



Critical Policy - 5 JUSTICE REFORM - ADVANCED LEGAL SYSTEM

LEGAL ABUSE

Legal abuse refers to the abuses within an adversarial legal system that are either sanctioned by law or simply go unchallenged to the point where they are reluctantly accepted by the vast majority of people engaging legal representation.

Sophistry

And it all begins with the art of sophistry; the ability to present an argument that is seemingly plausible, yet deliberately and knowingly false for the purpose of being misleading and deceptive.

It is this art form that will keep clients knocking at the door as lawyers and barristers, in particular defence counsel, build their reputations and their fortunes. It's all about winning, and not about how the adversarial game should be won.

From those first steps into the arena of skilful deception it is not too long before the pace increases and the lies become more and more blatant. Besides, no one is challenging you; your contemporaries are just as good at lying and deceiving as you are - possibly better. And the judge was there long before you started. And needless to say that your clients are happy with winning. And the ATM is still dispensing cash on demand.

But it is the damage being done to others; the abuses and losses they are forced to endure that constitute legal abuse. But more in a moment.

Theft

From sophistry, the following acts of theft become more than reasonable. Let's face it, if you can perpetrate dishonesty and fraudulent argument in a courtroom and get away with it, the sky's the limit.

Cost Building

Taking some innocent soul on a legal journey from A to Z and then back to the desired destination of C – charging every step of the way – without that client fully understanding the direction being taken, is a walk in the park by comparison to courtroom deception and lying.

Many of us have been in a strange town or city and asked the taxi driver to take us to a destination we have never been to. We could be taken on a tour which traverses any number of suburbs and never know that the driver was running up a fare three or more times higher than normal.

And so it is with lawyers. We know the destination (usually) but we don't know where we are being taken to get there. It is known as cost building and is the most commonly practiced method of theft in most law firms. In fact, without this form of thieving, few partners, associates, and junior legal staff would ever meet budget.

Again, cost building is only a fundamental step on the way to large scale theft of client funds. And again, it is abuse that occurs as a matter of course, and considered legal; certainly by the perpetrators.

Importance of the Matter to the Client

We can forget about asking a partner of a law firm what hourly rate is charged, because at the end of the day if the matter is of critical importance to the client then the entire billing process changes.

And even if a figure of \$450 per hour is quoted it becomes almost impossible to track the real number of hours worked on a particular case when an associate is also involved, and a paralegal, and then there are numerous discussions with counsel, and attendances with experts. It can be neverending.

A normal method of handling the billing of an important case (i.e. important to the client) is to quote an open ended figure. This might be \$25,000. But that usually ends up being a sprat to catch a mackerel. As the case unfolds the client becomes ensnared and continues to throw more and more money at it. And in order not to waste \$120,000 (say) already spent, the client is forced to add more.

These tactics have ruined families and individuals without matters ever being resolved. Illnesses and often suicides ensue, even on a much smaller scale. It's all relative.

This form of theft relies on a lawyer convincing you to write out that first cheque no matter how small. Once a file has been opened and your cheque book with it, you and your money belong to that lawyer.

And with criminal cases, of whatever magnitude, parents are loath to see their children jailed.

Lien/Mortgage Over Client Assets

Clients who have a liquidity problem but have substantial equity in their homes or other property need to relax. There are any number of law firms (all, in fact) who will slap a first or second mortgage over your assets and begin the billing process with the legal costs of the mortgage itself.

Most forms of civil litigation on a business level can eat away at the equity in your property, but defence lawyers and counsel in criminal matters will be out to take the lot. And particularly when parents are prepared to protect their adult children.

The crime for which a legal team needs to be retained is often a lesser crime than the one about to be perpetrated against the hard earned assets and the innocent lives which are now in the clutches of the instructing solicitors. There are few circumstances in life that would cause any of us to hand over our homes to another person and allow them to take whatever is needed, just to keep a family member out of jail.

Yet, there are a plethora of other important matters that can cause us to be rapaciously stripped of our available cash. And protecting our businesses and our families is where these important matters begin.

Power of Attorney

Most of us have been subjected to scams which at the outset appear to be valid. And we ask ourselves how it could be possible for anyone to tumble in without doing their due diligence. But it is possible when we understand that 1.52 percent of Australians (i.e. 350,000) are suffering from dementia and a further 1,700 new cases are added each week.

And this is incredibly fertile ground for lawyers who seek to take the interests of these Australians to heart by convincing them that they should give power of attorney over

their affairs. In what other circumstances could you convince a client to pre-sign an endless number of cheques and pass them across the desk expressing gratitude at the same time; because that is exactly what power of attorney is.

Adding to an already fertile and lucrative grazing pasture are the 24,700 people currently suffering from Younger Onset Dementia, and this figure includes men and women as young as 30.

There are also an incalculable number of Australians suffering from any one or more of a wide range of other mental illnesses and impairments covering depression, mild autism, brain damage, emotional trauma, etc; and much of it is often undetectable. So, all in all, it would be almost impossible to calculate what percentage of the adult population need others to advise them closely, or actually take over their affairs through power of attorney?

The introduction of an Advanced Legal System will stamp out this form of legal abuse by putting an end to the theft that has, for far too long, been synonymous with the legal profession.

PTSD

Dr Karin Huffer has spent over 20 years researching, diagnosing and treating post traumatic stress disorder (PTSD) and other trauma disorders. In 2008, her extensive work with those who sought “civilized, fair, due process of law and redress of grievances” led her to convincingly recognise that a justice system can and does cause traumatic stress.

The term, “Legal Abuse Syndrome” is the term applied by Dr Huffer to identify a very real sub-category of PTSD. It is a malady she describes as a ‘psychic injury brought on by being assaulted by legal abuses, betrayals, and fraud’ all of which flow from the abuse of power against individuals subjected to the justice system.

Few of us can ever come to terms with the often brutal assault on our lives when we hear the incessant lying, and witness the fabrication or concealment of evidence in court proceedings, particularly when the financial security and welfare of ourselves and those we are responsible for is being violated. And yet, this conduct is an everyday occurrence in the majority of Australian courts.

Other Ramifications

But those who are trained as lawyers and barristers do not, themselves, escape the ramifications of being trained to lie, fabricate and conceal evidence which results in the destruction of human rights. How could anyone do that to another without paying an emotional price?

It is now a recognised fact that 40% of Law students, 33% of lawyers, and 20% of barristers suffer from varying degrees of clinical depression. It is interesting to note that as the years pass and the conditioning (acceptance and justification) process takes hold, 17.5% of these young Law students will have shed this depression by the time they become lawyers, and 50% of these Law students - after more years of conditioning – will have shed depression if they decide to become barristers.

In fairness, however, the severity of these figures – numbers suffering from depression – can be mitigated with the understanding that one in five females and one in eight males will experience intermittent or longer term depression during their lives, irrespective of entering a career within the legal profession. **Yet, it is patently obvious that this profession undoubtedly acts as a catalyst precipitating this form of mental illness.**

Alarming, the Australian judiciary falls squarely into the same depression zone that claims so many legal practitioners.

Under a Federal Party government, measures will be put in place to assist and counsel not only sufferers of legal abuse, but those members of the judiciary – approximately one in five – who suffer the debilitating effects of depression; a mental illness that must, by its nature, create **some** of the legal abuse that is endemic in our courts. And this assistance and counselling will be done in parallel with introducing an Advanced – investigative – Legal System. It is this ‘investigative’ Legal System that will help eliminate the root cause of legal abuse.