

## **Management of Deceased Estates by Lawyer/Executors.**

**Submission to the Queensland Law Reform Commission on uniform ascendency laws within Australia.**

The current state of regulatory standards on the legal industry, with regards to the mechanisms it uses to manage ascendency within Australia, should be a major concern for all people who reside in Australia.

The law and the legal profession have fallen behind the gallop of the advancement of community expectations with regards to accountability and the level of service. The current legislation pertaining to the accountability of executors and trustees who are responsible for the management of the assets of loved ones, who have passed away, is almost non-existent and is only accessible to the financially privileged. The expectations of the law and those employed to work it, by the current generation of beneficiaries of deceased estates, has changed dramatically during the past twenty years. In general this generation of beneficiaries is better educated, better informed, and has access to a far greater amount of information than any generation before.

A large number of people within this community are being adversely affected by unscrupulous professionals whose main purpose is to make money for themselves from these family assets.

The laws pertaining to ascendency are formulated on the English classis principles of privilege. One is born into privilege or through some chance of fate one ascends to it, through one`s achievements in life.

Obviously privilege, always having the upper hand in the decision making processes, assures its own perpetuation by setting the rules of membership to the club of privilege. To question privilege and to request accountability of it is to question the master with the cane. Fortunately through the advancement of our society, the master with the cane has

## Lawyers or grave robbers?

been questioned in our education system and within our society the master is now accountable and he has lost his cane.

If we believe that these changes are a good thing for our community, why have we not requested the legal profession, who are in a position of privilege and stem mostly from the privileged within our community, to be accountable for their actions?

The laws pertaining to client confidentiality between the client and the lawyer/executor, empower the lawyer after the death of the client. They permit the lawyer to rack up costs against deceased estates, without showing accountability to the beneficiaries, who may be the children of migrant women. To see these Australian families being abused by unaccountable lawyers, who are privileged as individuals and as a group is abhorrent. This situation of unaccountable privilege can go unchecked within our current legal system, if the beneficiaries are foolish enough to become engaged in the legal process, which favours the unaccountable lawyer. This has been experienced by my own family.

When my sister, the family appointed executor, requested a letter from the co executor/lawyer, which set out the terms of the trust, in which my quarter share of the estate was placed, he refused to present her with a copy of this letter from my late mother claiming it is privileged information. The result has created a financial loss to my mother's family of at least \$110,000 and an emotional cost of a split family, with the matter remaining unresolved.

When one considers this to be a first generation migrant family, without an extended family network in Australia, you can only imagine the devastation he has wreaked.

Possibly my mother's worst nightmare. It can be compared to the ancient rituals of cruelty; rituals that involved taking something of value from a family for use by the ruling group of the day. If one regards inheritance as the accumulated resource of a genetic line and there is a misappropriation of

## The way forward Quality control for lawyers

such an accumulated resource, by a legal system that leaves self interested lawyers unaccountable for their actions, then it is the system that is damaging the development of families in our new nation Australia. The laws in these matters restricting the open exchange of information between the legal profession, other executors, trustees and beneficiaries after a person has died, favour the legal profession and act against the interests of the beneficiaries (consumers).

These laws have seen a great deal of debate within the legal profession. This debate is easily resourced from the internet and clearly shows the need for legislators to set standards and definitions for the legal profession in order to stop the financial abuse of estates by lawyers.

The legal fraternity has had this on the table since 1992. It is currently being discussed in Queensland and so far they have decided that a will does not have to have “will” written on the back in two inch high letters. When will the Governments of Australia require total accountability from lawyer/executor’s, when it has taken twelve years to work out this incredibly perplexing and complex issue? Please excuse my cynicism but there are limits!

The findings of the Queensland Law Reform Commission were due by the end of 2006 as yet they are still not finalised. Presently the review of Australian Acendancy Laws has not set measurable standards to ensure accountability from lawyer/executors who act for deceased estates.

A joint Federal Government Committee has made a thorough report on the Legal Profession and how it behaves in the Federal Court with particular reference to family law matters. Please refer to: Managing Justice: A review of the federal civil justice system. Report No 89.

This report contains reference to many of the pertinent issues that I have encountered with the lawyer/executor of my mother’s estate. The committee covers the issues of dispute and its relationship to costs. It recommends a re-education of the legal fraternity and the creation of a set of