

A Submission to the Victorian Government Law Reform Committee; Inquiry into Powers of Attorney

15 July, 2009

A lot of work has been done by the Federal Parliament 'Inquiry: Older People and the Law' (published September, 2007 Ch. 3 'Substitute Decision Making')

The Recommendations in that report, I believe, are also relevant to the State of Victoria.

However, the current Inquiry into Power of Attorney should also take into account the following:

1. All instruments pertaining to Substitute Decision Making for older people esp. **'Enduring Power of Attorney' should be mandatory registered. This would eliminate the necessity of searching for the document, if the donor loses capacity.**
2. In **establishing the capacity** of the donor, a letter from the donor's regular GP, should be obtained. **Lawyers should also be educated about ensuring the capacity of their clients at the start of a proceeding.** Unfortunately, I witnessed, a property settlement where that was not done. The case involved property settlement negotiations which lasted almost a year. The question of 'Capacity' of a party (long diagnosed as a sufferer of a serious mental illness), was NOT brought up till a couple of days before the scheduled signing of the final documents of settlement.
3. **Clarifying the meaning and implications of what is set out in the document; should be explained to the Donor, and the 'attorney'.** This would remove the excuse later on; "I did not know what I was supposed to do". Just from my own experience of signing a Power of Attorney for a close friend; the solicitor was more interested in getting the signature from me than to ensure my understanding of my duties in that particular document.
4. With reference to your **Terms of Reference (d). In minimizing the abuse of Power of Attorney: Something must be done to eliminate the case of Neglect of duty.** A case in point: The son has Enduring Power of Attorney for the mentally-ill mother. Property Settlement was requested by the father (who was separated from the mother for many years). The son just ignored the father's plea to settle for over 9 years; keeping the father to languished in unacceptable living quarters. In that case, the power was not given by

the father. He could not do anything; and no one would or could do anything to stop the neglectful son. The son would have full control of the total assets if the elderly father died before property settlement.

Thank you for the opportunity to submit to this Inquiry.

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