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I developed a different strategy and began utilising the complaint mechanisms that are available to consumers of legal services within the state of Victoria. I thought that this strategy would resolve the issues pertaining to my mother's estate and the problems created by the lawyer/executor for my late mother's family. I saw this as a mechanism that would not incur further legal costs as lawyer/executors are not allowed to charge for their time in responding to issues raised with the bodies responsible for handling such matters. Being a beneficiary and not the executor has meant that my complaints regarding the actions of the lawyer concerned were very limited by law, as a beneficiary to a deceased estate is not considered a client of the executor.

Hence the saga continues.

I initially wrote to the legal ombudsman to raise a complaint against the lawyer/executor in regard to the methods used in his handling of my request for my mother's medical records. Complaints against lawyer/executors are limited to the executor. Beneficiaries of an estate are not considered clients of the lawyer. The executor is not seen to be acting as a lawyer and is not under the auspices of the Victorian Law Institute. The fact that he is a lawyer is considered irrelevant by the Law Institute.

The legal profession defends its autonomy and has resisted calls for outside input. My case is just an example of why the legal profession needs outside regulation and cannot be allowed to remain self-regulating. This would allow beneficiaries (relatives) of deceased estates to have a fair go when entangled by the legal system.

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Letter 1

This letter was sent to:

The Victorian Attorney General, The Law Institute of Victorian and The Victorian Legal Ombudsman.

To The Right Honorable Robert Hulls. 01/03/05
The Attorney General and Minister for Work Cover.
Parliament of Victoria.
Level 1 55 St Andrews Place
Melbourne 3000

Dear Robert Hulls,

I am writing to you to request your immediate intervention in a matter concerning my late mother's estate.

It appears as if there are no laws controlling executors of estates who are professionals from carrying out unnecessary work for the estate and charging extravagant sums of money for such work.

It appears as if normal privacy considerations do not apply to professionals (lawyers) who are executors of estates.

I have approached Human Rights and Equal Opportunities, The Commissioner for Privacy, The Commissioner for Health Records. I believe from my conversations with all three bodies that the lawyer concerned and his firm are acting within the law but I believe they are damaging the value of my mother's estate and are therefore hurting my children and my siblings and their children through their irresponsible actions.

My request has emanated from a series of communications with the executor of my late mother's estate regarding her medical records.

I have requested authority to obtain her medical records from the executor of the estate in order that I can resolve certain issues relating to the estate.

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These requests have continued over a period of six weeks, involving three letters from my solicitor and three replies from the executor, all of which have cost the family unnecessary expense.

The executor has now taken it upon himself to obtain her medical records. This is not what I requested and specifically stated via my solicitor in my last communication that I did not want the executor to obtain such records as it would incur further unnecessary expense to the estate and it is a task that I as a member of the family can carry out at no cost. May I add that the medical records concern a period from June 2001 to June 2004. This is a period of 3 years and could involve over 1000 pages of information. I would assume the lawyer concerned will charge at his nominated fee of \$430 per hour to read the records and will charge the estate at \$150 per hour to have an article clerk photocopy the records. Apart from the costs already amounted from the three letters from my lawyer and the three replies the estate, that is our family will be forced to bear these costs as well. This could amount to a sum of \$2000 to \$3000. There are also serious issues regarding privacy of the family and intimidation by using excessive fees by the lawyers and firm concerned.

More importantly at this stage I do not see why my mother medical records should be viewed by the executor. These records are a personal issue and unfortunately the need to view them is required as a result of the actions of the executor. The medical records should not be available so that the executor can charge more fees to the estate and as her eldest son I feel I have a personal right to apply for my own mother's medical records.

I would like to point out that there appears to be an inconsistency in the requirements in this matter as I was able to obtain my mothers medical records from St Georges Hospital in Kew because I am the oldest living relative of my mother's family. When I asked for the medical records from the nursing home where she lived I was informed by the nursing home that I would have to ask the executor for an authority to obtain these records. I understand the reason

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given is that St Georges is a public hospital and the nursing home is a private institution. This still does not address the inconsistency from the perspective of the public.

As yet the executor has refused to grant such and has decided without any consultation with my siblings to go and get the medical records himself. This is an abuse of power by a lawyer who has no respect at all for the feelings and sensitivities of a grieving family and is treating my mother's estate as another exercise in ensuring maximum revenue for himself and his legal firm.

Please can you stop this man from obtaining information that he has no right to and that he has no right to charge for obtaining or perusing.

Your help in this most distressing situation is appreciated.

Yours Sincerely

Diarmuid Hannigan.

cc. Victorian Legal Ombudsman.

cc. Victorian Law Institute.

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Letter 1 Response from The Law Institute of Victoria.

PROFESSIONAL STANDARDS	
Mr Diarmuid Hannigan 97 Roberts Street NORTHCOTE 3070	Your Ref. Our Ref. PA:BB VLR/05/260 Telephone Enquiries Mrs P Antonov Direct Dial No. 9607 9429

CONFIDENTIAL

15 March 2005

Dear Mr Hannigan,

Complaint against [REDACTED]

I acknowledge your complaint form received by Professional Standards on 4 March 2005 and I refer to our telephone conversation on 10 March 2005.

You have indicated that you intended to raise a costs dispute regarding the Invoice dated 19 January 2005 for \$6,336.34. You also advised that the legal practitioner had previously rendered an account. The Law Institute of Victoria is able to deal with disputes relating to costs where the total legal costs do not exceed \$15,000.00. I will make enquiries of the legal practitioner to ensure that I have jurisdiction.

If the total legal costs are more than \$15,000.00 I will not have the power to deal with your dispute. In the meantime, I have referred your matter to the Manager of the Complaints Department who has granted you total dispensation from paying the outstanding costs into the Law Institute of Victoria Trust Account. This is on the basis that you have advised that the legal practitioner holds an amount of approximately \$560,000.0-0 in trust in relation to this Probate matter. Please forward copies of any invoices in relation to this matter. I ask that you do so within fourteen days of the date of this letter.

I have written to the legal practitioner concerned and am awaiting an explanation from them in the matter.

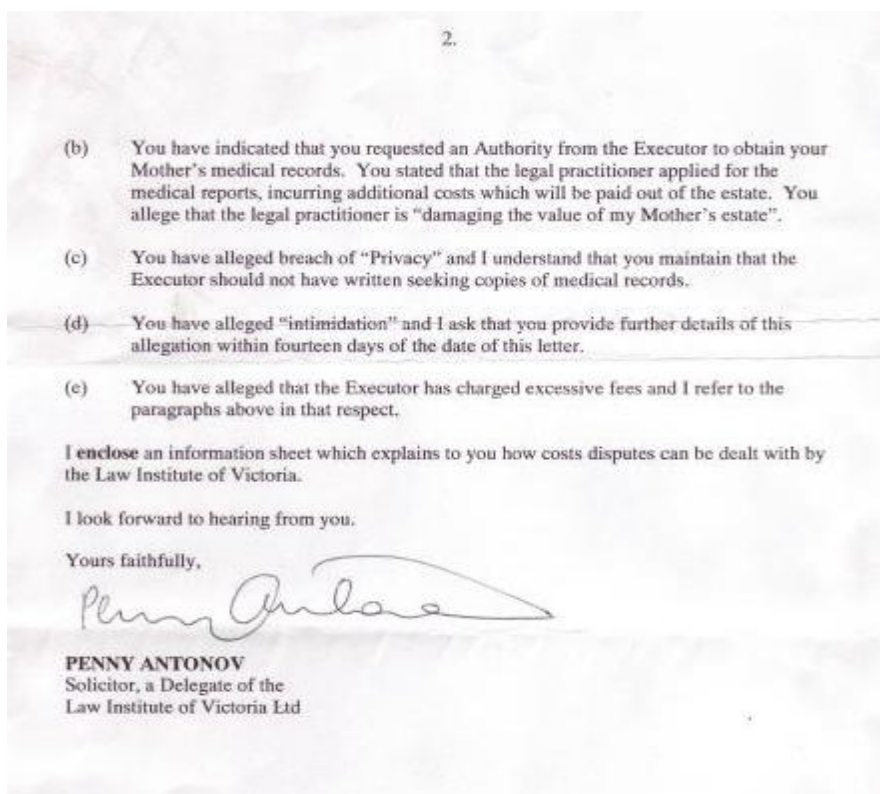
As I understand them, your complaints against the legal practitioner are as follows:

(a) You have raised allegations against the legal practitioner. I note that the allegations appear to relate to his conduct as the executor of the estate of your late mother. It may well be that your complaint does not fall within the jurisdiction of the Law Institute of Victoria. This is because the Law Institute has the power to deal with complaints regarding the conduct of solicitors. I have written to the legal practitioner for his response in that respect.

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471 Bourke Street, Melbourne 3000, Victoria 3000 Telephone: (03) 9607 9311 Facsimile: (03) 9607 9321
All correspondence: G.P.O. Box 243 C, Melbourne 3001
Email: poststd@lvam.vi
Website: www.lvam.vi

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Letter 2 To Law Institute of Victoria.

Penny Antonov. 26/03/05
Solicitor, a Delegate of the Ref PA:BB VLR/05/260
Law Institute of Victoria Ltd.

Thank you for your reply to my complaint.

Currently my complaint is contained to only one segment of the lawyer/executor's costs.

This complaint refers to the period initiated on 20/01/05. This complaint only refers to costs associated with attempting to obtain Elizabeth Hannigan's medical records from Hedley Sutton nursing home.

104 This complaint is an illustration of the methods utilised by the lawyer/executor and his firm to frustrate the

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obtaining of information which is required to facilitate resolution of a legal process. Copies of the bills sent in my last correspondence, illustrate how the firm charges and how much per hour Mr **** ***** is charging the estate. As yet I have not received any bills from his firm for the period from 20/01/05 onwards.

I would appreciate it if the Professional Standards could obtain a copy of these bills as any correspondence from me or my legal representative is charged at \$425 plus GST and will be further frustrated.

The complaint illustrates the techniques of:

- 1) Delaying.
- 2) Performing unnecessary work.
- 3) Charging a fee that is in excess of the expertise required to perform the task.

These techniques increase the costs to an estate and are intimidating to the beneficiaries particularly at \$425 per hour plus GST.

If the lawyer/executor had signed the medical authorities as was requested, I could have approached Hedley Sutton Nursing Home in late January. I would have received the medical records within two weeks, paid Hedley Sutton a sum of approximately \$200 for copying and read the records.

Instead, the lawyer/executor has written four letters, regarding the medical records. My legal representative has also written four letters over a period of one and half months. Each letter costs money and each letter involves a time delay of some days. The lawyer/executor is well aware of these facts as he is a professional lawyer. It is now 25th of March and I still do not have any medical records.

This means the lawyer/executor has successfully carried out an act of intimidation, when one considers probate will end on 14/04/05, as he has denied me the ability to obtain information, regarding my mother's state of physical and mental health, at the time of her writing her will.

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What the lawyer/executor will do after he obtains these medical records is anybody's guess. Since they cover a period from July 2001 to June 2004, I presume there will be about 3 x 365 pages of records, that is 1080 pages.

He will have to read each page, photocopy each page and then if he finds anything of relevance, document it, seek legal advice and then write some sort of a letter.

Let us assume he can photocopy for 20 cents per page and it takes one of his staff members one hour.

The photo copying charge will be \$300. If he reads through the 1080 pages at 30 seconds per page a total of 540 minutes or 9 hours at \$425 per hour \$3825.

Total costs for obtaining records.

Letters. My solicitors	4 x 80 = \$ 320
Letters lawyer/executor's firm	4 x 160 = \$ 640
Letter to Hedley Sutton	\$ 100
Photo copying	\$ 300
Perusing medical records	\$3825
Total	\$5185
GST	\$ 518
Total plus GST	\$5703

I realise this is only an estimate, but it is plain to see that if I had obtained the records the costs would have been under \$500. The costs for the lawyer/executor obtaining the medical records will be over \$2000. This is an estimated increase of between 400% to 1000%.

These figures are extremely intimidating.

There are other examples of the similar intimidating tactics used by the lawyer/executor and his firm.

(1) I find a charge of \$425 plus GST per hour to administer and make decisions over whether to release funds from a trust account of \$90000 for me and my family as grossly excessive and intimidating. Particularly when one considers the level of professional expertise required to do such a task.

(2) Mr. ***** after being asked to provide a copy of a letter from my late mother to himself, upon which he maintains

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her instructions regarding the setting up of a trust are made clear. In this clause he refuses to provide me with this letter. He bases his refusal upon the statement that the letter is confidential and that my mother would not have wished its contents to be divulged. He is prepared to show the letter to his counsel but not to me. This letter is the only piece of evidence in existence that could possibly explain why my mother had any reason to treat her children differently. Her four children, who are each 25% beneficiaries to the estate, have stated clearly that there should be no dispute, that we should all be treated equally and we should all receive our share in monies to do as we please. There has never been any indication or event that would have suggested otherwise and the refusal by the lawyer/executor to send us a copy of this letter is overwhelmingly intimidating.

This action involves interference between the unconditional love of a child and their parent. This information must be divulged, particularly as it is being used by the lawyer/executor as a reason to damage the future wellbeing of my family unit for time immemorial.

(3) Statement by the lawyer/executor.

“As I have mentioned before Mrs. Hannigan deliberately drew the will in the terms in which she did regarding Diarmuid’s share. If as a result it is “damaging the future wellbeing of her children and grand children” that is not our doing.”

In this statement the lawyer/executor absolves himself of any responsibility to the wellbeing of the family. I find that intimidating and their needs to be a quicker/cheaper way of obtaining the letter.

I have enclosed all correspondence between the lawyer/executor’s firm and my solicitors and my family.

A short synopsis of the history.

Mrs. Hannigan’s will is divided into four equal parts. Three parts going to her three younger children who will all receive a cheque with no conditions attached.

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The fourth share to her eldest son, is to be placed into a protective trust and can be paid out at the discretion of the executors.

The four siblings (one of the siblings is also co-executor at the time prior to her resignation as a result of ill health) request that the executor release the funds from the protective trust to the eldest son.

The lawyer/executor, the co-executor of the will at this stage refuses this request. He has also refused to provide his notes on the construct of the will and to provide a copy of the letter from my mother he claims he has in his possession that instructs him to hold money in a trust. My siblings and I have explained to him, my mother wanted us all to be treated equally. We all believe she would have wanted us to have done the best with the money she had left us for our families and that she loved us equally as we loved her. This is clearly stated in her will.

We have explained to the lawyer/executor that by keeping the money in his trust account, it will seriously disadvantage my family in comparison to my siblings' families and will lead to me working an extra four years from the age of 60 years old to 64 years old in order that I can pay off a home loan.

So far I have been unable to obtain a letter from my mother, that the lawyer/executor states he has in his possession. He claims this letter explains the reasons why I should be treated differently from my brothers and sisters.

To resolve this matter I require:

- 1) The letter Mr. **** ***** maintains he has in his possession.
- 2) The notes on the construct of the will. Refer letter (13) sent by my lawyer to the lawyer/executor.
- 3) The medical records from Hedley Sutton Nursing home.

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With this information my family and I can:

- 1) Read the contents of the letter.**
- 2) We can understand how much time was spent by the lawyer/executor and his firm explaining the draft of the will, to my mother and its impact both emotionally and financially on her family. We will be able to understand whether or not my mother was able to comprehend what the lawyer/executor had written for her in her will. As the will was drafted then written by the lawyer/executor, then bought back to Elizabeth Hannigan for signing. We will be able to ensure the lawyer/executor is made professionally accountable for his work on the will. We will be assured that all of the proper steps were taken by the lawyer/executor acting as a professional lawyer to protect my frail and ageing mother.**
- 3) As a result of reading the medical records we will be able to understand my mother's state of mental and physical health at the time of constructing her will. We will be able to see how her physical and mental health was progressing and whether or not she was vulnerable to any coercion or manipulation by the lawyer/executor at the time of constructing the will. In addition we will be able to see which medications my mother was taking and be able to gauge the impact of these on her ability to fully comprehend what is a complex legal document and understand if she was in a rational or irrational state of mind when she wrote the said letter of which we do not know the contents.**

With this information it is possible for my family and I to go forward and make rational assessments of my mother's will. We can present this information to any relevant parties, in order that her real intentions are carried out.

As a result of the lawyer/executor's adversarial tactics I have not been able to receive any of this information. This has cost me at least \$10,000 of my own legal fees, and the estate a further sum of monies. I have had to waste a great deal of time and energy on this matter. I, my brother, sisters, my

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wife and children have all been hurt both financially and psychologically by this process.


I maintain the only beneficiary in this dispute has been the lawyer/executor and his firm and the dispute is of their making, for their financial gain. It is not a dispute bought about by my mother and it is not a dispute bought about by any member of my family or that of my siblings. I maintain that the lawyer/executor is continuing this dispute to make money for himself from the estate as he is the only person alive who is benefiting from the dispute. I maintain his refusal to divulge and assist in providing us with the information we require is to protect his own financial and professional interests and has nothing whatsoever to do with my mother's intentions of how her will should be carried out.

If my mother was aware of what he was doing she would be horrified as I, my brother and sisters, wife and daughters are.

**Yours Faithfully
Mr. Diarmuid. Hannigan.**

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Letter 2 Response from the Law Institute of Victoria.



Mr Diarmuid Hannigan
[REDACTED]

Your Ref.
Our Ref. PA:BB VLR/05/260
Telephone Enquiries Mrs P Antonov
Direct Dial No. 9607 9429

CONFIDENTIAL

15 April 2005

Dear Mr Hannigan,

Complaint against [REDACTED]

Costs dispute

I refer to my letter dated 15 March 2005 and confirm my advice that where the total legal costs exceed \$15,000.00 the Law Institute of Victoria does not have the power to deal with a costs dispute.

In this case, the legal practitioner has advised me that two invoices have been rendered by the firm, one dated 21 October 2004 for \$12,176.42 and another dated 19 January 2005 for \$6,336.34.

The legal practitioner has indicated that unbilled work amounts to \$4,743.00. Clearly the total legal costs exceed \$15,000.00 and therefore the Law Institute of Victoria is unable to deal with your dispute. I advise that I have closed that part of the file. You will need to consider disputing the costs in another jurisdiction and for your reference I enclose an information sheet regarding taxation of costs before a Taxing Master of the Supreme Court.

Conduct Issues

After considering your complaint against the above named legal practitioner, I dismiss your complaint on the grounds that it is misconceived and lacking in substance.

The reasons for dismissing your complaint are as follows:

- You have raised conduct allegations against the legal practitioner however, I noted in my letter dated 15 March 2005 that the allegations appear to relate to the legal practitioner's conduct as the executor of the Estate of your later Mother.

As you are aware, the Law Institute of Victoria has power to deal with complaints regarding the conduct of solicitors, or legal practitioners, regulated under the *Legal Practice Act 1996*.

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2. You are a beneficiary under the Will of your late Mother. The legal practitioner and your sister [REDACTED] were appointed executors and trustees of the Will. However, it appears that your sister did not wish to act in the capacity of executor and the legal practitioner is the remaining executor.

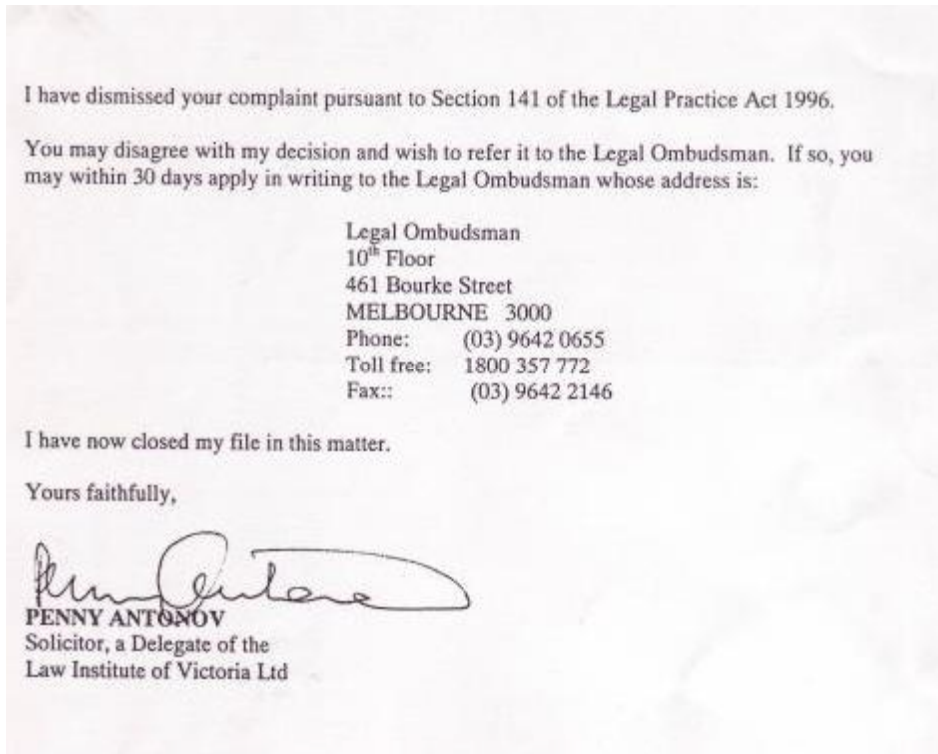
As the executor, the legal practitioner has an obligation to bring in the Estate and to distribute it in accordance with the terms of the last Will and Testament of your late Mother. The legal practitioner has been invested with various powers under the Will and it is not for the Law Institute to question those powers. Any issues regarding the manner in which the legal practitioner is exercising powers under the Will in his capacity as executor, need to be addressed in a civil jurisdiction. You may well need to seek independent legal advice in that respect.

3. In your complaint you allege that the legal practitioner has carried out "unnecessary work" for the Estate. This is a matter for the executor who has an obligation to act on the best interests of the Estate. This does not raise an issue relating to the legal practitioner in the capacity of a solicitor.
4. You have raised an issue regarding the Application for your late Mother's medical records and you have alleged a breach by the legal practitioner of Privacy Legislation. The legal practitioner, in his capacity as executor of the deceased Estate, stands in the shoes of your late Mother and has the same rights as she would have if she were alive. In other words, the legal practitioner has the discretion as to whether or not to apply for medical records and as to whether it is in the best interests of the Estate.

The executor elected to make a request for the records on the basis that it would be more satisfactory and more assessable to the relevant Institute for the executor to make an Application, rather than a beneficiary. In my view that is the prerogative of the executor and it is not a matter for the Law Institute of Victoria.

5. In relation to your allegation that the legal practitioner is "damaging the value" of the Estate, I advise that under the *Legal Practice Act 1996* in order to bring a financial loss claim, there must be a solicitor-client relationship. It is clear in this case there is no solicitor-client relationship between the legal practitioner and you and therefore any claim cannot be brought under the Act.
6. You have alleged that the legal practitioner has acted in an intimidating manner and you refer to a request by all four siblings, being the children of the testator your late Mother, making a request to the legal practitioner that the executor release the funds from the Protective Trust to you. As I have indicated above, your complaint relates to the legal practitioner acting as executor and relates to the obligations and discretionary powers invested in the executor under the Will of your late Mother. This is not a matter for the Law Institute of Victoria but a matter which relates to civil matters. I am unable to assist you in that respect.
7. If you are intending to challenge the Will or if you question the capacity of the testator, which is unclear to me, you will need to make an Application to the Court and there are strict time limits in relation to any such Application. I note that you are legally represented and I suggest that you seek independent legal advice in that respect.

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Letter 3 To the Law Institute of Victoria

Penny Antonov.
Solicitor, a Delegate of the
Law Institute of Victoria Ltd.

26/04/05
Ref PA:BB VLR/05/260

Thank you for your reply to my complaint.

1) Currently my complaint is contained to one segment of the lawyer/executor's costs. This complaint refers to the period initiated on 20/01/05. These costs do not exceed \$15,000. As only one quarter of the costs are borne by my share of the estate then my claim if all of the costs were considered would still be less than \$15,000. I question your statement that "clearly the law Institute of Victoria is unable to deal with the matter at hand" and I request you re-open the file.

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2) I realise, under the Legal Practice Act 1996, that as a beneficiary, I am not the client of the solicitor in question. Unfortunately my sister the executor, was unable to continue her role as executor due to ill health, (A nervous breakdown as a result of her responsibilities as executor under the will of my mother). The family is in the unfortunate situation whereby its member executor no longer has the capacity to take the role of executor. The breakdown occurred after the lawyer/executor created a dispute in the will, not as is stated in your reply because she chose to do so.

I am not sure where you have received that information, but it is at least a twisting of the truth. I suspect this interpretation was derived from information you have received from the lawyer/executor. If that is his interpretation of this particular event then it is a far cry from that of my siblings and from the truth as we see it.

Consequently the lawyer/executor has been able to do as he pleases with the issues concerning Elizabeth Hannigan`s Estate (matters which were highlighted in my previous letter). These allegations are very serious when one considers the impact an uncontrolled and combative lawyer can have on a deceased estate and a grieving family. It appears as if the Law Institute is prepared to wash its hands of such behaviour demonstrating that the Law Institute must condone the behaviour in question. The issue that is of greatest concern to me, is that my sister, brother and I have been forced to watch the lawyer/executor, a respected member of the legal profession plunder my mother`s estate for no purpose whatsoever but to enrich his own pocket.

As 100 percent beneficiaries of the estate the Hannigan family have agreed to settle the matter in concern, however the lawyer/executor has continued to create problems for the family. The ongoing dispute has cost the family in the order of \$40,000 and the lawyer/executor has failed to provide the family with evidence to support his reasons for the continued dispute. He has refused to provide us with his professional notes of the construct of the will and as yet has not provided

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us with any medical records from Hedley Sutton Nursing Home.

Despite the preponderance of advertisements advocating people to draw up legal wills and use the services of a legal professional in doing so, there appears to be very little in the way of consumer protection for any family who may be beneficiaries of estates. I would have thought that the Law Institute would now be well aware of the problems created by permitting legal professionals access to such unfettered powers when dealing with other people's money. A responsible professional association such as the Law Institute would, I assume, be most concerned about creating simple standards in order that consumers of legal services are protected.

The problems begin at the writing of the will. The legal professional is under no obligation whatsoever to act professionally. Since I cannot obtain the notes of the construct of the will and the details of its writing and signing, I have no method of determining what was his level of care in his process and procedures towards my mother, when he wrote her will.

You suggest the matter regarding the manner in which the executor is exercising his powers is a matter for civil jurisdiction. The only avenue to contest the executor is via the Supreme Court. This further benefits the legal professional and further erodes the value of the estate. Since the legal professional concerned is very difficult and expensive to remove (unlike a normal business contract), I would have thought it essential for the legal profession as a whole to ensure that executors to estates who are legal professionals are acting appropriately. To guarantee appropriate behaviour would require the Law Institute to draw up some guidelines and to insist on some training. I ask you if this is occurring.

How much training has the lawyer/executor had in the matter of estates and is he acting according to the guidelines set out by the Law Institute of Victoria?

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The transferring of assets from one generation to the next is one of the most important and sensitive times in a family's history. If The Law Institute has not created any guidelines to protect families from tardy professionalism of its members, I am an extremely perplexed person.

I believe it is important for the legal profession as a whole to behave in a dignified and honest manner and incorporate the principles of integrity, trust, understanding and quality as is so well proclaimed in his firm's web site.

It is in the interests of the legal profession to have such guidelines in order that they are perceived by the wider community with the respect they deserve.

3) Process is a part of any commercial operation.

One assumes process will be carried out as efficiently as possible, due to the competitive nature of business. The principal of consumer choice applies, if the consumer is dissatisfied he or she can find another service. In the case of lawyers who are executors the only way to remove the executor is very expensive, therefore the lawyer/executor should be obliged to follow the basic principals of trust, understanding, integrity and quality of service. One would assume as a consumer of a legal service that the professional concerned would avoid unnecessary costs as has occurred in the case of the medical records. The process used by Mr. ** is not the most cost effective in fact it would be hard to find a more expensive mechanism than that used by the lawyer/executor and his firm.**

Does the Law Institute have guidelines for professionals outlining acceptable and non acceptable process in order that excessive costs are avoided on estates that legal professionals are administering?

You have made the statement that the lawyer/executor concerned has made a decision on the basis that it would be more satisfactory and more assessable to the relevant institution for the executor to make an application for the medical records rather than a beneficiary. There is absolutely

116 **no substantiation for this claim.**

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The delaying tactic, the waste of money from the estate and the intrusion of family privacy by the lawyer /executor are serious lapses in professional conduct. If the Law Institute is prepared to set a precedent in this matter it will allow legal professionals to consume millions of dollars from estates for no purpose whatsoever, apart from filling their own pockets with money. This, I am sure, would not be approved of by the general Australian public. Surely this must be an issue for The Law Institute and the legal fraternity as a whole.

4) As I have explained, the family nominated executor has had a nervous breakdown. It is the responsibility of the professional to ensure he acts in a reputable manner. It is the responsibility of the Law Institute to set down guidelines for such behaviour. Even though an event is not covered by a law, it does not mean it should be condoned. Particularly if it is an irresponsible financial act carried out by a legal professional who only serves his own financial interest. The Law Institute has missed the most fundamental point of life. The basic building block of our society is the family unit. The law exists to ensure the well being of the family unit in order for our society to function at its optimum. (The Law Institute could refer to The Convention of The Human Rights of the Child which will help support the statement.)

The law does not exist because of money and it does not exist so as legal professionals can earn \$425 per hour plus G S T. The problem we have has been caused by the lawyer, not the family. In Australian law there appears to be no mechanism to override the lawyer's decision or mechanism to resolve the issues, apart from very expensive litigation which will reward the lawyer whilst diminishing the value of the family estate!! You must realise this is a serious problem for us as a nation and your organisation needs to look at this issue as it goes against every principal that I and my family believe in. I know as a father to my children that the lawyer/executor are hurting the future well being of my family unit. I know he has not produced one shred of evidence to make me believe my mother would not have wanted only the best for my family's wellbeing. The lawyer/executor has denied me a letter he maintains he has from my mother concerning my share of the estate. Mind you this appears to be the only

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evidence anywhere that my share of the estate should be under special consideration. He has so far denied me my mother's medical records and he has denied me the notes on the construct of the will.

In other words we have a situation where a professional lawyer has damaged my own families wellbeing and your association is prepared to stand by and watch. If the law is not there to protect and enhance the family unit then who is it there for? If the rights of a family unit to operate to its best financial advantage are overridden by a legal professional who is paid \$425 per hour plus GST to create disharmony, distrust and shatter the very meaning of family love then the law condones the terrible crime of "grave robbery."

5) You make mention of a query as to my mother's state of mental health and its effect on challenging the will. Until I have the medical records from Hedley Sutton it is impossible for me to make an adequate evaluation of her capacity at the time of her making the will. I am aware that my mother was diagnosed with an anti-social personality disorder. My siblings and I have tried very hard to maintain a family unit. the lawyer/executor seems to have no regard for this problem. I have obtained the information from St Georges Hospital regarding her psychological state, and the diagnoses are contained within these records. I would like further verification by obtaining the medical records from Hedley Sutton. I consider this to be my own affair and that of the family at this stage. I believe it is not an issue for the executor Mr. **** *****. As a matter of family privacy and financial prudence towards the estate I see no reason for him to obtain my mother's medical records. I do believe he should as executor do his job, which is to give me an authority signed by himself allowing me to obtain my mother's medical records. After I have obtained and read the records I will make known to the executor anything of relevance.

This is just part of a process. One process is cheaper and less intrusive on our family than the one chosen by the lawyer/executor. This process was prevented from occurring by the lawyer/executor prior to the ending of probate. I have

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been prevented from obtaining all of the information which I require in order to make an informed decision as to litigate or not to litigate by the lawyer/executor. Litigation is very expensive and very stressful. One would be a fool to litigate prior to obtaining all of the facts. There are huge risks involved and in order to calculate those risks I require all of the information. This is a basic human right, one the Law Institute would do well to ponder.

I have no intention of challenging the will as I have no dispute with the will. As yet I have not been allowed the information I need to carry out a proper assessment of the will. To be able to do so I require my mother's medical records, the supposed letter my mother has written to the executor and the notes of the construct of the will. I believe it my human right to have this information.

I believe by denying me this information the lawyer /executor is obstructing the due legal process. It is a serious matter that needs to be considered by his professional association as it will set a precedent which will flow on into the wider community and will be rejected by the Australian public. Thus it is an issue for The Law Institute and should be dealt with by this organisation.

6) I am of the understanding that the lawyer/executor's firm have charged the estate for responding to my initial enquiry, regarding preparation of correspondence to the Law Institute and intend to charge the estate for any further enquiries regarding their professional conduct and that of *** **** the executor. I cannot verify this information as I do not have access to an itemised record of their accounts.

As probate has elapsed and I have no quarrel with the estate, can you please clarify in writing what is the position in relation to their fees, in corresponding to enquiries from your office and from The Legal Ombudsman?

I request that you again review my situation in order that I can go on with my life in peace rather than peruse issues that are really a matter for the legal fraternity and not a mere member of the public such as me.

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Yours Sincerely
Mr. Diarmuid Hannigan.

Letter 4 To The Legal Ombudsman

To The Legal Ombudsman 05/05/05
Victoria

Dear Kate Hamond.

Further to my letter 01/03/05.

I enclose correspondence between myself and The Victorian Law Institute. The Law Institute has stated that the matters raised are not a matter for their involvement.

I do not agree with their decision and I am forwarding the matter to you.

Initially I raised concerns regarding a request for an authority to obtain my mother's medical records from Hedley Sutton nursing home. Please refer to enclosed correspondence between myself and The Law Institute for details. I would like to mention, at the time of sending this letter, I have not received the medical records from Hedley Sutton nursing home.

I will now raise further issues of concern that I have in relation to the handling of my mother's estate by her lawyer

Mr. **** ***** and his firm ***** ***** of whom he is a senior partner.

1) My mother was confined to a nursing home as a result of an irreparable broken hip. My mother was aged in her mid-seventies and in a state of extremely fragile health, both physical and mental at the time of writing her will. She was not unlike many older people who have become frail and infirm due to old age. At the time of preparing the will her attention span was hovering between five and ten minutes. She became confused as to whom she was speaking with and

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did not know which day it was or how many days had passed. She was in a great deal of pain and had been diagnosed with an antisocial personality disorder. She had cognitive problems in relation to processing complex information and her ability to interpret information was hindered by her psychological state. Further more the narcotics prescribed to alleviate her constant physical pain added to her confused state of mind.

I gather she employed the services of his firm to assist her in writing her last will and testament. I know she did not physically write her own will and it was in fact written for her by the lawyer/executor.

I have asked the lawyer/executor for his notes on the construct of her will in order that I can evaluate his professional process. I personally believe she could not understand or comprehend her own will in detail. I am most interested in discovering how much effort went into explaining her own will to her at the signing of it.

The lawyer/executor has refused to provide me with his notes of the construct of the will and therefore I have no method of determining what his level of care, in his process was and procedures towards my mother, when he wrote her will. I am unable to ensure she was properly treated by him as a professional lawyer.

2) The lawyer/executor maintains he has a letter written to him by my mother explaining his decision to keep my share of the estate in a testimonial trust. I have asked him for a copy of this letter. So far he has refused to show me a copy of this letter. The letter must have been written whilst my mother was alive. I am trying to find out why the lawyer/executor did not inform the co-executor of this letter as it appears to be the foundation of his reason for creating a dispute within the family estate. I maintain that as a professional he would have been able to foresee such a dispute and had a duty of care to my mother and to her siblings and their children to clarify anything that would cause confusion in her will prior to her death, as she would

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have wanted all of her children to live in harmony after she had passed away.

I maintain by not divulging the receipt of the letter to the executor *****, my sister, he has in fact denied her the opportunity to resolve any unforeseen problems with her will. I maintain he has not treated her with the respect due to her and his actions have alienated my sister from my mother.

3) I maintain the lawyer/executor and his firm have used a combative legal style in dealing with my enquiries regarding my mother's will. I maintain this combative style of legal process, rather than a conciliatory style is deliberate. The motive being, the combative style generates disputes, prolongs the legal discourse and generates more legal fees. This in turn damages the value of the estate.

3.1) At the reading of the will which was attended by my mother's four children and *****, husband, we understood that there was no problem with the will and the reason for my share being held in a testamentary trust was due to my particular circumstances of running a small family business. Business circumstances being as they are and the timing of her death being unpredictable, that it be prudent to protect the asset in this manner. The family decided my siblings would approach the other executor and request he concur with my sister *****, and release my share of the estate to me as was to occur with their shares. Thus we were all to be treated equally and this was also the most advantageous way of using my share of the estate to benefit the long term financial future of my family. The lawyer/executor disagreed and stated he had to refer to his notes.

3.2) A prolonged legal discourse occurred between my lawyer and the lawyer/executor's solicitor. This included a submission to the ethics committee. As yet I have not received a letter explaining the reasons for their decision to allow his firm probate but I would like to see it. My understanding is the ethics committee normally gives a

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written reason for their decision. My lawyer has asked twice and as yet they have not replied.

3.3) After three letters were sent to his firm and three letters were received from his firm, including a submission to the ethics committee, the lawyer/executor states that he is in the possession of a letter (The famous secret letter 30/10/98) from my mother to himself.) I maintain the lawyer/executor should have produced this letter at the outset and discussed it openly with me and my family. Instead he prolonged the time period from 25/08/04 until 28/10/04 a period of two months before even divulging the existence of this letter. I maintain this is part of his combative style.

3.4) In the meantime I have obtained my mother's medical records from St Georges Hospital. There are indications held within these records that show my mother's psychological vulnerabilities. I felt it necessary to investigate more closely her medical records during her confinement to Hedley Sutton nursing home in order to obtain some written evidence concerning her frail mental and physical state. I feel it is important for the executor to develop an understanding of my mother's health condition. I have found it most disappointing that despite the family discussing all of the above issues with the lawyer/executor including the damaging repercussions of his actions, he has refused to seek advice and discuss the contents of his letter with any of the children of my mother. We are the people who knew her the longest and understood her and loved her as only ones children can.

3.5) On two occasions the lawyer/executor has clearly indicated he is in possession of incorrect information about me.

3.5.1) The first incident implies that I am not a man of my word and that my word is not to be trusted. This incident involving a letter sent by R. S. A. (Retirement Services Australia) to his firm stating that I was collecting rent from my mother's unit. His firm took it upon themselves to send a letter to my solicitor asking him whether or not I was collecting rent from a unit my mother owned at Veronica

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Gardens. As I have not been collecting rent from Veronica Gardens, I asked my solicitor to reply and state that. His firm then sent my solicitor another letter with a copy of a letter sent from R S A. In this letter his firm infers that I had spoken an untruth. When informed of their error which I had to verify for them with R. S.A. (even though the executor has all of my mother's bank accounts and the funds were all transferred electronically) no acknowledgement of their mistake was forthcoming or any type of apology or deduction from their bill. My solicitor in his reply requested his firm to approach me directly about any administrative matters, to reduce my legal costs. My solicitor is acting in the capacity of dealing with what happens to my share of the estate. He is not there as an administrator for me. I maintain his firm has ignored this request on two occasions. They have sent a part settlement cheque to my lawyer when it could have gone directly to me as was the case with my siblings. They have sent correspondence from my sister to my solicitor which was completely irrelevant to our matters. I maintain a conciliatory style of management would have been to have phoned a family member or myself and asked the question. Stating at the same time the contents of the letter from R. S. A. This method would have identified the error in the letter from R.S.A immediately. Thus a combative style and not conciliatory. It is financially advantageous for legal firms to conduct a combative style when managing deceased estates. He has also stated that the Commonwealth Bank of Australia is one of my creditors. I have had no dealings with the Commonwealth Bank of Australia since 1994.

3.6) As a family my brother and sisters united together and proposed a unified trust to be held until my children are of age. He refused to discuss this proposal. He has made no attempt to conciliate this whole issue. He has made no attempt to explain his position and he has refused to provide me or my family with the relevant information to explain why we should suffer an \$80,000 penalty during the next ten years plus his costs for administering the trust at \$425 per hour plus GST.

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3.7) My **** ***** (my partner in marriage) wrote a letter to the lawyer/executor. This letter is self explanatory. In the lawyer/executor's response he absolves himself and his firm of all responsibility in relation to my family's wellbeing. I find it is irresponsible and a neglect of duty because he has refused to provide a copy of a letter he maintains he has from my late mother. He refuses to provide his notes on the construct of the will and he delays in obtaining my mother's medical records from Hedley Sutton nursing home.

3.8) My **** ***** (My daughter) also wrote a letter to the lawyer/executor This letter is self explanatory. My mother was a frugal woman who would never have agreed to have a professional charge her grandchildren \$425 per hour plus GST so as to administer their trust account. I am convinced by this statement that she was not fully informed by the lawyer/executor of the implications of her will and I am convinced he is misinterpreting it for his own financial gain.

One would have thought a legal professional would have ensured his fees were kept to a minimum and his style of dealing with an estate would have been conciliatory in order that he performs his role as an executor to protect the assets of the estate.

4) I am of the understanding that his firm has charged the estate for responding to my initial enquiry, regarding preparation of correspondence to the Law Institute and intend to charge the estate for any further enquiries regarding their professional conduct and that of the executor. I cannot verify this information as I do not have access to an itemised record of their accounts. As probate has elapsed and I have no quarrel with the estate, can you please clarify in writing what is the position in relation to their fees, in corresponding to enquiries from your office and from The Law Institute?

I look forward to hearing from you.

Yours Sincerely

Mr. Diarmuid Hannigan.

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Letter 3 Response from the Legal Ombudsman



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The response by the Legal Ombudsman raises serious questions in relation to the construct of the law pertaining to lawyers who act as executors in deceased estates.

The statement by the Legal Ombudsman that her powers are limited by the Legal Practices Act 1996, begs the question. Who was responsible for writing this act? Was it the legal profession or the consumers, that is the Australian people? Who does the act favour, the legal profession or those that pay for its services?

In an adversarial system developed since the battle of Hastings 1066, all those who have lived within its realm have been subjected to a legal process that rules over them, rather than a legal process that comes out of the people. In Australia it is a system with its foundations formed out of a penal settlement underpinned by an antiquated and tyrannical system that was transported to Australia from Georgian England.

The concept that a legal process is developed by community, community having its fundamental structure evolving from the family unit is completely foreign to a penal colony. In a naturally evolving human social structure, families are the building blocks of civilized society. Families make up communities. Laws then evolve from those communities and are based upon the need to ensure family well being. In Australia our foundation and the root of our legal process was based upon the running of a penal settlement. This had very little to do with community or the importance of family wellbeing.

The statement by the legal ombudsman that the lawyer/executor "is not to give you access to those instructions and indeed it would be improper if he did so," confirms my point.

A person facing criminal charges must be convicted on evidence. The process allows that person access to the evidence so as he can defend himself. In my family's situation that evidence is denied by the legal process. In other words our legal structure gives persons accused of

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criminal behaviour better access to information than beneficiaries and family members of deceased estates. Our legal system does not recognise the importance of family well being as the fundamental component of developing a strong and cohesive society, and is living proof of the failures of our adversarial rule over legal process.