decisions made by the then Guardianship Board.

All of these Ministers conferred with the NSW Guardianship Tribunal President and they all repeated the advice previously provided to me by the Tribunal President.

1997: The Hon Ron Dyer MLC Minister for Community Services, Minister for Ageing, and Minister for Disability Services NSW wrote.

- I refer to your letter to the Attorney General's Department dated 14th August 1997 concerning the Guardianship Boards involvement with your father [REDACTED]
- As the Guardianship Board is part of my portfolio your letter has been referred to me.
- **The Guardianship Board is an independent legal Tribunal. It is therefore neither possible nor appropriate for me to comment on or seek to influence decisions made by the Board in carrying out its judicial functions. I am therefore not able to respond to the many issues raised in your letter.**
- As you would be aware many applications received by the Board deal with complex and distressing dilemmas where there is often conflict over what is in the best interest of the person with the disability.

6.

- **The principles which underpin the responsibilities of the Board clearly dictate that the welfare and interests of the person with a disability are given paramount consideration by the Board.**
- Unfortunately, this sometimes means that family members do not agree with the Board's decision.
- Should the OPC believe that Mr. X. is not managing your father's affairs appropriately; an application can be made to the Board to have him replaced.

1999: The Hon Faye Lo Po MP, Minister for Community Services, Minister for Aged Services, Minister for Disabilities, Minister for Women NSW.

- It is not the role of the Tribunal to test every allegation made at a hearing. Rather, **as a fact finding body**, it addresses itself to questions of whether a person is incapable of managing their finances and whether there is need for a formal order.
- **As Minister for Disability Services the Guardianship Tribunal falls within my portfolio responsibilities. However, it is an independent legal Tribunal and it is not appropriate for me to comment on or to attempt to influence decisions made by the Tribunal.**
- I'm afraid I cannot support your call for an inquiry. Courts and Tribunals like the Guardianship Tribunal form part of a judicial arm of Government.
- **Their independence has developed historically as a safeguard against the possible misuse of influence by Members of Parliament.**
- To preserve this independence appeals must progress through the courts, rather than through parliamentary means. **In the case of the Guardianship Tribunal, the relevant legislation states that appeals are to be to the Supreme Court of NSW.**
- I hope this information is of assistance to you.

7.

2004: The Hon Carmel Tebbut MLC, Minister for Community Services, Minister for Ageing, Minister for Disability Services, Minister for Women NSW.

- In your letter you give your views on the procedures that the Guardianship Tribunal should follow in conducting its hearings
- **The Guardianship Tribunal is required, as a matter of law, to operate in a way that is procedurally fair.**
- **I am aware that the Tribunal is committed to conducting its proceedings accordingly.**
- Nevertheless, the legislation establishing the Guardianship Tribunal provides **that the Tribunal is not bound by the rules of evidence and may inform itself on any matter in such manner it thinks fit.**
- Also the legislation provides that proceedings before the Tribunal shall be conducted with **as little formality and legal technicality** and form as the circumstances of the case permit.
- **I am satisfied that the Tribunal meets its obligation to be procedurally fair while at the same time complying with its statutory direction to operate with as little formality and legal technicality as the case permit.**
- I hope this information is of assistance to you.

Attachment

3.

Article published in the [REDACTED] in April 2003 regarding
the will dispute with Mr. X.

This was arranged by Mrs. C.

1.

Will dispute delays cash.

On the first anniversary of [REDACTED] death, his daughters waited for closure. It never came. They are still waiting. At the core of this delay is a dispute over who will get his \$2m estate – his daughters or the ghosts of long gone [REDACTED]

[REDACTED], otherwise known as [REDACTED] came to fame when he first opened his [REDACTED] in the 1960's. He died on the [REDACTED] 2002, leaving a will dated 1994 leaving his entire estate equally divided between his three daughters.

However, close friend and former [REDACTED] Mr. X. believes an earlier will of 1989 should be honored. The 1989 will – of which Mr. X. is executor – shares the estate between the [REDACTED], [REDACTED] three daughters, other people related to looking after the animals and Mr. X. But 200 animals are nowhere to be found.

They are said to have escaped the [REDACTED] through a hole in the fence around 1990 – leaving more than \$400,000 allocated to care for the now non-existent [REDACTED]. This is a trust fund over which Mr. X. would have total control.

After reconciliation with his three daughters in 1994, [REDACTED] made a new will which left his entire estate to them. Mr. X. was made executor of that will in 1995.

In September last year the solicitor for Mr. X. told [REDACTED] daughter Mrs. C. that he would not be presenting the 1994 will because the deceased 'did not know or approve of the contents of the 1994 will and lacked testamentary capacity to make the will'.

Mr. X. who became friends with [REDACTED] after treating the [REDACTED] said he had the responsibility – as executor of the will – to see the wishes of [REDACTED] carried out.

"I don't know how many wills he made, but I have a responsibility to put forward the will I do know he made in 1989, he said. I am aware he made another will but I don't know the contents of it because I was not a signatory to it at the time, I was made executor of it a year later. It is in the hands of the solicitors at the moment, but the sooner it's fixed for all concerned, the better".

Mrs. C. told the [REDACTED] that she and her two sisters would be "contesting that most vigorously because her Father would have known what he was doing".

2.

“My Father was a very eccentric person” she said, “No one is denying that. A man who lived with [REDACTED] is not your average bloke, but he had testamentary capacity when he made the 1994 will”.

“He knew us, was always happy to see us and introduced us to people when we visited him”.

Before his stroke in 1994 forced him to move to [REDACTED] nursing home, [REDACTED] home became virtually a derelict shanty with 20cm of compacted [REDACTED] dropping covering the floors.

[REDACTED] was born in [REDACTED] and hunted crocodiles in far North Queensland before joining the RAAF as an instructor. One of his cadets was killed during a training flight crash landing in 1940.

“My Father was so profoundly affected that he had severe difficulties in maintaining normal relationships within the family and withdrew from social contact” Mrs. C. said.

“Eventually he became an isolated man, a hermit. He was a proud man and wouldn’t seek help and wanted to cure himself but he couldn’t. It beat him and it destroyed our family”.

Attachment

4

UNDUE INFLUENCE AND FINANCIAL EXPLOITATION.

This report was used as an exhibit during the LACA Committees

2006-2007 Inquiry into Older People and the Law.

UNDUE INFLUENCE AND FINANCIAL EXPLOITATION.

Undue influence is a form of psychological abuse, related to the phenomena of mind control defined as the substitution of one person's will for the true desires of another, undue influence generally occurs when the victim is incapacitated by cognitive impairment, physical or mental illness or some other vulnerability such as recent bereavement.

Undue influence is usually accompanied by fraud or duress by the perpetrator, generally someone in a position of trust or authority, who seeks financial gain at the expense of the victim.

How does undue influence occur?

According to Dr. Margaret Singer, a psychologist with expertise in mind-control and brain-washing, the perpetrator usually takes deliberate actions to gain control of the victim.

These actions include:

Isolating the victim:

The abuser attempts to cut off access to the victim by other persons by withholding or controlling phone calls, visits and mail. The perpetrator tells callers and visitors that the victim is asleep, busy, or too unwell for visits and calls.

Creating a siege mentality:

The abuser convinces the victim that no one else cares about the victim, and that family members, clergy, doctors and others are trying to put the victim in a nursing home. The perpetrator reassures the victim that only the abuser will take care of the victim.

Creating dependency:

The perpetrator manipulates the victim's activities, food and medication to create dependency on the abuser. This may include confining the victim to bed, over medicating the victim, or providing inadequate food and liquid that result in physical deterioration.

Promoting powerlessness:

The abuser uses his power to convince the victim that only the abuser can care for the victim. The abuser may threaten the victim with harm, neglect or abandonment if the victim doesn't comply with the abuser's actions and wishes.

2.

Keeping the victim unaware of reality:

Because of the process of abuse, the victim, in the role of a captive, becomes bonded to the abuser as do hostages, prisoners of war, incest victims and abused children.

Who is likely to be a victim of undue influence?

Elderly people with assets such as their own homes, stocks, bonds, and other material and financial assets, are most likely to become victims of undue influence due to their life circumstances. This can include ill health with physical dependency, cognitive impairments, grief and bereavement, and decreased independence in such activities as shopping, bill paying and the need for transportation.

Mentally ill individuals are also at risk for victimization, as are those with developmental delays, chemical dependency, and other such conditions that result in need for assistance with various activities.

What are the risk factors for being a victim of undue influence?

There are a number of identified risk factors that predispose people to being victims of undue influence and financial exploitation.

These include:

- Being elderly, mentally ill, physically disabled, and/or cognitively impaired.
- Living alone, especially in own home rather than in an apartment or condo.
- Being recently bereaved. (Some exploiters read obituaries and prey on widows and widowers).
- Being dependent in transportation and/or shopping.
- Having few local family or friends.
- Being isolated from community activities and health care services.
- Being naive and overly trusting and open with strangers.
- Lacking knowledge about own finances.
- Not having reputable assistance with financial matters.

3.

Who is likely to be a perpetrator of undue influence?

Perpetrators almost always begin with a close and trusting relationship with the victim and most often perpetrators are family members.

- Family members sometimes have a financial duty to the victim as their attorney-in-fact, and use that relationship to take financial advantage of the victim. Authorities have found that oftentimes there is a family member who lives with the victim, sometimes an adult child who never left home, and that person is in a prime position to isolate the victim from others.
- Unrelated perpetrators, such as accountants, trustees, attorneys or guardians, may have a financial duty to the victim.
- Other times the perpetrators are housekeepers, caregivers, neighbors, nursing personnel, physicians, church members, or even clergy.

Occasionally these people deliberately develop a close relationship with the victim with the goal of financial gain.

- Some people “make their living” preying on elderly people and go from one victim to the next.
- Young women may become “girlfriends” of elderly men, and young men may woo older women in an effort to become their “significant others.” The appearance of a new young “friend” in an elder’s life is often causing for concern.

What are some signs of undue influence and financial exploitation?

While it may be difficult to identify a pattern of isolation and undue influence in the early stages of an exploitative relationship, there are certain characteristics that when considered together should raise questions about the integrity of the relationship.

These fall into three categories: (A) victim behavior (B) perpetrator behavior (C) financial implications.

(A) Victim behaviors that may be observed include:

- Victim makes loans or gifts to someone who needs money for car repairs, surgery, etc.
- Victim is never left alone with anyone.

4.

- Victim is pressed into transactions without being given time to contact advisers.
- Victim appears to have been coached when meeting with attorney, accountant, etc.
- Victim seems reluctant to discuss matters that were routine with formerly trusted professionals or family.
- Victim seems sedated or appears to be intimidated or controlled by perpetrator.

(B) Behaviors demonstrated by the perpetrator may include the following:

- Perpetrator speaks for the victim and doesn't allow the victim to speak even when present.
- Perpetrator doesn't appear to have any other means of support other than the victim's income.
- Perpetrator has a controlling and defensive attitude if questioned about relationship to victim.
- Perpetrator denies access to victim by formerly trusted persons including victim's family, friends, Attorney, etc.
- Perpetrator moves into victim's home and promises to care for them in exchange for property upon their death.
- Perpetrator convinces victim that family members, friends and other previously trusted persons are trying to put victim in an institution and take their assets.
- Perpetrator creates alliance with victim's physician by insisting that only the perpetrator can successfully care for the victim.
- Perpetrator takes victim to a new attorney to make changes to estate planning documents, convincing the victim that previous attorney wasn't looking out for victim's best interest.

(C) Financial issues that should raise red flags to the possibility of undue influence and financial exploitation include the following:

- Change in bank or other financial institutions.
- Financial activity inconsistent with the victim's habits and abilities, such as ATM withdrawals.
- Numerous withdrawals or checks to cash, often in round numbers such as \$50.00, \$100.00, \$1,000.00, etc.
- Increased activity on credit cards for purchases not generally made by victim, i.e. gasoline, music and or CD's, electronic stores, etc.
- Withdrawals made from savings in spite of penalties.
- Change in account beneficiaries' attorney, etc.
- New accounts and/or new authorized signers on accounts.

5.

- Change in financial planning documents, such as wills, trusts, powers of attorney, especially when there is question about victim's capacity and/or the will or trust is in favor of a new or much younger "friend."
- Changes in property title, quitclaim deeds or new or refinanced mortgage.
- **Changes in solicitor, stockbroker, physician or other professionals.**

How does one deal with suspected undue influence and financial exploitation?

If there were an easy answer to this question, the prevalence of undue influence and financial exploitation would be less and when it occurred, it would be more easily resolved.

Dealing with these issues requires that people working with vulnerable adults be highly alert to the possibility of victimization and thoroughly scrutinize the relationships and financial transactions of their vulnerable clients.

While many of those working with the elderly assume that caregivers and others involved with vulnerable adults have altruistic motives; the prevalence of abusers is surprisingly high. Some authorities estimate that as many as half of all vulnerable adults may be preyed upon.

Wilber and Reynolds, researchers at the University of Southern California, found that "anywhere from 33% to 53% of elder abuse victims are believed to experience financial abuse."

When any of the warning signs listed above are identified, it is imperative that a trusted family member or professional – or even better, several people working together – insist on a private visit with the suspected victim.

Social workers, especially those with expertise in vulnerable adult issues, can be useful in evaluating these situations and documenting findings of victimization.

It is important to realize, however, that a skilled perpetrator can cause the victim to develop strong loyalty to the perpetrator, a phenomena known as the Stockholm syndrome based on bank hostages in Stockholm who were brainwashed by their captives.

- **The client's attorney should be contacted and notified about legal changes that were made by the perpetrator's attorney/solicitor.**

It is often necessary to contact authorities such as Adult Protective Services or police agencies to force the perpetrator to allow a visit from relatives or professionals such as an attorney, accountant or doctor.

In some cases, the victim can be hospitalized for his/her own protection, and interviewed by authorities in the protected environment.

Thorough documentation of any and all signs of undue influence is helpful in establishing the pattern of isolation, siege mentality, dependency and powerlessness that allows the perpetrator to gain control of the victim. When they receive timely notification of undue influence and financial exploitation, law enforcement officials are willing to prosecute this type of abuse and exploitation.

Undue Influence & Financial Exploitation - A Case Summary

Mrs. J, 88, was a recent childless widow when a neighbor she had known casually began to befriend her.

Mr. T was in his mid-50s, married, unemployed and received worker's compensation for a back injury. He had a lot of free time and began visiting Mrs. J daily.

Mr. J had done all the driving before he died, so Mr. T drove her to the grocery store, beauty shop, doctor's appointments, etc. Initially he used his own car but soon asked to drive Mrs. J's car since it was a fairly new Cadillac.

Mr. T kept the Cadillac tuned up and polished to a high shine, and less than six months after Mr. J's death, Mr. T became the owner of the car.

As the seasons changed, Mr. T took care of Mrs. J's home and yard maintenance, putting up and taking down storm and screen windows, trimming shrubbery, cutting grass and removing snow. Mr. T's wife, Mrs. T., began helping Mrs. J with housework such as cleaning and laundry.

The Ts visited with Mrs. J at least daily, often bringing in a meal or taking her out to eat. Mrs. J always insisted on treating the Ts to meals out since they were so nice and did so much for her. Mrs. J had a niece who lived an hour away with whom she had always been close, but she gradually grew suspicious of her niece and discouraged her from visiting.

The Ts insinuated that the niece wanted to move Mrs. J from her home into an assisted living facility or nursing home, and Mrs. J was adamant about remaining in her home.

Mr. T continued driving Mrs. J to the grocery store, beauty shop and doctor, but was less willing to take her to church services or her weekly church circle group. Gradually Mrs. J became separated from her church family and her only contacts were with the Ts.

Suspicious about Mrs. J's situation were aroused when her bank trust officer received paperwork from a new attorney informing the trust officer that Mrs. J had changed her financial planning documents in favor of Mr. and Mrs. T and was moving her assets to a different bank.

The trust officer attempted to discuss the matter with Mrs. J, but when he called her, she refused to talk or meet with him. He was surprised to find her so distant and almost paranoid on the phone, and was concerned about her mental stability.

Matrix (equivalent to Australian ACAT) was retained to assess Mrs. J's well-being and her capacity to make the changes she was requesting through her new attorney. When Matrix contacted the new attorney, he said that he would certainly co-operate with an evaluation, as he himself felt uneasy about Mrs. J's situation but couldn't put a finger on just why.

When the Matrix nurse arrived at Mrs. J's home, Mr. and Mrs. T were present and were highly resistant to any of the nurse's questions. They also refused to let Mrs. J sign the professional release form that would allow the nurse to obtain medical information from Mrs. J's doctor.

Mrs. J was also resistant to answering questions and insisted that the Ts were her very best friends who helped her with everything.

Based on the Matrix nurse's information and recommendations, the bank trustee sought legal counsel regarding the validity of the new financial planning documents.

In addition, an evaluation was scheduled with a geriatric psychiatrist and Mrs. J was informed by the new attorney that she had to attend the appointment before her new documents could be processed.

The geriatric psychiatrist insisted on meeting privately with Mrs. J and felt that she had been coached. He also found that she had little knowledge of her assets, she did not know who her heirs were, and that she appeared to be controlled by the Ts. Based on his report, the bank refused to honor the new documents and the case went to court.

Following a trial of several days in which the Matrix nurse and the geriatric psychiatrist were primary witnesses, the judge found that the Ts had unduly influenced Mrs. J and had exploited her financially by appropriating her Cadillac, transferring her homestead to themselves, and attempting to gain control of her assets.

The new documents were found to be invalid and the Ts were charged with financial exploitation of a vulnerable adult, fraud and other related charges.