SUBMISSION TO VICTORIA LAW REFORM

INQUIRY INTO SUCCESSION LAWS

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[redacted]

This submission focusses on the Discussion as it relates to:

Terms of Reference

1.2 *The purpose of the review as set out in the Terms of Reference is to:*

(a) ensure that Victorian law operates ***justly, fairly and in accordance with community expectations*** *in relation to the way property is dealt with after a person dies. (Why only "property"? (Shares, Super and other assets?) (b) ensure that the processes to resolve disputes about the distribution of such property? are* ***efficient, effective and accessible.***

(c) ***identify practical solutions*** *to problems that may still be outstanding in Victorian law and practice following the recommendations of the National Committee for Uniform Succession Laws*

Operation of the Jurisdiction

11. Any other means of ***improving efficiency and reducing costs*** *in succession law matters.*

The Commission should also consider any legislative developments in both Victoria and ***other Australian jurisdictions*** *since the National Committee released its reports.*

Items addressed in the Terms of Reference are in italics; Where appropriate, references are included as Appendices

Appendix 1 : Examples of Judge created problems, e.g. excessively lengthy trials and therefore costs, including to taxpayers.

Appendix II Article quoting findings of Judge McEwen B.C. Canada

Appendix III The case for introducing Court Ordered DNA family matching tests in Succession Laws. (includes cases and situations in relation to Wills and Succession Laws).

INTRODUCTION

This submission is based on cases examined during my own long and painful battle for justice. Extracts are from cases referred to me via websites, research resulting from

involvement in other Law Reform inquiries (the author is quoted in several) and from observations and discussions in State Courts with other "satisfied" as well as disenchanted participants. Also from media items which reflect my own and others' experiences , some of which are included or can be accessed on the net.

Of necessity, including to avoid conflict with Privacy issues, examples are given which directly apply to the author but reflect similar issues in other cases studied during extensive research into causes and therefore solutions to the lack of efficiency and accessibility to justice in our State Courts.

Establishing independent, transparent Arbitration Tribunals, perhaps headed by e.g. retired Judges among others and ensuring accessibility to experts , for resolving miscarriages of justice would result in substantial cost savings to taxpayers, rather than the current secret coverups by contract employed individuals which pass for investigations to the detriment of the public interest. The Legal Ombudsman should be replaced by a transparent, accessible independent Eyeball to Eyeball Tribunal process.

PREAMBLE

Almost every family is affected by Succession Laws at some time and in one way or another. Review is long overdue. ***"improving efficiency and reducing costs" needs to start at the top, ie with Judges and Attorneys General (Appendix I) . Judges need to take their responsibility to taxpayers as well as participants more seriously. Including more diligence in applying existing laws and Rules more appropriately and fairly. Also to avoid creating unnecessary, inappropriate Orders which prolong and complicate basic issues before the Court. Examples given in AI.***

Attorneys General need to adhere more appropriately to the democratic processes that independent and bi partisan Law Reform inquiries provide, rather than making ad hoc, individual based, on the run decisions which can have a seriously detrimental effect on Courts, individuals and justice generally when there is no transparent discussion. Appendix I illustrates examples of Judge created inefficiency which lead to injustice and includes as examples news articles of Judge Weinberg and Professor Bagaric.

Considering the discretionary powers they have , some Judges show an inexplicable reluctance to take ownership of the running of a case. There needs to be transparent, accessible, independent mechanisms available to the public to address and overcome entrenched, out of date attitudes towards prolonging cases unnecessarily so illustrated by my own case as well as others I've come across.

The huge cost to taxpayers of the convoluted, out of date, out of touch processes as well as out of date attitudes, laws, ignorant assumptions and indifferent politicians which exacerbate and increase costs and injustice need innovative solutions not dependent on mores and prejudices dating back 100's of years.

Lawyers can lie their heads off with impunity because they do not have to "prove" anything they say is true. The way to address this contributing factor to create more efficiency and minimise unjustifiably drawn out processes is

> **mandatory, independent, pre Court mediation *before* a case can be filed at the Court. Even when I sought an Order for one it was refused even though there were clearly issues which I did not believe should be out in the public arena.**

The outcome of applications under Succession laws do not just affect direct participants, i.e. the Executor and the Applicant The families of participants on both sides are torn apart and fragmented by dishonest Executors, greedy lawyers and out of touch Judges. The convoluted, out of date out of touch processes and procedures are not only financially and emotionally destructive, they are also very costly to taxpayers. Any chance of healing in families is made impossible.

> (e.g. Where **independent** mediation is encouraged/agreed to at an early stage warring families are more likely to forgive and forget than if a long, costly and painfully protracted battle ensues)

For low and middle income families regardless of who "wins" unnecessarily tangled protracted proceedings result in many being pushed onto the overloaded, costly tax payer funded health system and Centrelink handouts, especially if they lose their home through pursuing justice.

We would like to see more discussion regarding **causes, minimisation and solutions t**o the serious, costly, cruel inefficiencies which relate to the above terms of reference - so highlighted by PILCH as well as Judge Weinberg , Professor Bagaric and others (A I), concerned about the rising tide of injustice.

It is a well established fact the out dated convoluted processes contribute significantly to many injustices where the only winners are the lawyers.

> **As regards "*improving efficiency and reducing costs",* addressing the problems raised by the Chief Justice – "unrepresented litigants"* , Professor Bagaric - "rules of evidence" and Judge Weinberg " Lazy Judges" would go a long way towards this.**
>
> **A first step should be that compulsory, independent pre court mediation be established without exception, regardless of whether both parties are represented or not – indeed especially if one is and one isn't.**
>
> **Complaints about Judges as well as lawyers who perpetuate inefficiency and unnecessary costs etc should be examined by way of an independent, transparent arbitration process rather than contract employed one eyed public servants in the**

Department of Justice or secret inquiries by Ombudsmen seemingly employed to aid coverup of injustice rather than resolve it. ,

It is common knowledge among those claiming injustice that mediation is refused by those with something to hide and the deepest pockets, and the most to lose financially. Lawyers advise them against early mediation because they know the truth is more likely to be established and the matter resolved more "efficiently" as well as justly.

It is less likely barristers can mislead the Court with flimsy excuses for making misleading claims (lying on behalf of their client)

Mandatory pre court mediation before Courts and lawyers get involved would clearly and considerably reduce the taxpayer funded load on the Courts, far more efficiently and effectively than appointing more and more Judges.

More and more funding to Legal Aid and Community Legal Centres is fighting the problems in the Courts from the wrong end.

Judges should be more accountable to participants as well as taxpayers when they significantly prolong cases unnecessarily.(AI) The emphasis should be to minimise the factors which lead to so much inefficiency and therefore injustice as well as overburdening the more ethical, competent Judges. It is already within the power of Judges to address deliberately prolonged cases. What appears to be lacking is education and oversight to ensure they use them and take responsibility for ensuring cases are not dragged out interminably unnecessarily. Discretionary powers could be applied more intelligently and responsibly (responsibly to taxpayers that is) as well as participants.

The Rules already address this – the Judges, including Appeal Judges need to have more concern for taxpayers as well as participants.

Farnell vs Penhalluriack SC 2004 turned into a 14 year still unresolved public interest circus largely due to decisions and irrelevant Orders of Judges.

Definition of a small estate.

SE3 *Is there a better way to define which estates should have access to the simpler processes relating to small estates? For example by reference to certain asset profiles?*

Definition of a small estate is pointless.

Many of the Rules and Laws as they are should be rescinded and streamlined to create "*simpler processes*" to *all* Estate matters but more especially the rules of evidence. (AI Professor Bagaric) .

The savings to taxpayers might well eliminate the big black hole in the budget.

"*Simpler processes*" need to be addressed and established regardless of the size of an estate. **Especially by way of <u>mandatory</u> pre court independent mediation. More education of the public generally in this regard is essential because lawyers from both sides regularly advise clients against it purely to line their own pockets.**

Crime statistics would have us believe that the crime rate is falling. In fact, increasingly sophisticated white collar crimes are rife, including misleading Wills, falsified documentation including dated photos, and dishonesty in Estate matters – costing the government a fortune. Such frauds are made possible because our justice system is failing those who most need it most. Ie lower income adversaries. Appendix III (*Judge McEwen B.C. Article)*

The assumptions and attitude by Courts that the poor, the unrepresented and otherwise disadvantaged are the liars and the rich with slick representation are not, is not only outmoded, but has been discredited by social policy researchers whose studies prove the opposite ie that professional people are more likely to lie and cheat. . (*Age report*).

Currently Judges are assumed to be experts on all things because the Rules don't ensure the Executor, much less beneficiaries, have to provide a verifiable Statement of Assets etc. or other supporting documentation and Judges are not up to date with modern technology fraud. *(VLRC Fraud Inquiry findings and ALRC Genetics Ethics Inquiry) .)*

Judges publicly admit they do not have the time nor do they seem to have the training in complex financial issues, including modern day frauds.

Low income participants in State Courts have nowhere to turn to for this type of evidence and support so are forced through a convoluted Court system usually without representation.

In her paper on fraud, Amanda Vanstone points to the need for police to assist in fraud matters . Having already been cheated by family members surely some better form of handling can be established to address the Chief Justice' claims – ie that it is the Self represented who complain most about injustice? This may actually be misleading. Ie it is Judges and the way they treat self represented individuals which is the real problem.

The Fraud Squad seems to have been privatised and taken over by the banks.

<u>Solutions for Discussion</u>

Perhaps one cost effective solution for *efficient, effective and accessible justice* would be for a division of Centrelink or the Taxation Office to investigate claims relating to fraudulent wills pre Court or at a very early stage since clearly taxpayers generally pay when people are unjustly pushed onto Centrelink handouts.

Alternatively a separate "domestic fraud" body similar to the hugely successful and effective Community Policing program for victims of family violence, where retired police are assisting among others. Maybe it could minimise or replace the increasing number of "service providers" in the welfare sector – taxpayers money would be far better spent in prevention.. The author is homeless as a result of long term injustice – Ive been ''assessed" by at least six different agencies and even more service providers without actually achieving anything other than a cespoo;l of misunderstandings and stress which keep me under a taxpayer funded psychologist rther than a permanent affordable roof.

Fraud is a crime; it happens regularly in our Courts. Despite the huge cost to taxpayers of those whose lives are destroyed by fraud in probate matters there are no mechanisms to minimise it much less address it. **Should there be**?

"efficient, effective and accessible. "

The introduction of DNA as evidence in Succession Laws is essential. . Ie there is heavy reliance on DNA as evidence yet Courts cannot Order it where a party fails to consent or claims pre court DNA testing results are misleading (false). (Appendix II illustrates cases and situations where it has a significant effect on the outcome in relation to Wills and Succession) ;

It is particularly unjust where parties have consented to pre court family matching and the result is false regardless of the reason. Injustice is aggravated in the State Courts because "the Report" is still seen as the evidence despite the stunning findings of the ALRC Genetics Ethics Inquiry No.96. In this regard I would draw the Commission's attention to why the unjust outcome of the Farnell case should be of more concern when considering if Succession Laws would be more efficient if updated to include Court Ordered DNA Family Matching . . Appendix II

Where paternity fraud is committed against family members, whether by the father, mother or siblings ("deception by either parent is fraud" Philip Ruddock commenting on the ALRC findings)) or other prior to or after the death of the party in question, and estate assets distributed prior to death, it is clearly the best way for the aggrieved party to prove the lineal/collateral relationship or discredit it. State laws and Judges' training have failed to keep up with modern values in matters of justice as well as modern technologies.

Several cases we have come across illustrate that Supreme Court Judges are still relying on a Rule that dates back to the Napolionic wars rather than being given the power and encouragement to study and understand the **problems** as well as the **benefits** of new technologies like DNA testing and document fraud! (ALRC Genetics Ethics Inquiry No.96)

Women seeking justice via the Victoria Supreme Court had to give up due to the high cost of fighting for their right to confirmatory DNA testing in a Court that cannot Order them and

refuses to acknowledge more traditional evidence such as strong likenesses to family members. (*Dr Bentley Achison, retired scientist)* or in some cases not even try because of inappropriate, inadequate out of date laws. Others find justice in other States where DNA family matching is available in the Status of Children Act Consolidated Acts 1979) **and there are more appropriately constituted laws and mechanisms to address corruption.** Others, myself included work for change in the hope of attitudes as well as laws being updated (*see blog at Blisstree and others*)

Other Contributing Causes of Prolonged, Costly Court Processes

Community Legal Centres point to the fact that self represented litigants clog up the Courts due to **not understanding practice and procedure**. Including most significantly, how to get the facts in front of the Judge when the whole system seems to be designed to prevent it. A 1 Professor Begaric) The Chief Justice points to the fact they , un represented litigants, are the ones most frequently claiming injustice.

She is quoted as claiming it is because "they do not seek the process of an Appeal". **Not hard to understand why, is it , when they have no support and Judges ignore and trample on them**? (e.g. In Farnell vs Penhalluriack, the defence were aware Farnell was on a Seniors Pension, homeless and penniless yet the Appeals Court prolonged the case even further by Ordering she pay a $16,000 security bond be paid into Court, ignoring blatantly obvious lying in affidavits by the Executor.

B.C. Supreme Court Justice **McEwen is quoted as saying such impositions of fees are unconstitutional . Other issues in his findings are very relevant to the Terms of Reference** *(a) ensure that Victorian law operates* ***justly, fairly and in accordance with community expectations*** **" and are included for discussion as Appendix III)**

> **Surely then the solution to ensure more justice as well as efficiency is that there be far more support for unrepresented litigants? Judge Weinberg's comments being particularly applicable in such cases.** (ie that Judges fail to read affidavits" so if one is unrepresented, only the defence barrister is listened to no matter how blatantly obvious it is when they are misleading the Court. It is clear from the article relating to Judge Weinberg's observations that some Judges abdicate their responsibility to lawyers and Experts, rather than take responsibility for ensuring "*efficient, effective and accessible justice"*. Examples A I .
>
> **Perhaps education as regards their responsibility to taxpayers as well as participants would ensure discretionary powers are applied a little more effectively in terms of** *(b) ensure that the processes to resolve disputes about the distribution of such property are* ***efficient, effective and accessible.*** Regardless of the size of an estate, all parties have an expectation that justice will prevail. **Cases which**

have dragged on for a decade or more can scarcely be claimed as being just – whatever the outcome.

The high cost of welfare providers and handouts would go down if accessibility to justice went up.

Applicants are often at a financial disadvantage already , including where a fraud or family dispute has occurred before the death of the subject of the estate.

Surely **the solution** to these inter related problems is to ensure that regardless of the size of the estate, **access to justice is improved** as a matter of urgency, including and especially more practical help for self represented persons. Numerous media articles and blogs confirm current processes are costly as well as badly failing.

The archaic assumption by Judges that if low income and middle income participants have a case, pro bono representation will be possible no longer applies. The fact is the process as well as representation is too costly and out of reach. It needs to be fixed.

Judges need also to be instructed to apply the Rules and establish the facts just as fairly to unrepresented persons as to those with a top barrister barracking for them. **There need to be transparent, cost free mechanisms for resolution when they don't.**

Over sixty percent of lawyers give their time to pro bono cases (Past *President of Law Institute statement*) . We have many competent, dedicated Community Legal Centres; yet the current system of pro bono legal support is utterly failing taxpayers as well as participation. Clearly this is not necessarily because of the quality of their work but because of an out of date system specifically developed to line the pockets of greedy lawyers, and irresponsible Judges whose lack of diligence, insight or skill perpetuate and support protracted cases. A I

Assistance in obtaining a grant of representation

SE5 Could formal assistance through the Supreme Court Probate Registry be replaced by the provision of clearer more comprehensive court generated information?

This assistance should not just apply to small estates., It is naïve to believe no Wills are fraudulent and that Executors and defendants with deep pockets do not drag out the processes unnecessarily for financial gain regardless of the size of the Estate. .

Judges can contribute significantly to the problems by trampling all over the current laws as well as self represented litigants and ignoring them.

A simplified but comprehensive handbook should be available, including online, to laypersons who need it or professionals who should be aware it exists, regardless

of the size of the estate. Possibly modelled on the Fitzroy Legal Centre Hand Book but more specifically targeted..

This would enable those being ripped off by Executors and lawyers or trampled on by Judges to more readily identify the pitfalls of self representation and how and where they might help themselves. E.g. how to ensure the Judge is aware of evidence in their unread affidavits – a common problem.

A further typical example is that Judges could and should ensure self represented parties are aware of their rights . (A 1) and how and when to raise an objection. Pitfalls for self represented persons which affect efficient resolution of cases need to be out in the open as does more transparent independent mechanisms for resolving miscarriages of justice . .

The more efficient, just system which operated when Community Legal Centres were first established should be reinstated. This was that they could pro actively support self represented participants by way of research, help with procedures and process, such as witness support, legal research and points relevant to a particular claim, and in then obtaining a barrister if preferred/requested, rather than having to have a solicitor set on prolonging the case out as long as possible. (In the author's case it emerged too late that the PILCH appointed solicitor had a serious conflict of interest since she was actually working for one of the labs.)

This empowers self represented persons to ensure a just outcome. They will diligently work on their own case and of course have the relevant facts at their fingertips rather than a whole lot of irrelevant issues and other cases solicitors may be handling. What they currently do not have is the professional assistance needed to weave their way through complex procedures and processes so exacerbated by Judges and lawyers **who do not take ownership for minimisation. .**

Some examples of the sorts of things which could be included in a handbook could be canvassed and discussed such as:

Various Forms and the purpose.

The process the Court takes, especially as regards establishing early mediation and why this should be agreed to and insisted upon. And what to do if it is refused (early mediation)

Where to seek help if a Will is fraudulent/not adhered to by Executor (Maybe even establishing a link to Centrelink or the Taxation Department) or other process independent of greedy Executors and greedy lawyers.

Subpoenaing witnesses, rejecting witnesses, raising objections

Ensuring evidence is in the proper form (see AI Professor Markus Bagaric comments)

Pitfalls to watch out for, such as opposing preliminary Orders detrimental to their application, accessing and checking the Court Book Contents pre Trial which will be prepared by the opposing barrister. A common complaint is that @the evidence@ was originally given to the Court but wasn't @in the proper form ie in the Court Book.

Laws and rules are already in place which specifically would assist those on a low income but not applied by some Judges; lack of accountability of Judges perpetuates such injustices. Perhaps public input of appropriate information could be included in the handbook to address the problem of "*efficient, effective and accessible" justice.*

This might minimise unrepresented persons continually reapplying to the Court expecting against all the odds that one day justice will prevail, and not realising until its too late that the whole system is complicit in covering up injustice.

The Uniform Succession Laws project

1.5 *Queensland Law Reform Commission co-ordinated the project of SCAG DNA as evidence of family matching was introduced into State Law (Status of Children Act) in Queensland in 2002 NSW 2005 (**and of course Family Law decades ago**!)*

1,10 Succession laws concern the administration and distribution of the deceased person's estate.

> **Such laws would be more justly applied and the costly convoluted process minimised if DNA as evidence of family matching were introduced. This would quickly resolve and establish lineal and collateral lineage issues, particularly as DNA as evidence wasn't available to many, or not previously sought by those now processing through the State Courts.**
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> ***Discussion Ref. para.11*)**.
>
> **Many of those dragging through State Courts are middle aged or elderly and face the huge financial and emotional burden of convoluted cases at a time when they are too old to make a new start when greedy lawyers and dishonest Executors rip them off for everything they own. Again, it is taxpayers who fund the sad consequences.**

1.12 As the Commission's terms of reference concern succession laws, they extend only to reviewing the rules that regulate the administration and distribution of property interests that comprise a deceased person's estate. **Wh***y?*

Isn't this paragraph contradictory to the Terms of Reference- symptomatic of the "tinkering at the edges" Judge Weinberg and others recognise.

Establishing collateral and lineal issues is an essential part of reviewing the Rules because of how it clearly affects interpretation of the Will as well as distribution of an estate.** It would be easy to introduce if Magistrates as well as Judges were encouraged to apply such Orders, contribute significantly to "efficiency" as well as justice.

It is essential that in this context, discussion and consideration is given to the introduction of DNA as evidence of family matching – an issue which consumes many Court hours and destroys families. Examples are given which highlight the importance of this technology in ensuring swifter justice in relation to Succession Law **.Scientific evidence has a profound influence on the justice system.**

> **In this regard, ie the introduction of DNA family matching in Succession Laws, the findings of the Canadian FOI & Privacy Ombudsman in the application of Olsen Case File Numbers 6529 and H4357) is very relevant to the current Discussions. The findings include Health Act Privacy issues are not relevant to refusal of DNA testing reports for family matching since no health issues are established or accessible in Reports or working notes by this type of testing.**
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> **.Objectors to the very simple obvious benefit of DNA family matching are more likely to be greedy lawyers who turn simplest of issues into complex circuses and family members with something to hide .**
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> **Quoted in Appendix are other significant, relevant cases which highlight the importance and the need for the inclusion of this modern, effective, time and cost saving tool for justice.**

Currently, Mothers , siblings and offspring of de facto relationships especially are put through an unnecessarily humiliating, costly, extremely unjust process where the rules of evidence seem to preclude Judges from recognising very obvious evidence of paternity (e.g.evidence of strong motive for disclaiming paternity, strong family likenesses – in the case of Cindie Sassons – reported by the media while the father was alive, and visible likenesses to one of the siblings who refuse consent to DNA testing for six years at a legal cost of $700,000 for lawyers and heavens know what to taxpayers as well as preclude witnesses, and family members from giving it.

Fraudulent DNA test reports conducted under the inadequate discredited procedures so dramatically established by the ALRC Genetics Ethics Inquiry (tabled in Federal Parliament in 2003, can be used in evidence against Mothers and offspring in Succession Laws , yet unlike e.g. drug and alcohol testing, Mothers cannot obtain a court order for confirmatory DNA family matching at an independent lab under the newer process and procedure, if offspring have turned 18 prior to the death of the parent. . . The stunning findings of the ALRC Inquiry (tabled in Federal Parliament in 2003) include **that fraud can and does happen and cannot entirely be prevented.**

The strange systemic response to this seems to be more secrecy, less accessibility and widespread ignorance instead of the other way round – ie encouraging Orders for confirmatory re testing !

A bit of spit on cottonwool that bears no information relating to health, genetics health inheritance etc other than its stated purpose – family matching - is only controversial because of the secrecy and ignorance surrounding such basic tests.

In an Age report arising from the PVLR Sperm donor inquiry *Age 3 Feb 2013* re Sperm Donor Privacy it states "*Baillieu government deferred the issue ……. needed more info from donors" …. Need to balance donor conceived offspring against interests of donors*" – no mention of "Mothers' interests or Privacy issues relating to Mothers. . This is in fact typical of many gender biased issues relating to paternity where Mothers' Rights to input are always off the radar even though, half the genes involved with the offspring in question are hers.

The effect of not being able to prove paternity in Succession laws is just as devastating and totally needless with the introduction of advanced DNA family matching .

> **There is absolutely no valid basis on which this modern, swift, cost effective tool for justice should not be included in State laws. Particularly since blood testing has been replaced by the simpler non invasive mouth swab or hair follicles.**

For those now going through State Courts, especially older people, DNA family matching is not available to them Although some examples of cases are quoted in the Appendix the problems DNA tests can address are diverse. What should also be of concern is that many of the people losing their homes due to family fraud and extended Court battles are already at an age where making a new start is virtually impossible. **This pushes them onto welfare handouts and psychological support late in life at taxpayer expense even though they may have worked hard all their lives. Regardless of the circumstances Centrelink doesn't provide assistance with re training or obtaining work once a person is over retirement age! The system generally does not favour helping "prodigal sons" over the age of 18 trying to make a new start thus pushing vulnerable young people onto welfare handouts and homelessness as a first resort rather than ensuring family support**

It is extremely costly and unjust and indeed, downright ludicrous as far as the public interest goes that on the one hand Magistrates can order DNA tests in criminal cases, Family Court Judges can order DNA paternity tests even on unsuspecting babies, yet State Courts cannot even Order DNA tests on adult family members.

Modern IT technology is increasingly enabling identity fraud and other white collar frauds. To withhold the public's right to the technology that can address it is costly, pointless and illogical. The Family Court experience is that paternity and other family matching issues are mostly resolved by consent to DNA testing ***pre court*** . (*Swinburne University Report*). Participants are aware Judges can make the Order (at their discretion). It is the

reluctances of Judges to order confirmatory*** testing in some cases which is causing so much unnecessary loss and heartbreak. Blisstree blog and other sad cases. www.democraticjustice.org . The right to a swift , cost effective solution is denied adults in State laws.

*** ie not just to confirm previous testing but rather, to rebut previous traditional evidence which is in dispute.

1.18 The National Committee presented its report on Wills in 1996 which took account of the proposed Victorian Wills Act and recommended national model legislation"

DNA family matching was not appropriately considered by that Committee. It is difficult to understand why later submissions relating to the value to taxpayers as well as participants were ignored at National level yet introduced into the Consolidated Acts at State level in some States. Probably due to the ignorance that secrecy and coverup perpetuate.)

> **We believe the VLRC could and should lead the way and make a recommendation to SCAG that DNA as evidence of family matching be introduced into Succession Laws including the Family Provisions Act, the Wills Act and the Status of Children (Consolidated*) Act,***
>
> ***Recommendations could be made that Judges should be encouraged to apply discretionary Orders where it minimises cases . .***
>
> ***The LR Commission needs also to eliminate the strange Family Court Rule that the only purpose of DNA Orders are financial. There has been enough publicity and law reform studies etc. e.g. Sperm Donor inquiry - to show there are often significant psychological, health needs etc. – again a huge saving to taxpayers.***

The Administration & Probate Act

1.23 Widows & Young Children Act 1906 (Vic)

In considering issues relating to this section of the Acts the (*Status of Children (Consolidated) Act 1976??)* should also be considered – the only law outside discrimination laws which actually acknowledge that mothers' have rights! **("any woman for any reason**…..") because it arose and developed out of the discrimination the 1906 Act perpetrated. (*Neville Turner, retired lawyer - long term campaigner for the rights of Mothers as well as children in de facto relationships., Law Lecturer, Author of "Family Matters" and other books*. *For whom it is the opinion of many an OBE is long overdue*!)

Ie the Status of Children Act sought to right the wrongs against the Mothers and offspring in de facto relationships. (Even up the playing field as it were)

It may become increasingly relevant again in relation to human right s issues including e.g. sperm donor conceived issues.

The way in which DNA as evidence is now working against Mothers and de facto offspring is illustrated by Farnell vs Penhallurick SC 2004 – the author's long, taxpayer costly, painful 14 year injustice which could be so easily have been prevented by way of consent to DNA family matching or by a Judge with insight and concern about the implications raised by the case. And could now including compensations from labs involved since the evidence already exists. Unfortunately ignorance, coverup and indifference prevails.

> Not only should the Family Maintenance Act as well as the Status of Children Act be updated to include that Judges can Order DNA family matching**, it is in the interests of taxpayers that Judges be encouraged to apply it. What possible reason is there that they shouldn't other than complicity with greedy lawyers? In fact, why can't Orders be made possible via the Magistrate's Court.**

G. vs H. High Court illustrates the **way a Judge of insight and compassion can apply his discretion relating to refusal** where criminal issues are canvassed. Surely it is not too much of a task to extend such discretion to Orders for DNA Family matching or claims of fraud in family matters – including paternity frauds committed prior to the introduction of DNA paternity testing such as the old blood type matching. ***It is naïve, costly and cruel to believe fathers with much to gain didn't corrupt such tests.*** *L vs L FC 1993 www.cute.com.au/dna*

The huge cost savings to taxpayers are not the only reason. It would minimise the trauma that family members are put through when blatantly obvious drawn out injustice occurs*. Including the sad teenage experience*

1.24 "While not requiring the whole Act to be examined, the Commission's terms of reference extend to many of the key provisions, including those that address the following issues

(Is this an example of "Tinkering at the edges*" ?)*

> *"Executors commission for their time and trouble"*

Surely <u>Judges</u> have a responsibility under current laws to the deceased, to beneficiaries, to taxpayers as well as applicants (particularly where unrepresented) not to allow very obvious greed and hidden agendas of Executors (including signing off on false wills) to cloud the process that leads to so many injustices. Particularly where there is a blatant disregard by the Court as well as the Executor of relevant clauses in the Will. When Judges don't apply existing Rules fairly the current Appeals system is not only too costly, it simply is not working fairly - the downside of mateship?

A*pplying assets to the payment of debts*

- Existing laws could suffice if they were **applied with more insight and diligence by all Judges**. This is another area where it is essential the value of DNA family matching in

State laws should be recognised as a tool for minimising the procedures and processes. Having already been cheated by the deceased, the system ensures the creditor is further stripped of his/her assets due to prolonged processes which bear no relationship to the issue before the court.

- It (DNA as evidence) has just as much potential for righting wrongs in family frauds as it does in crimes of violence – though often the two are entwined in family issues.

Family provision

1.34 The policy framework within which the paper has been prepared is built on the terms of reference and given priority to:

Supporting the abilty of laypersons to administer small estates.

Why is support for the administrators of small estates the only issue under consideration in this context, particularly in view of the Chief Justice's comments relating to self represented participants? ? Rather than e.g.

"Supporting the ability of self represented litgants to run their own case".

Promoting ease of administration while protecting the interests that beneficiaries, creditors and others may have in small estates.

Considering the cost to taxpayers of current processes, doesn't this warrant consideration in larger estates?

Identifying statutory reforms that work hand in hand with non legislative measures to improve efficiency and reduce costs.

(There needs to be more study and discussion given to the role Judges as well as Executors play in prolonging cases unnecessarily, increasing costs unnecessarily and applying costs unjustly.e.g. On the one hand, the Chief Justice claims self represented people don't seek the appropriate appeal process, on the other hand Judges Order Security Bonds against unrepresented, in some cases penniless (in the author's case old age pensioners. Appendix II Sec Bond – Judge McEwen()

2.140

- *Fraudulently obtaining or keeping property (ACT)*
- *Protection of Persons Acting Informally (Qland)*
- *Liability of person fraudulently obtaining or retaining estate of the deceased (Victoria)*

In relation to 2.140 there are other types of modern day fraud not covered by these Rules, e.g. paternity fraud, document fraud and identity fraud generally. It is a well established fact that in the current climate of complex, convoluted processes, costly representation and increasingly sophisticated ways of perpetrating fraud, including identity fraud, the current mechanisms are inadequate, antiquated and out of touch with modern values and needs, including overloading responsible Judges

Even police themselves, with all their resources, cannot always establish fraud – how much more difficult is it then for applicants – especially the lower income and self represented to establish fraud issues by the deceased or beneficiaries ?

On the one hand we have Centrelink and Taxation Offices equipped with the most uptodate, sophisticated means of establishing fraud of often quite minimal amounts, on the other hand fraudulent wills, fraudulent Executors and fraudulent claims can cause extreme loss. The devastating effects on families and the massive unnecessary unjustifiable cost to taxpayers is washed over by the system.

Respectfully we ask that discussion and careful consideration be applied to the foregoing. Further clarification, information etc can be obtained by emailing [redacted]

Websites: www.cute.com.au/dna www.democraticjustice.org

APPENDIX I

Could Judges/Attorneys General Show More Responsibility for "*efficient, effective and accessible*" justice?

(Terms of Reference 1.2(a) *(a) ensure that Victorian law operates* ***justly, fairly and in accordance with communityexpectations****… are* ***efficient, effective and accessible. And as per page 1 of this submission.***

Judge hits out at legal system

Edition: 1 - FIRST Herald Sun (Melbourne); **25/10/2008** Norrie Ross

Section: NEWS, pg. 011

A JUDGE has taken a swipe at Australia's legal system, saying it is too slow, complex and expensive.

In a speech tonight, Justice Mark Weinberg will say the system is dogged by badly drafted legislation, lazy and greedy lawyers, and over-complex and expensive case management.

Justice Weinberg will tell fellow judges that they are to blame for some of the shortcomings, along with state governments and lawyers.

He says the criminal law is being made ever more complex by ``codification'' of every offence and by judgments of appeal courts.

``Regrettably, I believe legislation will continue to be drafted in a manner that almost defies comprehension,'' Justice Weinberg says. ``Appellate courts have required trial judges to direct juries in terms that most sensible people would regard as gibberish.''

Justice Weinberg is on the bench of the Victorian Court of Appeal, but was previously a Federal Court judge.

He says civil cases are bogged down in mountains of documents containing submissions that are never read by the judges presiding over them.

Help

He also criticises class actions as being of more benefit to the lawyers running them than to their clients.

``Most class actions in this country have ended up benefiting the lawyers on both sides, with only a modest return to the plaintiffs,'' Justice Weinberg says in his speech to the National Judicial College.

Hulls is the problem behind legal system that places process above truth

Author: MirkoBagaric
Date: 18/06/2008
Words: 910
Source: AGE

Publication: The Age
Section: Business
Page: 14

The court system would be fairer if it was faster, but don't hold your breath, writes **MirkoBagaric**.

THE biggest impediment to a fair and efficient legal system is not $14,000-a-day barristers but an Attorney-General who invokes extreme examples to illustrate supposed institutional deficiencies and who refuses to take ownership for his mistakes.

Victorian Attorney-General Rob Hulls has proudly declared that Victoria needs a new system for resolving civil and commercial disputes. He has allocated $4.5 million - a fraction of what his Government pays to media/spin advisers - in each of the next four years to trial a system of judge-led mediation. He wants alternative dispute resolution to become more prominent.

His core justification for the change is that the cost of justice, "particularly when some barristers charge up to $14,000 a day, is prohibitive". He boldly adds that courts "are not a forum for highly paid barristers to display their thespian attributes or to use as a vehicle to increase their bank balances, or for corporations to put off the need to sit down and resolve matters appropriately".

For good measure, he blames the "chest-beating, table-thumping antics of highly paid barristers" (apparently he is blissfully ignorant of the increase in women lawyers) for cost blow-outs in the courts.

The Attorney-General should be applauded for recognising that the Victorian civil and commercial legal system is dysfunctional. And yes, there is a solution, but it has little semblance to his burst of anti-reformist inspiration.

But first to the problem. It is all to do with the current legal system and nothing to do with lawyers. Hulls' government has been in power for about a decade. During this time, the Government has had power to fix the legal system. It has done nothing of consequence to this end. Hulls is the problem behind the problem.

The Government is the reason that market forces allow barristers to charge $14,000 a day. We operate mainly in an adversarial system. This places process above substance (that is, truth) and confers an enormous advantage to whoever can pay the most money to their lawyers.

This is exacerbated by the fact that the losing party normally pays most of the winning party's legal costs.

Moreover, the law is complex and changes rapidly. In this environment, rational litigants will engage the best lawyers to represent them. It would be remiss of business - which has the most money - not to engage the best lawyers. As with most services, there is a connection between price and quality.

The system also places enormous pressure on lawyers. Practising law is often about getting money for your client at the expense of someone else. Hence, lawyers typically find themselves in the middle of disputes, and arguing takes its toll on robust and deluded psyches alike.

It is not surprising that a beyondblue survey released last year showed lawyers were the most depressed workers in the country. Lawyer jokes aside, in reality lawyering is a hard and intense grind, especially when for every $14,000-a-day barrister there are at least 100 lawyers a day working pro bono.

In any event, $14,000 a day barely pays for the cost of the therapy, alcohol and holidays required to cope with the Attorney-General's legal system.

If the Attorney-General is genuinely committed to fixing the system, he needs to develop the process against the background of several unassailable principles and objectives.

The law deals with important rights and interests. All protections and obligations conferred by the law must apply equally to all people. For legal rights to be taken seriously, all parties must at the minimum have complete, unfettered access to forums that resolve legal disputes.

Memories fade quickly. Hence the truth is best ascertained by speedy access to the courts. Truth and the enforcement of legal rights must always take priority over worshipping legal processes.

Putting this into practice requires the abolition of (not tinkering with) the current system of civil and commercial litigation.

The court system should be adequately resourced so that the delay between lodging a complaint and the hearing of the matter should be no more than two weeks.

No person should be required to pay court fees to initiate an action. Parties - even if they lose - should not be liable for the other side's legal costs. This, at least, gives poor people access to the courts. This won't lead to a rush of unmeritorious actions - there are always better things to do than arguing with people in court.

The rules of evidence need to be abolished. These outdated judicial hunches, which have crystallised into articles of faith, are a major impediment to self-represented litigants and to uncovering the truth.

The only rule should be that all information that is relevant to the inquiry at hand can be received by the court. It is then up to the court to decide how much weight should be accorded to it. This is the same process that we all intuitively adopt in resolving factual disputes out of court and which operates effectively in most inquisitorial systems.

Incredibly, instead of simplifying the law of evidence, the Attorney-General is about to change it by introducing a new Evidence Act, based on Commonwealth law.

This has nothing to do with improvement. It is simply a change for the sake of change - which is exactly what this Government is doing with its tokenistic trial regarding reforms to the civil and commercial law system.

MirkoBagaric is a professor of law at Deakin University and a lawyer.

Judge created problems in FarnellvsPenhalluriack

- The author has studied other cases as well as the the wall to wall files obtained by PILCH in FarnellvsPenhalluriack. . Although there were clearly other factors such as the solicitor's serious conflict of interest, which contributed to injustice, the point I am trying to make is that even that serious breach of ethics would and could have been overcome were it not for the strange decisions of Judges which so unnecessarily and so inadvisedly turned a simple application for a Declaration of Paternity into a costly prolonged public interest circus which did terrible personal damage to both families.

- These include: The defence were totally unnecessarily given our DNA test reports against my wishes and advice right at the beginning of the case, other than one, which was then Ordered by the Judge. There was and is no error in the Reports, working notes etc and the Reports were not being challenged. So the daughters were able to have the DNA test we were seeking, without submitting it to our view or the Court .Penhalluriack the Executor claimed ''agreement had been reached'' (fraud against the Court) withCindie and I in his final affidavit yet we cannot obtain a copy of the Report !

- The Judges ordered Cindie to Court, all the scientists and other witnesses, yet the real experts, the half siblingswho refuse to provide the Report were not. A report giving all the information the siblings needed to get compensation was ordered but the one needed to prove fraud by labs was not.

- I wasn't represented at the Committal Hearing. The Judge asked the defence barrister to prepare the Court Book. It may sound naïve, but it never occurred to me to check it and in any case I didn't receive it until the day of the Trial. I believe at the very least Judges should impress on the self represented the importance. Im not unintelligent, but later still assumed the fact my daughter and I had provided considerable evidence to the Court direct as well as the lawyers some of which had been withheld) it would be taken into consideration especially the strong motive.

- When I checked the files later vital evidence such as the strong motive of the father was missing. The barrister lied about this. (And on many other occasions) Self represented people must be warned of the pitfalls. When I later pointed this evidence out to Appeals Court Judges (the significance will be understood if one reads Judge Bell's original ruling available at Austlii) it was claimed among other things not to be ''in the proper form'' even though it vitally affected the original judgement.

- The same Judge ordered that I could not produce any evidence from the Family Court files (even though he had ordered they be brought to the SC) and that the defence could! The whole ruling hearings etc were about DNA tests done under clearly discredited conditions and outmoded technology not about paternity the issue before the court. I believe this had a significantly detrimental effect on Judge Bell's original ruling because what would have been very clear to him , but was not later was the evidence of strong likenesses **while the father was still alive.** Judge Bell said there wasn't any. Then totally missed the significance of the motive (for falsifying the original DNA test)

- That the Executor was dragging the case out needlessly was and is obvious yet ignored by the Courts and the Order issued for the Security Bond. Had the siblings been brought to Court so that they were aware of what he was really saying and doing at an early stage, it would never have turned into such a mess – including one of the siblings bears strong resemblances to Cindie. . Yet my daughter was continually involved at the insistence of Judges even though Mothers are the experts on who their father is. Thanks to the strange Court process, the half siblings still seem convinced we "received – exhorted largelarge sums of money from the deceased when in fact he vindictively stripped away everything we had, including my credibility, because I wouldn't sleep with him when I found out about his business partner. (See evidence of motive)

- Cindie's affidavit was ignored Instead of following her generous suggestion, the Judge ordered all the science issues to be canvassed. Not one but several scientists for the defence, and other witnesses **all merely confirmed matters I was not disputing.** It was not in fact a scientific issue since there is no error in any of the DNA tests. The fact is I established in 1998 that Chipperton was turning up at labs, providing a sample, etc. and that insiders were switching samples. For anyone who is aware of the Herald articles, the claim the DNA I took to the lab was tested is fvalse. [redacted] left the Court after the defence barrister made this false claim, and just ignored what my response was as did the Judge of course. Ie that a positive result was achieved and was the only DNA test done on Chipperton's sample)

- Collusion and coverupis aworld wide problem as so sadly illustrated by the Olsen 18 year journey and other cases available as well as mine. Fathers go to extreme lengths to avoid their responsibilities,, including murder – it is costly, cruel and naïve to believe there is no corruption in family matters yet wafts over the heads of Judges

- The Judges, including in the Appeal Court Security Bond hearing (dragged out over several hearings) continual refer to ''claims of error'' made by me. This highlights the way Judges ignoredaffidavits because I have never claimed ''error''. Not only was it easy to work out what was going on (a corruption racket was operating and collusion etc) but I held a meeting in Geelong with other victims who filled in the picture whereby we were able to establish who. I pointed out continuously that the father's sample was not being used and a report we are not able to access now proves this yet I cannot get a lawyer and I cannot get compensation for the destruction of everything that mattered in my life and the terrible effect on a decent hardworking teenager who so much wanted to be part of a ''real'' family..

- In several of the cases sent to me Mothers despair of the way Judges have allowed defence barristers to humiliate and vilify them over the claim of false DNA tests and set one family member against another. Others of the way only the Child's rights were considered, thus putting the young person through hell knowing the cruel act of the father and the Courts ruling in essence Mothers don't have any right to prove they are not whores who slept with so many men they do not know who the father of their child is. .

  The original, pre Court story is at www.cute.com.au/dna including other cases. Also at www.democraticjustice.orgMy final affidavits are on the net if anyone interested in facts. Or email any questions.

  Respectfully,
  Patricia Farnell

APPENDIX II

CASES - SITUATIONS WHERE DNA FAMILY MATCHING WAS/IS ESSENTIAL

(Terms of Reference 1.2(a) *(a) ensure that Victorian law operates* ***justly, fairly and in accordance with communityexpectations*** *… are* ***efficient, effective and accessible. And as per page 1 of this submission.***

We have received others, but these were the most clearly in need of DNA testing under secure procedures.

- Case 1 : J.'s biological father died when he was 22. His paternal grandparents had left him, J. substantial property and assets, accessible when he was 25 but still not finalised in Court due to applications by other family members. . Mother was left reasonably well provided for also by the father and still employed in a professional capacity.
- [redacted] a former lover, and no hoper, turns up claiming to the Mother, K. and the son, J. he has had a DNA test which proves he is the biological father of J. and that he want to be more involved in his life. He [redacted] has a report in which no error shows and which he claims used his and J's DNA. Refuses confirmatory DNA testing under stricter rules. If true this could wipe out J.'s inheritance from his paternal grandparents which other family members are opposing. Mother concerned she won't be believed when she claims she ended the relationship when she met her husband, J.'s real father. [redacted] was actually put up to it by other family members.

- Case 2 Biological father of M. was eliminated by the old blood matching tests as the real father during a pre 1985 Family Court application. Mother claims the result was false, struggles to raise two children alone, doesn't remarry but when she learns the biological father dies and has left a sizeable estate, decides to seek legal advice as to if the "new" DNA tests could be ordered against relatives of the deceased to prove the children (now adults, one of which is mentally disabled) are entitled to a share. Relatives refuse consent, advised by lawyer no course of action.

- Case 3 Two of the Mothers who applied to State Courts have contacted us were the parents of children who turned 18 before the findings of the ALRC Genetics Ethics Inquiry established that "fraud can and does happen and couldn't entirely be prevented".

- Case 4 FarnellvsPenhalluriack

> Regardless of the tragic circumstances and international intrigue behind this 14 year battle for justice, the fact is that my daughter and I have sought DNA testing under the newer more secure procedures **during the whole of that time**, first via the Family Court then, just as the findings of the ALRC Inquiry had begun to hit home, but the father had died, via the Supreme Court. Fraud by the father was never canvassed in the Courts due to the whole focus on the DNA tests

Although at first we were not represented in the Supreme Court (nor previously in the Family Court) , having filed for an undefended action, Neville Turner, retired lawyer, was still following our fortunes at that time and raised the issue of confirmatory DNA testing at the very first hearing with Master Wheeler in April 2004.

He also advised Cindie as regards the point she made in her affidavit in November 2004 – and confirmed in the attached later affidavit November 2006 herewith .

> "*In my sworn affidavit of 4th November 2004 I made it clear that if my half sisters continued to refuse DNA testing with appropriate security oversight the Declaration of Paternity should be issued on the non scientific evidence since I would still be willing to have a DNA test if they then Appealed the Court's decision. I have never been ordered by any judge to have a DNA test, and I have never at any time refused my consent to a DNA test. "*

The manner in which the Court handled this generous offer is beyond belief and from a taxpayer's point of view as well as ours it gets worse. See A1 . It illustrates the way DNA family matching regardless of who is right or wrong (and as happens in criminal matters "on suspicion''the unnecessary cost to taxpayers. (PILCH took the case on when it all became a "public interest" case but the solicitor turned out belatedly to be working with one of the labs and the opposition – the ones with the money of course so I was unrepresented in the later stages.

Add to this the huge amount of welfare handouts, homelessness, etc I endure and psychologists support to avoid committing suicide, the systemic refusal to help anyone over retirement age to make a new start, and hopefully as Commission members you will now see your way clear to support my long term efforts to have attitudes as well as the law upgraded appropriately on behalf of other mothers as well as my daughter and I. .

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE 3821/08 (FROM 7534/04)
IN THE COURT OF APPEAL

Between

Patricia Farnell Applicant

And

Francis William Penhalluriack Defendant

AFFIDAVIT OF CINDIE SASSONS IN RESPONSE

(to [redacted] affidavit dated 30 September 2008)

date of document

filed by Applicant_____

I, CindieSassons, [redacted], Age 29 years, make this affidavit in response to the issue of costs and the Executor's request for a Security Bond for the Appeal Hearing.

1. I respectfully ask the Court when considering the issue of Costs and Security Bond, to take my evidence into account , especially my response to DNA testing compared to other family members, as I believe the significance of this was ignored. The social and psychological consequences as well as the financial ruin my father caused have had a devastating effect on my life.

2. At the time Malcolm Chipperton, my biological father died, my mother discussed with me her decision to write to the Chipperton daughters seeking DNA testing. I made it clear I was agreeable to this. As they, and the Executor refused the opportunity to minimise the court process my mother lodged an Application in the Court with my full support. I made several attempts, as did my mother, to meet with the Executor so that he could see for himself how strong the resemblances to my father are. The executor's response was to refuse all attempts by my mother, lawyers and myself then file an affidavit claiming I resemble my mother. Even Judge Bell admits this is not the case but drew no inference from this.

3. DNA testing was raised at an early stage with Master Wheeler while I was present. I had made it clear, including in my early affidavits, I was agreeable to DNA testing if done under the newer stricter procedures.

Master Wheeler sought my consent to be added on this basis. I believe that if during this Court action my mother or I had ever refused to have DNA testing by consent, the Court would infer that Malcolm Chipperton was not my biological father even though the strong resemblances I have to him were being pointed to while he was alive. I withdrew due to unnecessarily escalating costs, again making it clear in writing, with a copy to the Court, that I remain agreeable to DNA testing under the newer procedures - the modern, cheapest, swiftest way of settling the issue of paternity.

4. In my sworn affidavit of 4th November 2004 I made it clear that if my half sisters continued to refuse DNA testing with appropriate security oversight the Declaration of Paternity should be issued on the non scientific evidence since I would still be willing to have a DNA test if they then Appealed the Court's decision. I have never been ordered by any judge to have a DNA test, and I have never at any time refused my consent to a DNA test. I am well aware of the seriously inadequate security in place at the labs at that time because I was there, I was actively involved and I was deeply affected by the events. I was of course also aware a positive result was obtained by [redacted] of DNA Solutions. I willingly participated in the test It is not my wish to be directly involved in my Mother's case but the previous incorrect DNA test reports and the Court's reliance on them are affecting us both at a very deep personal level. I therefore supported her decision by being a willing witness, including by way of my appearances in court and agreement to strictly scrutinised DNA testing.

5. My mother's circumstances were dire at the time she wrote seeking the co-operation of my half sisters prior to filing an application in the Court. My half sisters made it abundantly clear before it went to court they did not want to acknowledge me as part of the family and I accept that. That is no reason for them to refuse to have the test recommended by [redacted] in her affidavit and later report since it would quickly prove us wrong if indeed we are. It was reasonable to expect the Executor and the Chipperton daughters would be as anxious to avoid a long, costly and unnecessary stressful court battle as much as I did. A strictly scrutinised DNA test would have been the end of it for them. If at that time and at any time since they truly believed my mother and I are both lying or delusional, and that their father was mistaken when he acknowledged me as his daughter, the quickest way to prove it would clearly be DNA testing under strict scrutiny.

6. On the two occasions my half sister [redacted] agreed to DNA testing via her agents, my mother assured me considerable effort, thought, time and consultation with highly placed scientists, lawyers and Victims of Crime representative [redacted] took place. This was not only to ensure the confidentiality and integrity of the test but to ensure I would agree to further DNA testing - which I didbecause of this reassurance . It was devastating not only tolearn they had again withdrawn their consent but that the judge saw no significance in all of this. Ie from my half sisters refusal over a period of four years, my ongoing agreement to further DNA testing if strictly supervised, my half Indian appearance and voluntary appearances in court. My mother and I have actively sought DNA testing under stricter security for ten years. I am assured all this is in evidence before the court.

7. . Evidence I provided of Chipperton's unusually strong motive for ensuring a false test result was also overlooked by the judge in evaluating the significance of the DNA tests.

8. Witnesses who knew my adopted father, Ray Farnell during his lifetime, as well as me provided evidence that I am totally unlike him Since I am half Indian, obviously do not look like my mother and have actively sought and agreed to further strictly scrutinised DNA testing the Court should infer that the Executor and the beneficiaries of the Estate have unnecessarily extended this painful litigation.

9. I have no doubt that a DNA test with the Chipperton daughters under the stricter guidelines now known to be essential would prove the previous DNA reports were erroneous because of the strong evidence there is that he is my father. The considerable likenesses I have to him, the fact that I am totally unlike my adopted father Ray Farnell, the fact Chipperton acknowledged he was my father when I was 16, and that my mother would not mislead me about such an issue and certainly would not be encouraging me to have further DNA testing after all we have gone through already support my mother's request that her case should proceed on its merits.

SWORN CindieSassons Signed ……..……..

BEFORE ME -

DATED

APPENDIX III

COSTS –NEWS REPORT RELATING TO JUDGE MCEWEN B.C. Comments Relevant to Costs and The Terms of Reference as referred to on page 1 of this submission

Judge finds civil hearing fees unconstitutional

Government-imposed charges block access to justice for middle class, women, first nations and others

By Ian Mulgrew, Vancouver Sun May 23, 2012

After two years of deliberation, B.C. Supreme Court Justice Mark McEwan has struck down Victoria's hefty civil court hearing fees as unconstitutional.

In the landmark 178-page ruling released Tuesday, Justice McEwan declared "some things cannot be for sale" and slammed the provincial government for its approach to legal funding.

"The court is an essential forum of that common life, and cannot perform its necessary function if it, like so much else, is subject to the values of the marketplace the government has used to justify the fees," he wrote.

The government charges litigants $500 a day starting on day four of a trial and $800 a day after day 10.

This constitutional throwdown arose from a typical family custody matter and the ruling could have far-reaching effects.

In this instance, a single woman pleaded that she should be spared the fees after losing a custody trial.

The legal tug of war with her ex-partner started in 2008 when the 43-year-old woman decided to return to Europe with her five-year-old daughter.

It cost her more than $20,000 in lawyer's fees just to get to the eve of trial.

She then was forced to litigate herself because she couldn't pay the lawyer to appear in court.

Her husband, a University of B.C. instructor, also represented himself at the 10-day trial. Neither is happy: This expensive system failed them both.

At the end of the proceedings, the woman asked Justice McEwan to waive the $3,600 she owed in court fees.

But the judge said that unless she was declared indigent, he had no power to give her a break without declaring the fees unconstitutional.

At that point, he decided to hear arguments about their legitimacy.

"A person who cannot afford a fee of $100 or $200 may properly be described as indigent, that is, as being 'destitute,' 'needy,' 'in want,' 'poor' or 'necessitous' as the dictionaries define the term," Justice McEwan said.

"It is an awkward word to use to describe a middle class family's inability to pay a month's net salary for the two-week 'rent' of a courtroom."

Ironically, the three-day constitutional debate would have added $1,872 in fees.

Justice McEwan's decision means the woman will not have to pay the hearing fees and puts in jeopardy the revenue the government reaps from them - about $2 million a year - if it does not appeal.

At the time of this litigation, the fees started at $156 for a half-day hearing and rose to $624 a day after 10 days.

Justice McEwan said this amounted to the government imposing a barrier to access to the judiciary and "this creates a constitutionally untenable appearance of hierarchy."

He went on to say: "It is evident from the sources presented that in the last two decades the government of B.C. has lost its enthusiasm for supporting the courts at a level required to fulfil their purposes."

Justice McEwan added that the breadth and implications of the economic and constitutional material he considered led to the "unusual delay" in producing the impassioned ruling that reviewed centuries of legal history.

The decision's effects will be substantial - lawsuits over the tragic 2006 sinking of the Queen of the North ferry, for instance, were abandoned in part because of the hurdle posed by $40,000 in fees and jury costs.

The public may not be an active participant in a private dispute between litigants, but Justice McEwan said it has an abiding and important interest in every case.

The outspoken jurist called the fees a "bad idea" during 2010 proceedings.

But no one expected him to so severely stomp the practice of making civil litigants pay thousands of dollars for their day in court - controversial levies that Victoria vigorously defended.

"Wow!" said lawyer Darrell Roberts, of the Trial Lawyers Association of B.C. who made submissions in the case.

"This is wonderful. I was never expecting this. He's done a great job. We won."

The Canadian Bar Association's B.C. branch, which also participated in the case, celebrated too.

"Justice McEwan has declared hearing fees unconstitutional and in so doing found that the fees, which escalate to over $600 per day, are an impediment to the courts for all but those who are well-to-do," said Stephen McPhee, past president.

"This decision reaffirms that the courts exist for both the rich and the poor, those with small cases and those with large cases."

Reasonable fees may be charged for services, but Justice McEwan said civil litigants don't have to pay the exorbitant hearing-day costs that Victoria argued had been a part of British justice for half a millennium.

He said the attorney-general's approach to financing the courts revealed "a significant misunderstanding by the government of its responsibilities under, and the limitations on, its constitutional mandate -"

Fees for time in court that put a price on or acted as a barrier to justice could not be allowed to stand nor could any "legislative constraints designed to limit access."

"Support for the civil courts is not seen as a cost of good government but as a discretionary expense to be minimized, ama-teurized (no legal aid), or privatized, wherever possible," Justice McEwan archly wrote.

He pointedly quoted from the recent book - What Money Can't Buy, the Moral Limits of Markets - saying the "mar-ketization of everything" is not good for democracy, "nor is it a satisfying way to live."

Given the current tension between the judges and the executive branch, his much-anticipated decision is even more pertinent and germane than when the arguments occurred.

The government had argued that the English and Welsh civil systems today are completely financed by user fees.

In this province, Victoria said, court fees predate Confederation.

But B.C. hadn't collected hearing-day fees since before the First World War and the present levies were imposed only in 1998.

The only other Canadian jurisdictions imposing hearing fees (though at much lower levels) are Saskatchewan, Yukon and the Northwest Territories. Victoria insisted the fees were intended to make the court more efficient and trials less lengthy.

But the Trial Lawyers criticized the exorbitant and escalating tariffs, saying Victoria was robbing the needy.

Roberts, who represented the lobby group, said the fees were abhorrent.

The bar association said the fees made it impossible for people of modest means to have their day in court, and disproportionately blocked first nations, the disabled, immigrants, lone parents and women from access to justice.

At the end of the last century, the Nova Scotia Supreme Court found similar hearing fees that increased with the length of the trial were unconstitutional.

That decision was never appealed.