

## Short Minutes Transcript – Alarm Bells for Solicitors: Elderly Clients

A New South Wales Government inquiry into elder abuse in June 2016 considered the role of solicitors in the increasing problem of elder abuse in the community.

The committee recognised that the law confers weighty responsibilities on solicitors particularly in relation to the financial abuse of the elderly. The committee considered that in order to prevent solicitors knowingly or unknowingly enabling financial abuse to occur they need to devote more time to ensure clients understand wills, powers of attorney, contracts for sale and other transactions.

An abuse of a power of attorney was considered by the Supreme Court in the recent case of Cohen and Cohen. Mrs Cohen made an enduring power of attorney appointing her only son as her attorney.

Some years later, after Mrs Cohen lost capacity and was placed in aged care, her son transferred her home to himself for \$1.00. He did this pursuant to the power of attorney and also produced to his solicitor his mother's will, showing him to be the sole beneficiary.

The solicitor considered the transaction was reasonable in the circumstances but of course could not obtain instructions from Mrs Cohen as she lacked capacity.

The alarm was raised when Centrelink deemed the transfer to be a gift and reduced Mrs Cohen's pension. Her nursing fees now exceeded her income.

Justice Hallen set aside the transaction as an unconscionable dealing and ordered the property to be transferred back to Mrs Cohen.

This case highlights how easily a solicitor can be unknowingly involved in what may or may not be elder abuse.

The Law Society has a CPD program to assist practitioners to identify and hopefully prevent elder abuse in the community.

A link to the case can be found below:

[Cohen v Cohen \[2016\] NSWSC 336](#)

I'm Melissa Fenton