



THE COST OF CUTTING CORNERS TAKING WILL INSTRUCTIONS – LEGAL SERVICES DISCIPLINARY FINDING Christine Smyth

The decision of *Legal Services Commissioner v Ronald Aubrey Lawson (LCR v Lawson)*¹ is sad, because it involves a practitioner of decades standing with no prior disciplinary matters who is now at the end of his career with a blemished record. Clients frequently ask why legal advice is so expensive, and why do lawyers have so many processes and procedures for an apparently simple matter? It is because we have duties and responsibilities that are so comprehensive, we are not permitted to cut corners. If we do cut corners, then the consequences are devastating both to our clients, their families and ourselves.

In the decision of *LCR v Lawson*, the solicitor took instructions for a will from the son of the testator, who had an interest in the will. The solicitor did not personally attend on the testator. Taking instructions directly from a testator is required standard practice especially where the intermediary giving the will instructions takes a benefit. It is surprising the number of people who are offended by this requirement in day to day practice. Here however, the testator could not attend the solicitor's office because of his age and frailty and the solicitor himself could not attend on the testator at his nursing home because the solicitor suffered physical incapacity from a recent injury. The solicitor drew the will on the instructions of the testator's son, then sent his two staff members to the facility where the testator was residing for execution of the will. The staff members read the will to the testator. The testator himself appeared to read the will. The testator noted some typos. Then, the testator signed the will.

Legal Services Commissioner v Ronald Aubrey Lawson at [14]-[15]:

“In the view of the Tribunal, the conduct of the practitioner in this case, in drafting and presenting for execution a will on which instructions had been provided only by an intermediary and without verifying those instructions with the testator, was conduct which fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

That is highlighted in this case by the fact that the intermediary giving these instructions was a person who not only had an interest under the will, but that the instructions that he gave were instructions which would have operated both to increase the share of his take as a beneficiary under the will, and also exclude another beneficiary completely from benefit under the will. Those circumstances alone should have been sufficient to ring the alarm bells for the respondent as to the need to obtain verification of those instructions from the testator. As already noted, that could have been done with a phone call. “

A link to the full case can be found here: <https://archive.sclqld.org.au/qjudgment/2019/QCAT19-100.pdf>

¹ *Legal Services Commissioner v Ronald Aubrey Lawson* [2019] QCAT 100