

BY: LACA

Submission to the Inquiry into Older People and the Law

### Introduction

Having had a recent experience with the Guardianship Tribunal in NSW (November 2006) I wish to make this submission to the Inquiry into Older People and the Law. My father lives in a different state to me. I am his only son and his immediate family. My mother died 7 years ago and since that time my father has continued to live in our family home until recently. My father has developed a friendship with a female who is younger than my father. Until recently they have maintained separate dwellings. My father is a very comfortable self-funded retiree.

### Why I approached the Guardianship Tribunal

- My father's intellectual health appears to have been deteriorating and this has been especially obvious since Christmas 2005
- During mid 2006 my father's short-term memory was causing him significant concerns and he was complaining about this with family and close friends
- In mid 2006 I spent over 30 days with my father (either at his home or in our home) and it is very clear that he has changed significantly in his intellectual skills, his decision making capacities, his moods, his views on matters and his personal hygiene.
- During 2006 it became clear to me that there were others who were having undue influence on my father and were interfering in his affairs.
- These outside influences did not appear to be in my father's best interests

Since my mother's death (7 years ago) and especially around 2004 I was especially concerned about my father's behaviours and changes in personality. I suspected early dementia. My uncle has had dementia and a relative on my father's side has indicated that dementia is a "family trait". As well, my father is over 85 years of age so has a high chance of having dementia. Surely these factors would indicate to the Guardianship Tribunal that there were reasonable indicators for concern? Also, members of the Tribunal were not interested and kept insisting that I produce direct medical evidence. I could not produce this evidence as my father was refusing to have any further tests. My access to existing test results has been refused by my father.

During 2006, at my insistence the GP referred my father to a physician. The physician assessed my father and thought he was satisfactory for his age. Having consulted the literature and also having sought extensive advice from the Alzheimer's Association of Australia (Vic) I was very keen to have my father referred to a Psycho-Geriatrician. This request was ignored by the GP and the physician.

I need to point out that during 2004 (when I last had serious concerns about my father) an ACAS staff member suggested that I could place a complaint about the GP to the Health Complaints Board of NSW if I wished to do this. I did not act on this. A letter was sent to the GP from the ACAS noting that this might be done. My wife's name was quoted in the letter (simply because she answered a telephone call from the ACAS when I was driving). We were not given a copy and we were not told by the ACAS that the letter was sent to the GP. The GP was extremely angry about the letter and phoned us to say so. I consider that since that time he has had a set view on the situation and has misjudged my views and my commitment to my father.

It should also be noted that the physician my father was referred to by the GP did not telephone me any time yet had various views and made statements to the Tribunal that were only based on the views of the GP and my father. These comments were made about my views without consulting me. I found this very disturbing.

Since insisting on additional testing and raising extensive and constant concerns with the GP there have been "counter actions" which appear to be the result of "undue influence" by others.

These counter actions have included:

- The placing of the family home on the market (in secret)
- The rapid sale of the family home (main asset) at well under the market value (North Shore development block)
- The marriage of my father to his friend (also in secret) and at short notice (to my knowledge only the friend's children and two of my cousins knew the marriage was occurring)
- The marriage occurred outside the Catholic Church yet my father has been a practicing and very committed Catholic all his life, who goes to Mass several times a week
- Numerous changes to testamentary documentation during testing by the GP and physician and also after I mentioned the possibility of going to Guardianship
- Prior to and during the Guardianship Tribunal various accusations were made about me (in writing and verbally) that were not truthful and made without any evidence.

It should be noted that I would have been very pleased if my father had married earlier and I have made this clear to my father on several occasions. As his only son I have only asked that my father protect our family assets. My parents were married for 49 years so I feel that my concerns about the protection of our family assets have been justified.

Having become aware of my father's deterioration I made contact with a range of individuals / organisations and I was advised to go to Guardianship. It should be noted that I did not have the backing of my father's GP or the local ACAS. In point of fact, both the GP and the ACAS "threatened" me about going to Guardianship and stated that my concerns were not justified and my father's behaviours were well within the normal range of "old age" deterioration. I do not agree with this view. My father is highly intelligent and the extent of his deterioration appears to be extensive. I believe that testing by a Psycho-Geriatrician is justified.

### **My experience with the NSW Guardianship Tribunal and my Concerns**

I refer you to the case, being \_\_\_\_\_ Please see attachments to this document which were my submissions to the Tribunal.

It should be noted that in my application to the Tribunal I wanted the State to take over my father's affairs. I made an application because I have had (and still have) grave concerns about:

- my father's capacity at present and back until 1999
- my father's care arrangements (current and future)
- the management of my father's assets
- the "undue influence" of others

We had a preliminary hearing (November 29, 2006) which is unusual. It was preliminary because we did not have the backing of the GP. Having seen the rapid and obvious change in my father's health I was very concerned and would have been extremely relieved if the NSW Guardianship Tribunal had moved to have a substantive hearing and had my father referred to a Psycho-Geriatrician for thorough testing.

I have several concerns about the NSW Guardianship preliminary hearing.

### **ONE: The over dependence on medical opinion only and also the over dependence on the impressions / views of a single GP and a Physician**

- The Tribunal members emphasised that I had to supply expert medical opinion. I was clearly not able to do this and that is why I went to the Tribunal. I was asking / hoping for a referral

to a Psycho-Geriatrician by the Tribunal. The Tribunal report however willingly accepted input from others who had no medical background and who were influencing my father and in some cases had a lot to gain financially. I have read some cases in Queensland on the website and in some of these there was obvious conflict between family members and medical practitioners. In some of these cases a referral was made for a second opinion. Why did this not happen in this case?

- Perhaps the Act should take into account the views of others who are not medical practitioners? In the committing of a crime (e.g. robbing of a bank) the views of any witnesses are taken into account, irrespective of their profession, employment status, gender or age. Why not here? Perhaps witnesses should have equal status?

#### **TWO: Appearance of my father at the Tribunal and my father's attitude to the process.**

- Even though this was a "preliminary hearing" and not a substantive hearing, I found it amazing that my father was not asked to appear. I made the application about my father and I thought that the hearing would involve my father and myself, not a cast of "rent a crowd individuals" who were opposing my application
- It is my view that the key person noted in the application should attend the hearing, even if the hearing is preliminary. Taking into account that I have been questioning if my father has dementia, I think that his appearance should have been insisted upon. Was my father "hidden" from the Tribunal?
- My father told a close family friend that "the GP knows this woman (team leader who prepared the report) and that Guardianship will do nothing". I thought that it was "out of character" for my father to make such a statement about a government process, especially as the process is supposed to be open and transparent. I now feel that the hearing was used by those opposing my application as "round one" in legal battles over my father's estate. This is not appropriate.

#### **THREE: The adequacy of the report to the Tribunal and the submission of the materials.**

- In my application I quoted several close family members and friends who had known my father for decades yet the Tribunal staff did not make contact with any of these people quoted. In contrast, others opposing my application were able to submit materials that were taken into the account by the Tribunal members as 'Gospel truth'
- In these materials submitted by those opposing my applications, many accusations were made that were totally incorrect and would have been refuted by my supporting witnesses if they had been consulted.
- Those opposing my application were able to attend the hearing yet none of my supporters were even contacted by phone / letter or asked to attend. The hearing appeared to be very biased
- The writing of a report by a staff member that took into account those who were "influencing" my father and had considerable potential to gain financially if I withdrew my application
- The submissions written opposing my applications were all carefully written to refute all the observations I had been making about my father. These people had full access to my application yet I did not have access to their written submissions. I only saw the Tribunal's report 30 minutes or so prior to the hearing.

#### **FOUR: The Hearing**

- During the hearing, the opponents to my application were given ample opportunity to make verbal statements (without evidence and not on oath). These accusations were accepted as

being truthful by the Tribunal yet there was no evidence to back up these accusations and I have been left with a tarnished reputation

- Some specific accusations and untruthful statements made during the hearing were
- 1. My father got married in a church with a priest (even my father told me this was not the case)!
- 2. Everyone knew my father was getting married (very few people did and my father even told me this and even mentioned that "strangers off the street" were witnesses)
- 3. I was accused of making harassing phone calls to my father yet this is totally untrue. I have had very regular phone contact with my father all my life since moving interstate. As well, my father has rung me on several occasions about clearing out the house and I needed to respond. I have the telephone records to prove that at no time have I been harassing my father or anyone else.
- 4. It was stated that my father needed to change the locks on the house because I would "break in". This was a ridiculous accusation because I live interstate and I would have to fly interstate to do this! I had specifically asked my father to be in the house when I flew up so that we could have some "closure" together and also there would be no misunderstanding about the items I could have from our family home. Initially my father had arranged to meet with me at the house to go through our family's items and he was pleased to do this. I had to plan ahead for this and make flight bookings. These arrangements were changed by my father the following day - I suspect under pressure from others because I was going ahead with the hearing and would not withdraw my application. I had made three airfare bookings but then had to cancel these. When my father changed the arrangements, he left a message a message on my mobile, stating "I could weep for you but you do not realise the position you have put me in with these people..". These people appear to be running my father's life. I refer you to the "helpful helpers" noted in a paper by David Walsh which is included in this submission. Also see papers by Sykes and Craig.
- 5. My cousin stated that my father and his friend ".....had been together for eight years". My mother only died 7 years ago. As well, my father and his friend have maintained separate dwellings during this entire period. My father does not receive any pension / benefits (to my knowledge). My father has always said that his friend was a dinner partner and travelling companion. Perhaps my father has led a double life? I do not know.
- I felt very awkward about replying to these accusations in detail during the hearing because it was very clear from the first few minutes that the Tribunal members did not wish the hearing to go ahead (yet my father's main asset has been diminished significantly in value and I am left to wonder if my father has had the "capacity" to sell the house, yet alone make a balanced decision to get married and make numerous testamentary changes. I did not want a "slanging match" during the Hearing about who was correct.
- I was told that my application was bordering on "frivolous" and that I should withdraw my application or potentially could face paying costs. I was not told this prior to the Hearing or how much costs would be. Why didn't the team leader mention this?
- The lack of willingness of the Tribunal members to consider the opinions of others (non medical)
- The lack of willingness to refer to a Psycho-Geriatrician, especially taking into account the obvious "counter actions" that had occurred prior to the hearing and the apparent "undue influence"
- The lack of willingness to even consider "undue influence"
- The lack of an opportunity to have a balanced and open discussion about my father's current and future care and also my father's capacity.
- The comments in the report and additional comments made by those opposing my application were so "at odds" with my own observations of my father. My attempts to refute these comments during the hearing were laughed at by those present and there was no effort by the Tribunal effort to follow up apparent conflicts in evidence.

#### **FIVE: Conflict of Interest**

- My application was opposed by my father's "new son-in-law" who is a psychologist. He attended the hearing and represented my father who exercised his right not to attend. It appeared that this psychologist appears at the Tribunal regularly. He is known to the Tribunal members and clearly understands "the system" very well. Surely this is a substantial conflict of interest?

#### **SIX: Privacy**

- At all times I have felt that I should respect my father's privacy. It has been very obvious however that my father's application has been circulated by my father to all members of the "rent a crowd". Several people have had access to the details.

#### **SEVEN: Inconsistencies in the case and "undue influence"**

- It is my view that my father has dementia or dementia like symptoms. This is a very complex disease and can take years to diagnose and also needs a very skilled specialist (Psycho-Geriatrian) especially if the person is of high intelligence. There are so many inconsistencies in this case and indications of "undue influence". I believe that the Tribunal should have at least considered these factors and referred my father to a Psycho-Geriatrian for independent assessment.

#### **Suggestions for consideration by the Inquiry**

Having had these recent experiences I would be pleased if the Inquiry considered / noted the following:

- The current system and processes in NSW do not seem appropriate to resolve complex issues relating to family conflict, capacity, undue influence and management of care
- The Guardianship Tribunal appears to be too dependent on medical views. The Act should be reviewed regarding this matter. I viewed some of the Qld cases on the website and noted that there was conflict about opinions of doctors. Second opinions were recommended in these cases. In my case a second opinion was not even discussed yet alone recommended
- The Tribunal and the report appeared to take the "path of least resistance". From my perspective the end result was a very inadequate hearing and a very poor quality report
- It is my view that the ACAS changed their views considerably between 2004 and 2006. Was the ACAS psychologist influenced by the new son-in-law (also a psychologist)? Prior to June 2006 the ACAS had been very supportive
- Being located interstate (and not being a lawyer) it was extremely difficult to prepare for the hearing and to gain adequate background information. My wife and I approached several organisations (in Victoria and NSW) to overcome this problem and we were criticised in the Tribunal report for having this initiative!
- I am very well educated and articulate yet I felt totally intimidated by the process. The process appeared to be biased and in my case, appeared to lack transparency. Those opposing my application appeared to have such an easy road and I was the only person "put on the spot". The others were not asked any questions
- I was shocked when the Hearing did not take on board my concerns about my father marrying outside the Catholic Church, especially taking into account my father's lifetime commitment to his Catholic faith.
- I felt that I had no other option but to go to Guardianship. I was deeply concerned about my father (and I am still deeply concerned) yet I was made to feel so guilty about submitting an application. I suspect that there has been and still is extensive "undue influence" relating to my father's decisions and management of his affairs. Those opposing my application were so

extreme (and inaccurate in their response) that I can only assume that I was “pressing the right buttons”. Where does Guardianship stand in relation to “undue influence”?

- Perhaps a national system and a national "Act" would be preferable? It was simply awful to try and manage this across two states with different Acts, criteria and organisations
- Rather than “round one in a legal battle” I thought that Guardianship would provide the opportunity for balanced, independent discussions about care and capacity. I did not anticipate having my character assassinated and I did not anticipate the “conflict of interest” regarding the participation of the psychologist. Surely these issues should be addressed by Guardianship?

**Please note**

- I am happy for this covering note to be published but out of respect for my father I would ask that if this is published, any identifying references to names be omitted.
- I would be more than pleased to attend any hearings (I am away overseas until February 16 but can be contacted by email).
- I would welcome any enquiries about this submission
- Various attachments are included with this covering letter

Thank you for the opportunity to make this submission to this Inquiry.

Yours sincerely

Ref: emk68d