

**Submission of Ms. June Walker**

**The New South Wales  
Law Reform Commission  
Review of the  
NSW Guardianship Act 1987**

██████████  
██████████  
18<sup>th</sup> March 2016

Mr. Alan Cameron  
Chairperson  
NSW Law Reform Commission  
GPO Box 31  
Sydney NSW 2001

Dear Mr. Cameron,

**Re: 1. The misuse of the NSW Guardianship tribunal by hidden or other financial predators.  
2. The misuse facilitating quasi legal process.  
3. Safeguards?  
4. The United Nations Convention on the Rights of Persons with Disabilities (the UNCRPD)**

As I have witnessed the shameful, unintelligible quasi legal process conducted by unmonitored and unaccountable NSW Guardianship Tribunal members that resulted in a hidden perpetrator of the prior financial exploitation of a person with a disability being placed as the victim's 'private financial manager' where he was protected from scrutiny and I was robbed of the opportunity to investigate his past financial and legal dealings with the victim until after his death, I welcome the opportunity to provide a submission to this review.

**1. The misuse of the NSW Guardianship tribunal by hidden or other financial predators.**

The case summary and other examples of the above I provided you with, clearly show that the NSW Guardianship Act of 1987 was seriously flawed at the time of its inception and as nothing has changed in almost three decades, it still is flawed.

After my ██████████ NSW Guardianship Board case in early 1995, I was advised by a member of the NSW Police and two separate solicitors:

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

As the secrecy surrounding this Tribunal and threats of large fines and prosecution these regimes make to the families of people with disabilities, prevent them from speaking out until after the 'person concerned' dies, there would be no record of the number of financial predators who have used the free legal services of this Board/Tribunal for their own financial gain however, I believe the examples I have provided you with are just the tip of the iceberg in relation to the above.

2.

Government funded organizations who provide services to people with disabilities, are aware that this Tribunal is open to misuse however, as they are fearful of losing their jobs or Government funding, they do not pursue this issue.

The Committee that conducted the 2015 Federal Inquiry into Violence, abuse and neglect of people with disabilities in institutional and residential settings, has raised the issue of the **Misuse of Guardianship by Facilities** in their report however, as my submission in which I raised the misuse of the NSW Guardianship Tribunal by financial predators, was classified as 'correspondence' which would be used for research, it was not published and the Committee did not refer to the issues I raised, in their report.

The financial exploitation of older people with or without disabilities is rampant in America and a lot of it is carried out by court appointed 'conservators' (guardians) who could manage the financial affairs of 50 or more wards.

The following article was published in an American newspaper in 2007:

#### **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.

See **National Association to Stop Guardianship Abuse (NASGA)** to see the real situation in America.

3.

**Between 2006 and 2007 the Federal Government instigated a LACA 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 a witness advised the Committee:

- Anybody can front up to the NSW Guardianship Tribunal and make any allegation they wish and then the 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.

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.**

The public were unable to view these submissions, one of which was mine, as the Committee classified them as 'confidential' to prevent the publication of allegations and attacks on individuals.

In the committee's final report the following complaints were listed under the heading of:

**Conduct of Guardianship Authorities:**

- Claims that the Guardianship Tribunal failed to follow its publicly stated processes.
- Lack of information provided by the Tribunal regarding avenues for appeal.
- Lack of transparency and accountability in dealing with family members.
- Acceptance of false information and untested allegations.
- Lack of communication from the Tribunal.
- Denial of representation at hearing.
- Intimidation by a solicitor present at Tribunal hearing.
- A number of witnesses to the inquiry felt that they had been intimidated, bullied or victimized by guardianship authorities.
- In support of this evidence, the representative from the Redfern Legal Centre advised the Committee that they had received a 'large number' of complaints in relation to guardianship and administration.

It is now 2016 and I believe none of the recommendations resulting from this inquiry have been implemented.

4.

Regardless of hundreds if not thousands of complaints being made regarding the actions of this Board/Tribunal and the former OPC now Trustee/Guardian and regardless of various inquiry's or reviews being held into these regimes, the concerns raised by the public have been ignored as both sides of Government have chosen to practice willful blindness and protect these unmonitored regimes, rather than protect the vulnerable, defenseless people who are the reason these regimes exist.

The final NSW Guardianship Tribunal Annual Report was published in 2013 and it contains a catchphrase stating '**24 years of empowerment and protection**'.

In this report the President claimed that he believed the NSW Guardianship Act 1987 had profoundly and positively affected the lives of many people with disabilities and those who care about them and for them since its inception however, I am sure that if a survey was carried out on those who have lodged complaints regarding this Tribunal during that time, like me, the majority of them would say they were profoundly and negatively affected by a legal process that disrespected, disempowered and provided them with no protection or justice whatsoever.

In reality the only people who are empowered and protected by the NSW Guardianship Act of 1987 are the Tribunal, its members, staff and applicants who are protected from defamation which is supposedly meant to ensure the interests of vulnerable people are protected.

## **2. The misuse facilitating quasi legal process.**

Guardianship Tribunals are described as being 'protective jurisdictions' and two of the principles guiding them state that the Tribunal has a duty to protect people with disabilities from abuse, neglect and exploitation and give the person's welfare and interest's paramount consideration yet, when the subjects of applications stand to lose their basic human rights, they are discriminated against and denied access to justice on an equal basis with others by being subjected to a quasi-legal process, where the unmonitored and unaccountable decision makers:

- Are not bound by the rules of evidence.
- Do not have the jurisdiction to determine whether wrongdoing occurred prior to hearings therefore, they don't identify possible hidden victims or hidden perpetrators of abuse, neglect or exploitation.
- Rely on people they consider to be credible and reliable witnesses, without testing their allegations.
- Deny natural justice to parties they declare to be unreliable witnesses.
- See some parties to proceedings who are accused of wrongdoing, as being an unreliable witness, regardless of allegations directed at them by others involved, proving to be groundless.
- Take advice from the subjects of applications without rigorously testing their claims.
- As it is not their role to determine the truth or otherwise of allegations made before it, they don't administer sections 105 and 106 of the NSW Guardianship Act of 1987.
- Fabricate excuses that have no bearing on the 'truth' on behalf of people who provide false or misleading information in applications and don't attend hearings.
- Make legal decisions prior to hearings taking place.
- Make legal decisions concerning the rights, welfare and protection of people with disabilities, based on untested allegations/evidence, discrimination and guesswork.

5.

The following information shows the situation some of the involuntary subjects of applications may be in when they appear before this Tribunal.

An Australian Institute of Criminology (AIC) report of 1999 titled **Fraud and Financial Exploitation of Older Persons** 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.**
- As is the case with domestic violence, reliance upon official crime statistics is problematic where older persons are concerned as many offences may not be reported to the police, particularly those which have been perpetrated by relatives or carers.
- This may be due to the close personal involvement of the older person and the offender, or to the fear of reprisal if the matter is reported to the authorities.
- There is also the concern that, if a carer is convicted and imprisoned, there will be no one left to care for the older person.
- Other reports state:
- Often the exploitation **is not discovered until after the victim dies and by then evidence may have been destroyed or disposed of.**

In past NSW Annual Reports former Tribunal Presidents have stated '**we must remain vigilant while getting through our increasing workload in a timely manner**'.

The 'quasi -legal processes' described on the previous page shows that there is no vigilance or care involved in this reckless and incomprehensible legal process.

During the LACA Inquiry into Older People and the Law the Australian Guardianship and Administrative Committee (AGAC) Chair Ms. Anita Smith made the following comment regarding Guardianship Tribunals role of removing a person's basic human rights and giving those rights to another person or to the Trustee/Guardian:

- **If done incorrectly, it has the potential to be a fundamental breach of human rights.**

Considering that the quasi legal process facilitates misuse by financial predators rather than providing protection to the subjects of applications, my question is:

- **Is this Tribunal breaching the human rights of the people they are mandated to protect?**

Would people with mental, intellectual or cognitive disabilities comprehend the legal process they are being subjected to?

- **The answer to this question is clearly NO as parties to proceedings who don't have disabilities, do not understand it either and that includes some honest solicitors.**

6.

When I received documentation from the Guardianship Board in December 1994, some of the rhetoric it contained stated:

- It was an offence to provide false or misleading information in an application. Penalty up to \$500.00.
- The Board was bound to be fair to all parties to proceedings.
- The Board had a duty to protect people with disabilities from abuse, neglect and exploitation etc.

I believed the information I was provided with was true. I also believed that the decision makers would be unbiased and that determining the truth would be of the utmost importance to them however, as they failed to adhere to any of the above points, my expectations were not met and subsequently the failure of the decision makers to abide by its publically stated processes, contributed to the unacceptable outcome of the matter concerning my [REDACTED]

If this was a private company, it would be charged with false and misleading advertising.

### **3. Safeguards.**

#### **What safeguards are in place to protect people with disabilities?**

- Section 105 of the Act states: It is an offence to provide false or misleading information in an application.
- Section 106 of the Act states: Penalty up to \$500.00.

These sections of the Act would provide some protection to the to the subjects of applications and protection to others involved who may be falsely accused of wrongdoing however, by imposing these sections of the Act; the Tribunal would need to rigorously 'test' all of the allegations and evidence before it to determine the 'truth' therefore, as these sections of the Act were not imposed by the Board/Tribunal in early 1995, sections 105 and 106 of the Act were obviously removed and replaced with 'It is not the role of the Tribunal to determine the truth or otherwise of allegations before it', as this enables the Tribunal to get through its ever increasing workload in a timely manner within the restraints of its resources.

#### **What safeguards are in place to protect Applicants and others who provide evidence?**

Section 74 of the Act provides strong protection to applicants who are protected from defamation proceedings.

In 1999 a former NSW Guardianship Tribunal President stated:

- Evidence before the Tribunal is exempt from proceedings under the Defamation Act **so as to ensure the interests of vulnerable people are protected.**

Rather than ensuring the interests of vulnerable people are protected, applicants and others involved being protected from defamation proceedings, adds to the lack of protection of the subjects of applications, particularly when allegations are not tested prior to legal decisions being made concerning the rights of vulnerable with disabilities.

7.

### **What safeguards are in place to protect the Tribunal, members and staff?**

Section 73 of the Act states: No proceedings shall lie against the Tribunal or any of its members or members of staff for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal, member or member of staff, and purporting to be done, ordered, omitted or suffered for the purpose of exercising a function under this or any other Act, if the Tribunal, member or member of staff has acted in good faith and with reasonable care.

Is acting in **'good faith'** with **'reasonable care'** appropriate considering:

- The extreme vulnerability of the subjects of applications.
- The extreme cunning and deceptiveness of financial predators, fraudsters, con-artists.
- In the matter concerning my late [REDACTED] two medical professionals who, without hesitation, provided information contaminated by Mr. X. to the Tribunal, were seen as credible and reliable witnesses without their evidence being tested.
- Without testing my allegations which should have raised a red flag to the Tribunal of prior financial exploitation, they were seen as lacking credibility and not being relevant to decisions that had to be made.

The 'quasi legal processes' described on page 4 show that people with disabilities who become involuntary subjects of applications to the NSW Guardianship Tribunal are denied access to justice on an equal basis with others and that no 'real care' is taken when legal decisions concerning their basic human rights are made.

## **4. The United Nations Convention on the Rights of Persons with Disabilities (the UNCRPD)**

### **Article 4 - General obligations.**

- Point (a) states: To take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.
- Point (b) states: To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.
- Point (c) states: To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes.

### **Article 5 – Equality and non-discrimination.**

- Point 1 states: Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
- Point 2 states: Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.



8.

**Article 12 - Equal recognition before the law.**

- Point 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.

**Article 16 – Freedom from exploitation and abuse.**

- Point 3: In order to prevent the occurrence of all forms of exploitation, violence and abuse States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities **are effectively monitored by independent authorities.**

.....

I have shown you that the NSW Guardianship Tribunal quasi legal process is a barrier to justice for people with disabilities as:

- The 'mock legal process' makes a mockery of the principles guiding the Tribunal and the laws of natural justice.
- It denies people with disabilities the support and protection of the law.
- It provides no safeguards or protection to people with disabilities.
- It is open to misuse by financial predators or others.
- It enables the decision makers to unjustly remove the basic human rights of people with disabilities and disempower family members and carers.
- Guardianship Laws in Australia as interpreted by the protected and unaccountable decision makers do not comply with Australia's International obligations as they apply to the rights of people with disabilities.

As long the Government permits these regimes to continue functioning without being monitored and accountable to an Independent Authority as stated under section **16 of the UNCHR**, the unacceptable situation described below will remain in place:

To address the issues I have raised, these protected Regimes need to be disbanded or reinvented in a manner which is advantageous to the protection of people with disabilities rather than the protection of these regimes and applicants.

10.

Once people with disabilities have an 'order' placed over them and become involuntary 'wards of the State,' they have no say who manages their financial affairs or where they live etc. and regardless of families now being able to go to the Administrative Decisions Tribunal to appeal decisions made by the Guardianship Tribunal, they rarely win an appeal.

Yours Sincerely,

June Walker.

A solid black rectangular redaction box covering the signature area.

## **Attachment 1**

Submission of June Walker

### **Case Summary**

**The hidden financial abuse/exploitation of people with disabilities**

**and**

**The hidden misuse of the NSW Guardianship Tribunal by financial predators**

1.

## **The hidden financial abuse/exploitation of people with disabilities and the hidden misuse of the NSW Guardianship Tribunal by financial predators:**

My late father is the subject of this case summary as he was the 'person concerned' in a past NSW Guardianship Board/Tribunal matter the outcome of which I have described on the cover of a DVD I forwarded to you earlier.

For the purpose of this review, this case summary is indexed and in chronological order. I refer to my father as **'the victim'** or **'G'**, to the perpetrator as **Mr. X.**, to his secretary /companion as **Mrs. T.**, to Mr. X's solicitor friend as **solicitor S.J.** and to my two sisters as **Mrs. C.** and **Mrs. K.**

The NSW Guardianship Tribunal's records will validate claims I am making in this submission and irrefutable proof of the following was obtained during an almost three year NSW Equity Court will dispute with Mr. X. (the former private financial manager) following the victim's death in [REDACTED] 2002:

- The 'reality' of Mr. X's friendship with the victim.
- When and why S. J. became the victim's solicitor.
- The will interference.
- Mr. X's covert involvement in the triggering of the late November 1994 Guardianship action.
- His responsibility for false allegations of 'missing monies' directed at me by the two applicants.
- Mr. X. and Mrs. T. being present when changes were made to the victim's executors and POA two weeks prior to the Guardianship hearing taking place.

Mr. X. instigated this dispute as a result of the victim drawing up a 'new will' via a 'new solicitor' on the [REDACTED]. This action by the victim occurred just after the Guardianship action was triggered in [REDACTED] 1994 and 2 ½ months prior to the hearing taking place in [REDACTED] 1995.

As the 'new will' left the victim's whole estate equally divided between my two sisters and me, Mr. X. contested this will in favor of an earlier will [REDACTED], under which he and others known to him stood to gain various shares of the victim's estate which, **had the victim been found deceased in his home in mid-July 1994 or had the 'will interference' remained hidden**, would have amounted to between **\$800.000 and \$1 Million dollars.**

Mr. X. contested the will of [REDACTED] on the following grounds:

- **The victim lacked the capacity to instruct a solicitor on [REDACTED]**
- **The victim didn't know or approve of the contents of the will of [REDACTED].**

To support the above, he claimed:

- **'He didn't think the victim knew 'what was going' on at the Guardianship hearing in [REDACTED] 1995; he seemed to understand some of it but not all of it'.**

Mr. X. was partly correct regarding this claim however; he failed to mention that he had covertly triggered the Tribunal hearing to secure his financial interest in the victim's estate and **he was the only person at the Guardianship hearing who knew, what was 'really going on'.**

3.

**Case Summary contents:**

Page:

1. Details of a hidden victim of Elder Financial Abuse.
2. The reality of Mr. X's association with the victim.
2. The will interference – the hidden financial abuse/exploitation.
3. The victim's hospitalization by the Police in mid [REDACTED] 1994.
- 4 Occupational Therapists report on the victim's living conditions.
6. Reporting suspected financial exploitation of a person with a disability (Elder Abuse) in late 94.
7. The reasons Mr. X. had a 'genuine concern' for the security of the will of [REDACTED] in [REDACTED] 94.
8. **The hidden misuse of the NSW Guardianship Board/Tribunal by Mr. X.**
10. How the two applicants assisted Mr. X. in the Guardianship and later NSW Equity Court matter.
11. What Mr. X. achieved by influencing the GP and Mrs. C. to approach the Tribunal.
12. **The Tribunal Investigation Officer's telephone contact with Mr. X.**
13. Contradictory evidence of claims made by Mr. X
14. The victim's contact with the Investigation Officer.
15. Reporting suspected financial exploitation to the NSW Guardianship Board/Tribunal in 1995.
16. **The day of the hearing.**
17. The Guardianship hearing.
19. Evidence tested during the hearing.
19. Evidence not tested prior to or during the hearing.
20. **The false conclusion reached by the decision makers.**
21. The neglect of the victim by Mr. X. and Mrs. C. after they secured their separate financial interests in the victim's estate.
22. Brief details of the 2002-2005 NSW Equity Court 'will dispute'.

Throughout this report, I will bring to your attention, some of the verifiable false and misleading claims made by Mr. X. during the 'will dispute', regarding his actions when the victim was in hospital and his knowledge of the victim's wills, solicitors etc.

1.

## Case Summary

### Details of a hidden victim of financial exploitation:

- The victim matched the description of a person who was a high risk candidate for financial exploitation for the following reasons:
- His mental problems began in 1940 as a result of him being involved in an air crash in which his [REDACTED]
- In **1976** his Veteran Affairs Psychiatrist (DVA) described him as **narcissistic, delusional, schizoid, depressed and an odd eccentric isolate with little hold on reality.**
- He refused help from DVA in around 1986 **claiming that he could cure himself.**
- He was isolated from family and the community.
- He lived in squalor as a recluse for over 30 years.
- He ran a [REDACTED] his [REDACTED] and these [REDACTED] also lived in his house.
- While he told some people he had no family, he 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 who saw him on TV or read the media articles would have had a **'good knowledge'** of his work and interests.
- He was a licensed Real Estate Agent for some years.
- At the time 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.
- When the Guardianship action was triggered in late November 1994, while his house was unfit for human or [REDACTED] habitation and needed to be demolished however, his 8½ acre property on the outskirts of Sydney was valued at around **\$2 Million dollars.**

### His family situation:

- He separated from his wife in around 1960 and was divorced in 1976.
- His ex-wife and daughters Mrs. C. and Mrs. K. ceased contact with him from that time.
- They also ceased contact with me in 1972 when I was divorced.
- Although I had a very traumatic relationship with the victim as he was not a person you could have a 'normal' relationship with because of his mental and other associated problems, I maintained contact with him and this was mainly via telephone as I moved from Sydney to Victoria in 1980.
- He discussed his wills with me in the late 1980's and early 1990's.
- While he wouldn't reveal the name of the person concerned, he began referring to Mr. X. as his 'friend' in the late 1980's.
- I was aware of Mr. X's occupation and that he had 'assisted' the victim to draw up two of these wills.
- At the time, I thought this 'new friendship' was strange as I was aware that over the years the victim had expressed considerable hostility towards Mr. X. and a colleague.

2.

**Mr. X's involvement with the victim:**

- During the 'will dispute' Mr. X. initially claimed **he had been the victim's friend for 30 years however, as this claim was negated by other witnesses, he changed his initial claim to:**
- He and a colleague had provided free professional services to the victim in relation to the [REDACTED] for some years; however, he became more of a 'friend' to the victim in the late 1980's.

**The will interference began in late 1988 and it involved:**

- The downfall of the victim's existing 1987/88 will under which Mr. X. and others known to him received no financial or other benefit.
- Solicitor S.J. becoming the victim's solicitor for the purpose of drawing up a 'new will'.
- Because of frequent disagreements with the victim, the new will was not finalized until [REDACTED].
- This very complicated 15 page will divided the estate into 20ths and Mr. X. and it resulted in Mr. X. and others known to him standing to gain various shares of the victim's 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 the victim's [REDACTED]

**The missing will:**

- In around 1992 the victim's [REDACTED] were deliberately released from his property.
- As the animals were no longer in his care, the trust fund in the will of 1989 was no longer necessary.
- Soon after this, the victim drew up a further will, with the assistance of his 'friend' Mr. X.
- This will was divided into 10ths and left a much lesser amount to Mr. X. and nothing to his associates.
- After my arrival in Sydney in late August/early September 1994, the victim insisted that his personal copy of this will was on a large bulldog clip in his kitchen with his other 'important papers'.
- He also insisted that solicitor S.J. had the original in his care for safekeeping, however, while the other important papers were on the bulldog clip, his copy of the will of around 1992, was missing.
- 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 [REDACTED] 1989, was the victim's last will, although the victim adamantly claimed it wasn't.
- In late [REDACTED] 1994, Mr., X. and Mrs. T. informed me that prior to my arrival, they had gone through the victim's house and had removed some items for 'safekeeping' however, they refused to tell me what these items were.

**During the will dispute, Mr. X. claimed:**

- He didn't know who the victim's solicitor was.
- He knew solicitor S.J. had done a will for him, but he didn't think he was his 'usual solicitor'
- He didn't know who had his will or where it was.

**Note:**

The existence of 'new will' of [REDACTED] and its contents was discussed by solicitor John B. who represented the victim at the Tribunal hearing. **This is covered in the Tribunal's findings.**

3.

#### **The victim's hospitalization:**

- On the [REDACTED], a nearby caravan park attendant called the Police after becoming concerned when the victim had not called in for his newspapers for a few days.
- The Police subsequently broke into the victim's putrid, ramshackle house and found him unconscious on the floor.
- They admitted him to hospital where he remained for around eight weeks.
- At this time, he had no wearable clothing or footwear and no decent bedding.
- The single bed mattress he slept on was filthy and saturated in urine.
- 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 [REDACTED]. (See DVD)

#### **Hospital records acquired after the victim's death in 2002 revealed:**

- On admission in [REDACTED] 1994 he was dehydrated and confused unable to move or transfer easily.
- Staff estimated that he had been unconscious in his home for at least 3 days.
- They estimated that he had not bathed or changed his clothing for well over 2 years.
- He was described as an odorous old man and he had to be soaked in a bath for over two hours to remove the dirt from his body.
- His toenails were 4cm long.
- He was diagnosed to be in the early stages of dementia and he had Parkinson's disease.
- At this time the victim's local GP had not diagnosed that he was suffering from Parkinson's disease which shows how little time the GP spent with the victim.
- A mini mental state examination (**capacity**) performed [REDACTED] gave a score of **24/30**.

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

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

Mr. X's plan for the victim to return to his house failed as a result of a **Hospital Occupational Therapist Inspecting the victim's home and seeing that it was unfit for human or animal habitation.**

#### **During the 'will dispute':**

- **Mr. X. admitted paying a plumber \$400.00 from the victim's accounts, to unblock one toilet.**
- **He denied ever suggesting that the victim 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 to enable the victim to return to live in it.**



4.

**A Hospital Occupational Therapists report of the victim's living conditions:**

**General background:**

- Patient lives alone in own home which is almost fully paid off. (Mr. X. or the victim 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.

**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 kangaroos 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)

**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.

**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.

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

I had contacted meals on wheels on other occasions when I was unable to contact him and although they had my contact details, **they failed to contact me as Mr. X. had instructed them that he was the person to contact if there was a problem.**

After contacting the Hospital in late [REDACTED] 1994, I took unpaid leave and drove to Sydney. I intended to be there for a week however, because of the victim's many personal needs and the suspicious actions of Mr. X. and his cohorts, I spent a month in Sydney, during which time I provided for the victim's many personal needs and organized his placement into hostel care in a Retirement Village.

I had no assistance from Mr. X. and no assistance from Mrs. C. or Mrs. K. who lived locally and were aware of the victim's hospitalization.

6.

#### **Meeting Mr. X. and Mrs. T:**

- I met Mr. X. and Mrs. T. for the first time in late [REDACTED] 1994 and during this and other meetings, he subjected me to various 'mind games' which included him frequently mentioning the victim's will which I found totally inappropriate at that time.
- It was obvious he had no interest in the victim's welfare and that the purpose of his consistent mentioning of 'the will' was to find out what I knew about it.
- The on-going 'mind games' resulted in me speaking to the victim's GP who advised me to approach the Guardianship Board/Tribunal.
- This was when I first became aware of this Board/Tribunal however, as I was under pressure to return to work in Melbourne and in the process of arranging to move to Central Victoria; I didn't approach the Guardianship Tribunal at this time.

#### **Reporting suspected financial abuse/exploitation of a person with a disability in late 1994:**

##### **The NSW Fraud Squad:**

- As I believed Mr. X. and his associates were involved in wrongdoing in connection with the victim's wills, I sought advice from the NSW Fraud Squad which proved to be futile as the person I spoke to advised me: **To spin the victim a story and get some money out of him myself.**

##### **Staff at the Aged Care Facility:**

- I raised my concerns with staff at the hostel and among other examples, I was advised:
- We see this happening all the time and we can't do anything about it.
- Close or distant family members, friends etc., will visit an older person and influence them to sign over their homes or other assets to them, with the promise they will take them home and look after them on holidays and weekends.
- Once the assets are signed over, the visitors are never sighted again.

##### **A Chamber Magistrate:**

- After advising a Chamber Magistrate of the situation, I was advised:
- To attempt to locate the 'missing will' as, if I was unable to locate it, the earlier will of [REDACTED] would be seen as the victim's last will.
- I then realized the 'mind games' Mr. X. and his cohorts were subjecting me to, were aimed at prompting me approach the Guardianship Tribunal to secure the will of 1989 as the victim's last will.
- On the advice of the Chamber Magistrate, in late [REDACTED] 1994 I asked the victim to give me Power of Attorney so that I could obtain a copy of the will solicitor S.J. was holding on his behalf.
- I intended taking this to the victim so that he could see if it was the will he thought it would be.
- He agreed but insisted that Mr. X. was to have joint Power of Attorney with me.
- At this time the victim appeared to be frightened of not involving Mr. X.
- As the victim didn't want anyone to have the authority to 'sell his property', a clause was added to the POA to this effect.

7.

The reasons Mr. X. had a 'genuine concern' for the security of the will of [REDACTED] 94:

- My arrival in Sydney resulted in him losing sole control of the victim.
- His persistent interrogation of me to find out what I knew of the contents of the victim's wills resulted in me advising him that the victim had discussed his wills with me and I was aware that the will of 1989 had been negated by the will of around 1992.  
This disclosure resulted in him angrily advising me that **the will of the [REDACTED] was still valid and he added "you girls are well provided for"**.
- As I didn't want the victim to return to his home and I needed to insure that his solicitor was aware of his situation, I asked him if he knew who the victim's solicitor was.
- He said he didn't know and added vaguely that he thought the solicitor was in Sydney.
- **He said he knew his will was with the solicitor.**
- I thought this was strange because for a long period of time, the victim had told me that **Mr. X. had 'assisted' him to draw up his last two wills.**
- When the victim's solicitor's name was required prior to him being placed in a Retirement Village, **Mr. X. reluctantly gave me solicitor S.J.'s. name and stated he was also his solicitor.**
- **He was to later claim he didn't give me solicitor S.J.'s name.**
- **He was aware I disapproved of solicitor S. J. having become the victim's' solicitor.**
- **He and solicitor S.J. disapproved of me acquiring joint POA with Mr. X. in late [REDACTED] 1994.**
- **After strong resistance from solicitor S.J. the eventual release of the victim's will, resulted in the victim discovering that it was not the will of around 1992 he expected to see, it was the will the will of [REDACTED] which he adamantly claimed he changed after the release of his [REDACTED]**
- **Mr. X and solicitor S. J. were aware I was highly suspicious of them and that the POA could result in me exposing the 'will interference' and other possible wrongdoing by them.**

Mr. X's concerns increased when shortly after I returned to Victoria in late [REDACTED] 1994; the victim received a letter dated [REDACTED] from estranged daughter Mrs. C.

- Among other matters regarding Mrs. K's divorce, this letter falsely advised the victim that 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 the victim or me for over 18 years, then began visiting the victim and driving him to the bank to withdraw funds for Mrs. K.
- Mrs. K. was getting divorced and she had told her estranged husband that **she had a few tricks up her sleeve which would enable her to buy out his share of the marital home.**
- **A copy of the letter from Mrs. C. was provided to the Guardianship Tribunal by me; however, like the victim, the Tribunal members believed all of the claims Mrs. C. made in this letter.**

In late [REDACTED] 1994, Mrs. C. was overseas and I was in Victoria.

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

8.

**How Mr. X. covertly triggered the Guardianship action to secure the will of [REDACTED]**

**Step 1: He created a 'genuine reason' to prompt Guardianship action.**

- In mid-[REDACTED] 1994, the **'very easily influenced'** victim, who prior to this time was adamant his property would not be sold until his death, **suddenly placed his property on the market with a reserve of \$1 Million dollars which was less than half of its value.**

**For some time after the Guardianship hearing the victim 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.

Documents subpoenaed from the Estate Agents during the 'will dispute' revealed that after initial contact with the victim on the [REDACTED], the property was placed on the market on the [REDACTED] with a three month 'safety net' placed over it, as it was not due to be auctioned until the [REDACTED] which was almost one week after the scheduled Tribunal hearing of [REDACTED]

- The victim wrote a note stating [REDACTED] on correspondence from the Real Estate Agents dated [REDACTED], ([REDACTED] being the Estate Agent).
- The Estate Agents file notes revealed that on the [REDACTED] the victim rang the Estate agents and instructed them to cancel the auction.
- The victim did this to remove the reason for the Guardianship hearing.
- He was advised by solicitor John B. that this would not have any bearing on the Guardianship hearing going ahead.
- The property was eventually taken off the market **after the Guardianship hearing** and prior to the proposed Auction date.

**As soon as the property was 'on the market' in mid N [REDACTED] 1994, Mr. X. influenced others of use to him to approach the Guardianship Board/Tribunal for an 'urgent financial management order'.**

9.

## Step 2:

- **Applicant 1 was the victim's GP** who took over the local Medical Practice in late 1989.
- He had no prior knowledge of the victim **or of when Mr. X. 'befriended him'**
- Mr. X. contacted the GP and advised him that he was **'concerned'** about the victim as the victim was **selling property in an irrational manner for less than half of its value.**
- To draw attention away from himself and direct it towards me, he advised the GP **"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' in favor of the application as he as he was the treating GP.**
- **Solicitor S.J. contacted the GP for the purpose of obtaining a 'written opinion' of the victim's ability to handle his own affairs and without my or the victim's knowledge, the GP dutifully obliged.**
- **A copy of this letter was later provided to the Tribunal by solicitor S.J.**
- As the victim was on a full Veteran Affairs TPI pension, the GP would have billed his medical fees to the Department Veteran Affairs, he would have had no knowledge of the victim's other financial or legal dealings therefore, **his opinion would have been contaminated by Mr. X's opinion.**

## Applicant 2 was formerly estranged daughter Mrs. C.

- After learning of the impending 'property sale' for less than its value, Mrs. C. and Mrs. K. both had a **'genuine concern for their inheritance'**.
- **Until six weeks prior to this time they hadn't contacted the victim for over 18 years.**
- Mrs. C. initially contacted the GP who, **without mentioning the source of his information** advised her that **'over \$20.000 had gone from the victim's accounts since I gained POA via a new solicitor'**.
- He then provided her with the name and contact details of **the victim's 'friend' Mr. X.**
- Mrs. C., who had no prior knowledge of Mr. X. and no knowledge of his 'real interest' in the victim, rang Mr. X's number and initially spoke to **Mrs. T. who told her "a large amount of money had gone from the the victim's accounts since your sister June took over his affairs"**.
- Mr. X. confirmed Mrs. T's claim and he advised Mrs. C. that **he had considered approaching the Tribunal for a 'financial management order' but it would be better if she did it.**
- In her subsequent 'financial management order' application, Mrs. C. who did not want me to be placed as the victim's 'private financial manager' 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 the victim's affairs.**
- **When she visited the victim on [REDACTED] he had \$26.000 in his bank account.**
- **When she visited him again on the [REDACTED] 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.**

When the Office of the Protective Commissioner (OPC) took over the victim's finances after the Guardianship hearing **there was just over \$19.000 in the accounts.**

10.

**How the two applicants assisted Mr. X. in the Guardianship and later NSW Equity Court dispute.**

**Mrs. C.**, who had seen the state of the victim's living conditions in [REDACTED] 1994, blindly assisted Mr. X. by falsely described him under the following heading:

- **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'.**
- Her refusal to believe claims I made and her vilification of me also assisted Mr. X.

**After the Guardianship hearing Mrs. C wrote to the GP and among other matters she stated:**

- I am very pleased by the decision of the Guardianship Board 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.** (See the victim's situation after the Tribunal hearing page 21.)

During the NSW Equity Court matter, the GP provided this letter to Mr. X. **to support his claim of his 'friendship' with the victim and to throw doubt on claims I made in my affidavits.**

**The GP also blindly assisted Mr. X. via the following:**

On the [REDACTED] [REDACTED] 1994 he wrote to solicitor S.J. and advised him:

- As discussed previously, I have made an application to the Guardianship Board to look after his affairs.
- His inability to handle his affairs is based on the **hospital specialist, the nursing staff and his closest friend Mr. X.**
- **The reason for this letter is that I have recently spoken to Mr. X. who has indicated that he has offered to sell his land for half its value.....**

**In his application the GP stated:**

- **The victim's 'closest friend' and former solicitor' S.J. want the Guardianship Tribunal involved.**

Mr. X. and the GP whose opinion was contaminated by Mr. X's opinion, both communicated with the hospital specialist prior to the Guardianship hearing therefore, **her opinion would have been contaminated by their opinions.**

11.

Regardless of the GP being aware of the victim's self-neglect and squalid living conditions and regardless of him not having access to the victim's bank accounts, he 'falsely described' Mr. X. in his application 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?**

He also placed the names of Mr. X. and the **prominent Geriatrician who is also an expert in Elder Abuse and was then a part time member of the Tribunal**, 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.**

As the GP and Mr. X. both communicated with the Hospital Geriatrician prior to the Guardianship hearing, any opinion she formed regarding the victim's ability to handle his own affairs, would have been contaminated by Mr. X. and the GP whose information was also contaminated by Mr. X. and solicitor S.J.

**What Mr. X. achieved by influencing the victim's GP and daughter Mrs. C. to approach the Tribunal:**

By vilifying me in the eyes of the GP, Mrs. C. and the Tribunal members:

- He deflected everyone's attention away from himself and directed it towards me.
- This ensured that I wasn't placed as the 'private financial manager' where I would have the power to investigate his past financial and legal dealings with the victim.

Past NSW Tribunal Presidents have stated in their annual reports that '**once an order has been placed over a person, it is very difficult to prove capacity**' therefore, by influencing the GP and Mrs. C. to take Guardianship action, Mr. X. and solicitor S.J. achieved:

- A. A written report from the GP, regarding his opinion of the victim's ability to handle his own affairs and this report would have been contaminated by Mr. X's opinion.
- B. The hospital Geriatrician, who was a part time Tribunal member, without being able to locate her notes or being able to recall the results of a mini mental test she performed on the victim in July 1994, provided a report to the tribunal which would have been contaminated by Mr. X. and the GP.
- C. The fact that family member Mrs. C. doubted the victim's capacity and applied for a 'financial management order' in November 1995, would support any future claim made re the victim's 'capacity' to instruct a solicitor should the victim draw up a 'new will' around or after that time.

Points **A** and **B** of the above were used for the purpose of the Guardianship matter and all **three were used to for the purpose of the NSW Equity Court matter to support Mr. X's claim of the victim lacking capacity in December 1994.**



12.

After lodging an application dated [REDACTED] which was not received by the Tribunal until [REDACTED], in a letter dated [REDACTED] 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 Mrs. K.,

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

As a result of Mr. X. being falsely described in the 'applications' of the GP and Mrs. C. as: **'The person who had frequent contact and took a personal interest in the victim's welfare, without payment', the Tribunal Investigation Officer contacted Mr. X:**

The following information is taken from the Investigation Officer's notes of [REDACTED] [REDACTED] 1995.

The answers are in the order they appear in on File Note page however, as some answers were difficult to decipher, I have crossed referenced them with information in the Investigation Officer's report of [REDACTED] [REDACTED] 1995.

#### **In response to questions asked by the Investigation Officer Mr. X, advised her:**

1. He knew the victim for 30 years.
2. He supported the PC Proposal.(I think this is the OPC)
3. At one stage he was joint.
4. Solicitor John B. said Mrs. Walker is now sole POA.
5. He started to assist after **G.** was taken to hospital.
6. He assisted him to purchase his unit at the village approximately \$83,000.
7. His pension has been redirected to the hostel. He organized this.
8. He didn't know how the property came to be put on the market.
9. He had been very active in ensuring the property was not sold for less than its true value.
- 10.** The victim showed him a letter he had signed agreeing to his property being sold for **\$1 Million.**
11. He saw a letter from the agent, [REDACTED], saying that an offer had been made for this amount.
12. He told the victim not to sell the property for this amount.
13. He contacted agents in the area and was told the property would be worth \$1.5 to \$2 Million dollars and one agent indicated that if it was sold for \$1 Million dollars, it would be regarded as a steal.
- 14. Because family is feuding and the victim is 'very easily influenced by whoever speaks to him' it would be preferable for an 'independent person' to manage his affairs.**

13.

**Contradictory evidence regarding Mr. X's above claims in regard to the following points:**

**The POA's:**

3. Mr. X. held joint POA with me from [REDACTED] until [REDACTED]
4. I became sole POA without my knowledge on [REDACTED]
  - Mr. X. became the sole POA on the [REDACTED] under suspicious circumstances.
  - **Solicitor John B.** drew up the 'new will' [REDACTED], he acted on the victim's behalf in regard to the property sale and he also represented the victim at the Guardianship hearing in February 1995.
  - In the presence of **Mr. X.** and **Mrs. T.** on [REDACTED], solicitor John B. made changes to the executors of the will of [REDACTED] and the victim's POA's which resulted in, family members being removed from these positions and Mr. X. becoming the sole executor of the will of [REDACTED] and sole POA.

**Assisting the victim after his hospitalization:**

- 5 Mr. X. or Mrs. T. purchased some cheap pajamas for the victim prior to my arrival in Sydney.
  - After my arrival I purchased all of his other clothing and personal needs.
  - I took the victim shopping to be fitted with clothing, shoes, slippers etc. I also purchased a TV, an electric shaver and other personal items.
  - I took the victim to an optometrist to arrange for new glasses.
  - After paying around \$1400.00 for these items, I wrote to Mr. X. requesting that he refund the amount owing to my account. I was reimbursed by Mr. X.
  - After the Guardianship hearing, **Mrs. T. rang me and claimed that the OPC wanted the receipts.**
  - **The OPC advised me they did not require receipts for items purchased prior to [REDACTED]**
  - I did not send the receipts to Mrs. T. and I heard nothing from her after that time
- 6 The victim did not purchase a unit, I arranged for the victim to be admitted to hostel care in a Retirement Village and a bond of \$83,000 was required prior to his admission.
  - As I didn't have access to the victim's bank accounts at that time and Mr. X. did, I advised him of the amount required and he subsequently paid the required \$83,000 from the victim's accounts.

**The property sale:**

- 8 The victim insisted that Mr. X. told him to sell his property to help his family and that a low reserve would attract more interest and have people fighting over it like bees around a honey pot.
- 9 **Mr. X. omitted to inform the Investigation Officer of other matters he had been very active in.**
- 10 Mr. X. did not provide the alleged 'letter of acceptance' to the Tribunal and he **was unable to produce it during the 'will dispute.**
  - Further to this the victim denied accepting an offer of \$1 Million dollars.
  - After the Tribunal hearing, the victim adamantly denied writing a letter of acceptance of an offer for \$1 Million dollars and he did not possess a writing pad at that time.
- 11 Documents subpoenaed from the Estate Agents during the 'will dispute' revealed that the victim had received and **refused an offer of \$1 Million dollars.**
  - He had also **refused a subsequent offer of \$1.2 Million dollars.**

- He advised the Agents that **he wanted the property to be auctioned, but he wanted to speak to an unnamed friend and his solicitor John B. first.**

13 He had no need to contact Agents to determine the property value as he was well aware of its value.

14.

#### **The victim's calls to the Investigation Officer:**

- While in an extremely confused and agitated state the victim made numerous calls to above officer:
- **On the [REDACTED] 1995** 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.
- **On the [REDACTED] 1995** he 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 the above calls:**

- At this time, I was in Victoria, Mrs. C. was overseas and Mrs. K. had ceased visiting him.
- I witnessed Mr. X and Mrs. T. exerting undue influence over the victim prior to this time.
- The victim was the sole occupant of a hostel room.
- This gave Mr. X and Mrs. T., who would only speak to the victim alone behind a closed door, ample opportunity to deliberately anger and confuse him, turn him against others and instruct him what he was to say or not say to the Tribunal Investigation officer.
- As shown in the comments he made on [REDACTED], the victim blamed Mrs. C. for the Tribunal action and was extremely angry and hostile towards her.
- **The victim was never made aware of Mr. X's or the GP's involvement in the Guardianship action.**
- Had he had known of their involvement, he would have been hostile towards them and he would not have wanted Mr. X. to manage his affairs.
- As Mr. X. was to later claim victim lacked capacity on the [REDACTED], it is interesting that the victim was able to locate and dial the correct telephone number to speak to the Investigation Officer.
- I firmly believe Mr. X. and Mrs. T. were behind the calls the victim made to the investigation officer in early 1995 and it is highly likely they were deliberately agitating and enraging him when he made these calls.

#### **My contact with the Investigation Officer:**

I was the last person to be notified of the pending Guardianship hearing and on sighting the allegations of 'missing monies' the GP and Mrs. C. directed at me in their applications, I contacted the Tribunal Investigation Officer and advised her that as I suffered from anxiety/panic attacks in stressful situations and may not be able to confidently represent myself, **I wished to be legally represented at the hearing.**

- My request was denied and I was assured that I wouldn't need to be legally represented as **anyone who lied in an application would be placed under scrutiny.**
- **I was advised the Tribunal was bound to be fair to all parties to proceedings.**
- I was also advised that I needed to lodge an application in order to be able to attend the hearing.

Trusting that people who lied in applications would be placed under scrutiny and that the decision makers would be fair to all parties involved, I subsequently lodged an application:

15.

### **Reporting suspected prior financial exploitation to the NSW Guardianship Board/Tribunal in 1995.**

As my request to be legally represented at the hearing was denied and I felt it was important to inform the Tribunal of the reasons for my concerns regarding Mr. X., Mrs. T. and solicitor S.J., in a facsimile dated [REDACTED], I provided the Tribunal with the following information:

- **Over the years the victim discussed his wills with me.**
- **I was unable to locate his last will.**
- **Mr. X initially advised me that he didn't know who the victim's solicitor was.**
- **He later advised me that his own solicitor was the victim's solicitor.**
- **Mr. X and Mrs. T had gained access to the victim's bank accounts.**
- **They also held books of blank cheques which the victim had pre-signed.**
- They were evasive when questioned regarding their access to the bank accounts.
- **During conversations with Mr. X. he frequently mentioned the victim's will.**
- **He questioned me to ascertain if I was aware of the contents of the victim's will.**
- **He told me that there was a 'trust' in the will and the victim had provided for his family.**
- **He is or was a beneficiary in the victim's will and he is or was a trustee of a trust which he claimed was still valid, although the victim insisted it wasn't. (the missing will)**
- **It appeared strange that Mr. X. appeared to know more about the contents of the victim's will than the victim did.**
- **During the victim's hospitalization, in Mr. X's presence, Mrs. T was overheard repeatedly instructing him "If you go to see your solicitor 'G', you go alone and don't take June".**
- The victim was happy to have me around while he was in hospital however; **he became different after visits from Mr. X and Mrs. T.**
- After speaking to a Chamber Magistrate, I arranged for a POA via a local solicitor as I intended taking a copy of this will to the victim to ensure that what he thought was in it, was correct.
- **I contacted solicitor S.J who appeared to be expecting to hear from me. I asked him if he was holding the victim's current will and he replied angrily that he couldn't tell me what was in the will, which is not what I asked him. He was very hostile and condescending towards me and this added to my concerns.**
- On receipt of the POA, I organized for the local solicitor to contact solicitor S.J. and ask him to send a copy of the victim's will sent to him to keep with the original POA for safekeeping.
- **I fully expected there would be a problem obtaining this will from solicitor S.J. and I was correct.**
- When I went to the local solicitor to collect it, **there was a letter from solicitor S.J. saying that the victim had instructed him that the will was to stay with him.**
- **I told the victim I felt solicitor S.J. had something to hide as he did not want me or him, to see what was in the will.**
- **The victim rang solicitor S.J. and I then collected a copy of the will without further problems.**
- On opening the envelope I found it was the will with the trust in it which I already had a copy.
- **The victim became angry and said this was an old will and he had done a much easier one.**

- All of these matters have done nothing to alleviate my concerns and with the victim telling me that he would sign anything Mr. X. put in front of him without reading it, I have reason to be concerned.
- Mr. X has too much control over the victim 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.

16.

### The day of the Guardianship hearing:

Those present were:

- The victim, who was driven to the hearing by Mr. X. which gave him ample time to instill fear and instruct him what he was to say and what not to say.
- I attended however, in order to do this I had to lodge an application.
- My two estranged sisters **Mrs. C.** and **Mrs. K.**
- **Mr. X.** [REDACTED], was invited to attend by the Tribunal after being falsely described by the two applicants as **'the person who had frequent contact and had a 'genuine concern' for the victim, without payment'**.
- **Solicitor John B.** who represented the victim at the hearing also acted on his behalf in respect to the 'property sale' and the drawing up of the will of [REDACTED]

**The victim's GP** did not attend as he conveniently withdrew his application when he learnt that Mrs. C. had approached the Tribunal however, **his 'evidence' was still used in relation to the matter.**

Prior to the hearing commencing, Mr. X. asked me if the two women sitting nearby were my sisters and after advising him that they were, he proceeded to introduce himself to them.

- During their conversation, **Mrs. C. proceeded to show Mr. X. a copy of the letter I faxed to the Tribunal in which I described the reasons for my concerns regarding him and his associates.**
- I heard her advice him to sue me.
- On returning to sit next to me, Mr. X. quietly but menacingly stated:
- **I'm warning you June, I am not a man to mess with.**

During the hearing I felt extremely apprehensive and intimidated, **not only by the prior threatening warning by Mr. X., but also by the looks of contempt I received from the arrogant and intimidating Tribunal Presiding legal member.**

17.

### **The Guardianship Tribunal hearing:**

The legal representation of the victim at the hearing:

Everyone present, including Mr. X. **had the opportunity to object to the victim being legally represented at the hearing in [REDACTED] 1995** however, although he was to later claim that the victim lacked the capacity to instruct a solicitor on [REDACTED] as he needed the 'decision makers' and others to believe the victim's false claim that he was 'looking after him', **he did not object at this time.**

### **Allegations/evidence tested at the hearing?**

The **ONLY** allegation/evidence '**tested**' at the hearing was the GP's allegation of:

- It has been reported to me that over \$20,000 dollars has gone from the accounts since on daughter gained POA via a new solicitor.

### **Tribunal members fabricating excuses on behalf of applicants who provide false or misleading information in applications:**

At the time of the hearing I didn't know that Mr. X. was the person who 'reported' the alleged missing money to the GP however, when the GP'S allegation proved to be false and misleading, I expected the 'decision makers' to contact the GP to determine the name of the 'person' responsible for reporting this to him however, instead of contacting the GP, the Tribunal members 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 Mr. M's admission to the Retirement Village.**

Rather than make a simple phone call to the GP to determine 'the truth' and instead, fabricating an excuse that had no bearing on 'the truth' on his behalf, the decision makers failed in their duty of care to the victim, failed to provide me with natural justice and instead they facilitated misuse by Mr. X. who sat in silence during the discussion of the alleged 'missing monies' as he escaped being placed under scrutiny and was no doubt 'very satisfied' with the false conclusion reached by the expert decision makers.

18.

**The announcement of the 'new will' of the [REDACTED] 1994.**

**During the hearing, solicitor John B. advised all present:**

- He drew up a 'new will' on behalf of the victim on the [REDACTED] 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 POA however, prior to him leaving the victim's room that day; the victim changed his mind and made me the sole power of attorney.
- **Changes to the executors and POA's on the [REDACTED].**
- On the above date John B. stated that he returned to the victim's hostel room to make changes to the executors of the will of the 2<sup>nd</sup> December and the POA.
- These changes resulted in family members being removed from these positions and Mr. X. becoming the sole executor and the sole Power of Attorney.
- Documents provided by solicitor John B. during the will dispute, revealed that **Mr. X. and Mrs. T. were present the changes to the executors and POA's on 3/2/1995. Mrs. T. witnessed and signed the codicil to the will.**

**Tribunal members fabricating excuses on behalf of people who lie in applications, instead of placing them under scrutiny:**

Regardless of **changes to wills, executors and POA's being signs of financial exploitation**, instead of placing solicitor John B. under scrutiny and asking him if anyone was present when the changes were made or who witnessed or signed the codicil to the will, **the Tribunal members simply concluded:**

- We are satisfied that 'G' (the victim) **was acting in an 'irrational manner' when he had changes to his executors and powers of attorneys".**

**Mr. X. sat in silence while the 'new will' and its contents were being discussed and no doubt, he was also very satisfied with this false conclusion as he' once again' escaped being placed under scrutiny.**

**During the 'will dispute' Mr. X. claimed:**

- He didn't know of the existence of the will of [REDACTED] until after the victim died in 2002.
- He didn't know the contents of that will or any other will that the victim made.
- He didn't know who had his will or where it was.

**In regard to the above:**

- In September 1994, Mr. X. angrily advised me: "[REDACTED] [REDACTED] is still valid and you girls are well provided for."

- Documents subpoenaed from Wildlife Authorities during the 'will dispute' revealed that in **mid-1989 which was prior to the will [REDACTED] being finalized, Mr. X. advised them that he had been left money to care for the [REDACTED] if anything happened to the victim.**

19.

**Evidence/allegations not tested during or prior to the hearing:**

- Although it should have been common knowledge to the expert Tribunal decision makers, that older people with or without disabilities who are dependent on others for assistance, will falsely claim that a family member, friend or carer is assisting or looking after them when this is not true, claims made by the victim were not tested.
- The GP and Mrs. C's description of Mr. X. 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's claim that I had only recently contacted the victim.
- The GP's claim of the victim lacking capacity.
- Mrs. C's allegations directed at me re a past property dispute.
- Mrs. C's allegation of me being annoyed because I didn't receive a benefit under our mother's will.
- The hospital Geriatricians claims of regarding the victim's ability to make decisions.
- Information I provided to the Tribunal describing the actions of Mr. X., solicitor S.J. and Mrs. T.
- Information I provided to the Tribunal re the actions of Mrs. C. and Mrs. K.

**Taking advice from a person with a disability without rigorously testing their claims:**

When the victim, who had wet himself and was shaking with fear throughout the entire process, was asked by the male presiding legal member asked the victim the **leading question of:**

- **Would you like your friend Mr. X. (he mentioned Mr. X's professional qualifications) to manage your finances?**
- The victim replied "**yes dear**".

As Mrs. C. and Mrs. K. had no objection to Mr. X. being placed in this position and I was being glared at with disgust by the presiding legal member, it was pointless for me to object as I would have been overruled very quickly.



20.

**The false legal conclusion:**

Regardless of my concerns containing information that 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, the missing will etc., and regardless of the allegations of 'missing monies' directed at me proving to be unfounded, the three expert decision makers 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 'G' and 'G's' obvious reliance and trust in him. Mr. X has indicated his willingness to act.**
- The Board accepted that he could interact with 'G' so that 'G' 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 'G' estate and throughout the Board has been concerned to achieve the best interests of 'G' himself.

**In response to the 'legal' conclusion, I am confident that the Board:**

- The Board failed to give **'due weight'** to all of the **'evidence'** before it.
- I believe that 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, a 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 the victim's rights, welfare and best interests.
- The Board members facilitated misuse by two separate financial predators *who* did not have a 'genuine concern' for the subject of applications.

Regardless of the allegations directed at me by the GP being found to be false and misleading, I was still considered to be an unreliable witness, untrustworthy and a potential financial predator.

It was very evident during the hearing that the presiding Tribunal member was very impressed with the professional standing of Mr. X. who was playing them and everyone else involved for fools.

21

### **The victim's situation after the Guardianship hearing:**

Having successfully used the NSW Guardianship Tribunal to secure 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) which was 'no supervision' as they trust the 'integrity' of 'private financial managers'.

- 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 provide for his on-going personal needs.
- On becoming aware of his need for new clothing and being unable to travel to Sydney in person, I contacted a large local department store and arranged to have a staff member go to the hostel to take his measurements and then provide items I requested for his needs.
- Over a year after he vacated his home, he was still receiving electricity and water accounts as Mr. X. failed to have these services terminated.
- His personal mail, much of which came from overseas as a result of his work with the [REDACTED] being covered in various newspapers 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.

### **The provision of a cheque signed by the victim for payment of his funeral:**

- As I had arranged the victim's funeral in [REDACTED] 1994, after the victim's funeral I was contacted by the Funeral Directors who advised me that they had been presented with a cheque signed by the victim for payment and subsequently, **this cheque bounced at the bank.**
- I advised them to contact the executor Mr. X. as he would have arranged this cheque to be sent to them.
- On contacting them a week later to see that the problem had been corrected, I was advised they couldn't provide me with any information as **Mr. X. had threatened them with the 'privacy act'.**

a

22.

### **The NSW Equity Court 'will dispute'.**

In 1995, I knew that Mr. X. would contest the will of [REDACTED] and I also knew the grounds he would use.

As I was under the impression that it was an 'offence' to provide false or misleading information in sworn affidavits and Mr. X, Mrs. T. solicitor S.J. and others involved provided had verifiable false and misleading information in their affidavits, I raised this issue with the solicitor who represented me and my sisters and I was verbally advised :

- **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 [REDACTED] [REDACTED] 1994.**
- **It's not the person telling the 'truth' who wins, it's the person who plays 'the game' best who wins.**

This nonsensical situation enabled Mr. X. to play 'legal games' for almost three years and wear us down financially and emotionally prior to him eventually offering to 'settle' out of court.

As we lacked the funds to pay a 'senior counsel' in advance and taking the matter to Court would have cost the estate more than accepting Mr. X's financial demands, we were blackmailed into accepting Mr. X's demands .

The almost three year 'legal game playing' cast the estate between \$450.000 and \$500.000.

**Attachment 2:**

**Submission of June Walker**

**Responses to complaints of improper practices of the**

**NSW Guardianship Tribunal**

**and the**

**Misuse of the NSW Guardianship Tribunal by financial predators.**

1.

### **Responses to complaints of the improper practices of the NSW Guardianship Tribunal decision makers and the misuse of these Tribunals by financial predators.**

As I was negatively affected by the unjustified and unfair treatment I received from the NSW Guardianship Tribunal decisions makers, for some years after the hearing I raised concerns with the then NSW Guardianship Tribunal President, regarding the above and these concerns included the following:

- The 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 the decision makers placed as a my father's private financial manager.
- The denial of my right to natural justice by discriminating between parties to the proceedings.
- The failure or the decision makers to rigorously or otherwise test the evidence/allegations made by all parties to the proceedings.
- The failure to test claims made by the victim.
- The failure to abide by sections 105 and 106 of the NSW Guardianship ACT of 1987 which state:  
It is an offence to provide false or misleading information in an application. Penalty up to \$500.00.
- The decision makers fabricating an excuse that had no bearing on the truth, on behalf of a GP who provided false and misleading information in an application and did not attend the hearing..

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

A further complaint regarding the above points 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 17<sup>th</sup> February 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, Mr. Garth M, and**
- 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 6<sup>th</sup> 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.

2.

- **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 having gone from the accounts....” proved to be unfounded, I responded to the former Tribunal President’s letter 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 Power of Attorney via a new solicitor’ and this allegation proved to be false and misleading?
- 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?**
- **Was it legal for the Tribunal members to fabricate excuses on behalf of an applicant who provided false and misleading information in an application and didn’t attend the hearing?**

**The former President failed to respond to these questions.**

### **Complaints to the then Office of the Protective Commissioner (OPC now Trustee/Guardian)**

My complaints to the above 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.

As my sister Mrs. C. would not believe that Mr. X. was involved in wrongdoing with the victim at that time, any attempt I made to have him removed from his position as the ‘private financial manager’ would have been futile and I didn’t have the necessary funds to take Supreme Court action which was then the only option available, I was unable to take this action.

3.

As the former NSW Guardianship Tribunal President's 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 paramount to their welfare and interests, a further complaint from me resulted in the former President, providing me with the following explanation of his previous comment:

Dear Mrs. Walker

- 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.**
- **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 make.**
- 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.**

4.

**Responses from former NSW Ministers for Ageing and Disabilities:**

I raised the issues described previously with the then 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 Board.**

Prior to responding, all of these Ministers conferred with the NSW Guardianship Tribunal President and simply repeated the rhetoric previously provided to me by the President.

**Note:**

At no time did I ask any of these Ministers to seek to influence decisions made by the Board in carrying out its judicial functions.

**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 14<sup>th</sup> August 1997 concerning the Guardianship Boards involvement with your father Mr. G.

- 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.
- **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 Boards 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.

5.

**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.

6.

**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.

These responses show an unashamed lack of interest in the issues I was raising by a former President of the Tribunal and Politicians who were responsible for people with disabilities but were interested in protecting the Guardianship Tribunal.

**In 2013**, I was contacted by an extremely distressed woman who had been involved in a NSW Guardianship Tribunal matter which was triggered by self financially motivated relatives who had no contact with the subject of their application for over 60 years and the outcome of this case mirrored the unacceptable outcome of my 1995 father's case.

On providing her with details of the correspondence I received in relation to my complaints regarding the quasi legal process my father was subjected to, **she was shocked to see that the responses she received almost two decades later, were the same 'standard responses' that I had received years earlier.**

**Attachment**

**3**

**Submission of June Walker**

**Past Newspaper reports regarding the  
NSW Guardianship Board and former OPC**

1.

**Treated like naughty kids:** Sun Herald, Sydney, November 2, 1997

- It was a rare holiday, taken on doctor's orders and Jack S. selected a trip to Murwillumbah for what was to be his final journey with his beloved wife of almost half a century.
- Where better for Mary, 73, a mild dementia sufferer, to take a much needed rest?
- Besides she could visit he brother, who was terminally ill in the local hospital.
- But the couple had not even unpacked after the grueling 600km (960 miles) journey from Sydney before an embarrassed young policeman tapped the retired boot maker, 82, on the shoulder and broke some alarming news.
- **The NSW Guardianship Board** had assumed responsibility for Mary's case.
- The couple had failed to get its permission for the trip, so they were ordered to return to Sydney under police escort, like naughty children who had run away from school.
- The board took control of Mary's life eight weeks later. And for four years, the couple was forbidden to take overnight excursions.
- Finally, the Board ordered Mary into a nursing home.
- She died, alone, weighing less than 20kg (44 pounds). A doctor claimed she was malnourished

**Ever since the Guardianship Tribunal was set up in 1989 to take over the lives of 11,000 people unable to make their own decisions, it has been enveloped in controversy.**

The Protective Commissioner and Public Guardian – Dickensian titles for its bureaucratic office bearers – administer the Board's decisions. Essentially, it takes responsibility for the lives of those under its care. It has \$600 million of investments and charges fees for the service.

Bewildered relatives and carers, many of whom have struggled for decades to deal with sick loved ones, suddenly find they cannot get access to money. Sometimes, they cannot even visit. It is a highly charged breeding ground for suspicion and frustrated rage.

Now, as the Federal and State Governments consider extending guardianship powers, calls for a full investigation are becoming louder. The 800 members of the Carers of Protected Persons Action Group (COPPA) are calling for a Royal Commission.

Their claims come as the Board faces its biggest challenge: a predicted budget blow-out and the potential to allow medical experiments on people who cannot legally consent to anything. What worries many people is the move towards expanding the Board's powers to include medical trials.

A recent parliamentary committee recommended the trials – which could include drug testing, surgical procedures or the fitting of diagnostic devices – despite an estimated 33 of 58 submissions warning against it.

2.

The wording in the legislation is so loose, said COPPA's Paddy Costa; it may mean "anything from lobotomies to vaccination or deep-sleep therapy to sterilizations". It is a tinderbox atmosphere of emotion and threatens to become as explosive as the issue of aged care.

Costa formed COPPA two years ago after a family member became involved with the Board. She is the custodian of hundreds of letters which arrive daily from concerned carers. Emotional phone calls and piles of faxes describe very human tales of sacrifice and suffering, ugly family feuds, recriminations and exploitation.

### **For their own protection - Guardian authorities accused of abuses:**

**Saturday, 19 Jun 1999 - From section: News and Features - Publication: Sydney Morning Herald**

Two more story features showing the uncontrolled victimization by authorities in this country under the guise of assisting those who can't help themselves. These people are crooks, (one was jailed for 5 years for embezzling 'client's' funds) criminals, and a menace to society who should be eradicated.

Read on... you'll be horrified to think that these things can be happening in a 'civilized' country.

### **1: Guardian Authorities accused of Abuses:**

A victim's rights organisation is calling for a parliamentary inquiry into what it claims are abuses, lack of accountability and financial mismanagement by the NSW guardianship authorities.

Ms. Paddy Costa, founder of Carers of Protected Persons Association (COPPA), has given the President of the Legislative Council, Ms. Meredith Burgmann, a dossier detailing some of the complaints from 800 families.

More than 11,000 people are subject to orders by the Guardianship Tribunal because they are deemed incapable of handling their own affairs. Two State Government guardianship agencies have absolute power over their welfare and finances.

Among the cases Ms. Costa has investigated:

\* A girl of 16 who was awarded \$3 million in damages from a car accident which left her mildly intellectually disabled. While under guardianship she was encouraged to leave home and live in refuges, was raped, stabbed, began using drugs and put on 60 kilograms before her mother won joint custody;

\* A 77-year-old woman whose husband was placed in guardianship and sent to a nursing home.

The guardianship authorities applied for a Family Court property settlement and placed a caveat over her house - she believes only her husband's death forestalled her eviction and the sale of the property.

Four years ago when he was Minister for Community Services, Mr. Ron Dyer acknowledged that the guardianship authorities were "capable of making mistakes" and said **he would establish a complaints commission.**

**Nothing happened.**

## **2: Guardian authorities accused of abuses:**

They take people from their families to safeguard them. But sometimes it goes terribly wrong.

WE CAN'T tell you who she is, but she has one of those sweet Georgian names, redolent of rosewater, tea dances and knitting jumpers for our boys in Gallipoli. And although she was born 85 years ago, in the shadow of World War I, "Edith" is as bright as a button - and hopping mad.

She is sitting on the sun-flooded veranda of the block of apartments she owns, overlooking Mosman Bay, picking away at some needlework as she talks about that dreadful day two years ago when she learnt from her son John that she had been ordered to attend a hearing of the Guardianship Tribunal - a hearing that could have made her, in effect, a ward of the state.

"It really shook me up, I can tell you," she says. "They never even spoke to me first. I could understand it if I was some poor down-and-out, but look at me - I am self-sufficient. I live as well as the Queen."

Well, give or take a corgi or two. Edith doesn't just own the valuable block of flats. She manages it, collects the rent and organizes the maintenance. She has an active social life and plays cards three times a week. Her eyes are bright behind her pebble glasses, her conversation is acute, and she walks slowly but without a stick.

Is this a woman "... of diminished intellectual capacity, unable to manage your financial affairs and thus disadvantaged and exploited by your son", as the allegation to the Guardianship Tribunal put it?

"It's a pack of lies," she bristles. "As anyone would have found out if they had come to see me."

The real reason the application was lodged, as the president of the Guardianship Tribunal, Nick O'Neill, now acknowledges, was "conflict within the family". But the consequences, if she had been made subject to either guardianship or an order placing her affairs in the hands of a financial manager, would have been catastrophic.

As its own publicity makes clear, "any order that the board makes ... interferes with fundamental human rights".

The system was originally designed to protect people unable to look after their own affairs - the official in charge was once called the Master in Lunacy, and many of the people subject to orders are elderly and suffering from dementia, psychiatric illness or brain damage.

4.

A decade ago, however, the concept of incapacity was expanded. Many more people are now being caught up in the guardianship net and finding it almost impossible to escape.

Once an order is made, the authorities can, and do, tell people where to live, what care they must receive and what medical attention to undergo - including the use of experimental drugs on people unable to give informed consent, and the compulsory sterilization of young women.

While subject to a guardianship order, one woman has been compelled to have an abortion, and another told how her hair should be cut, and when.

All a person's assets are confiscated and placed in the hands of a functionary with the Orwellian title of Protective Commissioner (now NSW Guardian/Trustee).

Once an order is made, a person's property, bank account, shares, pension, medical card, will, and the contents of any safety-deposit box, must be handed over. In at least one case where a man was admitted to a nursing home, the Protective Commissioner filed for a property settlement in the Family Court intending (or so the man's elderly wife believes) to evict her from her retirement-village home and sell it.

"I had no idea these people existed, let alone the powers they have," says John, a property developer who has vowed to take the Guardianship Tribunal to the United Nations Human Rights Commission.

The reason most people, like John, know nothing of the guardianship authorities is simple: lack of scrutiny. It is illegal (penalty: one year in prison) to identify anyone who appears before the Guardianship Tribunal. Legal representation may not be allowed.

Evidence is not sworn. There is no appeal except to the (also little-known) Protective Division of the Supreme Court.

The handling of cases by the guardianship agencies is not subject to Freedom of Information legislation - Edith, for example, had to battle for seven months to obtain a copy of the application made to have her placed under guardianship.

You cannot appeal to the Ombudsman. Even the NSW Attorney-General, Jeff Shaw, one of two ministers responsible, has said he cannot intervene because it is a "quasi-judicial authority".

Fortunately for Edith, her son had the money and the clout to hire a lawyer and fight for her rights. The tribunal hearing was hastily cancelled.

But they still wonder, and worry, **how she could have come so close to losing her freedom when a simple telephone call to her or her doctor would have shown how false the application was.**

5.

PADDY Costa thumps down a plastic-bound volume the size of the Yellow Pages on the table in the lounge room of her house in inner-city Petersham. "That's only about 20 of the worst cases," she says. "I have another 800 on my books and there wouldn't be a week go by without more people contacting me."

Four years ago, outraged by the treatment of a relative whose affairs were taken over by the guardianship authorities, she founded a unique organisation called COPPA (Carers of Protected Persons Association) to take up the cause and seek a parliamentary inquiry.

She was mobbed by relatives of people subject to guardianship orders who were deeply aggrieved about the way they and their loved ones had been treated.

One thing they have in common is a fear and distrust of the guardianship authorities - and with reason.

While researching this article, I was telephoned out of the blue by a Melbourne woman who told me she was quaking at home waiting for police to knock on her door - she had refused to tell the Victorian guardianship people (who have even wider powers than those in NSW) the whereabouts of her elderly mother, and they had written to her saying that unless she did she would be in contempt of court, arrested, and punished with a fine of up to \$100,000, five years in prison, or both.

The number of people under guardianship or financial orders has quadrupled in the past decade as the population gradually greys and medical advances make it possible to keep people's bodies functioning long after their minds have packed up. There are 11,500 people in NSW who have lost the right to manage their own lives, and about 2,500 new applications were made last year cases are pumped through the tribunal at the rate of 4.5 a sitting day.

Anyone can apply for an order over someone they believe "incapable of making their own lifestyle or financial decisions".

About half the applicants are relatives, and the rest social workers, doctors and other professionals. Most cases involve older people about two-thirds are over 65 commonly suffering from dementia. But a disturbing number are younger (16 is the minimum age) and they include people with eating disorders, people who have AIDS, or who are deaf, blind or autistic. An extraordinary 14 per cent have "reason unknown" recorded against their names.

In about two-thirds of cases the person winds up in the care of a public servant named Brian Porter, a 58-year-old former lawyer, who has worn the two hats of Protective Commissioner (he looks after the money) since 1981 and Public Guardian (he looks after your welfare) since the office was invented in 1989. It is against the behavior and performance of people under his control that most complaints arise.

Porter rarely gives interviews and is clearly uncomfortable when questioned about some of the complainants on Paddy Costa's books - he says he is so nervous his throat has dried up, and goes to fetch a glass of water. "There is always another side to the story," he says.

6.

He is keen to point out that "granny bashing" is on the rise and he is there not to strip people of their rights but to "re-empower" older people who are being abused or exploited. "We don't have a week go by here that we don't have another example of quite severe elder abuse in a financial sense ... Like a painter comes into an old person's home and pretty quickly owns the house, ships the old person out into a nursing home and sells the house. Con people are extraordinary."



He is less keen to discuss cases such as that of "Carol", one of the people whose personal and financial welfare were under state control when a whole series of calamities befell her.

He does not interpret his statutory obligation to protect his clients from "neglect, abuse and exploitation" as including looking after Carol's day-to-day welfare, even though her carers were hired and paid by him from her estate.

Carol's woes began when at the age of five she was hit by a car on her way to school and left mildly brain-damaged and with-out the use of one arm. She is one of seven children in a close-knit Lebanese -Australian family who cared for her until, aged 16 and with a multimillion-dollar compensation award heading her way, she was reported to the tribunal by a social worker and made subject to guardianship and financial management.

Carol says a social worker told her she was "boss of her own body" and free to live where she wished and to go out with boys - her family was horrified when told that they should provide her with condoms. Disputes quickly developed and Carol left home and was placed in a refuge in Darlinghurst.

Cut off from her family, her life spiraled out of control. She began using amphetamines and alcohol, she put on 60 kilograms, she was stabbed in a fight. The last straw came when she was raped and then told by a social worker that if she had the baby it would be taken away from her. She agreed to have an abortion.

Now back with her family her mother has won joint guardianship, they have rented a house for her near their own home, enrolled her in a gym to lose weight, and rid her of "carers" she said she did not need Carol says, "I couldn't be better."

She and her family, however, are far from happy with the way the authorities still control the \$3 million she was eventually awarded in compensation. She wants to invest at least some of it in a block of apartments to provide for her long-term financial needs - her financial managers insist she is better off putting it in government bonds.

Dr Alec Preda, a doctor who for seven years was one of the commission's "court visitors", says this kind of case mismanagement is common.

As a "visitor" responsible for monitoring the care of people in guardianship, he had a caseload of about 100, and would see people no more than once a year.

7.

"There are frequent stuff-ups ... I can even remember one case where a man died because he was not taken to hospital in time," he says. "The problem is you have a concentration of power in the hands of one authority which is not responsible to anyone."

What makes this lack of accountability doubly concerning to people like Preda is that last year, with little public debate, the law was changed to allow "clinical trials" - described by critics as medical experiments on human beings - of drugs, medical devices and procedures to be performed on people subject to guardianship orders without their informed consent.

Last year one such trial was approved of a drug which, it is hoped, will improve the white blood cell count to combat pneumonia and sepsis. Since then the use of another eight experimental drugs designed to slow the development of dementia and reduce damage from severe strokes has been approved by the tribunal, although O'Neill would not name them nor discuss any details, for fear of damaging the commercial interests of the drug companies involved.

Although approval for such clinical trials is subject to strict conditions and must conform with National Health and Medical Research Council guidelines, **people such as Barbara Wright, a nurse who is president of the Medical Consumers Association, are extremely concerned. She is It is the most appalling abuse of human rights."**

She is appealing to the Human Rights and Equal Opportunity Commission, claiming that experimental drugs with the potential to harm (known side-effects of one drug trialled include bone pain and enlarged spleen) should not be used on people who are incapable of understanding what is being done to them.

"These people are being used as guinea pigs for the profits of the multinational drug companies," she says. "

HE LIES on his back on a hospital-style bed, a fragile figure with his hair wet from the bath from which he has just been lifted by his burly carer, his eyes open but unfocused. When "Margot", his elderly mother, tries to get him to acknowledge the visitor by blinking or moving his thumb, there is no response. "I've got you a nice bit of perch for lunch," she whispers, kissing his damp forehead and turning away.

This is how "Jason" has been for 13 years. Totally dependent on his mother and on 24-hour-a-day care, living in a specially built suite under the family home fitted out with the tilt tables and other apparatus needed to keep him alive.

Now aged 40, Jason was once one of the most promising young talents in the Australian arts. That ended abruptly when a car accident left him profoundly brain-damaged.

The battle to obtain compensation for his horrendous injuries he was eventually awarded more than \$7 million was nothing compared with the war his mother is now waging to remove him from the clutches of the guardianship authorities.

8.

Tears of anger and frustration run down her face as she describes how they have mismanaged her son's welfare, using his money to fight her through the courts to try to take Jason from the care of his mother.

Among many complaints: thousands of dollars from his award were spent leasing a house for him and buying and storing furniture that was never used. One carer hired to look after Jason turned out to have a criminal record, while another extraordinary as it sounds became besotted by the helpless young man, kidnapped him from the house, and spirited him away for a fortnight.

Eventually his mother was made his guardian, but she is still trying to extricate Jason's finances, which she believes are being squandered, and invest them in a private trust fund.

**She calculates \$3 million of the award has gone already, an extraordinary \$2 million in legal costs alone.** "The legal profession treats people like her as a milking cow," Costa says. "Her greatest worry is that when she passes on, the money will be gone and [Jason] will be buried in some dark ward."

As near as can be calculated from year-old accounts, the Protective Commissioner is entrusted with \$1.75 billion of the assets of people deemed incapable of handling their own affairs - \$850 million in cash, the rest in property.

This great pool of funds money which is all thousands of people have to last them the rest of their lives is still in such safe but underperforming investments as government loans and bank and building society deposits, even though the law was changed in March last year to allow investment in the more profitable stock market. All private trust companies switched part of their portfolio into stocks almost immediately.

The result is that the Protective Commission claimed a 9.6 per cent return on its investments last financial year, compared with a 13.7 per cent average for Australia's large superannuation funds. It might sound nitpicking, but this shortfall of 4.1 per cent represents about \$35 million in extra income that the commission's "clients" should have received. The Auditor-General is conducting a performance audit sparked by this and other complaints.

Greg Pride, an investment consultant at Godfrey Pembroke, says that most people whose assets are managed by the commissioner never see even this paltry return. This is because of the unique way the commission is financed. Its \$15 million-a-year operating cost comes not from the Government but from charging its clients 5.25 per cent of their investment income.

"Decisions are being made by people on \$30,000 a year who don't even have an ASIC [Australian Securities and Investments Commission] license," he says. "It's scandalous, absolutely scandalous, that these poor people have been swallowed up by a monster under the banner of, 'We are protecting your interests.'"

9.

As well, the potential for outright fraud was underlined last year when a senior official at the Protective Commissioner's office was found to have stolen \$500,000 by forging wills, and opening a bogus bank account using the birth certificate and pension card of a woman institutionalized for 45 years. Jeffrey Douglas Nichol, 47, was sentenced to five years' jail.

WHEN they took her husband away to a nursing home, Margit Harves felt a sense of relief. Joe was suffering from severe dementia and had taken to wandering off in the night from their house in a retirement village at Turramurra.

**But she didn't expect the authorities would decree that he had to be put in a home in Warriewood, which would entail her travelling by public transport for two hours a day to visit him. Nor did she realize that placing his affairs in the hands of the guardianship authorities would almost cost her, her home.**

Both were on a pension, and the only major asset the couple possessed was the house. The Protective Commissioner applied to the Family Court for a property settlement, which she believes would have led to her eviction and the sale of the home, with the proceeds being split between them.

Mrs. Harves, who was then aged 77, says, "I nearly dropped dead on the spot when I found out they had put a caveat on the house. How can they do this when it's in my name? What are they doing putting an old lady out in the street?"

The fact is they can, and do. In the Harves case, the proceedings were forestalled only by Joe's death.

**Without money, large amounts of money, to go to the Supreme Court, people like Mrs. Harves, Carol, Margot and all the others have nowhere to appeal.**

Ron Dyer, when he was NSW Community Services Minister, did acknowledge in 1995 that the guardianship authorities were "capable of making mistakes" and promised to establish a complaints tribunal. But nothing happened.

Until it does, the hundreds of people on Costa's books will continue to demand:

**Who is guarding the Guardians?**

## **Attachment**

**4.**

**Submission of June Walker**

**Examples of:**

**The misuse of the NSW Guardianship Tribunal**

**and**

**Abuse of Power by Guardianship Tribunal decision makers**

1.

## **The hidden misuse of the NSW Guardianship Tribunal by financial predators:**

### **Example 1: 2012 - 2013**

On more than one occasion a public interest TV program screened a segment regarding a NSW Taxi Driver known as 'Sam' who made a habit of befriending elderly customers with or without disabilities, for his own self-financial benefit.

- One story concerned a widow Mrs. J., **who lived alone and had no nearby relatives.**
- **Mrs. J.** used Sam's taxi to take her to and from her hospital and medical appointments.
- **Sam gave Mrs. J. his personal card to enable her to ring him direct to book his cab.**
- **This isolated Mrs. J. from others and gave Sam control over her movements.**
- The reporter stated Sam had acquired either 'a guardianship or financial management' of Mrs. J.
- **When Mrs. J. was on her deathbed in a hospital, Sam arrived with a witness, a pre-typed will and other documents for Mrs. J. to sign.**
- **Although Mrs. J. was legally blind, the documents were somehow signed.**
- **This act resulted in:**
- **Mrs. J. changing her normal religion to become a Muslim, which resulted in her body being wrapped in a cloth and being buried without a casket.**
- **Sam acquiring full ownership of Mrs. J's mortgage free home after her death.**

### **Sam was shown in another TV segment which involved:**

- Sam befriending a vulnerable male 'war veteran' with an intellectual disability who lived in an Aged Care Facility.
- Sam was using this person's ATM card for his own financial benefit.
- This veteran also frequently used Sam's Taxi and although the evidence of Sam's wrongdoing was put in front of him, **he refused to believe that 'Sam' was taking financial advantage of him.**

One elderly woman who didn't have a disability and used Sam's taxi at times, advised the reporter that **Sam asked her outright to leave him something in her will and she said 'NO'.**

### **Example 2: 2011- 2013**

A further TV segment titled '**Missing Monies**' involved a Sydney female Bank Manager with a habit of befriending elderly, wealthy female customers.

- One victim was Mrs. H. who lived alone and was a customer at a bank branch where the manager originally worked

- When the manager transferred to another bank, Mrs. H's accounts were also transferred to that bank branch which was close to Mrs. H's home.
- After befriending Mrs. H. the Manager arranged for a personal friend to become **Mrs. H's paid carer.**
- Without the prior knowledge of senior members of Mrs. H's family, one of whom resides overseas, with the assistance of a solicitor known to the Manager, these two women became Mrs. H's **guardians and financial managers.**
- Locks were frequently changed on the doors of Mrs. H's home to prevent family members from gaining access.

2.

- 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 at least three of Mrs. H's wills with their personal financial gain increasing with each will.
- The final amount resulted in these two women standing to gain around \$1.5 Million and only one junior family member receiving \$20,000.

Mrs. H. had been diagnosed with dementia and while she was in hospital the solicitor who 'assisted' the bank manager in the '**NSW Guardianship Tribunal' matter**, arrived at the hospital with the intention of obtaining Mrs. H's signature on legal documents which would have given the Bank Manager POA **however, an alert staff member prevented them from doing this.**

- After Mrs. H's death it was discovered that around \$500,000 was missing from her accounts.

It was later discovered that this bank manager had also befriended two other elderly woman with the aim of financial gain.

**The NSW Police became involved in this case.**

Newspaper Article regarding the above story:

### **Doubts over will of sick woman      Published August 8<sup>th</sup> 2011**

- A BANK manager and paid carer have **lost guardianship of a NSW woman** after she was hospitalized with hypothermia - and her family claims an estimated \$500,000 in cash and assets has vanished.
- Yet the pair are in line for a further \$1.48 million in assets because the dementia-suffering 91-year-old's will was changed to make them main beneficiaries.

- In September 2006, just months after joining Bendigo Bank, **the manager became co-guardian of the woman, who was a customer.**
  - It was only when the woman's family wrote to the bank's CEO in mid-2007 that alarm bells sounded.
  - In August 2007, the bank wrote to the family to say it considered it **"inappropriate for an employee of the bank to act in the capacity of a legal guardian with control over the financial affairs of an existing customer ... the bank considers the potential for a conflict of interest to arise in such situations too great and is contrary to the bank's code of conduct"**.
  - In October of that year the bank wrote to the family to say it had "concluded its investigation and appropriate action has been implemented".
  - In an initial statement Bendigo Bank said the woman "does not hold any bank accounts with Bendigo and Adelaide Bank and as such there is no conflict".
  - However, a November 2007 bank letter - **not to the family** - shows it was still **"concerned about the conflict of interest"** and, contrary to what it said in October, **investigations were not complete.**
  - In a second statement the bank admitted **"at the end of 2007, there was a short period of time - up to six weeks" where its manager was its customer's guardian.**
- 3.

### Example 3: 2013

**This story is from an internet blog regarding NSW Guardianship Tribunal Abuse.**

The NSW Guardianship Tribunal is only meant to place a person or their affairs under the control of the NSW Trustee/Guardian **as a 'last resort' if there is no suitable alternative.**

One woman who voluntarily approached the NSW Guardianship Tribunal wrote:

- 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.
- 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 handing our family affairs.**
- **There is no dispute between us or any need for the Trustee.**

4.

- 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.**

**This is not an isolated case** as many other cases where there has been 'no family conflict 'and no financial or other abuse occurring, **have resulted in the NSW Guardianship Tribunal decision makers** ignoring the wishes of the person with the disability and family members by unnecessarily **placing the affairs of these people into the hands of the NSW Trustee/Guardian.**

This clearly indicates that this Tribunal is working as a 'collection agency' for the purpose of propping up the funds of the Trustee/Guardian.

**Example 4: 2014.**

**Abuse of power by an Aged Care Facility manager:**

**Are People with Disabilities the 'Hidden Stolen People' of Australia?**

The following example occurred in South Australia and **it has also happened in NSW.**

A different and alarming scenario was shown on a South Australian based TV segment which involved a **Manager of an Aged Care Facility and the South Australian State Trustees.**

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

- A middle aged daughter in S.A. 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 very early stages of dementia, in an Aged Care Facility for a period of 20 days of respite care.
- When hospital staff advised her that her father's health had deteriorated and he was close to death, the daughter returned to the Aged Care Facility to take her mother to the hospital to visit her husband for the last time.
- On arriving at the Aged Care Facility the daughter was confronted by the Facility Manager who advised her that **she could not see or remove her mother from the facility as he was her mother's guardian and the S.A. State Trustees had taken over her mother's financial affairs.**
- The daughter was then told to leave the premises immediately as she was trespassing.

The TV segment went on to show the daughter arriving back at the Aged Care Facility with a TV reporter.

- On returning to the Aged Care Facility with the Today Tonight reporter, the Facility Manager **repeated that he was mother's 'guardian' and that the daughter was not permitted to see or remove her mother from the facility.**

5.

- With the reporter's support, the daughter managed 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.**
- She stated that **she did not understand what she was signing but was 'too frightened' not to sign them.**

Surely the question needs to be asked:

- Are the State Trustees that desperate for 'clients' that they have to steal them from Aged Care facilities?

**Example 5:**

#### **Unwilling Ward of the State – The Queensland Courier-Mail September 2007**

A MAN who spent \$200,000 over 10 years on phone sex lines had his affairs taken over by the state after relatives claimed he was suffering dementia.

- **The 76-year-old retiree is now fighting the long-term Guardianship and Financial Administration Orders under which he was placed by the Guardianship and Administration Tribunal in June.**
- They have kept me under orders **without (sufficient) medical proof** that I'm not capable of making my own decisions," he said.

The case raises more concerns about Queensland's guardianship system – which is already the subject of a review by the Queensland Law Reform Commission – including whether the tribunal should be required to seek expert medical opinions when placing people alleged to have diminished capacity under long-term orders.

Carers Queensland, one of two advocacy groups now trying to help the man, said it remained concerned about a number of aspects of the Guardianship Regime, particularly about procedures that declare an adult incapable of making his or her own personal and financial decisions.

**"It is the most extreme and serious action that can be taken by the state . . . There must be extreme caution taken in exercising such a power,"** the agency's Brendan Horne said.

- In the man's case, the orders made by the Tribunal mean the Office of the Adult Guardian and the Public Trustee can control every facet of his life, from where he lives and who he has contact with, to what he can spend money on.
- The tribunal's reasons for the November 2006 decision show members of the man's family variously alleged he'd made \$20,000 worth of 1902 calls a month over two years, or that he'd spent \$200,000 over several years, that he was delusional, had mood swings, practiced poor personal hygiene, was incapable of looking after himself and that he had been diagnosed with dementia.
- After he was placed under orders, the man contacted a professor of neurology and a respected neuropsychologist and subjected himself to extensive clinical and cognitive testing, including brain scans.
- Both specialists, who subsequently provided reports to the tribunal, said **he did not have dementia and that he was not of diminished capacity.**

6.

- The neurologist's report said the neuropsychologist's findings support my diagnosis that (the man) **has no form of dementia and that he is competent to manage his personal and financial affairs.**
- "But at the last hearing in June, the Tribunal said that if I wasn't demented, **maybe I was psycho – that's the offensive term the woman chair of the tribunal used,**" the man said.
- "So now I'm arranging to be examined by a psychiatrist and because I don't have control of my finances, **I'm putting a bit by each week out of the allowance the Public Trust gives me to live on to pay for it.**"

Tribunal documents from the April and June hearings show **the Tribunal members raised the possibility of the man having a psychiatric illness, ruling he was of diminished capacity and extending the guardianship order for two years and the administration order indefinitely.**

In its reasons it said:

- Whilst the Tribunal accepts that (the man) does not have a diagnosis of dementia, there is evidence of cognitive dysfunction which impacts on the nature and effect of his decision-making in respect of the 1902 calls.
- **The reasons do not show the Tribunal recommending the man undergo psychiatric testing to back that finding.**
- A spokesperson for the family said they supported the Tribunal processes and the appointment of the Adult Guardian and the Public Trustee.

The Adult Guardian, when asked whether she had concerns about the Tribunal's decision to place the man under orders, **said she was unable to comment about individual cases because of confidentiality provisions.**

- The man said he could not remember when exactly he began making the 1902 calls, which can cost up to \$5 a minute. "(It was) 1999 I think. It started out as a bit of fun for me," he said.
- It averages, for around 40 years of married life, about \$5000 a year and that's a pittance because I never spent any money on myself and I was a very good provider to my family."
- **When the Public Trustee arrived to physically take his cheque books and freeze his bank accounts, he said he was "shattered".**
- **"I cried all night that night – I had been writing out cheques for 50 or more years and I just couldn't believe this was happening to me," he said.**
- The man, who is now estranged from his family, said he felt "foolish" about his use of the 1902 numbers. "Look where that's got me," he said.

## **Attachment**

**5**

Submission of June Walker

**U.K. Court of Protection**

1.

## **At last! Victory on secret courts: (Equivalent to Guardianship Tribunals)**

Published: 09:12 AEST, 17 January 2014 | Updated: 09:12 AEST, 17 January 2014

### **Rulings in family cases to be made public after Mail campaign**

- Family Court and Court of Protection judgments will now be made public.
- Expert witnesses, including social workers, are to be named
- Councils applying to take children into care can no longer claim anonymity
- New rules laid down by President of the Family Division Sir James Munby
- Daily Mail has exposed a series of major scandals over the past year
- **These have resulted from justice being conducted behind closed doors**



**Landmark ruling:** President of the Family Division Sir James Munby

2.

Decisions by secret courts that can lead to children being taken from their parents **or old people forced into care homes are finally to be opened up to public scrutiny.**

Under rules set out yesterday, future judgments in the family courts and the **Court of Protection (equivalent of Australian Guardianship Tribunal)** must be made public except in cases where there is a clear reason to dictate they should not be.

- Councils applying to take children into care or to take control of the lives of the old and sick can no longer hide behind a cloak of anonymity.
- Expert witnesses, including social workers, should also be named in public, as should anyone found responsible for wrongdoing.

**The landmark changes break a silence that has surrounded family justice for nearly 100 years.**

They also mark a major victory for the Daily Mail which has campaigned against secret courts and exposed a series of major scandals over the past year resulting from justice being conducted behind closed doors.

The new rules, laid down by the most senior family judge, President of the Family Division Sir James Munby, say that judgments in the family courts and the **Court of Protection must always be publicized unless there are ‘compelling reasons’ why not.**

Only children **and adults** caught up in disputes and members of their families should be protected by anonymity.

The guidelines warn that **secrecy prevents families who have been involved in cases from complaining when they believe they have suffered injustice.**

Sir James said in guidance sent to judges that there would be ‘an immediate and significant change in practice in relation to the publication of judgments in family courts and the **Court of Protection**’.

He added: ‘In both courts there is a need for greater transparency in order to improve public understanding of the court process and confidence in the court system.

‘At present too few judgments are made available to the public, which has a legitimate interest in being able to read what is being done by judges in its name.’

The Mail’s campaign revealed last April that the Court of Protection – set up by the last Labour government to deal with the affairs of those too ill to make decisions for themselves – had jailed a woman in secret and without publishing any record.

3.

A Birmingham judge imprisoned Wanda Maddocks, 50, for contempt of court for trying to get her father out of a care home where he had been ordered to stay.

Miss Maddocks had no lawyer to represent her, and no judgment was published. She served six weeks.

In December we revealed how an Italian mother who had been forced by the Court of Protection to have a caesarean begged a family court judge in vain to allow her to keep her baby. Everything that happened to the mother, Alessandra Pacchieri, was decided by the courts in secret.

In the same month we disclosed the case of the 'irreproachable' father who spent 12 years and £100,000 in the family courts trying to win the right to see his 14-year-old daughter – and who still has not won his case for access.

Currently, secrecy in the family courts – which can remove children from dangerous parents, order them to be adopted, and decide on their custody – is governed by 1960 law.

This makes it contempt of court to discuss a case when no judgment has been published, a crime punishable by two years in prison. Successive attempts to open up the courts have been thwarted.

In 2006, Labour Lord Chancellor Lord Falconer blocked a law that would have allowed more light in because state-subsidized charities such as the NSPCC and the National Children's Bureau opposed the idea.

Labour's 2005 Mental Capacity Act, pushed through by Lord Falconer, set up the Court of Protection. Its rules say 'the general rule is that a hearing is to be held in private'.

Sir James Munby, who took over a year ago as President of the Family Division, which includes responsibility for both courts, said his new guidance, would take effect from February 3.

He added that further guidance and formal legal practice directions will follow. There may yet be full Parliamentary legislation, although Sir James said this is 'unlikely in the near future.'

He said that current rules are 'inappropriate where family members wish to discuss their experiences in public, identifying themselves and making use of the judgement.

**'Equally, they may be inappropriate in cases where findings have been made against a person and the court concludes it is in the public interest for that person to be identified.'**



## ...and how the rules have changed

*In the family courts, matters which will normally be published under the new rules include:*

■ **Contested hearings with allegations of significant physical, emotional or sexual harm.**

■ **Final orders for children to be taken into state care, where the parents object.**

■ **Adoption orders, where the parents object.**

■ **Imprisonment, medical decisions, applications for secrecy in the case.**

*And in the Court of Protection:*

■ **Hearings about the withholding of medical treatment.**

■ **Rulings on imprisonment.**

■ **Disputes over 'attorneys' - lawyers or friends who have the right to decide on life or death for some patients.**

■ **'Deprivation of liberty' cases confining people to care homes.**

■ **Cases involving property and assets worth more than £1 million.**

■ **Rulings on whether people have mental capacity to marry or consent to sex.**

*In both courts:*

■ **Identities of local councils and expert witnesses, including social workers.**

■ **Only children, adults and family members in the case should remain anonymous.**

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# **Attachment**

## **6**

**Submission of June Walker**

**U.K. Court of Protection**

**Examples of Abuse**

## **Read these stories of how the secret courts imprison the elderly in care homes against their will - and weep**

By [Steve Doughty for the Daily Mail](#) Published: 12:10 EST, 14 March 2014

**Seldom does a parliamentary inquiry manage to uncover a national scandal on the terrifying scale of the one blazoned across yesterday's Daily Mail front page under the headline 'Prisoners of Care Homes'.**

Astonishingly, this report by a House of Lords committee on the workings of the Blair government's 2005 Mental Capacity Act found that 'thousands, if not tens of thousands' of old people have been forcibly incarcerated in care homes or hospitals against their wishes and are being 'de facto detained unlawfully'.

At the heart of the scandal is the ultra-secretive Court of Protection, set up under the Act, which rules every year that thousands of people are deemed to 'lack mental capacity' — so that control of their lives and property can be handed over to social workers and other state officials.

The 2005 Mental Capacity Act, which rules every year that thousands of people are deemed to 'lack mental capacity' - so that control of their lives and property can be handed over to social workers and other state officials.

The Lords report concludes that Labour's 2005 Mental Capacity Act, which brought in the Court of Protection and the so-called Deprivation of Liberty rules, **has in practice so dismally failed to honour the purposes for which it was put into law that this whole system needs reforming virtually from scratch.**

**To this end, Lords recommend an independent body is given responsibility for oversight of the Act to drive forward vital changes.**

**But even in their excoriating report, these peers have scarcely told the half of why this reform is so desperately needed.**

**There is some hope, however. Lord Justice Munby, head of the Family Division of the High Court, appears determined to open the Court of Protection to the 'glare of publicity'.**

**This means we might one day see an end to one of the greatest scandals in Britain.**

Last week a damning inquiry found thousands of vulnerable people were being deprived of their liberty by decisions made in the secretive court under the Mental Capacity Act.

**The scathing report by a Lords committee said that the Act was being ‘willfully used to oppress individuals and to force decisions upon them’ and should be changed urgently.**

'It is clear that the secrecy here is acting to protect someone who has been trying to extort money from someone, and will do nothing to protect other elderly people in a similar situation'

**Liberal Democrat MP John Hemming**

**Wanda Maddox:**

Last year, the Mail lifted a corner of the veil of secrecy surrounding this little-known court’s workings when it reported the case of Wanda Maddocks, who was imprisoned by one of its judges for removing her 80-year-old father from a care home in Stoke-on-Trent where he was being abused.

Eventually, he was tracked down by social services, and forcibly returned to care, **while his daughter was punished for ‘abducting’ him with a 12-month jail sentence.**

The Mail was able to report the details of this story only after Miss Maddocks was released from prison, because in the meantime her father had died and his case was therefore ‘closed’.

Thousands of people all over Britain have been locked up against their will and the wishes of their families on the say-so of 'experts' in secret courts

While the Lords report is savagely critical of how this system works, **finding that it is too often used to detain old people illegally**, it scarcely touches on the terrifying consequences of this incarceration for elderly and vulnerable individuals up and down Britain.

A number of journalists like me have long been aware that these constitute one of the most flagrant abuses of human rights to be found anywhere in the nation today. But it has been extremely difficult to bring this to light because of the way the Court of Protection manages to hide the extraordinary powers it bestows on social workers.

We should be grateful to those members of the House of Lords who have raised the deeply worrying workings of this court to the forefront of national attention.

But it is only when you learn of individual cases, as I have over years of writing on this subject that you truly appreciate just how much misery the Mental Capacity Act has wrought on those who fall into its clutches.

Here are three such cases concerning families who have contacted me in anguish. Because of the secrecy imposed on each of them by the Court of Protection, I cannot name the individuals and their details are necessarily sketchy — but they will all make you want to weep.

3.

**THE SOLDIER WHOSE WIFE HAS ALZHEIMER'S**

Mr. C, who served with the 'Glorious Glosters', as the Gloucestershire Regiment was known for its heroics in the Korean War, had been happily married for more than 50 years when his wife developed Alzheimer's.

At the behest of Exeter social workers, a Court of Protection judge ordered her removal from his loving ministrations to a private care home.

Mr. C was shocked to observe how his wife was not being properly looked after. When he arrived one day to find her missing from her room, it was eventually discovered that she had wandered off unnoticed and became trapped in a cupboard.

He protested to the social workers, **whose response was to ask the Court of Protection for an order forbidding him and his wife to have any further contact.**

**Not only was he prohibited from visiting her for years, he was not even allowed to send her flowers or Christmas and birthday cards.** He finds it hard to speak of what has happened to them both without weeping.

#### **THE EX-MIDWIFE WHO IS TERRIFIED OF HER CARERS**

Miss G is a 94-year-old former midwife living in her own house in East London. When Redbridge council social workers sent in 'carers' to help her, she found them hopelessly inadequate.

But a married couple who befriended her at church moved in and looked after her so well that she now talks of them as 'family'.

Meanwhile, the council hired a psychiatrist who found she did not have 'mental capacity' to make decisions on her own behalf, and sought the Court of Protection's permission to take control of all her affairs, including her house and substantial savings.

Horrified, she paid £1,000 to be examined by the President of the Association of European Psychologists. He found that she certainly still had 'capacity' to manage her affairs, and was highly critical of the council psychiatrist's report.

**But the judge dismissed his findings, preferring those of the council's 'expert'.**

This frail old lady is now terrified the social workers will evict the couple looking after her, and bring back the old carers who were so inadequate, using her own money to pay for them.

4.

#### **THE CHESS PLAYER FORCED TO LEAVE THE HOME HE LOVED**

Few stories are more upsetting than that of Mr. B, whose case came to court at the behest of Essex social workers three years ago and who was deemed by a judge to lack 'mental capacity'.

Against his wishes, he was removed from the comfortable house where he spent most of his life, to be incarcerated in a private care home

Initially, his son was allowed to visit him, and one day, at his father's wish, the two went sailing. **On their return, the son was arrested, his father taken back to the care home and the son's visits were suspended.**

The council had been given by the court complete control of the father's property, money and other assets, including some very valuable pictures painted by a famous artist who was a family ancestor — which it then sent to a local auction house to sell, to help towards paying the fees for the care home.

**When the son protested to the auctioneers, they were withdrawn from sale.** His father, still able to play chess and do crosswords, despite having been ruled as lacking 'mental capacity', became ever more miserable at his situation.

Only recently, **when he suffered a series of injuries inflicted on him in the home, has it begun to look just possible that — thanks to an unending battle fought by the son — this unhappy 85-year-old might be allowed to return home.**

There must be hundreds of similar stories unfolding every year, almost none being reported, because of that blanket of secrecy the Court of Protection has been allowed to throw not just around its own workings but over the conduct of everyone who benefits from this system — the social workers, the psychiatrists they hire as 'expert witnesses', the lawyers who act for them, the owners of the private care homes they provide with a regular supply of customers.

As with much else that goes on behind the closed doors of our family courts, no one can argue with the laudable intentions of this system — to ensure those who cannot fend for them-selves are looked after.

5.

**Handyman took £200,000 from woman, 89, after secret court gave him control of her bank account:**

By [Steve Doughty for the Daily Mail](#) Published: 10:18 AEST, 17 March 2014

- He persuaded the vulnerable woman to sign over her bank accounts
- The agreement was approved by Court of Protection - despite social workers' doubts

- Her insurance firm raised alarm after he tried to take nearly £150,000

A gardener was able to take more than £200,000 from the bank account of an 89-year-old woman **as a result of a ruling by the controversial Court of Protection.**

- The handyman persuaded the confused and vulnerable woman to sign an agreement that he should control all her bank accounts, savings and property.
- The agreement – which was approved by the court even after social workers questioned the gardener’s motives – allowed him to put more than £200,000 of her money into his own account.
- He was stopped only when he tried to take nearly £150,000 more of her savings, causing her insurance firm to raise the alarm and the police to investigate.
- Astonishingly, although the court has now ruled the man can no longer manage the woman’s affairs, **it has ruled that his name should be kept secret.**
- Details of the case were disclosed in a Court of Protection judgment under new legal rules demanding greater openness.
- But critics said the ruling wrongly protects the gardener and leaves other elderly and vulnerable people and their families without warning of his record.

The gardener, now 69, was able to persuade the wealthy widow to give him a lasting power of attorney (LPA) after he began working at her home in Orpington, Kent, in 2006.

The woman, who had spent her career working for the BBC World Service, has no children and only distant relatives.

In August 2011, she signed a will in which she promised to leave four-fifths of her estate to the gardener. Two months later, she signed over to him the right to control her affairs through an LPA.

Her signature was witnessed by her accountant, and two friends completed a form in which they said she understood what she was doing and was not being pressured into it, the Court of Protection found.

A recent enquiry said **many elderly or vulnerable people are dumped in residential homes to make it easier to control them or simply to save money.**

6.

However, social worker Jenny Payne told the Office of the Public Guardian, which is part of the Court of Protection and regulates LPAs that she had ‘concerns about [the gardener’s] conduct’.

She told the court that the woman had been found on a bus in a confused state and taken to hospital but that the gardener had turned up on the ward, declared there was nothing wrong with her and insisted that she be discharged into his care.

**Despite this, the gardener was granted power of attorney.**

According to the judgment 'As the power of attorney was for property and financial affairs, and because the NHS concerns were of a personal and welfare nature, the Public Guardian felt that he was unable to intervene.'

Six weeks after the gardener won power of attorney in February 2012, the widow was moved into a residential care home in Bromley with dementia. Over the following months, a series of payments were made to the gardener from her assets.

They included a banker's draft for £7,000, cash withdrawals totaling £8,520 and a gift the gardener made to himself of £38,000.

A further £8,340 went on his salary for house clearance, rubbish removal and gardening. He paid a £599 deposit for a Motability car for his wife, together with £55-a-week car hire payments and petrol money of around £30 a week.

In February last year, he sold the widow's house for £165,000 and moved the money into his own account. An investigation began only when the gardener asked Aviva to pay him the proceeds of a £140,000 investment bond held by the widow.

A manager at the insurance company immediately froze the money and the Office of the Public Guardian started an investigation.

After he discovered he was being investigated, the gardener changed the name on the account into which he had put the money, putting it into the woman's name.

Investigators for the Public Guardian found the woman did not even know who her gardener was and did not understand the powers she had given him. They also found he visited her care home only once every three weeks.

6.

At a court hearing, the gardener protested that if the LPA were to be struck out, he would not be able to afford the Motability car and would no longer be able to take the woman to visit her husband's grave.

But Senior Judge Denzil Lush ordered the LPA to be revoked. He said the gardener had broken its terms in several ways and his claim to a salary was 'inherently artificial'.

Because there has been no criminal charge **'it does not imply that his behavior has been impeccable', he said.**

He ordered that the woman's affairs should be managed by a publicly-appointed official who will pay her care home fees from the proceeds of the sale of her home.



Although the gardener was investigated by police, the Crown Prosecution Service decided not to prosecute. **He will keep more than £60,000 of the money he took from the woman's accounts and estate.**

Liberal Democrat MP John Hemming, who has campaigned against secrecy in the courts, said: **'This is not exactly naming and shaming.**

**'It is clear that the secrecy here is acting to protect someone who has been trying to extort money from someone, and will do nothing to protect other elderly people in a similar situation.'**

The Lasting Power of Attorney was introduced under the 2005 Mental Capacity Act, which set up the Court of Protection – **only now being opened to public scrutiny after a series of scandals.**

The extraordinary case will add to growing fears over the workings of the Court of Protection

**But yet again we see the old truth that, where courts are allowed to operate in secret, terrible abuses of justice almost inevitably follow.**

## **Attachment**

### **7**

Submission of June Walker

### **MDAC**

MDAC is an international human rights organisation that uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide.

MDAC is headquartered in Budapest, Hungary and was registered as a foundation by the Budapest Capital Court (registration number 8689) in November 2002.

MDAC was long-listed by the Parliamentary Assembly of the Council of Europe for its 2013 Vaclav Havel European Human Rights Prize.

1.

**Oliver Lewis,**  
Executive Director,  
**MDAC - [Mental Disability Advocacy Center.](#)**

**‘People still are often subject to the most grotesque neglect and abuse’**

By Yana Buhner Tavanier

***Legal capacity and autonomy is one of MDAC’s priority areas. What should change in this direction?***

**Guardianship is supposed to provide protection, but it does not. In fact it facilitates the human rights abuses. It is a human rights abuse by itself. And the ECHR has recognized it as such.**

What happens is that a family member goes to a local court with a psychiatric report which says a person has a diagnosis of a mental health problem or an intellectual disability. The court then deprives the person of his/her legal capacity. Often the person whose capacity is in question is even not informed that this is happening.

And once one is stripped of his/her legal capacity and is placed under guardianship, she/he is deprived of numerous rights, for example the right to vote, to work; to manage his/her finances, to decide where to live, to marry. The properties of such person are managed by his guardian.

We believe that this binary approach is unsuited to the realities of life: everyone has functional capacity to do something, and that people are capable of different things.

Article 12 of the UN Convention on the Rights of Persons with Disabilities provides that everyone has the right to legal capacity. It also provides that people should have access to support if they need it in exercising legal capacity. Thus for example supported decision-making is an alternative much more appropriate than fully stripping people of their legal capacity.

MDAC has been working with NGOs and the governments in Hungary and the Czech Republic, and both governments have introduced changes to their laws, and the Parliaments are considering these proposals. They will be the first two EU countries that are changing their legislation inspired by the Disability Convention.

In Bulgaria the government has not yet taken an interest, but MDAC will be advocating for such changes. In Bulgaria it is quite shocking that the directors of large residential institutions are also the guardians of the residents: **this creates an unacceptable conflict of interest.**

2.

***What about institutions themselves? What, according to MDAC, should happen there?***

We want governments to open institutions to public scrutiny. Governments need to establish and fund inspectorates which are thoroughly independent of government and carry out regular and vigorous human rights monitoring of places of detention.

We also want governments to take active steps to close down institutions and to establish community care alternatives so that people with disabilities are integrated into society.

Article 19 of the UN Convention on the Rights of Persons with Disabilities provides for a right to live in the community.

We look at what is happening inside the institutions – **ill treatment, physical and sexual abuse, isolation, physical restraints, medical restraints, seclusion and death.**

***Should the EU require better human-rights track-record from future candidate countries?***

Undoubtedly yes. When Bulgaria and Romania were joining, it was blatantly obvious what the situation was, there was no lack of information about the human rights abuses in institutions.

The situation was even mentioned in the progress reports of the European Commission. **But the Commission failed European citizens by totally ignoring this situation.** There has been no change since these countries joined the EU, and there are few mechanisms for the Commission to improve the rights of people in its Member States.

**Bulgaria and Romania were quite literally getting away with murder: people were, and are, still often subject to the most grotesque neglect and abuse, and such human rights violations are carried out with impunity.**