

OUR GOVERNMENT MUST PROTECT THE WISHES OF THE DEAD

Dear Member.

I write to you regarding a situation I have encountered pertaining to the way Russell Kennedy, a large, well respected and influential law firm, managed my late mother's estate. The situation is indicative of the failure by the legal profession to protect the inheritance rights, family rights and human rights of family members in its administration of these estates, and is impacting in a negative and destructive manner upon many Australian citizens. The experience my family, along with many other families, has endured is an erosion of a fundamental principal of Australian society.

The Victorian Charter of Human Rights, Article 17 states:

17. Protection of families and children

- (1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.

The passing of inheritance from generation to generation is one of the actions overseen by government through various acts of parliament. Our society recognises the importance of this process and relies upon it to maintain family cohesion and development. Our legal profession and other professions such as professional trustees are available to assist families through this transition. These professions, by the very nature of what they do, are highly regarded by our community and when acting for individuals in a fiduciary role as an executor are bestowed with the highest level of trust a person can give, because the person giving that trust knows they will be dead when the trust is enacted.

It is essential that our wider community regards our legal profession with respect and has faith in the people who work within it for the trust to work and for our society, guided by the rule of law, to function. If at any time individuals within this profession break this trust they also break the trust their profession has with the community, therefore bringing the profession into disrepute.

One of the main tenants of government is to appoint regulators in key positions to ensure that dishonest behaviour, empowerment and financial exploitation by individuals and organisations over others are prevented. If this does not occur, we see the erosion of the principals of the rule of law. One such regulator is the Victorian Legal Services Commissioner, whose job it is to regulate the behaviour of Victorian lawyers as defined by The Legal Professional Act 2004.

The Legal Services Commissioner has stated in response to my complaint that:

- He does not have the power to investigate complaints against lawyers who are acting as executors as they are executors and not lawyers.
- Lawyers who are in private practice are not bound by the Victorian Charter of Human Rights.

The Victorian Legal Services Commissioner in his round table discussion on ascendancy laws stated he had received over 1000 complaints about lawyers in this area of law over a three year period.

Just recently State Trustees had a problem with one of its own employees who misappropriated funds of \$175,000 from 33 estates over a three year period. State Trustees is a government owned company and is the largest organisation in Victoria that administers deceased estates, and should have had systems in place to prevent such systemic abuse of the dead.

In my own family's situation we encountered a lawyer, Ian Bult and his law firm, Russell Kennedy, who were assisted by Russell Kennedy's resident wills and probate specialist Arthur Bolkas. Problems occurred from the outset in relation to communication. The lawyers Ian Bult and Russell Kennedy disagreed with the family and the family member co-executor on the interpretation of the will. Ian Bult stated that he had in his possession a letter written to him by our mother six years prior to her death that supported his and Russell Kennedy's interpretation of my mother's will. When requested by the family and the family member executor for evidence, he stated the letter was privileged and withheld it from the family. Now after six long years, the letter has finally been revealed to the family by Russell Kennedy. The contents of the letter prove that Ian Bult and Russell Kennedy lied about its contents to the children of my mother, and that they used that lie to persuade the family member executor not to join in the probate of the will. They in fact betrayed the trust bestowed upon them by my mother and broke her will. The result was catastrophic for the internal family relationships, and severely eroded the value of the estate available for the beneficiaries to the amount of at least \$220,000 in excess fees and financial waste.

Despite appealing to the Ethics Committee, the Law Institute of Victoria, the Legal Services Ombudsman, the Legal Services Commissioner, the State and Federal Attorney Generals and the Victorian Ombudsman about the concerns the whole family had regarding Ian Bult and Russell Kennedy's actions, no Investigations were carried out.

It was obvious to even the simplest minded person that there was a serious problem. When all four children of a deceased parent including the family nominated executor disagree with an interpretation placed upon their own mother's will by a stranger who will not divulge his source, as was the case with Russell Kennedy and Ian Bult, the red flags should have gone up and the alarm bells should have rung loud enough for the regulator to act. If the regulator had investigated the concerns put to them by the children of the deceased at the outset, the dishonest behaviour of Ian Bult, Russell Kennedy and Arthur Bolkas would have been discovered and my mother's family would have avoided the ensuing train wreck.

When it is found that a well-respected and prestigious law firm such as Russell Kennedy have failed to implement management systems that prevent senior partners and other members of the firm from behaving dishonestly when they appoint them as their representative executor of a deceased estate, then the firm has been negligent in their duty of care to their clients and to the reputation of the legal profession as a whole. When a senior partner such as Ian Bult acting as a fiduciary is found to be lying to the children of their deceased mother in regards to her will, it not only brings the individual into disrepute, but the firm Russell Kennedy and the legal profession as a whole.

The regulators of the legal profession including the Attorney Generals are also brought into disrepute when they do not act, as the wider community expects our government to protect its fundamental values and principles.

One very basic principal is: Do not lie to the children of their deceased mother about her wishes.

The lie maintained by Ian Bult and Russell Kennedy exposes a serious flaw within our laws as interpreted by the Legal Services Commissioner and the Law Institute of Victoria, in that lawyers who act as executors are not bound by the Legal Professional Act of 2004 because they are executors. This interpretation may contravene the Trade Practices Act and other Acts the Legal Services Commissioner is supposed to abide by, as his interpretation of the law may well be assisting lawyers who act as executors in carrying out misleading and deceptive conduct.

The behaviour is misleading and deceptive because lawyers who offer their services as executors are perceived as lawyers by the consumer of their services. Many of these consumers believe that because they are lawyers they would have to comply with the laws governing their profession and apply the principles of their profession in the actions they carry out as executors.

In my book *Lawyers or Grave Robbers?* (written prior to the letter being revealed) I have a chapter called 'Quality Control for Lawyers, A Legal System, out of Touch out of Time' (see attached). In this chapter I take a scientific approach to the prevention of the problem of abuse of deceased estates by lawyers and utilise technological concepts based upon what engineers (and others) term Quality Standards. These standards create the checks and balances in operating procedure so as to minimise errors. Unfortunately due to the self-regulating nature of the legal profession this valuable technology is ignored and there are no standards in place for lawyers who act as executors, a situation which allows them to remain unaccountable for their actions.

I made three suggestions relating to the quality control of services provided by lawyers who are acting as executors:

1. Lawyers who are acting as executors not be allowed to empower themselves over a whole family, and must disclose any information they have even if they claim privilege over it when it is relevant to determining the wishes of a family's deceased parent.
2. The need for mandatory training and for standards to be both written and enforced for lawyers who act as executors.
3. The need for a more informal method of resolving issues pertaining to deceased estates utilising tribunals and commissioners based upon the European truth seeking system of justice rather than our current adversarial system.

If all of these suggestions were implemented, lawyers like Ian Bult and Russell Kennedy would be largely prevented from being dishonest when acting as executors. By lying to the children of their deceased client, Ian Bult and Russell Kennedy destroyed her family and cost her estate at least \$220,000 in primary losses. The cumulative cost is in the millions when loss of opportunity, psychological damage, hundreds of hours wasted in legal communications to little or no avail, and break-down in interfamily relationships are included. This cumulative cost will impact in a negative way upon my mother's family for eternity, while Ian Bult and Russell Kennedy have, through their dishonest communications, directly disadvantaged the lives of fourteen people who are the immediate members of my mother's family.

I am aware of many other families who have been adversely affected by the costly and inefficient and unaccountable process of succession law. This problem has been verified by the Victorian Legal Services Commissioner in his round table discussion on Succession Law 2010. Unfortunately his recommendations will not solve the problems as they do not address the internal practices of the

legal profession when operating in succession law. There is no mention of Quality Standards, or of lawyers who act as executors being bound by either the Legal Professional Act of 2004 or the Victorian Charter of Human Rights (Refer 'Submission to The Review of the Victorian Charter of Human Rights: Why lawyers who are in private practice should be bound by the Victorian Charter of Human Rights when dealing with inheritance issues').

Links:

http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter_review/submissions/09_-_Hannigan_Diarmuid_1_23.5.2011.pdf

http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter_review/submissions/09_-_Attach_A_23.5.2011_.pdf

Fortunately we live in a democratic society where we elect people from our communities to represent our needs in parliament. It is in the community's interest to ensure that prestigious law firms such as Russell Kennedy and a senior partner (Ian Bult) of that law firm can never again act in such a dishonest manner and destroy another Australian family. The parliament has the power to address these issues and, as already stated in the first page of this letter, is in fact obligated to do so.

I urge you to consider the importance of ensuring the families of deceased parents can trust our legal profession to manage their estates, and act to implement the necessary changes to the law so that such is assured.

If you would like any further information on this issue please do not hesitate to contact me, as I would be happy to oblige such requests.

Yours sincerely,

Diarmuid Hannigan