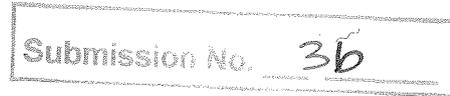




Diarmuid Hannigan



Sunday 7th of October 2012



To The Honourable P D Cummings
Chair
The Victorian Law Commission

Dear Philip

Thank you for responding to my submission on Inheritance Law Reform dated 14th August 2012.

In your response you refer to a number of issues that I have raised, which you interpret to be outside of the terms of reference given by the Attorney General.

You state these issues to be:

- Extending to the regulation of legal practitioners generally
- The breadth of human rights legislation
- The operation of the adversarial system of law.

I have no doubt that you and your associates, who make up the Victorian Law Reform Commission, are fully aware of the significance of our Inheritance Laws upon the wider workings of our community and also the significant revenue base this work provides to the legal industry.

From my own assessment I would estimate that approximately 50,000 Victorians die every year leaving an asset base of approximately \$500,000 each. This amounts to a grand sum of \$25 billion dollars per year.

The legal costs of processing this asset base are in the order of \$1.5 billion per year, which is about 20% of the Victorian legal industries revenue base. I would suggest that two thirds of that sum, is currently being wasted through an inefficient and unaccountable system that serves the revenue base of the legal profession, at the expense of Victorian families. The cumulative cost of this waste over a ten year period is about \$20,000 to \$40,000 per Victorian family. This amount of money is significant to most Victorian families who are not on high incomes, unlike the incomes that the legal fraternity are accustomed to. This amount of money, when used in a crisis, whilst bringing up a child in an average Victorian family, can be the difference between lifelong dysfunctionality or a happy and fruitful life.

Considering the long term significance law reform on Inheritance can have on Victorian families I would like to draw your attention to the "make war on 1034 campaign" that was developed in the 1970s and its similarities to the reform of our Inheritance Laws.

In the 1970s we had a motor car system that was killing and injuring a large number of Victorians. We as a community decided to address the problem on a whole of system basis.

- We redesigned the internal workings of the motor cars, by introducing seat belts, internal padding, and better brakes and tyres.
- We changed our approach to how we treated the driver of the car. Through education and legislation we reduced the number of testosterone alcohol fuelled drivers upon our roads.
- We gave our regulators more tools so as to combat the road toll. Country speed limits were reduced, .05 testing of drivers and tools to catch speeding drivers were invented.

These approaches have worked, they have made our roads safer and have significantly reduced the number of Victorians who have died or who have been injured upon our roads. The results have made Victoria a world leader in road safety development and have contributed to making Melbourne one of the world's most liveable cities in the world. By reducing road trauma we improved the wellbeing of all Victorian Families and saved ourselves a lot of money that is redistributed back into our communities.

Now let me return to Inheritance law reform.

Currently we have a situation in Victoria where everybody at some time encounters inheritance law, simply because we all at some stage will die or we will know a person who is close to us who will die and somewhere along the line the majority of us will inherit something. Most of us will either be a beneficiary or in the end a testator, some of us will be nominated as executors. One can compare testators and beneficiaries to motor car passengers for the purpose of this analogy and nonprofessional executors as learner drivers of what can be a very expensive motor vehicle driving along a dangerous road. The real drivers of the motor car are the professionals whether they are lawyers, accountants or professional trustees.

The journey this vehicle takes us upon is the journey of life, as inheritance when confined to the family, which is where the bulk of it remains, will affect the trajectory of the family for eternity. As it impacts not only upon the family's material wealth but also upon the state of internal health between family members.

The way the inheritance vehicle is driven, the road and the road laws that guide the vehicle and the regulators that control the way the vehicle is driven will all have a bearing upon the final outcome for the vast majority of Australian families.

The breadth of human rights legislation

Hence if the driver of the Inheritance Vehicle is a lawyer, which in a large number of cases it is and if not, a lawyer will most likely be a trainer of the driver (executor). We need a lawyer who respects and understands the essence of human rights and can encompass the charter of human rights so as it has a bearing upon the trajectory of the inheritance vehicle. Therefore it is critical that lawyers who are in private practice are bound by the Victorian Charter of Human Rights when working in the area of inheritance as they are the drivers of the inheritance vehicle.

Extending to the regulation of legal practitioners generally

The review of inheritance law and tinkering with the Inheritance Act can only redesign the vehicle by adding safeguards, but unless the driver is responsible and accountable and is aware that a regulator has the tools to ensure he or she follows the rules, any change to the design of the vehicle will have very little impact upon the journey. The regulator must be independent of the driver (legal profession) and must not have a vested interest in protecting the driver, if the driver does not follow the rules. Hence the independence of the regulator (Legal Services Commissioner) is important because it is only human nature for some of us to break the rules and an independent regulator is far more difficult to corrupt than a self-regulator.

The operation of the adversarial system of law.

The way the vehicle is driven will have a significant bearing upon the state and condition of the inheritance vehicle at the end of the journey. The perfect outcome is to have the vehicle begin its journey in good shape and condition and to have it finish its journey in a similar state and condition. If the inheritance vehicle is driven using the adversarial system as against the inquisitorial system it will take longer to reach its destination it will cost more and it will more often than not get to a wrong destination. This process inevitably can lead to a significant devaluation of the inheritance that is available to the beneficiaries, more often than not the children of Australian families.

Please refer to Annett Marfording`s report. Civil Litigation in New South Wales:

Empirical and Analytical Comparisons with Germany Annette Marfording Ann Eyland.

Link to <http://law.bepress.com/cgi/viewcontent.cgi?article=1223&context=unswwps>

As I said at the beginning of the letter in response to your letter, it is your interpretation of the terms of reference that excludes three significant components of my submission which if excluded will not ensure that Victorian law operates justly, and in accordance with community expectations in relation to the way property is dealt with after a person dies.

As a Victorian who has experienced the failing of our Inheritance law system, I maintain I am in a special position and a qualified person who can comment upon the importance to develop a system that will give Victorians the guarantee that the Victorian law operates justly, and in accordance with community expectations in relation to the way property is dealt with after a person dies.

I would at this stage take the liberty of describing my own families experience of Victoria`s Inheritance system, so as you can appreciate how I have formed my perspective of our legal system and its relationship to family inheritance, as it gives good cause for the Commission to adapt its interpretation of the terms of reference, so as to create an inheritance vehicle for all Australian families that is keeping with their needs and expectations.

In my own families situation my mother nominated my sister and [REDACTED] (at the time of her death) to be executors of her estate. Prior to probate being granted my mother`s family met with [REDACTED] of [REDACTED] to discuss the terms of my mother`s will.

Most significantly: The meeting occurred on the 19th of August 2004 at the offices of [REDACTED]. [REDACTED] attended that meeting along with [REDACTED], [REDACTED] wills and estates expert, my brother [REDACTED] my sister [REDACTED] and her husband [REDACTED] both practising psychologists and my sister [REDACTED], the family nominated executor and her husband [REDACTED] a medical practitioner. The purpose of the meeting was to discuss how the estate could be distributed equally amongst my mother`s four children who were all in agreement as to this being my mother`s final wish and that this would be in the long term interests of our families`.

At this point in time as far as I can ascertain [REDACTED] was the only nominated executor to the will, along with [REDACTED] at the time of my mother`s death, as probate had not yet been granted and the actual member from [REDACTED] who was to take up the role of executor, had not yet been decided. [REDACTED] happened to be at that meeting because [REDACTED] had been involved in writing my mother`s will and had been the lawyer from [REDACTED] to who my mother communicated with.

The facts are, that a meeting at the offices of [REDACTED] Solicitors, at which one family member executor attends and one lawyer [REDACTED] who is representing another 20 lawyers, one of whom could become the other executor and a lawyer [REDACTED] employed by the law firm [REDACTED] attends. The lawyer [REDACTED] states that [REDACTED] has a letter in [REDACTED] possession written by my mother that [REDACTED] says, states that [REDACTED] cannot divide the estate equally between her four children, as it would be contrary to her wishes. This statement was not true and was a misrepresentation of the contents of the letter (which only came to light after six years). The lawyer [REDACTED] [REDACTED] who was charging the estate for [REDACTED] presence at that meeting had at least two clients, one being my sister and another 20 clients that is the members of [REDACTED] at the time of my mother's death, who are referred to in the will and the probate documents. That lawyer [REDACTED] had a duty of care to my sister [REDACTED] to tell her that [REDACTED] other client (a representative of [REDACTED]), was misleading her during the meeting.

Instead, when my sister requested a copy of the letter [REDACTED] said [REDACTED] had possession of: stating to [REDACTED] "My mother would never have wanted her children to be treated in an unequal manner after her death." [REDACTED] [REDACTED] advised [REDACTED] that he could not let [REDACTED] see that letter as it was a privileged document.

[REDACTED] the current lawyer who is dealing with this matter at [REDACTED] has been asked who was representing who at this meeting on 19th August 2004. [REDACTED] has stated that [REDACTED] was primarily representing [REDACTED] and that it had been adverted to [REDACTED] prior to this meeting that she required independent legal advice. Upon checking with [REDACTED] it has been found that [REDACTED] is not telling the truth. At no time prior to the meeting of 19th August 2004 had she been informed by any member of [REDACTED] [REDACTED] that she required independent legal advice at that meeting. This means that [REDACTED] was representing [REDACTED] as the family nominated executor of the estate and the other 21 members of the law firm [REDACTED] at the time of my mother's death as stated in her final will.

The Attorney General Robert Clark in his letter to my brother ([REDACTED]) dated 27th of June 2012 which states; "The Commissioner can also investigate serious misconduct that occurs outside of legal practice that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice or that would be reasonably regarded as disgraceful or dishonourable to the profession."

The point of me telling you this story is as follows.

1. [REDACTED] and [REDACTED] [REDACTED] were able to hide the truth of my mother's wishes for seven years, by claiming the letter whose contents [REDACTED] misrepresented, was bound by legal client privilege.
2. This misrepresentation of the contents of the letter by [REDACTED] led to my sister, the family nominated executor and the person who I maintain was the only real executor prior to the granting of probate to have a disagreement with [REDACTED]
3. [REDACTED] then used the threat of exorbitant legal fees to sort out the problem. Stating it would cost the estate in excess of \$200,000 in legal fees. [REDACTED] then wrote a letter to my sister strongly recommending that she not partake in probate. As a result of the bullying, intimidating and dishonest tactics used by [REDACTED] without intervention by [REDACTED] the paid employee of [REDACTED] along with the other 20 members of [REDACTED] at the time of my mother's death, my sister who also cares for a

special needs child had a nervous breakdown and left the running of the estate to the members of [REDACTED].

4. [REDACTED] became the executor.
5. I received 50% of my inheritance and [REDACTED] invested the rest on the stock market where [REDACTED] lost about \$80,000 during the G F C when accrued interest is taken into account.
6. [REDACTED] were able to amount \$75,000 in legal fees against the estate. There were more fees for running a trust that they set up that was based upon a lie.
7. The result of the actions by [REDACTED] have destroyed the inter family relationships because of the uneven distribution of the inheritance between my mother's children.
8. Despite three complaints to the Legal Services Commissioner and a complaint to The Victorian Ombudsman which were well documented and have provided conclusive evidence that [REDACTED] and [REDACTED] and [REDACTED] behaved in a disgraceful manner that involved:
 - Lying
 - Working for their own financial gain
 - Abusing the Inheritance, family and human rights of my mother's family
 - Mismanaging the estate whilst in control of it.

There has never been a proper investigation carried out by the regulator about this matter.

The Legal Services Commissioner has continually stated that [REDACTED] was acting as an executor and not a lawyer and that the matters that I am concerned about are a matter for the Supreme Court. I find this to be very surprising particularly when you become aware of a case of professional misconduct that is currently being brought against a Mr Harold James Johnson by Mr Michael McGarvie - The Legal Services Commissioner. VCAT Ref J124/2011

Mr Johnson is charged with writing intemperate language in three affidavits to the courts whilst he was acting as a self-represented non litigant in a family law matter. In this case the legal services commissioner is prepared to go all out against Mr Johnson on the basis that even though he was not acting as a lawyer in his self-representing role he had communicated in a way that lawyers are not permitted to do and in so doing had behaved in a disgraceful manner and should be barred from practicing law for five years. None of what Mr Johnson has stated in his affidavit material has been disproved.

And yet we have about 300 complaints arriving at the Legal Services Commissioners desk many involving lawyer who are acting as executors whom the legal services commissioner does not see fit to investigate and refers the complaint back to the complainant often suggesting that they take the matter to the supreme court so as they can incur more legal fees and charges.

- We have at least one case that I know of where a lawyer who may or may not have been an executor who clearly behaved in a dishonest manner to gain control of my mother's deceased estate whose behaviour is disgraceful, is not investigated by the Legal Services Commissioner. Hence the issue pertaining to extending the regulation of legal practitioners generally.

9. Despite frank and forthright communication to [REDACTED] and [REDACTED] who are still at [REDACTED] my mother's family have been refused permission to examine the estate file. A file that has been fully paid for by my mother's estate and which I maintain is the property of my mother's family.

I can assure you that none of the above indicates that Victorian law operates justly, and in accordance with community expectations in relation to the way property is dealt with after a person dies and all of which indicates that to shift the Victorian law to a position that ensures that Victorian law operates justly, and in accordance with community expectations in relation to the way property is dealt with after a person dies will require the law reform commission to consider and incorporate

- Extending to the regulation of legal practitioners generally
- The breadth of human rights legislation
- The operation of the adversarial system of law.

in to its interpretation of the terms of reference so as to achieve the desired outcome. An outcome that would reduce the cost of running the Inheritance transfer system by one billion dollars per year which would then be redistributed back to Victorian families. As with the flow on benefits Victoria has gained by its war upon 1034 we can use the same method to impart a positive contribution when we reform our Inheritance Laws.

I welcome commission's practice of publishing submissions and have no objections to you publishing my submission. I can understand the need to remove any names from submissions as to not do so would create an unworkable environment. I am saddened to hear you will not be publishing my book (Lawyers or Grave Robbers?) on your web site, but I did not send you a copy of Lawyers or Grave Robbers? so as it would appear on your web site, however I did send you a copy of Lawyers or Grave Robbers? for a reason, as there is information contained within the book that will assist the commission and a documented story that is true. The perspective of a person who is outside of the legal profession will shed a different light upon a subject that although not in the forefront of day to day events at this point in time it will have a beneficial impact upon the workings of most of the people who live in Victoria.

I trust that you will take my comments on board and I live in anticipation of seeing fairer and more equitable Inheritance Laws and a system that administers them emanating from the Victorian Law Reform Commission's review of these laws.

If I can be of any further assistance please contact me.

Yours Faithfully

[REDACTED]
Diármuid Hannigan

CC The Attorney General Robert Clark, Richard Wynne Shadow Minister for a fairer Victoria
Dr Ian Hardingham