

Elder Care Issues Part 1

This paper is presented in the context of a New Zealand society that is rapidly ageing. It is predicted that by 2001, 16.35% of the population will be over the age of 65 years, by 2040, that number rising to 24%, almost $\frac{1}{3}$ of the entire New Zealand population. However, what is particularly pertinent is the increase in numbers in the "old,old" population, those over the age 80 years. In the decade to 2001 those people aged 80 years and over will increase by approximately 43% and continue to rise dramatically. (National Advisory Committee on Core Health and Disability Support Services Report on the "Care of Older People in New Zealand 1995").

Within this context, the phenomenon of older person abuse arises as an emerging social problem, a problem to which society looks to the legal fraternity for effective legal protection and redress. A recent article in the Auckland City Harbour News stated that The Elder Abuse and Neglect Service, run by Age Concern, answers 400-500 calls from Auckland and Waitakere cities' residents each year. As the population continues to age there is a drive to more community-based care for the elderly as increasing numbers are cared for by family or within staged care facilities and retirement villages with varying levels of support. We are increasingly being made aware that abuse does happen – in the home, in rest homes and hospitals, within families and in the local community.

These statistics vividly highlight the immediate and future impact of our increasingly older population, the potential for vulnerability of the "old,old" population and the concomitant need for clear and effective legal protective mechanisms and vigilance in our practice as solicitors when advising the older person.

We, as solicitors dealing with the older client, will often be approached to assist the older person as part of a specific transaction. For example, in a request to prepare a will or enduring powers of attorney, to set up a family trust, sell a house and buy a licence in a retirement village, arrange a mortgage or guarantee a mortgage to raise funds for a child's business venture or to assist them to buy a house. These requests are often made in the context of huge misconceptions in relation to legal documentation already in place or contemplated and in the face of family pressure to "get things sorted out".

It is important to ensure that the transactions contemplated are appropriate and to advise the older person carefully. Most abuse of older people takes place within the family context and most older people wish to assist their families and avoid conflict. Cases of abuse most commonly reported by Age Concern relate to neglect, physical and psychological abuse and the taking of possessions and money or decisions by children to care for elderly parents at home rather than losing their inheritance to pay for Rest Home fees. It is important that we, as solicitors, do not unknowingly compound that abuse.

Greater awareness of elder care issues and the potential for abuse and the help available in the community is the best response. The purpose of this paper is to highlight the issues and develop an awareness of the questions to ask and the services to access when advising the older person. Failure to understand these principles and to advise clients carefully may lay one open to challenge from other family members and/or has the potential to incur solicitor liability.