

MPAG Dissertation

Elderly Financial Abuse in New Zealand: Is the Law Sufficient?

**A Dissertation Submitted in Partial Fulfilment of the
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Abstract

Older citizens can become victims of an alarming amount of criminal and fraudulent behaviour in New Zealand (NZ) and throughout the world. Their estates, life savings and even their welfare incomes are stolen, plundered or misappropriated. The offenders can be relatives, friends, or trusted individuals, professionals, or even corporate bodies. It involves victimisation and criminality to victims including intimidation by neglect, threats, and violence. It concomitantly intercedes in life-sustaining health, well-being, age, and disability issues. Often very well hidden, because of perceived shame for family and necessary secrecy by the very perpetrators, Elder Abuse is difficult to trace and police. Elder Abuse affects not only the victims but families and broader society. Institutional respite carers, family carers, all involved in medicine, social justice, economics, law, and policing, their stakeholder interventions can all become intertwined or interlocking. These can tend to be within the elder or disability support roles. Many people and institutions and can be quite peripheral to the actual caring or protective roles of elder people and they can often become involved.

The Dissertation submission title invites the question: - *Elderly Financial Abuse in New Zealand: Is the Law Sufficient?* The arguments, as given below, suggest that some robust overhaul and changes in New Zealand law and administration of EA and EFA are overdue and necessary.

Before proceeding too far into the topic, it is necessary to define what is meant by the term 'Elder Abuse.' There are many and varying versions of Elder Abuse from all over the world (Brook, 2008) pp 48. Lachs and Pillemer also noted the many variations and definitions in theories about Elder Abuse, some quite contradictory (Lachs & Pillemer, 2004) pp 492-497. Many others have attempted to more closely define the term 'Elder Abuse by dissecting the types and variations' (Moraru, 2006). For issues about EFA within New Zealand, the most credible definitions are those used by the Age Concern Non-Governmental

Organisation (NGO), Wellington. They are the significant contributors in advocating for recognition in the problems of EFA. Age Concern are recognised as the NZ NGO advisers to government and are a 'go to' public resource (Age Concern New Zealand. National Advisory Group on Elder Abuse and Neglect. et al., 1995).

This paper discusses the vagaries of Elder Abuse and, more particularly, Elder Financial Abuse. To save endless or repetitive explanations herein on terminology, it is referred hereinafter to as EA or EFA. Discussed within, there are constituent elements of EA and EFA involving related and generic abuse generally. The focus herein will primarily be on *Elder Financial Abuse* but some added explanations regarding theories on *generic abuse* do provide insightful offerings.

As a basis and starting point to EA and EFA, it is initially approached within a broader and generic sub-category and framework of abuse and human rights issues. Initially, it becomes clear that EA and EFA are legitimate sub-categories of generic ranges of human abuse and human rights. The wider issues about generic abuse, included are included in the legislation for New Zealand Property Rights, (*Protection of Personal and Property Rights Act 1988*) The discussion on that legislation also needs to be examined as a core part of a more holistic study for detection, forensics, policing, administration, and prevention strategies.

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Chapter 1.

A Newer Approach

The proposal, as given herein, proposes changes to legislation and integration. It suggests changes and integration into one oversight statutory authority. The present legislation requires necessary and robust protective law offering forensic detection, auditing, policing, and administration is described herein. This submission argues for updated legislation with safer new laws and new victim protections. The submission herein presents a case for an institutional and protective authority which includes *all* the various stakeholders including actual victims. With appropriate legislature and design, and with all-inclusive operational policies, an appropriately legislated authority could benefit from more complete and preventative insights into individual case studies. In shifting the preventative focus more to the perpetrator than for the victim, it can thereby reveal the characteristic action patterns of intending or potential perpetrators. The robust prevention authority, as suggested, then would allow ongoing surveillance, governance, and culprit accountability. Circa 1998, The New South Wales Government (NSW) established their NSW Protective Office authority. That NSW office, perhaps somewhat idealistic at the time, served to protect *all* vulnerable people, those in prisons vulnerable to abuse and victimisation, children, disabled or suffering aging or those with mental health issues. In this Dissertation, it is the central core of the message that a similar but modified rationale for a protective authority be legislatively established in New Zealand. Protection could, thereby, also be mandated for Elderly Abuse and Elderly Financial Abuse.

Based upon a statistical analysis of documented case studies, it can also serve to predict likely perpetrator to victim roles. When properly legislated and administered, the proposed system as discussed herein, will both facilitate, and accommodate, non-partisan or non-party-political administration.

With better and more complete oversight, recourse to further government law-making and for the Courts for legislation, it can then be offered for administrative or to punitive and for correctional purposes. Improved policy design and law-making is made more effective in setting out clearer legislation and forensics for desired outcomes. With more robust controls, criminality or administrative breaches requiring punitive Court dispositions *including any administratively corrupt behaviour* can be more easily detected and sustained. Some a’ priori and rigorous compliance expectations are placed upon persons charged with administering monies and estates. Those monies and estate then become subject to robust administrative surveillance protecting the property and human rights of any person incapacitated by reason of disability or age

The submission herein proposes holistic and legislated integration into one legislated institution, either as a partially funded private enterprise or, perhaps, as a formalised government authority. The suggested integration would, ideally, offer a preventative means of disincentive forensic and a’ priori detection of intended fraudulent or criminal behaviour. Allowing robust administration, the proposal herein includes both preventative and detection attributes.

That proposed authority, as a legislated body, should be robustly structured to be non-partisan and independent of corporate, institutional, political, personal, or family politics. It should be isolated from any personal issues and cannot be economically or politically manipulated, connected to, any possible abuse, criminality, or greed behaviours. It could, functioning as an integrated working system, more effectively and forensically detect, and circumvent most personal need or greed issues. The functioning legislation with its influence through its established routine, offices and authority, will circumvent behaviours borne of institutional tardiness, criminality, and fraud.

It is proposed that all monies, transacted, received or payable, from *any* source, will be channelled *only* through that integrated and legislated authority. Upon robust auditing and clearance for legitimacy, it will then be remitted to the legitimate owner, the eventual recipient donor or to their established bona fide trustees.

Abuse and Human Rights

On a wider scale, there are dynamics of EA and EFA which can be safely included into studies of a larger and generic range as abuse and human rights issues. In embarking on a study of EA and EFA, as issues from their integral mezzo or micro scale, each provides some added and specialised knowledge or skills. With further research, through delving further, as human rights abuses, it can be argued as not occurring separately with EA or EFA. Generic abuse is then the base line field of study then merging into EA and EFA. In New Zealand it sometimes known as FEA (Davey & McKendry, 2011).

The dynamics of EFA are closely intertwined with Elder Abuse. EFA may reasonably be viewed as a subset category of Elder Abuse. Quite apart from the distress and harm to an individual person, qua the victim, many wider medical, social, community, legal and economic resources also and inevitably drawn into the problem.

Chapter 2.

A Broader Perspective

Outside of our immediate EF and EFA case and discussion herein, it is then appropriate to view EA and EFA within a much wider generic category of abuse and including human rights abuse. Discussing it within a wider category, and using a wider inclusive abuse classification, it would cover criminality, violence, abuses broadly on disabled, marginalised and with other disempowered victims. Much of the forensics and policing falls well within the same dynamics of human rights abuse as for EA and EFA whilst the physical scenarios may tend to vary.

Often, abuse of any kind, can be found to have occurred to those victims, those as an abuse cohort, may have limited or deprived socioeconomic circumstances and characteristics.

To clarify the point above, EA and EFA could then be included in *any* discussion on factors of abuse and criminality involving wider any regressive economic, social justice policies, including physical discrimination for disability. Those can also be viewed as abuse by deprivation of rights just by regressive marginalisation of victims. With any new or proposal of an extrapolated description of generic abuse, covering wider characteristics on maltreatment, EA and EFA can properly become inclusive and descriptive categories.

EF and EFA, in viewing them as more specific categories and as forms of generic abuse and human rights issues, they need not be limited to just EA and EFA qua as EA and EFA distinctions. They possess similar and implicit behavioural dynamics to wider abuse and human rights characteristics.

Though not immediately topical or inclusive to our EA and EFA discussion, as a wider vision on abuse it could, generally and reasonably, be included in discussions closely related to other potential victims. These can include examination on broader generic abuse and human rights issues. By way of an example, Nosek noted the significant occurrence of

abuse occurring to women with disabilities (Nosek et al., 2001). Sobsey, Wells, Lucardie and Mansell, noted the greater risk of violence abuse to aged victims (Sobsey et al., 1995). In context, that violence can safely be included as a part of EA or EFA behaviours. Expanding the purview further of abuse and human rights issues, Kingston noted the effect of *statelessness* (also as human rights abuse and even including marginalisation) as related to abuse citing the case of the plight of the Rohingya peoples. (Kingston, 2017). The paradigm, and its constituent dynamics. are of the same family: - there is a perpetrator and a victim.

Power Differentials in Abuse Roles

Crichton, et al, noted the occurrences of abuse and violence in spousal human relationships where the women were submissive (Crichton et al., 1999) implicitly containing a power differential, one partner to another. The perpetrators, holding a dominant role, either as an individual or, in our case, as used above against the Rohingya sovereign state. The perpetrators, victimising the Rohingya, hold an endowing power differential. That power differential favours the perpetrator's role in the relationship and to the disadvantage of the victim. For our purposes, it is unnecessary to view abuse, as discussed in Crichton, to be applicable only to women, the dynamics of the wider abuse concerns are much the same.

The victims may be of both age and non-age-related abuse. They can be of various ages with diverse cultural, social, economic, physical, or cognitive disabilities. Other possible victims can be characterised as involved in unfair power differentials and as such if only because of their *perceived* disability or marginalisation.

Disadvantaged or potential victims, through any causal factors, can also be considered for inclusion within the same EF and EFA abuse dynamics. They could, credibly, be included and paralleled within the same *overall and generic* abuse paradigm regardless of age, disability, or cognitive abilities. Our dissertation case herein is, however, founded on EF And EFA. This submission is that the human rights and abuse in EA and EFA dynamics should

also be included. They should be viewed in wider and much larger psychosocial and economics categories of violence and/or abuse.

EF and EFA kinds of abuse as noted by Post, et al, included six abuse types: physical, caretaking, verbal, emotional, neglect, and material (Post et al., 2010). Cultural variables can intervene in determining types of abuse. These can include ‘beliefs over rights to property, disrespect and dishonour to elders, [or endemic] cultural factors’ (Fanslow & Glasgow, 2001).

Adding further constraints from the above, recognition of the victim’s encountered abuse in both the cognitive and legal senses, may not always be identified and known to the victim. Davey and McKendry suggest that the victim may not always be immediately aware of extent of the applicable law and their own human rights (Davey & McKendry, 2011). Given the victim’s possible lack of awareness on the nature of any abuse they may encounter, it may not hinder or even prevent reporting of their experience. Police are not always fully aware or trained in various types of abuse. That issues applies in the applicability of law relative to *abuse or not abuse*. Police or other stakeholders may elect to prosecute, discount, or even withdraw from the case as represented to them. It then becomes an issue of whom is incorrectly or correctly acting in classifying the incidence of any one case of abuse (Payne et al., 1999).

Defining Nomenclature Limits

Expanding or diverting the nomenclature or scope of the EA and EFA abuse, into a much broader and across-the-board abuse coverage could, *seemingly* and at first, specifically constrict and detract from the essential dissertation narrative of EA ad EFA as being presented herein. There is, however, some merit in discussing EA and EFA being included as a subset of abuse or human rights behaviour if only to assist in more clearly characterising the various abuse categories for preventive or even legalistic dispositions.

If only to recognise possible forensic patterns and bringing any preventative or counter strategies, viewing it specifically as EA and EFA, it will allow more specialised interventions particular to EA and EFA. Collected insights including EA and EFA as about generic abuse should, generally, be aimed at a more complete, collated and described knowledge of the behavioural dynamics associated with that abuse. Any concomitant fraud, criminality, and the perpetrator's intended gains from abuse, *including EA and EFA*, is also a relevant and necessary concern.

Chapter 3.

Kinds of Abuse

In dealing with abuse both as a human rights issue as given in the United Nations Assembly (Assembly, 1949) and along with its maltreatment criminality, there are many different kinds and fields of abuse. Lacher noted that neglect, active or passive, psychological abuse, financial, physical and anti-constitutional abuse were common (Lacher et al., 2017). In New Zealand, the types of abuse frequently encountered are like those seen in other countries. As extracted from (Wolf et al., 2002):

Physical abuse is the “the infliction of pain or injury, physical coercion or physical or drug induced restraint”; psychological or emotional abuse is “the infliction of mental anguish”; financial abuse is “the illegal or improper exploitation or use of funds or resources of the older person”; sexual abuse is the “non-consensual sexual contact of any kind with the older person”; and neglect is “the refusal or failure to fulfil a caregiving obligation”, that “may or may not involve a conscious and intentional attempt to inflict physical or emotional distress on the older person.” Wolfe, et al, 2002.

A general discussion of abuse, only as genetic abuse issues, might be counterproductive in seeking amelioration of the specific and accompanying and characteristics of EA and EFA problems. Each field of abuse research and professional practise has its specialist practitioners of which studies and therapies for EA and EFA are but two. Imagine then, the plight of any stakeholders in correctly diagnosing or identifying types of abuse.

Finkelhor notes that workers in the various human rights fields tend to have their academic or practice specialities wherein varying kinds of abuse of other people is their majority focus (Finkelhor, 1983). When the research, discussions of breach of trust, domestic abuse, and specific socio-economics prevention and amelioration inputs then become necessary. Some EA and EFA specialisation and skills would, in that case, then become essential (Chesterman, 2016).

As stated above, the submission herein will focus on EA and EFA in pointing to a specific controlling interest. This goal needs aiming at the intended outcome of coordinating the many different operant variables presently within. It is suggested that robust control and structures as advocated in this dissertation submission should be the goal. It should point forwards as a controlling or an institutionalised authority as it would provide better control for early detection, prevention, policing, administration, and auditing.

An Etiological Power Differential?

With many, if not in all cases of occasioning human rights abuse, marginalisation, and discrimination generically, all seem to contain an *inherent power differential*. That differential is in favour of the perpetrators and effectively adds to the relative powerlessness of the victim. Older victims can also attract EA and EFA as in our more focussed case. The victim loses by default their own personal sovereignty.

Finkelhor (page 18) also argues that “Abuse tends to gravitate to relationships of [the] greatest power differential.” (Finkelhor, 1983). Dutton and Starzomski noted the correlation between the Minnesota Power and Control Wheel and argued that there is a:

‘MPCW dimensions of the abuse of power and control were significantly intercorrelated, suggesting the existence of a syndrome of abuse of power and control.’ (Dutton & Starzomski, 1997).

From a closer examination of the power differential in abuse, the motivation for the abuse behaviour was deemed by O’Leary and Maiuro also *in* (Graham-Kevan, 2007) under the ‘umbrella term’ as ‘*controlling behaviours*’ where the abuse behaviour is perceived as:

‘Placing the emphasis on the perpetrator’s behaviour rather than a [focus] on the impact on the victim.’

Throughout this dissertation, it strives to move attention from the ‘impact on the victim’ along with the physical emotional, mental health outcome stresses upon the victim. The focus should be applied more on anticipating the possible abuse dynamics and/or directly controlling the perpetrator’s behaviour. Quite mindful of the distressing impact on the victims, this shift of focus will allow specific control or a’ priori barring of the prospective or perpetrator’s behaviour. This can be directed at the abuser’s behaviour by early or preventative detection, policing, auditing, and administration controls and as discussed above. Through dealing more directly with the perpetrator and the *power differential* in the abuser’s behaviour, somewhat less accent should be placed upon the victim in the relationship. By shifting the emphasis, off the victim to the abuser, counselling for the victim can be more effectively directed towards amelioration.

By separating the victim’s own encounters from the perpetrator’s behaviour, any victim’s self-blaming or mental health outcomes, can become self-blamed as being within the victim’s own perceived faults in the relationship. By clearly delineating the victim’s experience from the abuser’s behaviour any self-blaming by the victim can be more directly dealt with. The victim’s mental health and any physical disabilities, along with any *perceived* causal disadvantage, are moved away from themselves to perceive the

perpetrator's own behaviour as the direct cause of the abuse. Directing the attention to the abuser away from the victim's role, the perpetrator's behaviour then becomes a locus for more specific control. Amelioration and therapy may then become possible.

Movement of the focus on to the abuser's behaviour and role is a vital and necessary change for the victim. It does, however, present a badly placed timing intervention and can have an inherent disadvantage. Insofar as the criminality and the abuser's behaviour has occurred, it has *already* come to the attention of the remedial stakeholders. The abuse has *already* occurred. It is treating the abuse, the crime, *after* it has occurred and has been committed. In this dissertation, ideally it should be viewed as an a' priori *prevention* matter even before the abuser's behaviour occurs.

This paper submits that the attention must be focussed more on providing circumstances preventing or inhibiting any perpetrator intentions or behaviour. Preventing any tendency to act involving possible abuse, gains or criminality should be the modus operandi for stakeholders. The proposal again argues that the primary goal should then be moved towards early blocking or prevention. That preventative goal must be aimed at negating any *possible* means and motives. Acting to forestall harbouring of any early intention by the perpetrator, those ideas directed or planned towards maltreatment of the victim cannot thereby achieve any possible gains. The suggested changes herein provide primary and early-stage barriers making criminality far less possible for the abuser to succeed. It removes the crime *before* it could happen. By clearly forestalling any possible criminal intention, the crime may become less appealing. It thereby changes the dynamic by removing ideas that any success or benefit could be derived from the prospective abuser's actions without risking early detection.

Chapter 4.

The Victim's Role and Experience

Ong, cited in Waldegrave, copied herein and verbatim as hereunder, is noted from in the *New Zealand Longitudinal Study of Aging*, wrote about the demographic characteristics of victims of abuse in New Zealand. (Waldegrave, 2015)

Māori experienced significantly elder abuse when compared with non-Māori on all four subscales. Divorced, separated, and widowed older people experienced a greater level of dejection with sad and lonely feelings, whereas partnered people showed lower levels. Consistent statistical correlations were found between elder abuse and lower levels of health and wellbeing, and higher levels of depression and loneliness. Elder abuse can reduce the person's independence, self-esteem, confidence, and safety, especially if the person is dependent on others. However, it can be hard for older people to talk about their abuse when it happens for a variety of reasons. Some of the reasons an older person may not talk about abuse include:

They [victims] can depend on the abuser for support. They [may] have low self-confidence and self-esteem. They don't want to make a fuss They are afraid that if they complain the abuse will get worse. They are isolated, so that it is difficult for them to tell anyone. They do not know who to tell or how to get help They have dementia, or an illness prevents them from telling anyone. They blame themselves for the abuse They are ashamed that the abuser is a family/whanau member. Waldegrave, 2015.

New Zealand Ministry of Social Development have suggested that some victims can become dependent upon the Elder Abuser person. The abuser can then manipulate the victim and others and by setting themselves up as 'gatekeeper.' The gatekeeper will attempt to

control communications and contact by others with the victim. In limiting the victim's ability to complain or to seek relief for the abuse, the abuser prevents any intervention by others.

<https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/family-and-sexual-violence/elder-abuse-in-aotearoa.pdf>

Retrieved online: 19th April 2022.

International Comparisons and New Zealand Law

Preventative, or actual *forensic legislation and as preventative administration* has not attracted a great deal of well-deserved attention in many countries. Many academic journals discussions focus on, and write about, the *existence* and case histories of elder abuse. Fewer online discussions seem to present viable tools to detect, police, and provide adequate legislation to prevent the wrongdoing and criminality as a holistic and integrated administration.

Given that Elder Abuse has been discussed academically in many countries as a serious issue, it is relevant to compare legislation and prevention herein particularly in relation to a country other than New Zealand. For this purpose, choosing a country with a similar geographical proximity and with similar socioeconomic, cultural values and its history, Australia shows that some changes are necessary.

Australia, by comparison with New Zealand, it can be argued, has been somewhat tardy in recognising the need for a *national or federalised* Elder Abuse legislation for an integrated forensic detection, policing, accounting, and administration instrument.

Elder Abuse, as an internationally located phenomenon, is well reported both within NZ and overseas. Australia has developed *some* elder abuse protection provisions, but they are seemingly fragmented and incomplete from one State to another. Some emerging Australian national (federal) or interstate recognition of the existence of the problem is

gradually emerging (Dunn, 1995). From the journals, there appears to be little or no interstate or seamlessly Australian control as a nationally organised and coordinated structure (Kurrie, 2008). Park and Taylor submitted a study on the occurrence of EA in Korean elders where they described that EA incidence (Park & Taylor, 2011).

New Zealand has *some* specific legislation, but that law has, as discussed below, offers only *an after-the-crime effect* when the wrong-doing or criminally has been committed. Atkin studied the NZ Act and it seems apparent, in practice, that Act can only be invoked and intervene while the criminality or abuse is being committed or has occurred. It is not possible to prosecute a person for a crime they have not yet committed *The Protection of Personal and Property Rights Act (2007)* as discussed by Bill Atkin (<http://www.victoria.ac.nz/law/research/publications/legal-research-papers>).

The New Zealand law and administration has no real or effective *before-the -act deterrent prevention* and administration. The Act only shows the law and consequences of the commission of any elder abuse but law cannot presently and sufficiently act as an effective a' priori deterrent. Once the criminality has been committed and proven, once any irreplaceable assets, estate and personal chattels are lost, the present law can allow intervention but does not necessarily provide an a' priori deterrent to the mindset of a determined perpetrator.

Darral Campbell of Dementia NZ, New Zealand, Canterbury Office, (personal communication, 28th April 2022, <http://www.dementiacanterbury.org.nz/>) has strongly suggested that the present legislation, in given in the *Protection of Personal and Property Rights Act 1988*, should be completely replaced. Some questions need to be asked about why such an Act could reasonably be expected to prevent EA or EFA with only by threats of the *possible consequences* and without providing a coalface mechanism for some robust prevention rather than punishment.

Chapter 5.

Abuse and Human Rights

On a wider scale, there are dynamics of EA and EFA which can be safely included into studies of a larger and generic range as abuse and human rights issues. In embarking on a study of EA and EFA, as issues from their integral mezzo or micro scale, each provides some added and specialised knowledge or skills. With further research, through delving further, as human rights abuses, it can be argued as not occurring separately with EA or EFA. Generic abuse is then the base line field of study then merging into EA and EFA. In New Zealand it sometimes known as FEA (Davey & McKendry, 2011).

The dynamics of EFA are closely intertwined with Elder Abuse. EFA may reasonably be viewed as a subset category of Elder Abuse. Quite apart from the distress and harm to an individual person, qua the victim, many wider medical, social, community, legal and economic resources also and inevitably drawn into the problem.

In fairness, it must be argued that protecting personal privacy and human rights issues for the victim is central to the operating philosophy. Protecting the victim's *comprehended* human rights, as experienced by contributory stakeholders, and with their *supposed* concerns can, become a forgotten issue.

The victim's human rights, such as confidentiality and self-determination, can also become a barrier when it involves necessary interventions to allow effective advocacy measures. Institutions, staff, and families can invoke mistakenly *perceived* privacy and confidentiality issues and in cases where affirmative remedial intervention is properly required. Fears of dispositions outcomes by professional institutions, by employers for dispositions breaches of ethics, can forestall or prevent necessary interventions by staff or caseworkers. Such inappropriate claims or perceptions by caseworkers can be invoked, albeit with all good intentions, by supposedly protecting the victim's rights. These can occur before

any advocacy or interventions for the victim or where more appropriate legislation can be effectively invoked. Fortunately, the New Zealand Government have just enacted new legislation enabling outcomes for whistle-blowers and complainers to formally and informally to be heard.

https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_99238/protected-disclosures-protection-of-whistleblowers-bill
Retrieved online 13th July, 2022

Those interventions as above, can, without proper and informed circumstances interests for *the real world and actual* circumstances for the victim, serve to bar or disallow prevention or administrative action (Corbi et al., 2019) also (De Donder et al., 2015). Naivety about the proper interests in the victim's human rights, the immediacy of required interventions which deserve more appropriate consideration, all can serve to prevent ongoing perpetrator criminality or harm to the victim.

Those misjudged perceptions and resultant non-interventions of proper actions and ethics, as above, can forestall the rights of the victim to have the criminal behaviour by the abusive perpetrator or circumstances properly removed. Preventing workable action to help the victim, the lack of informed staff, by their institutional carers, can sometimes default in error trying to protect the victim's supposed human rights. The staff and others can tend to discourage the victim, themselves, or other attending stakeholders, through their lack of training or suppositions about the privacy, confidentiality, and protection of the victim's human rights. The result can become, through lack of information or training, a failure to protect the victim or reveal any abusive behaviours by the perpetrator (Brandl & Raymond, 2012). They can naively and wrongly claim that the victim has more or lesser human rights to

privacy and confidentiality. As a result, staff and institutions can misguidedly assert that human rights accrue for both the victim and the stakeholders' ethics must first be protected.

Chapter 6.

The Legislation

The existence and prevalence of Elder Abuse (EA) and Elder Financial Abuse (EFA) demands the question of how well, if at all, existing detection law and administration are coping with both EA and EFA? The discussion is entirely relevant to Article 17 (1) in the United Nations Declaration of Human Rights:

It states that '(1) Everyone has the right to own property alone as well as in association with others.'

'(2) No one shall be arbitrarily deprived of his [her] property.'

It is the intention of this paper to advocate for specific changes in legislations, detection, and proposing better administration.

This dissertation will attempt to describe a cohesive interlocking system offering some greater prevention, detectability, policing, and administrative control. It will suggest a schema designed to make EA and EFA criminality and behaviours more difficult to instigate in negating efforts to evade control, detection, and policing.

This topic for this dissertation was motivated by some personal and informal verbal suggestions from Age Concern (NZ). Their proposals suggested that it might help to advocate for real change on Elder Abuse problems. During an office-desk research discussion with Age Concern (NZ), staff in Wellington New Zealand, dealt more specifically in counteracting or prevention of EA and EFA problems. Following on from the content of those discussions and from their own Age Concern publications, this dissertation will propose a series of deterrent coal face actions These will become one overarching prevention submission, intending to limit or discourage EA and EFA abusers. The underlying motivation herein is to

promote *prevention* rather than endless academic discussions or resultant Court legal dispositions for perpetrators regarding EA and EFA.

Preventing, detecting, and policing Elder Financial Abuse as one integrated system, its tools and the institutional/governmental response is now essential. The prevalence of Elder Abuse and Elder Financial Abuse within NZ and overseas, despite the existing law, suggests more robust preventative legislation is required (Carney, T, 2015).

Law acting 'before the fact', *before* the offences, rather than 'after the fact' of EA and EFA abuse and criminality is long overdue. Advocating for a case for mandatory reporting of elder abuse and Elder Financial abuse in New Zealand could well offer somewhat better protection of elderly and disabled persons.

Other Victims and Financial Abuse

Perhaps, marginalised, or physically disabled people, are usually less often discussed within the same EFA or EFA contextual labels and intent. We need to be concerned about *not just* older people *and* EFA. There are other possible victims of what is most labelled, but they can become potential victims, they are often not well recognised, as being in similar marginalised circumstances to EA and EFA. They can possess full cognitive ability and possess normal sentience, but just their limiting physical disability can affect them by the dynamics contained within Rosenhan's Labelling Theory. Those are as discussed below. In many writings online, the same criminality dynamics that can go for EA and EFA as with older victims but also to other marginalised or disabled people (Sathya & Premkumar, 2020) and (Leeb et al., 2012).

Sometimes referred to 'Economic Abuse' (Kutin et al., 2017) or 'Domestic Violence' (Frazão et al., 2014) is not specifically defined as EFA and, perhaps, not recognised as being similar in its effects as such. As a case in point, persons with intellectual disability can become victims (Buhagiar & Azzopardi Lane, 2020) with similar modalities and outcomes.

Brandl and Horan suggested that perpetrators can often be a spouse, adult child or family member (Brandl & Horan, 2002).

The topic of this paper, in the main, suggests that parallel oversight is also needed for crime detection, protection, policing, and administration. Those needs should equally apply where there are other victims and of *any age or disablement*. These involve criminal behaviours regarding physical threats, fraud, theft or illegal conversion of money or assets of people who are marginalised, disabled.

The victims can often be least empowered or can have little perceived credibility to protect and fend for themselves once perceptions or labels of mental health are imposed on them. Rosenhan argued that Labelling Theory, and its attributes, can be a very powerful disincentive for people to want to challenge *perceived* labels of mental health or disability (Rosenhan, 1973) and (Scheff, 1999). Often, the victims themselves or families, will be hesitant to disclose any knowledge or suggestions of impropriety or criminal activity. They may wish to avoid bringing on shame to themselves or can want to avoid any possible police or criminal involvement against the family or of criminality of the perpetrator. Beaulaurier and Seff discussed the barriers to seek help in abusive relationships:

“Internal barriers incorporated the concepts of protecting family, self-blame, powerlessness, hopelessness, and secrecy” (Beaulaurier et al., 2008).

Overstreet and Quinn suggested that the victims can be reluctant to seek help because they fear possible outcomes of any help-seeking behaviours:

“...cultural stigma, stigma internalization, and anticipated stigma. Cultural stigma highlights societal beliefs that delegitimize people experiencing abuse. Stigma

internalization involves the extent to which people come to believe that the negative stereotypes about those who experience Intimate Partner Violence (IPV) may be true of themselves. Anticipated stigma emphasizes concerns about what will happen once others know about the partner abuse (e.g., rejection).” (Overstreet & Quinn, 2013)

The NZ version is most topical to our discussion, using those provided by Peri (Peri et al., 2009) from the definition used by Age Concern, NZ (As copied verbatim from Peri et al.).

New Zealand has adopted the New Zealand Age Concern Elder Abuse and Prevention Service definition: elder abuse and neglect are usually committed by a person known to the victim and with whom they have a relationship implying trust. A person who abuses an older person usually has some sort of control or influence over him or her. (Peri et al., 2009)

Moraru (2006) explains topical to New Zealand occurrences on Elder Abuse for the New Zealand Age Concern Elder Abuse and Prevention Service.

Definitions of Elder Abuse

Using Moraru's (2006) Analysis as Copied Verbatim Below

'Elder abuse and neglect [acts] are usually committed by a person known to the victim and with whom they have a relationship implying trust. A person who abuses an older person usually has some sort of control or influence over them.'

Types of Elder Abuse

Physical Abuse: infliction of pain or injury, physical coercion, or physical or chemical restraint.

Psychological or emotional Abuse: infliction of mental anguish.

Financial or material Abuse: illegal or improper exploitation or use of funds or resources.

Sexual Abuse: non-consensual contact of any kind with an older person.

Neglect: refusal or failure to fulfil a caretaking obligation, including or excluding a conscious and intentional attempt to inflict physical or emotional distress on the older person.

Definitions may vary between different cultural groups, but regardless of its type or definition "elder abuse" results in unnecessary suffering, injury or pain, the loss or violation of human rights.

EFA occurs across many cultural and ethnographies. Hong Jay Park, for his Ph.D. Dissertation, conducted a New Zealand social work research project focussed on Asians particularly on Korean people this study (Park, 2007) Park argues that 'Different meanings of elder abuse exist in different societies or cultures.' Also, behaviours characteristic of those frequently described as EFA are like recent news events. In the recent Brittany Spears' Conservator' matters about claimed control of Spears's estate and her personal life autonomy by her father, Jaimie Spears (Zammiello, 2021), it discussed control of another person's life and affairs. See also more information as discussed by Cohen (Cohen, 2021). The USA descriptive nomenclature of 'Conservator' is the role that approximates as EA and EFA in New Zealand.

For the purposes of and the content of this document, it is not necessary to exhaustively present the very many academic and theoretical representations characterising Elder Abuse. It is sufficient to recognise herein that there is a very well publicised problem. Present EA and EFA law need urgent attention change and, as a result. a clear fix-it response. Both Judith Davey (Personal communication, Christchurch, November 2020) and (Cohen, 2021; Vickers, 2017) have asked the question of how well, if at all, is the present law and the administration coping.

Within the online academic readings, there are very few inclusive discussions on the actual coalface detection, prevention, policing, and administration of EA and EFA. Writers do not appear to offer very many practical coalface and a' priori EF and EFA preventative solutions. As legislatively coordinated along with coalface strategies, there are not many discussions about writings of fix-it and deterrent plans on prevention or detection. It needs a' priori prevention legislation framed towards hard-core or concrete actions in dealing with the problem. Most writings on the subject tend to discuss the social justice and welfare rights and wrongs of Elder Abuse and Financial Abuse.

Journal publications and books, seemingly, just want to present discussions acknowledging the *existence* of the EA and EFA problem. The tendency in writings about EA and EFA largely seems to focus on presenting theories on the morality and ethics. Discussions are needed how to change the incentives, morality or perspectives of the perpetrators and stakeholder actors.

Sadly, it became evident in the research for this paper that whilst there are many New Zealand writers and academics interested in EA and EFA, as a topic, there is less than optimum joint coordination acting as cooperative action collectives. These interested parties and writers need to be formed and acting together for prevention of EA and EFA. For those that do have an active interest in EA and EFA, their focus tends to be mainly devoted to

individualistic victim casework. Age Concern New Zealand, a NGO based in Wellington are notable insofar as they do actively liaise with government about EA and EFA issues and are also involved victim support casework. While researching this study, a few other New Zealand organisations and writers, some publicly notable, had been invited to discuss topics on elder abuse prevention but, sadly, were less than spontaneous in offering their ideas and inputs.

Some of the Elder Abuse can be hard to trace (Kosberg, 1988) because the secrecy of it necessarily hides the perpetrator's behaviours. Family members and EFA perpetrators do not want their behaviour to be known. The apparent invisibility for detecting the EFA is also because the victims themselves can be reticent in seeking outside help. That "*reticence may be partly due because of a perceived need to maintain their [personal and family] privacy*" (Harbison et al., 2012) and also (Karmen, 2007). The victims themselves may also fear social blame, shame, and bad outcomes from within their family relationships, The victims may desperately need to avoid emotional or risk physical abuse pay-back from their perpetrators. While *perceived* or as ostensibly suffering from dementia or mental health problems, the victim's credibility makes any attempt to complain less likely to succeed (Lachs et al., 1997).

When in action, EFA encompasses a broad range of negative behaviours. These can add extra dimensions of financial, physical, and psychological Abuse, fraud, theft or misappropriation of possessions, estates, or stolen welfare support payments. Life savings can be stolen, misapplied, and dissipated, ostensibly with the claim of helping the victim. It can become quite complicated to locate or trace incidences of Elder Abuse and Elder Financial Abuse (Davey & McKendry, 2011). As above, some personal perceptions of professional ethics or beliefs about statutory privacy regulations can also discourage professional or other helpers to intervene.

Elder Abuse and Elder Financial Abuse is commonly *perceived* to occur mainly in end-of-life settings (Jayawardena & Liao, 2006) while in palliative care (Cohen et al., 2010). Other professional or institutional situations can also hold risk factors for potential victims. People with financial, personal, institutional, or politically vested interests can try to restrict actions on the victim's residential (NGO) care staff. NGOs and institutional staff can sometimes be naïve about elder abuse protection of clients/patients. This can occur when the patient/victim's behaviour does not meet the carer's expectations such as in cases of frequent bed wetting or in contradictory behaviour. Institutional staff carers can become impatient and/or abusive (Homer & Gilleard, 1990; Kurrle & Naughtin, 2008). Fraudulent or inappropriate claims by perpetrator can tend to divert or block any actions by other stakeholder carers. Carer staff or their institutional organisations might otherwise be too busy to devote time, or any have interventional concerns. A further barrier to protection for the victims, in fearing any possible legal or employment ramifications, staff and institutional organisations can purposefully decline to become involved.

In another NZ quantitative study, Weatherall (Weatherall, 2001) surveyed managers of residential care facilities and found some alarming figures. Weatherall reported that twenty-six managers of those 27 care facilities were interviewed. In that study, they found that 92% of the managers were able to identify at least one case of Elder Abuse in those care facilities. The manager respondents reported that, for 31% of the cases, elder Abuse was a factor in at least one case each in admissions to their residential care facilities. Weatherall found that the incidence of psychological Abuse and Financial Abuse were also frequently reported.

Chapter 7.

Some Anecdotal Case Histories

During the research for this Dissertation, some institutional carer staff cited several anecdotal cases they had encountered during their employment. They suggested that, despite the existing legislation, Elder Financial Abuse is occurring in New Zealand.

Case History #1

In one case, an elderly mother residing in a New Zealand rest home was told by her son that she must sign a document allowing her family to sell her house. Unless she assigned the document, she would not see her grandchildren again. That is extortion. The son allegedly claimed she would be unlikely to need the place again. The home was where she, the victim, had raised her family.

Case History #2

In another, at a Christchurch assisted residence home, the aging mother, was suffering from early-onset dementia symptoms. Her nursing staff found she did not have enough funds left from her government superannuation pension. Some of her government welfare pension left just sufficient for pleasurable and additional lifestyle costs. Due to EFA withdrawals by the EPA perpetrator on her pension, she found she then had insufficient funds. She had no money to get a taxi to visit her doctor, attend her regular hospital visits, purchase a favourite toothpaste, or buy the shampoo she liked. Her son, then the Enduring Power of Attorney (EPA) for her estate, claimed '*she had spent it all.*'

The retirement home care staff reported that they occasionally had to buy her preferred toiletries, birthday, or Christmas gifts just for herself or the patient's family out of their own pockets. She, reportedly, had incurred *little or no* outgoing private expenditure apart from the incumbent rest home costs.

In the meantime, the son, had allegedly bought himself a brand-new utility Land Rover vehicle *reputedly* from the proceeds of the sale of his mother's house. He claimed the Land Rover was, ostensibly, to 'take Mum to the doctor or the hospital.' It was claimed by her residential home staff that neither that the son, as EPA, nor the family had visited her in two years.

Perhaps, in a more charitable view above, the mother's deteriorating dementia communication abilities were *claimed* by the son and by the family for her to have advanced to declining sentience, cognition, and mental health. The perpetrators also fraudulently claimed that the aging or dementia now had limited meaningful contact with the victim. They claimed that any protective interventions by other stakeholders, carers and others were no longer necessary or effective and the intended involvement by any well-intentioned people was a waste of time.

An Extreme Case in New Zealand

The extreme nature of the case, an elderly man was put in a nappy and a wetsuit overnight. Locked in a dark room overnight, was forced to wear a nappy and a wetsuit he could not remove. The judge found the couple guilty on charges of neglect. The man was found guilty of theft charges, assault, and forging a document for funds that he used to buy a new car.

<https://www.stuff.co.nz/national/crime/129127642/son-found-guilty-of-locking-elderly-father-in-room-at-night-and-forcing-him-to-wear-wetsuit> Retrieved 11:44, Jun 30, 2022, from Stuff.co.nz an online newspaper reported by Sam Sherwood

Chapter 8.

Who Loses and Gains?

Victims may not *necessarily* be elderly but may also be economically and regressively marginalised. They can be disabled or disadvantaged because of accident trauma, mental or physical health. The victims can then become abuse victims. As with elder abuse cases. They can also become abuse victims because of birth disability (Kutin et al., 2017). As a generic label, the descriptive terminology about various types of abuse can sometimes be applied, as above, to a broad characteristics range of abuse victims. EPA or EPA as a specific category of violence, is more closely defined by stakeholders. The EA and EFA nomenclature, and as a separate category of violence, is useful to various stakeholders, referring to both victims and they describe the roles of perpetrators. It distinguishes their evidenced criminal behaviour from other types of violence. EA and EFA can reasonably be characterised to have similar concomitant and generic abuse issues, behaviours, and outcomes.

Referring again to the Britney Spears Conservator case, the incidence of similar abuses of trust is alleged to have occurred in that matter (Cohen, 2021).

This Dissertation topic mainly concerns older adults' victims in elder abuse but strives to acknowledge and include those who are abused and disabled for other reasons. Included are people who just cannot adequately manage their social, legal, or economic lives without assistance. As stated above, the victims of the criminal behaviours can be people other than only older people. And partially too, because of their isolation from the world due to their disability, they can be disempowered and marginalised. They can become institutionally, economically, and socially vulnerable. Their vulnerability to abuse can arise because of the lack of personal containment of co-morbidity symptoms. Such comorbidity can occur due to, say, bedwetting or concomitant disabilities from any resultant medical hospitalisation.

In our discussion, applying the term '*Elder Financial Abuse*' behaviours could then be construed to acknowledge and include those not necessarily elderly. The EFA behaviours are not exclusive to older people and can involve those people who become victimised by EFA-like criminal dynamics through their disability. The victims are people who suffer disablement or are marginalised socially, politically, or economically.

Bagshaw (Bagshaw et al., 2013) wrote about the likely victims of Elder Abuse: those more likely to become abused. Bagshaw has suggested that the most common form of reported or suspected [including financial] abuse of older people (often accompanied by psychological abuse) is by the 'older persons adult sons and daughters.' and by trusted family members. Abuse, including financial Abuse, also occurs in residential and palliative care institutions (Cohen et al., 2010). A current (2021) NZ Government investigation is researching '*Abuse in Care.*'

Much has been written and publicly discussed both about Elder Abuse and Elder Financial Abuse. The research and the *nature and prevalence* of the problem seem to be the most frequent discussion topics. Some of the cited references in the journals seem to prefer discussing individualistic casework rather than investigating possible preventative measures. In many of the available readings, less has been found or said on very down-to-earth *coalface* policy with ways of detecting, policing, and administering EFA risk behaviours and criminality. Myers explained that data required to study or verify the problem adequately is inconclusive and is often hard to obtain or verify sufficient to satisfy legality constraints (Myers, 2005).

Victims will tend to not complain due to shame or fear of retribution. (Wolf, 1998). Victims of EFA can be manipulated to be the cause of the problem in not meeting the perpetrator's demands. They can be made to appear at fault by the perpetrator in portraying their victim as if *they* are, ostensibly, the cause of problems. In not obliging culprits in the

commission of the EFA, they can manage and portray the victims as being the cause of their own complaints. The claims made by the culprit, about the victim, for not cooperating with the perpetrator's accusations serve to nullify any complaints by the victim. Any well-meaning interventions by others or stakeholders are negated by claims about the victim for not complying with the perpetrator's influence. The victim, again, forfeits personal sovereignty.

Also, the *perceived* credibility of the complainant has inherent problems. As stated above, the labelling theory effect of the role in which the 'victim' is cast tends to undermine any efforts by them to achieve remediation.

Present legislation in New Zealand has the unfortunate effect of controlling it *after the outcome* rather than providing steps and the foresight to prevent it actively. It becomes an '*ambulance at the bottom of the cliff*' paradigm insofar as it threatens and dictates what is illegal and what will happen to the perpetrator *after the offence is ever detected*. It needs a significant paradigm shift in the style of Kuhn (Kuhn, 1970), a total rethink. Laws do not necessarily or wholly *prevent* crime; they tend to set down the stakeholders' outcomes when the *detected* crime has by then been committed.

Chapter 9.

The Elder Financial Abuse Shift

This Dissertation proposes '*an ambulance at the top of the cliff*,' approach. The proposed Dissertation will advocate for some quite newer and more complete means of detecting, preventing, policing, and administering EFA as Elder Financial Abuse. These ideas are not presently *known* to be *collectively* available or implemented in NZ.

The current means of dealing with Elder Abuse and Elder Financial Abuse seems to be concerned more with what could *perhaps* be labelled as a casework *therapy approach*; counselling victims and abusers in improving relationships between abusers and victim (Papadopoulos & La Fontaine, 2000).

It is proposed, within this Dissertation, to advocate for a more wholistic operational model along with new or amended legislation to detect, prevent, deter, enforce, and administer NZ Elder Financial Abuse law more effectively.

To progress, it is necessary to first establish a proven case for the existence, prevalence and nature of Elder Abuse and Elder Financial Abuse in NZ. (Davey & McKendry, 2011) described the effects of NZ Elder Financial Abuse. They also discussed how hard EFA is to detect and trace [to any meaningful extent of usable forensic action].

Statistics Canada, as reported by Podnieks (Podnieks et al., 2010), showed that some 25% of elderly people reported elder abuse. The figures can vary but *all* seem to confirm the existence of Elder Abuse as does Peri (Peri et al., 2009).

The New Zealand Law Commission, in their year 2,000 Discussion Paper, argued for the need for protection of 'those unable to manage their own financial affairs' as victims involving "Misuse of Enduring Powers of Attorney' (EPAs) (New Zealand. Law Commission., 2000). Also, NZ Legislation, in 1988, also made the case that protection was needed for those not able to manage their own affairs (New Zealand. Dept. of Justice., 1988).

Their official accompanying reference guide gave details on fulfilling the requirements of the Act.

Some Existing Protections

In New Zealand, (New Zealand. & New Zealand. Dept. for Courts., 1998) The Protection of Personal and Property Rights Act 1988 gives *some* protection, among other things, to those not able to manage their affairs. It may become necessary for the incapacitated person, or their family or NGO carers, to appoint a person in the role of Enduring Power of Attorney (EPA). The Courts may also determine the need for appointing a formal EPA where the person's incapacity clearly warrants such an appointment (Coates, 2002) . The New Zealand NGO, Age Concern, have become a de facto consultative advisor to the New Zealand Government on matters relating to aging and wellbeing for older people. This dissertation further argues that the former Enduring Powers of Attorney (a.k.a EPAs), including the limited powers of the Welfare Guardians (WGs), do not leave sufficient protection to fraud or abuse to the victim.

Those roles, EPAs are also herein included as WGs) become what Carney (*Carney, 2015*) suggests what he has termed “*as representative payee schemes or “nominee” arrangements [and] are not compatible*” with the cognitive or even the human rights of the victim person. Such EPA or WG ‘arrangements,’ it can be argued, supposedly acts as conferring a perceived, proprietary but de facto, illegal license.

The 'Welfare Guardian' (WGs) is appointed by the Court and can only make welfare, comfort, and well-being decisions for and on behalf of the elder person, child (or disabled person). The Welfare Guardians are not formally empowered to make decisions about, or commit any actions, dealing with the person's estate, finances, or properties. The Courts, in both cases, of Enduring Power of Attorney or as Welfare Guardians (pp 5) 'are given extensive powers to supervise or revoke their appointments.' As with the EPAs. and quite

illegally, the WGs can manipulatively use their relationship with the victim to obtain, ('borrow') monies or assets and claim that the proceeds have been applied for the benefit of their victim. As advocate Some more robust, protection external and controls would, seemingly, offer better accountability or administration.

To the intending perpetrator, any claimed protection under today's legislation and the present absence of any adequate legislative lack of oversight or protective controls, can be conveniently mis-construed by the intending perpetrator. It is too easy, even simple, to assume the victim's property and personal rights then becomes the perpetrator's rights to convert the proceeds of the estate or property to their own purposes. In explanation, it can, under existing New Zealand legislation, become too easy to assume defacto control and entitlement, by an intending culprit, to have full possession rights and control of the victim's property, These can include assets which includes their victim's estate along with any economic incomes.

The EPA or WG perpetrator can criminally, through misrepresentation or by personal and convenient rationalising, to themselves or to other stakeholders, can seemingly entitle themselves to full control and the ownership of the proceeds of their victim's estate. Without a valid knowledge by other stakeholders, of the existing law, the EPA or WG can fraudulently misrepresent their activities and entitlement to other stakeholders. The culprit can fraudulently claim that their Court granted EPA and WG status passes legal and personal ownership and possession of their victim's estate' properties and incomes to themselves.

Naivety: The Present Legislation

The defacto, and Court disposed EPAs and Welfare Guardian roles, are not working sufficiently to give robust and working protective relationships for elder people or other victims. Rather than granting up robust protective or guardianship protocols, the New Zealand Courts have unwittingly granted an intending EPA, or even when acting in a very

limited WG role, the status to open the victim's 'wallet,' An intending perpetrator can be therefore granted and become what is, effectively, a de facto licence. It becomes a claimed or *perceived* right to manipulate to convert the victim's assets or estate for their own self-serving ends. It provides a *perceived* and semi-official means for the real purpose of the EPA used to become fraudulently used or knowingly misrepresented. It provides a rationalisation or even, eventually, become a somewhat 'leaky' means for potential perpetrators to defraud, threaten, and abuse elders. It thereby provides the perpetrator the means to profit from the relationship either criminally or perhaps even physically. The criminality occurs when the *sometimes-naïve* victim does not willingly accede to those threatened, abusive and claimed demands.

Age Concern publish many information brochures available to the public on many age-related topics. The relevant brochure produced by them is 'Enduring Power of Attorney: What? Why? How?' The brochure provides information and recommendations for those considering entering a Enduring Power of Attorney relationship either as an EPA or as an older person needing that caring.

In general, there is the major legal and mandatory function in appointing the EPAs. There is another, separate to the responsibilities and obligations of the EPA. The Act also refers to the role 'Welfare Guardian.' Both have statutory roles and obligations in caring or supervising for the person (Atkin, 1997). Criminal sanctions can result in cases of Abuse of the person and the role.

The EPA role can assume supervision and control of the person's finances including all their assets and incomes just as if *they* were the person for whom they are acting. They can control banking, sales and purchases of real estate, investments and even welfare incomes. They have legally sanctioned powers to administer the economic lives of the person.

A third common and de facto role is frequently used in providing informal care. Supervision is often provided by family members or close friends but with no formal legal or Enduring Power of Attorney Court involvement. In those cases, the helper person has not been registered or approved by the Court. They act only on the perceived or claimed need or altruism to look after the elder person, child, or friend or relative.

Cases of physical violence and threats to aging or dementia patients occur in New Zealand. ' Psychological or physical abuse by abusers occurs when they abuse their victim to sign documents for access to bank accounts, real estate, and welfare incomes or other resources. There is an apparent tendency for those perpetrators to assume that that they can, informally, have some familial or even Enduring Power of Attorney right to claim personal ownership or access to their EFA victim's estate (Stum et al., 2017). Also see Jury et al where the proceeds of an elder person's estate can be unilaterally converted by the perpetrator for use to their own ends. (Jury et al., 2017).

It is the intended purpose herein to show, aside from proven criminal actions, that the Courts can only intervene in appointing or revoking an EPAs appointment or a Welfare Guardian's powers. These legal actions frequently occur only *after* the criminality or intention has occurred. For some intending or current applicants for EPA or WG, there can be a tendency to treat the EPA and WG roles as a de facto licence to harvest the donor person's finances or assets; it is treated as their own property.

Goldfarb and Cardozo have suggested reinforcing the use of [Court] Protection Orders and, in ordinary circumstances, where the EA and EFA is already known and detected, such Protection Orders might be helpful (Goldfarb, 2007). The problem is made more difficult if the means or credibility for victims and whistle-blowers is limited or prevented before any action from Court Protection orders interventions can be instituted.

As discussed above, the perpetrators, the gatekeeper, will strive to prevent their abusive behaviour from being detected. Often, the victims find they do not have any credibility to report or accuse the perpetrator. That is always in recognising that the victim's *perceived* age and/or disability could undermine any whistle-blower attempts to report. The whistle-blower's credibility is often undermined as being disputed; their attempts to inform must first be perceived as *justifiable* (Malek, 2010) see also (Keil et al., 2010). Further, the New Zealand Government (2022) has enacted a Parliamentary Bill:

https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_99238/protected-disclosures-protection-of-whistleblowers-bill.
in discussion progress about some amendments to further protect whistle-blowers (Miceli et al., 2014).

As discussed above, the victim can also be emotionally or physically manipulated to believe *they* are the cause of the Abuse by not surrendering to the abuser's demands. Families will also try to maintain privacy and will avoid any shame by not reporting the problem. Court Prevention orders are what *follows* a recognised perpetrator abuse behaviour. Protection Orders will not occur *before* the EA or EFA abuse behaviour. Prevention *before* the act is therefore better than *after* the act. This Dissertation proposes a schema on prevention, detection and administration *before* the acts of EA and EFA Abuse become possible.

Misuse of the Enduring Powers of Attorney

The Law Commission (NZ) have published a discussion paper on the problem where criminal behaviours occur.

Kent (Kent, 2003) reported on the issues, and as also discussed in the Law Commission discussion paper showing how the formal or informal caring and management

powers can be misused (pp 4) where the EPAs are not acting in the best interests of the person they are supposedly representing.

Types of Misuse

The major concerns, listed here in shortened form, are frequently encountered as:

1. Outright embezzlement 'often rationalised [by relatives or others] as "borrowing."
2. The EPA, WG, formal or informal, is helping themselves to the donor (victim) person's belongings.
3. Failure to institutionalise the donor (victim) person for medical or palliative care where it is obvious that such is necessary. Often, necessary institutionalising the victim person is avoided so as not to detract from the size of the estate.
4. Prematurely institutionalising the donor victim/person to suit the needs of the EPA or WG.
5. Following on from institutionalising the donor/victim, the perpetrator/s then sell the person's home without their consent. In doing so, they can dash the person's (ofttimes irrational) hope of going back to their home because, realistically, they may never return there. The threat of selling the house, among other things, can also be used as manipulative blackmail for yet other abuses (e.g., financial abuse) of the person (i.e., "unless you sign this paper, I will sell the house, or you will not see the grandchildren again!").

Some journal writings have discussed methods of prevention but, in the main, they have taken the view that the preferred approach is to form committees pairing with police, counsellors [and other stakeholders] (Davis & Medina-Ariza, 2001). That approach is targeted at the coalface level, right *after* the elder abuse has been detected or reported. Though forming committees may be essential, interceding at the time after the abuse is

happening or has occurred, may not be effective. It is certainly not helpful for the immediate needs of the victim. Curtailing any probability of abuse *before it happens* must necessarily become the first line protection and defence for the crime and the victim.

Ploeg, Fear, et al, studied outcomes and found that interpositions [of other stakeholders] failed to reduce and may have increased the ‘likelihood or reoccurrence.’ They claimed that interventions had no effect on ‘case resolution and at-risk caregiver outcomes (Ploeg et al., 2009).’

Robust Protection Approaches

The core of this dissertation is centred around detecting, preventing, or deterring the abuse perpetrator's mentality and ability to abuse the donor/victim psychologically, physically, or financially. This paper proposes a holistic scheme for planned prevention and to increase their *perceived* likelihood of the abuser's activities being detected beforehand rather than occurring *after the fact* of the crime.

The proposal herein advocates for robust monitoring, auditing, policing, and oversight administration of the donor person's finances, economic life, or estate. This oversight restraining action should be done by legislation and, summarily, performed by a duly qualified and *specifically licensed* external authority. The properly formed Authority could be, for example, an upgraded agency and the resources of the NZ Public Trust. Other forensic institutions, NGO's, chartered accountants, or solicitors may also be appropriately licensed to similarly act to protect the donor's interests. Continued reliance upon the present powers of Attorney EPA and Welfare Attorney (WA) is clearly not working and, as above, needs relegation to the legal scrap heap. Some aspect of the EPA and WA could be retained but only under the robust oversight, control, and with regular auditing by the appropriately legal Licenced Authority or Licensed Trustee.

This submission proposes that organisations or people such described as, say, Public Trust NZ. or people acting as Court appointed 'Licensed Trustees', be granted the administration and auditing roles. Those appointed to those roles can be robustly selected from people such as legal practitioners, chartered accountants, academically proven administrators being financially and administratively bonded by government as a fidelity guarantee. Those organisations or practitioners could be specifically licenced and chartered as EA or EFA 'Licensee Trustees' but would require having appropriate professional, legal qualifications. With necessary forensic skills and accounting resources, the 'Licensed Trustees' could serve to audit *all* EA and EFA persons and all those involved in their trusted EPA estate's administrative function. The 'Licensed Trustees' will act as an oversight authority for family, relatives, friends (etc) undertaking carer roles. To move away from the soured names erstwhile associated with roles of formal and informal EPA, the amended legislation would, perhaps, rename those formerly acting then known as EPAs. Under an amended legislation, as herein proposed, those carers would, now closely controlled and administered, would act for those who could otherwise become victims and vulnerable to abuse. The proposed audits and administration will assist to circumvent predatory theft attempts before any criminality or financial abuse could occur. The most likely supervision authority could be The NZ Public Trust offices though other persons or institutions could also become suitably chartered and franchised through legislated empowerment as 'Licensed Trustees.'

Administration Resources and Costs

The NZ Public Trust, for example, already has established skills and resources to provide the required estate audits and care. With appropriate legislation and some added resource expansion, the NZ Public Trust could also turn its present resources to providing

statutory EFA, EPA and WG protection and auditing. These services could include detection, prevention, and administration for either informal or formal EPAs or WGs.

NZ Public Trust already have an established fee structure to mitigate their estate administration and auditing costs. Some clients, needing the services and protection of Public Trust or who elect to use bonded, and legislation appointed Trustee Licensees, may need assistance to meet the administration and auditing costs. Where there is some economic hardship or welfare marginalisation, some proportionate, reduced, or funded fee structure should be negotiable. Some clients may not have adequate or immediately realisable cash assets. To quote an often-used catchphrase in this context, the words '*asset rich but cash poor*' is, for some people, appropriate here. Any clients, because of their economic marginalisation, their rights for protection from cannot be denied. To ensure proper equality and human rights, all clients must be adequately protected.

This paper will propose that ALL persons, formally or informally acting as EPAs, or as WGs for an incapacitated or elder person will be legislatively registered. That registration proposal that *all* EPA or WGs should be legislatively required to claim their interest and involvement and is as suggested by Judith Davey, Ph.D., (a personal communication November 2012). Davey is a Wellington (NZ) academic and writer on aging, EA and EFA matters.

Whether acting formally or informally, the informal or formal (formal as EPA) should be registered and legislated to submit ALL documents, receipts, bank statements (etc). for regular and robust auditing for *all* claimed disbursements made upon the older person's (EFA) estate. This will include submission to a standard and full audit by an external audit authority or to a duly mandated and chartered trustee/licensee for all disbursements, any instruments of material relevance and for every six months. The proposed auditing regimen

will be required and performed by mandatorily and those duly chartered as licensed trustees
(Licensed Trustees?) as above.

Chapter 10.

Conclusion

This paper has invited the question: Elderly Financial Abuse in New Zealand: Is the Law sufficient? It became necessary to define scope and nature of the terms, what is meant by Elder Abuse and Elder Financial Abuse. The paper argues that Elder Abuse *of any kind*, it fits well into one broad generic abuse category singly best described as physical, psychological, financial or neglect. The discussion suggests that even children and those who suffer disability or debility, those abysmally poor or the very rich, any person can also be subjected to mistreatment and including elder abuse or financial abuse. One common factor emerges for all kinds of abuse is the ever-present imposition of a power differential in the relationship between the culprit and their victim. Contrarily, the victim can tend to become dependent on the perpetrator out of fear of punishment or becomes too ashamed to admit guilt or fault placed on them by the wrongdoer.

The question arises, is the presence of specific legislation carrying with it criminal dispositions for offenders, can that prevent abuse of any kind, elder abuse, or financial abuse. Clearly this is not the case as such criminality would never occur if the law adequately prevented such crimes. Similarly, the law and Courts can only become involved *after the act of the abuse* has taken place and *never* before the act.

This Dissertation shows above, from cases cited above, that the current New Zealand legislation is ineffective in *preventing* Elder Abuse or Elder Financial Abuse. New Zealand law is not a good and sufficient deterrent acting towards a presumptive prevention of offenders from committing their crime.

Considering the harm being done to powerless and maltreated victims, despite existing, law, a compelling case for robustly and radically changing legislation is presented above. Robust and custodial legislation, offering full supervisory administration is now

essential to ensure that integrated prevention, detection, and forensics, auditing and administration must become the dominant legal philosophy. This Dissertation argues that both in theory and actual practice, new law replacing the present legislation must, in the lead, prevent and deter the perpetrator's mentality and ability to abuse the donor/victim psychologically, physically, or financially. New legislation must now place legal and administrative barriers and obligations on intending offenders in fencing off the means and opportunities of any intention to commit elder abuse and financial abuse.

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