

CITATION: *Sunana v Laming* [2009] NTMC 002

PARTIES: AYN SUNANA  
v  
DEREK LAMING

TITLE OF COURT: Local Court

JURISDICTION: Local Court

FILE NO(s): 20308866

DELIVERED ON: 30 January 2009

DELIVERED AT: Darwin (by posting)

HEARING DATE(s): 22 August 2008, 13 November 2008,  
1 & 2 December 2008

JUDGMENT OF: R J Wallace SM

**CATCHWORDS:**

*Adult Guardianship Act (NT)*

**REPRESENTATION:**

*Counsel:*

Applicant: M Allan  
Respondent: E Terrill  
Executive Officer, Adult Guardianship: G Martin  
The Public Guardian: I Kase / A Kudra  
Mr Peter Laming in person

*Solicitors:*

Applicant: M Allan - Barrister & Solicitor  
Respondent: Terrill & Associates  
Executive Officer, Adult Guardianship: Solicitor for the NT  
The Public Guardian: Cridlands MB

Judgment category classification: C  
Judgment ID number: [2009] NTMC 002  
Number of paragraphs: 137

IN THE LOCAL COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20308866

*[2009] NTMC 002*

BETWEEN:

**AYN SUNANA**  
Applicant

AND:

**DEREK LAMING**  
Respondent

REASONS FOR DECISION

(Delivered 30 January 2009)

Mr WALLACE SM:

1. On 9 December 2008 I made orders in this matter and promised written Reasons later. The orders were:
  1. Pursuant to s 15(2)(b) of the Adult Guardianship Act, PETER LAMING and the PUBLIC GUARDIAN are appointed as joint guardians of DEREK LAMING.
  2. Order 1 is conditional within the meaning of s 18(1) of the Adult Guardianship Act and confers on the joint adult guardians the following authority and functions:
    - (a) to make decisions concerning where and with whom DEREK LAMING is to live from time to time;
    - (b) to make decisions concerning DEREK LAMING'S health care and to consent to any health care that is in his best interests, except as otherwise provided in s 21 of the Adult Guardianship Act;
    - (c) to make decisions concerning DEREK LAMING'S day to day care so as:

- i) to facilitate his access to support services as required, and
  - ii) to facilitate arrangements for DEREK LAMING to be assessed for respite care in supported accommodation.
- (d) to facilitate, as far as is consonant with the expressed wishes of DEREK LAMING, regular contact between him and his mother, AYN SUNANA, the Applicant.
- 3. It is a condition, pursuant to s 18(2) of the Adult Guardianship Act, of Orders 1 and 2, that the joint adult guardians facilitate a medical and psychiatric review and assessment of the medication taken by and appropriate for DEREK LAMING.
- 4. Pursuant to 2 16(1)(a) of the Adult Guardianship Act the Public Guardian is appointed as the manager of the finances and estate of DEREK LAMING.
- 5. Any person with standing in the matter pursuant to s 13 of the Act is granted liberty to apply to bring the matter back on short notice.
- 6. These Orders are to be reviewed within two years of today.

Dated: 9 December 2008 at Darwin

The Reasons follow.

### **Family History**

- 2. Derek Laming was born in Papua New Guinea on 22 November 1977. He has a younger brother Barry Laming, who has often resided with him, but now lives in Townsville Queensland, where he is a soldier in the Australian Army. Derek Laming is now 31 years of age, by all accounts a strong stocky – sometimes overweight – man severely handicapped by his autism.
- 3. When Derek Laming was about 3 years old the family moved from PNG to Darwin. It seems that it was fairly soon after that that his autism was first diagnosed. He attended mainly specialised schools and learning centres.

4. In January 1987, the family moved to Melbourne, Victoria. Derek Laming's special education continued. In Melbourne, when he was about 9, his mother, Ayn Sunana ("Ms Sunana") returned to full time work as a nurse, and as such was the main – much of the time the only – breadwinner of the family. Peter Laming, Derek Laming's father, pursued studies in the field of psychology, kept the house and largely looked after Derek Laming.
5. The parents separated, Derek Laming staying with Peter Laming, and eventually divorced in 1997. At about that time Peter Laming moved back to Darwin, taking Derek Laming with him. If Derek Laming had then been a minor, rather than a man of 19 or 20, Peter Laming's abduction of him could have had certain consequences pursuant to the *Family Law Act*. As it was, no such legal consequences flowed. I have no doubt however, that Peter Laming's unilateral action further poisoned relations between him and Ms Sunana who was left living 2,000 miles away from her son. I have no way of telling how bad relations between the two were before that, but I am sure they were worse afterwards.
6. In Darwin, Peter Laming was briefly employed full-time as a psychologist. He has only worked intermittently since then. He has been the major caregiver to Derek Laming who has also received individualised support from various agencies, mostly on weekdays, since then.
7. Ms Sunana, as a result of this abduction and because of the separation which preceded it, and because she was working long shifts to support the family before the separation, has not cared for Derek Laming for any substantial periods of time for more than fifteen – it may be nearer to twenty – years.

### **The Application**

8. On 18 March 2003 Ms Sunana made her first Application pursuant to the *Adult Guardianship Act* ("the Act"). On 23 June 2003 Mr Luppino SM made a Temporary Order appointing not Ms Sunana, but Peter Laming and the

Public Guardian as Joint Guardians of Derek Laming. Mr Luppino ordered that his Orders be reviewed within 90 days. On 15 September 2003, Mr Lowndes SM conducted that review, and made orders for 2 years with Peter Laming and the Public Guardian again as Joint Guardians of Derek Laming.

9. The matter did not come to be reviewed within two years as Mr Lowndes SM had ordered. It was listed for that purpose on 13 September 2005 before Mr Cavanagh SM, who adjourned the review to 3 October 2005 with the consent of the two representatives in court that day, Ms Parsonson for the Executive Officer, Public Guardianship, and Ms Marris, then the representative of Derek Laming's interests. On 3 October it was again adjourned (Ms Terrill, for Derek Laming, being the only noted appearance), this time to 17 October, by Mr Loadman SM. The reason for that adjournment appears to have been the unavailability of Mr Peter Laming, according to a letter from Mr Craig Clark, Adult Guardianship Officer.
10. Soon after the Court received Mr Clark's letter, Ms Sunana also wrote requesting a further adjournment. It is perhaps worth reproducing that letter which contains a summary of Ms Sunana's concerns at that time:

**“REVIEW OF HEARING OF DEREK LAMING’S ADULT  
GUARDIANSHIP ORDER**

Dear Sir,

Please delay the hearing set for 17 October 2005. The Adult Guardianship Board did not inform me of this hearing. I spoke with Elpeth Crosby on 4/10/05 who was unaware that no one contacted me for this Adult Guardianship review hearing.

Craig Clark and Peter Laming were appointed as joint Guardians on 15 September 2003. I did not attend the hearing at that time due to financial difficulties. Since the above named men were appointed as joint Guardians, Derek was not allowed to visit me despite return air fares for two being paid by me for Christmas 2002 and Christmas 2003.

Caring for Derek is a distressing 24/7 job. As Derek's mother, I had attempted to relieve Peter Laming and my strong desire to stay in contact with Derek had been hindered by Peter Laming's obsession and ownership of Derek since Peter Laming was awarded as a Guardian.

Derek had been deprived of his mother and his brother Barry in Melbourne. There are other issues concerning Derek's care and the impact on Derek since he (Derek) was taken to Darwin by Peter Laming.

I am unable to get to Darwin early for the hearing. I will arrive in Darwin on 18/10/05 by train as I am relocating to Darwin to share the burden of caring for Derek.

Please note that I have vacated the above address on the date this letter was written. I can only be contacted on my mobile phone, 0438 051499.

For your consideration please.

Ayn Sunana

Derek Laming's mother"

11. The review was again adjourned, again by Mr Loadman on 17 October to 24 October, and further adjourned by me on 24 October to 2 December 2005. The reason for that, longer adjournment is clear from a letter sent by Ms Terrill, then and still Derek Laming's legal representative, to Ms Parsonson, dated 9 November 2005, a copy of which is on the court file:

"Dear Madam

RE: SEPARATE REPRESENTATION FOR A REVIEW UNDER  
THE ADULT GUARDIANSHIP ACT FOR D LAMING

Thank you for forwarding me Mr Clark's email to you of 3 November 2005.

I must say I am somewhat concerned by Mr Clark's attitude.

As you are aware this matter was initially adjourned because I was concerned about the proposed order that the Public Guardian no longer be a joint guardian in this matter. Mr Clark told me very

specifically that he no longer wanted to be a guardian as there was “no role for us” in the matter. He said that the Public Guardian did not have a “functional role”, they are only the buffer between Territory Health Service and the father and that he could not fault Mr Laming for any of his decision making.

Mr Wallace SM made it very clear that he expected an updated medical report to be provided at the next hearing date. Dr Reid’s report is not sufficient.

A psychologist cannot provide an updated medical report. Mr Laming is also not independent, and bearing in mind the animosity between the parents, it is essential that there be an independent person providing a medical update.

Furthermore, I am concerned about the matter myself and I wish to receive an updated medical report from an independent psychiatrist.

I must say that I am appalled by Dr Reid’s report. In particular: “I understand the Lithium was commenced several years ago on the basis of an Osteopathic hair analysis”. Lithium is an extremely dangerous drug and a routine blood check is not required every year or two. It is required constantly as it can cause serious damage to the kidneys.

Dr Reid’s report of 4 June 2003 is extremely disturbing. It appears he was prescribing drugs (or somebody has prescribed Haloperidol) without even seeing Derek, at least at that time. He may have seen him once or twice a year since then but at that time it appears that he was prescribing drugs without even seeing the patient.

I am somewhat perturbed by Mr Clark’s comments “We need to keep in mind what the purpose of the review is”. I am not quite sure what he means by that but the purpose of the review is not to just continue previous orders without any enquiry as to what has been happening since the making of the order. The review is to determine the effectiveness of the guardianship order in providing for the care and protection of the represented person and also, amongst other things, to determine whether there are any changes that might be necessary to the existing orders. Mr Clarke has told me that wanted to be discharged because there was no need for his involvement as he had very little to do with the case in the time since last order.

The previous order provided that Mr Peter Laming and the Public Guardian were to make decisions concerning Derek’s healthcare and to consent to any healthcare that is in his best interest.

The mother, who has a right to be heard by the court, has very clearly put before the court issues in relation to Derek's healthcare. From what information we have to date there may very well be very clear issues about his healthcare which the court has to review and see whether the best decisions have been made for him. Derek cannot make those decisions himself. That is why the court reviews these orders. As we know guardians often do not make the best decisions for a represented person and thus they have to be removed. Whilst Derek is clearly under a disability and the orders should obviously continue, it may very well be that the order in relation to determinations for health issues may have to be varied in some way. I and the Court needs to know if the appropriate treatment has been given to Derek to date and that can only be ascertained by a qualified medical practitioner advising the court of his medical condition and what treatment is required for him.

I look forward to receiving a report in those terms as soon as possible.

Yours faithfully

TERRILL & ASSOCIATES

EILEEN TERRILL"

(I believe it was Ms Sunana who first raised the concerns about Derek Laming's medication).

12. On 2 December Mr Loadman set the matter down for hearing on 24 March 2006, adding an Order that no party remove Derek Laming from the jurisdiction of the Northern Territory.
13. On 24 March 2006, the matter came on for hearing before Mr Trigg SM who records Ms Parsonson and Ms Terrill appearing in their accustomed capacities, Ms Allan appearing for Ms Sunana, and Peter Laming appearing unrepresented. It appears that all parties consented to the orders made by Mr Trigg that day, continuing the Guardianship order, but removing the Public Guardian and leaving Peter Laming as the sole guardian of Derek Laming. Mr Trigg ordered a review within two years.

14. On 17 March 2008 the matter duly came on for review before Ms Fong Lim SM, when the review was adjourned to 25 April 2008, apparently because Peter Laming had been served late with the Report prepared for the review, and Ms Sunana had not been served at all. On 28 April Ms Oliver SM adjourned the review to 12 May. On that date the matter came before Mr Trigg again. It is clear from the Orders that Mr Trigg made that day that a new cause for concern about Peter Laming's guardianship of Derek Laming had arisen, namely, Peter Laming's capacity to continue to act as the manager of the finances and estate of Derek Laming. Mr Trigg reinstated the Public Guardian as a joint guardian with Peter Laming, and transferred the management of the finances wholly and solely to the Public Guardian. Those orders were to remain in force until the conclusion of the hearing.
15. Mr Trigg allotted two days for the hearing, 29 July and 1 August 2008. It is quite exceptional for an Adult Guardianship application to give rise to a hearing of any length – two days is most extraordinary. In the event, having commenced the hearing on 29 July, I sat on the matter not only then and on 1 August, but also on 14 August, 22 August, 13 November, and 1 and 2 December.
16. This has been the only contested hearing of the matter, and the only one in which evidence has been taken, beyond the reports prepared for court, and various attachments to them. Ms Sunana, the applicant, was apparently unable to travel from her then home in Melbourne to be at the hearing listed before Mr Luppino in 2003, while in 2006, when the matter was listed for hearing before Mr Trigg, and when she was present and represented she consented to orders contrary to those she had applied for. Mr Trigg's handwriting is never easy to read but I can decipher enough of his endorsement to see that her reason for doing so, at least in part, was her acceptance that she and Peter Laming could not work together as joint guardians.

17. I am also of the view that Ms Sunana and Peter Laming cannot work together, and it seems to me to have been eminently reasonable for Ms Sunana to have consented to the 2006 orders, given that she then had, as far as I can tell, no practical alternative to offer to Peter Laming's continued care of Derek Laming. It also seems clear on the evidence that Ms Sunana's original reason for bringing her application was concern for Derek Laming's welfare. She had concerns, which were far from baseless, about the quality of care Derek Laming was receiving from Peter Laming, in respect of the safety of Derek Laming's medication, Derek Laming's safety on the streets and the level of hygiene and general care he was receiving.
  
18. When later, a further legitimate concern emerged, about Peter Laming's application of Derek Laming's money, Ms Sunana renewed her application at the due date for review, and the matter accordingly went to hearing. I can't see how anyone could accuse her of being unreasonable in doing so, given the accumulation of topics of legitimate concern, and the apparent inability of the authorities to allay those concerns. As for the Court's time, I suppose it might have been more efficiently spent – we can always suppose that – but I cannot think of a more important use of the court resources than in the proper and careful exercise of its protective jurisdiction under the Act (or, similarly, under the *Community Welfare Act* and its successor). I appreciate that it is not only the resources of the Court that have been consumed in this long hearing, but also government resources represented by the four counsel acting, many witnesses, and the presence throughout most of the hearing of Ms Parsonson, Ms Crosby, Ms Politis and Ms Campbell. On the other hand, the workings of government branches not often stirred by controversy, can often be improved by the random shafts of light that came to fall upon bits and pieces of their operation in a case like this, and I am sure that those four officials will have taken away from the hearing an improved appreciation gained in a fairly painless fashion (compared, say, to

a coronial inquest), and at no great expense (compared say, to a thorough-going review of operations).

## **ISSUES**

### **I Wandering**

19. Derek Laming sometimes goes out walking. On occasions he does so accompanied – shadowed might be a better word – by his carers or Peter Laming. At other times he does so alone. Often this is at night. Given Derek Laming’s intellectual disability, it is impossible to be sure how well he understands the dangers presented by road traffic. That is one of Ms Sunana’s legitimate concerns. Secondly, Derek Laming behaves strangely, in various ways, and is unable, because of his autism, to respond in any normal fashion when he is questioned or challenged by people concerned by his strange behaviour. It is reasonable to fear that an intervenor may be led to assault Derek Laming or Derek Laming to assault an intervenor, as a result of the strange behaviour coupled with failure to communicate. That is another legitimate concern. Thirdly, any person wandering the streets of Darwin alone is at risk of victimisation by antisocial individuals or gangs. As far as I can tell, there is often no motive for such bashings apart from the perpetrators doing it for fun, or to show off to their friends. There is no more pattern to violence so motivated than there is to lightning strikes.
20. The evidence in relation to Derek Laming’s wandering comes from various sources. Peter Laming has often shadowed his son on his rambles. Peter Laming insists that Derek Laming is traffic-safe, that he does not endanger himself while out walking. Peter Laming has ceased to obstruct Derek Laming from going for a walk when he wants to. He leaves the gate unlocked. His major justification for doing this is that Derek Laming reacts badly and violently to having his will thwarted. There are other justifications. For one, Derek Laming’s wanderings are the most important form of physical exercise that he gets, and, given the amount and quality of

the food he consumes, and given that he is inclined to become seriously overweight, he needs a lot of exercise to preserve his general health. Furthermore, Peter Laming seems determined to treat Derek Laming as a grown man whose wishes should be respected as far as possible, and Peter Laming is engaged on a programme aimed at endowing Derek Laming with the largest array of life skills that Derek Laming can practicably acquire, in order that Derek be able to function independently in the community.

21. Critics of Peter Laming's laissez-faire approach to Derek Laming's wandering submit that his approach is motivated not so much by respect for Derek Laming's autonomy, but more by Peter Laming's fear for his own safety if Derek Laming's will is thwarted. Peter Laming concedes that there is an element of truth in his submission, but accords it no great significance. I am not sure about that. Another criticism of Peter Laming's rationales is that his hopes for Derek Laming's overall skill development are illusory. As to that, on the evidence before me, I agree. Derek Laming has been making fitful progress in developing some life skills, but I have seen and heard no reason to think he will ever be able to lead a life without a lot of supervision.
22. There is some support in the evidence for Peter Laming's belief that Derek Laming has learned to safely walk around road traffic. For one thing, as far as the evidence discloses, he has never been struck by a vehicle. For another, his carers seem content to watch him wander, and he evidences to them a capacity to walk safely. See, for example, the evidence of Steve Vitone, given on 29 July 2008.
23. On the other hand there is a mound of material giving cause for concern about his traffic skills. For one, there was the evidence of Tiffany Manzie, given on 1 August 2008. Ms Manzie, as it happens, is the sister-in-law of Monique Politis, and also the neighbour of the Lamings in Fern Court Leanyer. She spoke of and had sworn on 7 February 2008 an affidavit, part

of Exhibit 2, concerning an event at about 1045 on a rainy night in Leanyer, when she was driving and, to quote her affidavit:

“I almost ran over Derek who was standing right in the middle of the intersection of Leanyer Drive and Ridgehaven Circuit. He was very difficult to see until I was right near him. Returning after collecting my son [about 15 minutes later, according to her evidence] Derek was still in the same spot”.

24. Ms Manzie was worried enough by the danger she perceived Derek Laming to be in to go to the Laming house and suggest to Peter Laming that he go out and retrieve his son. Peter Laming did not. (Ms Manzie had only once before been moved to approach Peter Laming on a matter concerning Derek Laming, as to which, see below.)
25. Ms Manzie seemed to me to be an honest, objective and tolerant person, and not at all prejudiced against Derek or Peter Laming. Having lived next door to them since about 2002, she has unavoidably seen a good deal of Derek Laming and her evidence as to his wanderings and their frequency was, to me, persuasive: to the extent that Peter Laming’s evidence as to the frequency of wanderings was at variance from Ms Manzie’s, I prefer hers.
26. That Ms Manzie’s experience on 7 February 2008 was not singular is established by extracts from police records. Derek Laming has often been returned home by police. Sometimes a member of the public has reported something. At other times it seems police may just have happened upon him. As I read the reports, it is clear that some have been occasioned by Derek Laming’s strange behaviour – often not threatening to himself or anyone else. Others have the reporters concerned for his safety from traffic. The police reports are before me in two forms. There is a bundle annexed to the affirmation of Ms Sunana affirmed 29 April 2005 (Exhibit 10), obtained by her pursuant to the *Information Act*. And there is a second bundle produced on 1 December 2008 in answer to a summons issued on behalf of Ms Sunana. This bundle was misplaced somewhere in the Registry for the

last two days of the hearing, and none of the parties or their legal representatives has seen it. One of the clerks found it and brought it to me on 3 December. I believe s 12 of the Act permits me to do what I have done, which is to read through this bundle.

27. I would have expected the PROMIS entries produced in answer to the summons to include all of those produced in answer to Ms Sunana's freedom of information application. I have, however, found five documents in the latter not included in the former (PROMIS Nos 155308, 166460, 195025, 195414 and 201198). Perhaps the terms of the summons explain that discrepancy. There are thirty or so PROMIS records in the former that are not in the latter. Some, at least, of them relate to incidents subsequent to the FOI application. As to other discrepancies, who knows. It seems to me quite possible that there are yet other police records yet undiscovered. For all that, those before me are enough to be going on with.
28. I reproduce the records which unambiguously have Derek Laming making a traffic hazard of himself:

29/10/99                      1842 (Time)                      187077 (PROMIS)

"...standing at the intersection Lakeside/Trower causing traffic hazard".

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4/11/01                      1626                                      407433

"...He is walking back and forth across the road..."

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6/7/02                              1108                                      499739

"...Male is stepping in the middle of the road talking to himself... Jumps [sic] up and down on the spot...Male is bare foot and Compl is also worried that he may be hit by a passing vehicle".

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3/9/02

2125

523145

“... intersection of Bagot Road and Nightcliff Rd...is walking down the middle of the road...Compl is in a green Magna behind him with her hazard lights on...”

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17/9/02

1451

530209

“...walking in the middle of Trower Rd. He is looking up at the sky”.

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23/10/02

0130

549167

“...Comp is concerned he may get hit by a veh...”

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25/10/02

1951

550689

“Caller states...walking down middle of Leanyer Drive...Compl states vehicles are swerving to avoid him”.

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14/11/02

1902

561781

“...Comp states a male wandering around in the middle of the road...”

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20/1/03

2024

600525

“...Upon conveyance to watchhouse members located Derek Laming walking in the middle of Vanderlin Drive [Peter Laming...eventually attended...and Derek left in his care”]

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28/1/03                      1158                      604789

“Comp reports Derek Lemming [sic] walking in the middle of the road [Leanyer Drive – and police attending find him walking there]”

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5/9/03                      0006                      730412

“Caller says there is a male walking down the middle of the road in Leanyer Drive”.

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6/1/04                      1659                      813325

“...Laming was walking on the road on Parer Drive and vehicles had to slow and swerve around him...”

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1/2/04                      2055                      830492

“...a male now known as Derek Laming walking in the middle of Leanyer Drive...went to Lamings house and spoke to his father. Father stated his son is autistic and just likes to walk and does most nights and had good traffic sense...”

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22/4/05                      0025                      1374933

“[Police]...on [sic] route to Kulaluk, located Laming on Trower Road (crn Rapid Creek) walking in the middle of the road”.

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4/9/                      2053                      1526281

“[Police]...Located Derek Laming on Vanderlin Drive...concerned for welfare – that Laming may get hit by a car. [Then, after a tussle on the median strip]:

...Father Peter Laming attended and was happy willing and able – nil intoxication – to take care of his son”.

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26/9/05                      1919                      1548124

“...walking in the middle of Leanyer Drive near Ridgehaven Cct...caller worried he will get run over...His father Peter was contacted and attended to take care of him”

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10/10/05                      0800                      1561263

“Comp reports male person at roundabout McMillans and Vanderlin Drive...attempting to walk into the traffic”.

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24/7/06                      2242                      3336264

“...came across Derek standing in the middle of the road at the intersection of Leanyer and Ridgehaven, Leanyer. Derek had soiled himself. Members contacted his father and he attended and Derek was left in the care of his father”.

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3/8/06                      2005                      3347460

“...Derek walking in the middle of Leanyer Drive...escorted Derek home as his father refused to pick him up”.

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9/5/08                      2100                      4067890

“...Compl states a vehicle nearly hit him [Derek Laming] as male has no road sense...”

29. There are another dozen or so where the police reports (and the reports from the public that led to police attendance) do not disclose whether Derek Laming was on the road or off it. The records also give an indication of the extent of his wandering – a few of them relate to sightings in Darwin City, a couple to Palmerston. Others suggest that he may not always have walked all the way from home to the place where he attracted attention – there are

incidents where he is spoken of having slipped away from his carers or wandered off from Mindil Beach Market etc.

30. Obviously these incidents show that Derek Laming's wandering place him occasionally – a reported two or three times a year, with who knows how many unreported – at risk of being struck by a motor vehicle. Enough instances are recorded of his walking on the road for me to reject Peter Laming's evidence and belief that Derek Laming has good traffic sense. Peter Laming has held that belief, it seems, since at least February 2004, and clung to it in the face of many instances evidencing that Derek Laming's traffic sense is fallible.
31. There are many people who walk on the roadway in Darwin. One common reason, at least until a few years ago, was that in the older suburbs there were no formed footpaths, and it was easier to walk on the road than along untamed nature strips. Most of those making the choice are capable of making a fairly informed assessment of the risks involved. The capability of others – notably, drunken people – is less clear, as is that of Darwin's most inveterate and prominent road walker, the woman known as "Pigeon Woman", often to be seen pushing her worldly possessions straight through the middle of the intersection outside the Magistrates Court building, with no apparent regard for traffic. Her survival, unscathed, and that of Derek Laming, may suggest that the risks are negligible. Clearly, however, they are not. Almost every year one or two pedestrians die after being struck by vehicles – I can recall in recent years a woman hit on Trower Rd, across from the Rapid Creek Market one Sunday morning. The collision was at first thought to be minor – she was struck only by a car's wing mirror – but her liver was fatally ruptured by the blow. Similarly, not long before that, there was the death of a man standing on the edge of a suburban street in Fannie Bay, again hit by a vehicle's mirror, not hard enough for the driver to be aware of the collision. As those instances show, the middle of the road is not always the most dangerous place to be.

32. Section 4 of the Act says:

**4. Best interests of represented person to be promoted**

Every function, power, authority, discretion, jurisdiction and duty conferred or imposed by this Act is to be exercised or performed so that –

- (a) those means which are the least restrictive of a represented person's freedom of decision and action as is possible in the circumstances are adopted;
- (b) the best interests of a represented person are promoted; and
- (c) the wishes of a represented person are, wherever possible, given effect to.

33. Peter Laming's practice of permitting Derek Laming to roam as he pleases is obviously in accordance with s 4(a) and s 4(c). The question is whether Derek Laming's "best interests" are being promoted by the practice of allowing him to run the risks of death or injury that are entailed in using the means that are least restrictive of his freedom of action, and giving effect to his wishes.

34. Mr Steve Vitone, Social Worker, was the first witness called in the matter. He had had contact with Derek Laming since about 2001, some of it as a hands-on support worker. He had some – I suspect extensive – experience of watching Derek Laming walk the streets of Darwin. Asked by Ms Allan whether Derek Laming was safe while out on his own Mr Vitone said

"...I'm not sure, to be quite honest. And that's always been an issue with Peter, myself and others. I think Derek's a grown man now and when he's with support workers out in the community and myself at times, he's proven that he doesn't go and walk – there's a red light, he doesn't go walk across the road, He'll wait. If the support worker is not holding his hand, the support worker is there shadowing him at times, Derek's in the lead and Derek will stop at the lights and wait until the light shows that he's able to cross and he'll cross. He won't just walk aimlessly out into the traffic. I don't believe that at all.

Okay, but it's the case, isn't it, that Mr Laming has been comfortable with Derek being out on his own as a pedestrian late at night?---I don't know if he's comfortable, I believe he's exhausted a lot of the

time and I know for a fact he's many a times out in his vehicle and looked for Derek. And he was just one or two streets around and he's taken him home. And then possibly two or three hours later Derek decides he wants to go for a walk again. I don't believe that's the majority of cases though.

And when you tell us about him going in the car to look for Derek, is that based on what Mr Laming has told you?---Correct. And there's been occasion that I've got a call from the police because Derek has a card made up if indeed he got into some strife. There's emergency numbers on it, so my name's on there and my phone number. The police called me and said you know, we have Derek, who (inaudible) and I said have you called the father, no. I said well here's his number, give him a call and if no luck call me back. But there hasn't been an occasion that they've called me back. So I'm assuming they've spoken with Peter and the situation was addressed.

How many calls have you had from the police?---Probably three in four years.

And were they late at night?---Yes.

Because this is behaviour, wandering behaviour is something that just doesn't happen when paid carers are involved with Derek"---No, it's in the evening. He doesn't have night carers.

Yes, so what I'm saying to you is the wandering behaviour is something that only occurs when he's under the supervision of his father?---Well he wanders with the support worker but they wander with him. If he wants to go from a walk from Leaner to Nightcliff and the support worker's up for it, well they're in for a 15 k walk."

35. At the end of the evidence I was no more certain of Derek Laming's safety with traffic than Mr Vitone was. I am persuaded, as I think Mr Vitone was that Peter Laming has an exaggerated and mistaken belief in Derek Laming's traffic skills. But I am not satisfied that the risk of his being hurt is so large that his freedom ought to be any more circumscribed than it has been under Peter Laming's guardianship.
36. The other risks arising from Derek Laming's wanderings are even less knowable. I will not recite from police records the many instances of their being called because someone had taken alarm at Derek Laming's

strangeness. I do accept that the rate of these incidents has appeared to decline lately, but it may be that that appearance has been occasioned by the large number of calls initiated in the past, but not presently, by Leanyer Primary School, which seems for a time to have had a recurrent problem with Derek Laming's presence on the premises, frightening some children, amusing others and in any event disrupting the business of the school, which went as far to issue a notice to Derek Laming pursuant to the *Trespass Act*. The utility of the notice as directed to him was predictably, nil, but its existence allowed the school to call police and empowered the police to remove Derek Laming from the premises. When that bundle of police records is removed from the mass, the change in frequency of other incidents is less marked.

37. It may be seen as a sort of tribute to the discernment and humanity of most of the residents of Leanyer, in particular, that the reactions of those alarmed by Derek Laming's presence has been to call the police, and report not only their alarm but also their sense that there is something not quite right with him. As far as I can tell, there is no record of anyone taking things into his or her own hands to abate any nuisance Derek Laming has created. (Perhaps Derek Laming's size has something to do with it as well.)
38. Still, there must be some sort of risk that Derek Laming will frighten someone enough for that person to attack him in the perceived need for self-defence. Again Ms Manzie witnessed an incident (this was the other time she was moved to go to Mr Peter Laming's house to ask him to intercede) which she described (at p 6 of the transcript of 1/8/08):

“The only other time that I've ever felt the need to, to raise it as an issue was when Derek was on Leanyer Drive one day and a lady was outside her property and Derek was standing on the medium strip, like on strip outside her house. And she was clearly distressed and she was screaming at Derek and Derek's obviously non-communicative standing there and he was looked to what in my opinion which isn't much other than just observing Derek on the streets since he's moved in, he was getting a little bit distressed by

the situation. It was just a, a negative circumstance so I've pulled over and said to the lady he's, he's he's not able to communicate with you, don't worry he's not going to go into your house, I'll go, he's my neighbour, I'll go and get his dad to come and get him. And that's the only other time that I've gone next door and that I would say to you would be three years ago".

39. Thanks to the good sense and good hearts of the people affected, that would seem to be about as bad as it gets.
40. Mr Peter Laming appears to expect the general run of people to become accustomed to Derek Laming's appearance and behaviours and to learn to live with it. So far, it must be said, that expectation appears by and large to have been met. However, as Ms Terrill, Derek Laming's representative at the hearing, submitted, people come and go: those who know Derek Laming or know of him may be relied upon not to harm him; those who do not may be as alarmed as the woman Ms Manzie spoke to.
41. Overall, the risk of his coming to harm in this way does not appear to be great, and, in my opinion, certainly does not raise to great a threat to Derek Laming's best interest that his liberty, wishes etc ought to be curtailed or thwarted to guard against it. The traffic risks are, on the evidence before me, more to be feared. As against them, is Derek Laming's evident desire, if that is the word, to ramble around, and the pleasure, if that is the word, that he takes in it. The alternative, for the present, is to, in effect, lock him up unless there is someone available to escort him. Section 4 of the Act calls for a balancing of considerations that are not, truly compatible. Overall, I am not satisfied that Peter Laming's policy – of effectively allowing Derek Laming to roam as he wishes – is proved to be so contrary to his best interests that it must be changed, by more restrictive measures that would restrict Derek Laming's freedom of decision and action, and frustrate his wishes. In short, I am not persuaded that Derek Laming's wanderings constitute a reason to impugn Peter Laming's guardianship of him.

## II Medication

42. Peter Laming has instituted and continued a regime in which Derek Laming takes – not as regularly as Peter Laming would like, but usually – medications including vitamin and mineral supplements and lithium carbonate. As for the vitamins and minerals, no one has much criticism and I suspect no one quite shares Peter Laming’s enthusiasm. Many people are induced, at one time or another in their lives, habitually to take this or that non-prescription medicine, rarely causing any harm and almost never doing any demonstrated good.
43. The lithium carbonate is another matter. For one thing, it is a prescribed medication. For another, if used to excess, it can cause serious medical problems.
44. Peter Laming’s attention was brought to bear on lithium during the late 1990s when the family was living in Melbourne and he was researching the literature on autism. There he found reasons to believe that extra Vitamin B6 and magnesium might be of assistance to autism sufferers, so those readily available substances became part of the regime. According to his evidence on p 66 of the transcript of 14 August 2008, Peter Laming at that time consulted a Dr Allen (if that is the correct spelling) whom she found sympathetic insofar as Dr Allen seemed to have done much of the same reading as Peter Laming.

“And Dr Allen was the most educated in that sense in Melbourne at the time and I told him about this and yes, he was aware of the B6 and magnesium and he was aware of the glymeth glycine and others – other things that have been used for people with autism, some – most of them not very successfully. And he suggested that we do the – the – amongst other things he suggested that we do the – the hair test, the hair analysis. The hair analysis unlike the blood test gives you a picture of what is being collected in the body over a period of time rather than what is actually in the body in the blood at this particular moment. And on the basis of the hair analysis he noticed elevated levels of copper and lead so he gave us some – some sort of calcium (inaudible) or something or other to – to reduce – to rid the

body of excess lead and copper. The other thing that came out of that test was an extremely low level of lithium and he said, ‘Well, you might be able to improve his performance if you give him lithium that sort of balances that up somewhat’ and so on that basis I tried the lithium and I found that it didn’t make a dramatic difference, but it did certainly take the edge off his anxiety, it made him just a little bit more relaxed, a little bit more – what’s the word I used, there was words that I used in – less edgy I think I said”.

45. It was never clear to me whether Dr Allen practised mainstream medicine (Dr Stanbury described him as an osteopath; perhaps getting that information via Dr Reid – see Ms Terrill’s letter quoted above). The way Peter Laming spoke of him could not fail to suggest he might be some sort of quack, but be that as it may, the evidence is that as a result of this test, showing (I do not know how conclusively) that at that moment Derek Laming had a deficiency of lithium, compared to the norm. Peter Laming embarked his son on a regular regime of lithium tablets.
46. There is, of course, an accepted medical use of lithium (hence the availability of the tablets). Dr Barrie Kenny, psychiatrist says in his report dated 30 November 2005, p 6:

“Lithium is a medication that has been used for many years. It has been generally used to control mania and it has generally been used to control manic-type behaviour in Bipolar Affective Disorder, sometimes in chronic Schizophrenic illness and sometimes in other circumstances to supplement other medications, sometimes it will cause a fine tremor and there are reports of its causing kidney dysfunction”.
47. Dr Kenny, who seems to have been charmed by Peter Laming as well as impressed by his dedication to Derek Laming, then goes on to describe the possible toxicity of lithium. Dr Kenny was inclined to play down general concerns about toxicity, but, more importantly, he was not at all perturbed by the dosage Derek Laming was accustomed to take.
48. Further evidence on the issue came from Dr Dennis George Stanbury, a very experienced practitioner (MB BS Adel 1954). Dr Stanbury’s evidence

helped me to understand Dr Kenny's apparent insouciance. The gist of Dr Stanbury's evidence is this. First, there is no known effect on autism as such from taking lithium. At most, when there is reason to suspect (from eg. family history) that bi-polar disorder may be coexisting with autism, taking lithium (to combat the bi-polar disorder) might be indicated. There is nothing in Derek Laming's history and no other psychiatric diagnosis to suggest that he has bi-polar disorder.

49. Secondly, the dosage taken by Derek Laming is sub-clinical in terms of psychiatric efficacy. Derek Laming has been in the habit of taking about half as much lithium as would be expected to be needed to work and taking that reduced dosage five days a week, rather than seven. This has the advantage of making it unlikely that he will poison himself by taking too much of the drug. It also means that it can be stated with a fair degree of certainty that his taking the medication is having no effect upon him whatsoever.
50. Thirdly, it is a matter of speculation what the appropriate dose is for Derek Laming, and likewise a guess that the dosage he takes is about half of that. In order to arrive at an appropriate therapeutic dose, a patient needs to provide regular blood samples for testing to see whether the concentrations are right. There have been few – very few – blood samples taken from Derek Laming during the decade he has been on this medication. There are understandable reasons why this is so – Derek Laming's responses to new situations, such as pathology collection room, are poor – but as a result of the rarity of these tests one can only say that on three or four occasions in the last ten years or fifteen years lithium was at a safe level in his blood.
51. Fourthly, the only reason Derek Laming has been taking lithium is Peter Laming's decision that he should do so. That decision came about in the first place, if I interpret Peter Laming's evidence correctly, out of concern that Derek Laming, might be deficient in that mineral. Later Peter Laming

became persuaded that, in some unspecified way, the lithium helped with Derek Laming's management. I say "unspecified", because the echos of Peter Lamings previously expressed opinions (in Dr Kenny's report, for example) are vague, and because Peter Laming in his evidence said several times that he does not regard the use of lithium as a management tool in looking after Derek Laming.

52. Fifthly, lithium is, in sufficient quantities, toxic. As it happens, the therapeutic dose is not a lot lower than the toxic dose – hence one of the reasons for the frequent blood tests of those using it. As I have said, there is no reason to believe that Derek Laming has ever poisoned himself with lithium, or that he ever would if he adheres to the regime that Peter Laming has devised for him.
53. Sixthly, (although this does not have much to do with Derek Laming's case) Dr Stanbury was, I think, a little surprised that Peter Laming had been able to persuade a series of doctors to prescribe lithium in the complete absence of any psychiatric diagnosis indicating its use, and in circumstances where no regime of regular blood testing was in place (nor, if the prescribing doctors had put their minds to it, was there ever likely to be).
54. That is my summary of Dr Stanbury's evidence, which I accept. Dr Kenny's report does not diverge from any of those points, so far as the report discusses them. On the material before me I conclude that there is absolutely no reason to believe that the administration of lithium medication has done Derek Laming any good at all. As it happens, it has probably done him no harm either. However, it could do so. The evidence from Peter Laming and others, is that his storage of medicines, including lithium is anything but secure. They are kept in a drawer in his bedroom. Peter Laming says that Derek Laming would not seek them out there and he knows him better than anybody, but even if his confidence is not misplaced, there seems to me to be no justification for having a potentially toxic, and

practically useless, medication within the household where Derek Laming has free range.

55. I may be wrong, and Peter Laming may be right. The lithium may be positively affecting Derek Laming. But I would not take his word for it, and I do not believe any responsible medical practitioner should either. Unless a psychiatric practitioner, after examining Derek Laming, is persuaded to recommend the continued use of the medication, I believe it ought to be removed from the house and not supplied to Derek Laming.
56. The case with the other prescribed medication, haloperidol, is, if anything, in my opinion even more strongly against. Even Dr Kenny, supportive as his report is for Peter Laming, finds it hard to be enthusiastic about its use (report p 7):

“Haloperidon is not one of my ‘favourite’ antipsychotic medications. In my view there are better and newer ones available, for example Risperdal. However, if Peter Laming has been using it with Derek and considers it helpful, then my view is that he should be supported in so doing and if and when he thinks it’s not helpful, he be encouraged to experiment with other medications when indicated and after discussion with his doctor psychiatrist.

The way Haloperidon is being used it is unlikely to cause any significant side effects and hence my view is that we should not be concerned about it”.

57. Dr Kenny’s understanding of “the way Haloperidol is being used” is “occasionally only and when he is particularly agitated – and when he is prepared to take it”. That understanding is in accordance with the evidence of Peter Laming before me which was to the effect that Peter Laming’s resort to Haloperidol is now rare, and becoming increasingly more rare. Peter Laming’s evidence provides only one memorable example of an occasion when in his opinion the use of Haloperidol was crucially effective to restore Derek Laming’s mood to acceptable levels, and that was during a

trip to Papua New Guinea, when they were staying in a village with Ms Sunana's relatives.

58. Dr Kenny's opinion as to the essential harmlessness of this medication is an expert opinion, but it is not clear to me whether he was ever informed of the incident in June 1998 when Derek Laming probably overdosed himself – perhaps greatly – as described by Peter Laming most fully on 13/11/08 at p 83-84 of the transcript of that day. Derek Laming had apparently snatched the bottle, poured an unknown number of small tablets into his hand and scooped the lot. Peter Laming seems then to have had a belief that the number was 10 or so, but who knows? The incident is singular but does establish that concerns about Derek Laming misusing medication are not entirely theoretical.
59. There is nothing in the evidence that explains to me why Haloperidol was prescribed in the first place, or, indeed, by whom. Ultimately there is no opinion as to its appropriateness that does not rest upon the opinion of Peter Laming. On the material before me I do not understand what need there is for any anti-psychotic medication for Derek Laming. As in the case of Lithium, in my view it ought to be removed from the house and not supplied to Derek Laming unless a psychiatric practitioner is persuaded to prescribe its use.

### **III Financial**

60. As far as I can tell Peter Laming controlled Derek Laming's finances from the time he was born until Mr Trigg's order of 12 May 2008. As far as I can tell, until the advent of Eric Pojari, Peter Laming administered Derek Laming's estate responsibly and prudently. In later years Peter Laming may have been somewhat nonchalant in mingling his own small streams of income with Derek Laming's, but, it being the case that the whole was being spent upon the household – essentially Derek and Peter Laming – and it being the case that Peter Laming ran the household essentially to care for

Derek Laming, there was no harm in that, and certainly no suggestion that Derek Laming was being left with less money that he was entitled to – quite the contrary.

61. Meanwhile Peter Laming preserved and invested Derek Laming's small capital until he was induced to lend it to Eric Pojari. Mr Pojari is from Papua New Guinea. He appears to be a cousin of Derek Laming, a son of Ms Sunana's eldest brother. Mr Pojari came to Darwin to study nursing, and he has continued with those studies to and including the time of hearing of this matter.
62. Exhibit 11 is a copy of an email Mr Pojari sent to Ms Sunana in an effort to raise funds from her, purportedly for the purpose of paying for his studies. He had no success in this appeal. Instead, Ms Sunana was alerted to the fact that Peter Laming was lending money to Mr Pojari purportedly for that purpose, and suspected – rightly as it turned out – that the money Peter Laming was lending was Derek Laming's. This discovery made her extremely angry, and her anger – with Peter Laming and even more so with Mr Pojari – remains strongly felt. In September 2008, when she saw them both outside the Fern Court house, she was moved to stab Mr Pojari in the face with some keys she was carrying, causing an injury (fairly superficial, from the sound of it).
63. I have not heard from Mr Pojari in the matter, and I do not know whether he is simply a needy nursing student from a poor country seizing his chance to gain qualifications to work for the good of mankind, or whether he is something of a conman. Peter Laming's reasoning to justify his lending Derek Laming's capital to Mr Pojari is complicated. Peter Laming's fondest hope has been that Mr Pojari, having lived for a few years while studying with the Lamings, and being bound to Derek Laming by ties of blood relationship fortified by gratitude for the loan, will be on hand to assist substantially in the care of Derek Laming as Peter Laming ages, and perhaps

became Peter Laming's replacement after Peter Laming's death. I can understand the attraction of that idea, but I have no reason to think it at all likely to come to pass. For one thing, Mr Pojari is not entitled to long term residence in Australia, and there is no certainty that he will ever be granted such entitlement. For another, he, like anyone else, may have other ideas about what he wants to do with his life, especially if he come to marry and have children himself.

64. More realistically, Peter Laming must have welcomed another person in the house who could offer some respite in his stewardship of Derek Laming; and also Peter Laming may well be right in thinking that it has been good for Derek Laming to have the steady acquaintanceship of another person.
65. Even so, the loans to Mr Pojari were a reckless misapplication of Derek Laming's capital. Furthermore, the moneys were advanced to Mr Pojari in so casual a way, and what repayments there have been were so poorly documented, that, although it has been fairly well established what has been lent, it is impossible to discover from any records what has been paid back.
66. Peter Laming, by the end of the hearing, claimed that all the money had been repaid, and Derek Laming's estate replenished. In the end I was of the view that Peter Laming was not in the least dishonest in relation to these loans. I believe he thinks the money has been restored in full. (I suspect the restoration has come at least in part from his own money not from Mr Pojari.) He may be right.
67. He may ultimately also be proved justified in his hopes for a lasting non-financial dividend from the commitment of care and affection from Mr Pojari to Derek Laming. But be that as it may, the episode of this reckless loan satisfies me that Peter Laming ought not have the management of the finances and estate of Derek Laming.

68. I have been able to treat this aspect of the matter quite briefly in these Reasons because Peter Laming accepted that he could not expect to be entrusted with that management.

#### **IV Housekeeping**

69. The state of cleanliness in the Fern Court house has always been among Ms Sunana's concerns. In her affidavit (Ex 10) she says (paragraph 6):

“The house in which Derek lives is untidy and dirty. Even though I have not been allowed inside the house since January of 2007 I can see through the windows that the place is dirty and untidy”.

70. In her evidence and speaking of earlier times she said (p11-12 of the transcript of 11/8/08):

“And was there any visiting? Did you come up for short visits?---  
Yes, I came up.

Yes, tell us about that?---I came up in 2003 and I found the living conditions worse than a pig and a dog would live in.

How long did you stay during that visit?---Couple of days.

And did you stay at the house or did you stay elsewhere?---Yes.

Can you describe what state the house was? Like, be specific, not necessarily - - -?---Yes. I'll give you one example. Derek would pour water right behind the door – you know – and then sleep on top of the water to cool off and the house was filthy, so very, very, very filthy. Very filthy.

What do you mean by filthy?---Dirty. Uncleaned.”

And:

“What sort of things was he doing that made you feel that he had become difficult?---He was wet, he was dirty, he was smelly, non-compliant with hygiene.

So when you say wet, did you mean that he'd - - -?---Urinate.

- - - urinated?---Yes.

And when you say ‘dirty’ what do you mean?---Faecally incontinent.”

71. That this was not a unique or isolated state of affairs is clear from the evidence of Monique Politis, who works as the investigative officer within the Office of the Executive Officer, Adult Guardianship. In her evidence on 29/7/08 Ms Politis spoke of paying four visits to the house (Transcript 29/7/08 p 25-30):

“Can you describe the house to his Honour, what you found when you arrived?---Okay. It’s a basic Housing Commission house. It’s – there’s a trampoline in the front yard. There’s a couple of trees in the front yard. There’s also some chairs on the small verge of the veranda. We entered the house when invited in by Peter Laming. It seemed reasonably tidy, but you know, it’s like a bachelor pad as such because it was quite unkempt. And what struck my straight away was the strong smell of urine.

When did you smell that?---Basically at the doorway before I even entered the doorway. And then entering I was overcome by it. And then we didn’t go into any other rooms, but the bedroom, I went straight to the bedroom.

Whose bedroom?---Derek Laming’s bedroom because we were to serve a document on him and his father said ‘he hasn’t got up out of bed yet’.

What time was that?---That was about 10.20 in the morning. So the carer went in there to try and wake Derek up and to get him out of bed and he didn’t want to come out of the room. So I actually had to enter the room and once again was overcome by the severe strong smell of urine.

So the first visit to the household was to serve Derek with a notice?--  
-Yes, that’s correct.

And you said you’ve been there three times?---Yes.

What was the - - -?---The second visit we went there to provide Peter Laming with a court report that Eileen Terrill, solicitor for Derek Laming and Sharon Parsonson and myself went. And once again Peter Laming was present, the carer was present and Derek.

Was it the same carer as the first occasion?---I could not tell you, I'm not sure. It was a female.

A female?---Yes.

And the state of the house again?---Very similar. Once again the strong smell of urine. Quite untidy, yeah.

And how long did you stay on the first occasion?---Not very long, about 10 minutes or between 5 and 10 minutes.

And on the second occasion how long did you spend?---Approximately 25 minutes I'd say.

And you said you attended there on a third occasion. What was the reason for the third occasion?---The third occasion was prior to the application that – on Monday 28<sup>th</sup>, the morning of Monday 28 July to serve Peter Laming with an application but he had actually left when I arrived and the carer advised me that. The carer was there, I did not see any sign of Derek Laming.

And the carer male or female?---Female.

Had you seen the female carer before?---No, I don't remember if it was the same one from the previous time.

And was the same odour still there?---Yes, absolutely. Very overbearing. I did notice when I went in there yesterday to serve a -  
- -

So you've been there four times?---Yes, sorry four times. I did go yesterday to serve the affidavits on Peter Laming that there were two mattresses on the trampoline outside which I presumed to myself, I presumed that they were airing because Derek may possibly – urinating on them.

Did you go inside the house?---No, Peter met me at the door and I handed the affidavits to him.

Was the smell able to be detected by you then?---Yes, it was. It was almost immediate when I walked in the gate, the smell alerted me to the mattresses on the trampoline”.

72. As it happens, although I have been acquainted with Ms Politis for a decade or so – she used to work in the Local Court Registry – I do not know whether she is more or less fastidious than the average person.
73. Ms Politis’s sister-in-law, Ms Tiffany Manzie, the Lamings’ next door neighbour was asked (on p 8 of the transcript of 1/8/05) whether she had noticed any smells or unpleasant odours coming from that house or its yard. She said not, and she regarded the yard, at least, as tidy; she said “...the yard kind of looks like it’s a kept environment.” Again, I know nothing of Ms Manzie’s sensibility to smells.
74. Mr Steve Vitone, in one capacity or another, was involved in Derek Laming’s day care between about 2000 and 30/6/08. Mr Vitone was among those who admired Peter Laming’s devotion to and care of Derek Laming. But his admiration did not blind him to some realities at least. Of the domestic situation when he first became involved Mr Vitone said (p 13 of the transcript of 29/7/08):

“...Well when we were with the department that Derek was in a state of extreme anxiety, he was not able to participate in almost anything. It was lying in faeces and urine for hours at a time, refusing to shower, refusing to participate in any daily living activities and wearing clothes for a length of time that was unacceptable and that’s why the department was trying to do interventions to assist Peter in the management of Derek”.

75. Mr Vitone was, however, firmly of the view that in this respect, as in many others, there had been a vast improvement. On p 17 of the same day’s transcript he said:

“And do you know what’s done to manage them? Like whether he uses some kind of adult nappy or whether there’s a rubber sheet on the bed? Is there anything done like that?---There is a Kylie I know of that used to be on the bed. It’s a Kylie, it’s a plastic sheet that has material on the top that sort of absorbs.

And if – so if Derek wets the bed do you know whether he gets up or – because he’s wet the bed or does he essentially stay in the wet bed

until the morning? And just tell me if you don't know?--- I know historically Peter and Eric would try and assist if Derek got up and was (inaudible) and there was possibly a reason for it and it wouldn't be because he's wet the bed. And he would be prompted to use the shower.

Have you been in Derek's bedroom?---Yes.

Does it smell of urine?---No.

You took a long time to answer me?---I was just thinking of one of the town's camp's I was in. If someone asked me does it smell of urine, well yeah, it does. But does that mean it hasn't been cleaned. What's your reference? I can say – the bathroom here smells like urine. If he hasn't urinated himself it wouldn't smell like urine.

So is there an odour to the room itself because of his mattress having repeatedly been wet or the carpet or other furnishings, does the room itself smell of urine?---No, no. If you would have asked me eight years ago I would have said yes. But not presently.”

76. Again, I have no knowledge of Mr Vitone's sensibilities, although I would expect them to be fairly robust, given his use of town camps as a referent.
77. Ms Politis's observations were made towards the end of the period of which Mr Vitone spoke, that is, in the improved state of affairs.
78. Ms Sharon Parsonson, Executive Officer, Adult Guardianship, mentioned in her evidence having visited the Fern Court house two or three times. On the first occasion (transcript of 1/8/08, p 35). Derek Laming was in the shower when she arrived, and stayed there. Ms Parsonson thought that the house "...looked a bit messy that time". As to any smells, she was out on the verandah and smelt nothing.
79. Her second visit was in the company of Ms Politis on 23/2/08 (p 36):

“We went to see Derek who was still in his bedroom and there was a smell of urine at that point”.
80. Ms Parsonson's third visit was in the company of Ms Eileen Terrill, Derek Laming's legal representative. On that occasion Ms Parsonson again waited

on the verandah, and that time noticed nothing remarkable by way of smell or untidiness.

81. Ms Tracey Campbell, adult guardianship officer with the Office of the Public Guardian, visited the house at Fern Court twice in mid 2008. According to her evidence (see the transcript of 29/7/08 at p 51-52) the first of these visits was, not by design, a surprise one – she had been unable to make phone contact – the second was by appointment. During the first she remained at the front door: during the second she went into the house. Neither time did she notice any smell, and she says that “things were tidy, there was nothing on the floor” at least on the second visit.
82. Melissa MacDonald, client services manager of Territory Care and Support Services, gave evidence on 1/8/08, and spoke of her workers finding “The smell of urine when they come in in the mornings to support Derek when, to get him out of bed”. (p 55 of that day’s transcript)
83. It is in my view not at all difficult to reconcile these accounts, all of them given by impartial witnesses (except Ms Sunana). It is not in dispute that Derek Laming wets himself and his bedding and soils himself. If he has done so, until he can be persuaded to clean himself up, the house stinks. It seems to fall to Peter Laming, or Eric Pojari, to change mattresses etc. If they are not there, or tired, the place continues to smell. Mr Vitone’s evidence speaks of Peter Laming being often exhausted.
84. Overall then, there will often be a smell of urine in the house, and sometimes of faeces. Occasionally the nuisance does not have an end put to it as quickly as it might. However, most of the time it is abated as soon as Derek Laming can be talked into the shower. In any event the smell is not so pronounced as to impinge upon the neighbours, eg. Ms Manzie.
85. As for the general order of the house, it seems to be often less than an ordinary householder would expect, but seems never to enter the realms of

total disorder and sometimes, at least, tidy enough to meet that ordinary standard. Given that the house is occupied by three men, one of them (Derek Laming) utterly uninterested in tidiness, another (Peter Laming) often tired and the third (Eric Pojari) busy with work and studies, it really does not sound too bad.

## **ALTERNATIVES TO THE STATUS QUO**

### **I Ms Sunana's proposal**

86. Ms Sunana's proposal, is summarised in paragraph 21 of her affirmation of 29 April 2008:

“If Derek is placed in my care I want to leave Darwin and move to Townsville where there are other members of my language group living. Derek's brother Barry is in the army and is also stationed in Townsville. I also plan to bring a member of my family out from PNG who can assist me in caring for Derek”.

87. Ms Sunana expanded in her evidence concerning the Townsville community of her wontoks (p16 – 17 of the transcript of 11/8/08):

“There are families who live in Townsville. They come from the area where I come from. We have the same culture, same language and we know each other. They encourage that I move there because few people from my area who live in other parts of Australia eventually settle in Townsville and that's were I intend to settle where I have cultural support”.

88. Ms Sunana, it seems, has had this idea for some time: she has discussed it with Peter Laming in the past. She is due to retire from her nursing in about three years, and wants to make the move.
89. That Barry, Derek Laming's brother is living in Townsville is, in the context a bonus, but not part of Townsville's principal attraction. Ms Sunana appreciates that Barry's residence there will not be permanent. It is expected to be interrupted, at least, when Barry goes to Duntroon, and would be expected to be further interrupted by Barry's postings overseas and

around Australia. Ms Sunana, as her evidence as a whole may be hoping that Barry will be there and will be a help, but well knows that a lot of the time he will not be there.

90. Nor did I interpret her evidence as meaning that she expected any help from her wontoks in looking after Derek Laming. Their presence would be a comfort to her, and a good reason to think she could find a welcome in Townsville, but no more than that.
91. Her proposal to bring a relative down from PNG to help look after Derek Laming did not appear to be fully developed. (In fairness, how could it be in her state of uncertainty as to whether Derek Laming would be placed under her guardianship?) From cross-examination by Ms Terrill (transcript of 11/8/08, p 27):

“When did you intend to move to Townsville?---I would prefer to go ASAP.

Okay. And who would look after Derek when you got there?---I would – initially I would be on holiday. So about eight weeks, three months I’ll be on holidays initially and my sister’s willing to come down to help out in the event that I’m not there to – the hours that I’m away at work.

Where does your sister live?---Port Morseby.

And how old is she?---She’ll be late 40s or 50.

And how long could she come down for?---I think the immigration allow them to stay here for three months I think.

And has she got any experience of looking after somebody with Derek’s disabilities?---No. She’ll be just like a mother at home if I’m – when I’m at work.

Derek needs more than somebody just like a mother though, doesn’t he?---Yes.

Yes. So do you think somebody who doesn’t know his problems would be able to care for him properly?---Well, Derek knows his aunties.

When did he last meet his aunty?---The last time – a couple of years ago.

For how long?---Just passing on holidays.

Well, he doesn't know his aunty very much at all does he?---No.

No. Do you think you're being realistic in what you're proposing?--- It may sound unrealistic but I have never been given opportunity to care for Derek”.

92. The idea seems not entirely unrealistic – more likely to be realised, I would say, than Peter Laming's dream of Eric Pojari staying around to become Derek Laming's main care provider – but leaves many questions still to be answered. It assumes that Ms Sunana could find a succession of relations willing to drop what they're doing and come to live with her and Derek Laming for two or three months at a time. It leaves unexplained why they would do so, aside from familiar love and kindness. Ms Sunana has some money – a house in Melbourne in which she has, she thinks, about \$50,000 in equity, another in Darwin in which she may have some equity, and \$100,000 or so in superannuation (as at August '08, when the collapse in share values had already gone some distance) - enough to pay the fare for visiting helpers, and to look after them, but not enough to pay anything more than pocket money. Derek Laming does not sound like fun to look after, and he can be violent. Would, in the event, Ms Sunana's relations be willing?
93. It assumes that Immigration law would not impede the arrangement. I suspect Ms Sunana is right about that.
94. It assumes that Ms Sunana will be able to act as Derek Laming's principal caregiver. Circumstances beyond her control – I mean Peter Laming's abduction of Derek Laming from Melbourne, and his use of a notice under the *Trespass Act* to keep her out of the Fern Court house – have, as she recognises, left her capacity in that regard untested. No one who has listened to her could doubt her pure concern for Derek Laming's welfare. This is not a case where her concern is simultaneously motivated by a desire

to strike back at her ex-husband. But it is not known whether she would have what it takes to look after Derek Laming from day to day: the physical strength (although I would guess, having seen both of them, that she would be at least as strong as Peter Laming) the endurance and the patience. Certainly she would be less well read on the subject of autism than Peter Laming, but it might be that a lifetime of nursing has given her a stock of practical knowledge that would compensate for that lack of learning.

95. It assumes that Derek Laming could be successfully relocated to Townsville. As Ms Sunana pointed out in her evidence he's been moved a lot in his life – by jurisdiction from PNG to Darwin to Melbourne as well as from address to address in Darwin and Melbourne. He has gone on trips (of some duration) to PNG. So it does not seem immediately problematical to propose another move and I have no reason on the evidence to think Derek Laming at 31 to be any less adaptable that he was at 20 or so, when he was brought to Darwin. It also assumes that Derek Laming would be content to be cared for by his mother. There is, necessarily, no good evidence on this point, again because Ms Sunana has not had much chance to find out. But in my opinion, what evidence there is suggests that Derek Laming would be content. I refer here to the evidence touching on those occasions when Peter Laming has left Derek Laming in her care so that he, Peter Laming, could have a bit of a holiday; and also to evidence of other, apparently successful contacts between Ms Sunana and Derek Laming, one of which occurred (in mysterious circumstances – someone Ms Sunana refused to name rang her to inform her that Derek Laming was out by the roadside, roaming – Ms Sunana drove there, picked him up, took him shopping, then to her home for the night, then to his home) during the latter stages of the hearing. Whether or not Derek Laming desires to have contact with Ms Sunana as part of his life with Peter Laming (and the evidence, not just from Peter Laming, is that, on the whole, Derek Laming doesn't: see, for example the evidence of Mr Vitone on p 18 of the transcript of 29/7/08), I have no reason to believe

Derek Laming could not, within a different routine, come to live cared for principally by Ms Sunana.

96. Ms Sunana's Townsville proposal also rests to a degree upon there being in that city publicly funded support services which could assist with Derek Laming's care and supervision. Ms Sunana has made some very preliminary general inquiries as to what is available there, and has the general impression that things are pretty much the same as they are in Darwin. Her evidence on these matters was not sufficient for me to have any confidence that services in the two places are comparable, and I should add that, even if I were satisfied that they are comparable, I would have to doubt whether Ms Sunana there, would be as successful at obtaining those services as Peter Laming has been in Darwin.
97. It seems, in summary, clear to me that, at least until Ms Sunana's retirement from work, her Townsville proposal depends upon access to assistance – her sister, government services – which would not necessarily be available, and also draws on (without depending on) optimism about Barry Laming's presence, and the cultural and social comforts she would hope for there. Ms Sunana's Townsville plan is not at all ridiculous; it may be quite practicable, but I am not persuaded that it is practicable right now.
98. If Ms Sunanan were to take on the guardianship, and the care, of Derek Laming right now, she would have to do so as the occupant of her two bedroom unit (one of a block of 10), and in a context where she is in full time work. When she said she would like to move "ASAP", I take it that that would involve, (in no particular order) (i) packing up and selling her Darwin unit, (ii) finding and purchasing a home in Townsville (at least 3 bedrooms if her sister is in the picture), (iii) finding work in Townsville (not hard, I suppose) and (iv) investigating support services in Townsville and engaging them on Derek Laming's behalf. She would need to get all of these things done while coming to a modus vivendi with Derek Laming, a

process which, in my opinion, alone would be likely to take up most of her waking moments for months. While it is easy to imagine that, all going well, Derek Laming's quality of life in Townsville would eventually be equal to that he enjoys in Darwin, I cannot believe that the time – months, I think, on the most optimistic assumptions – he would necessarily spend in that unit would be anything the quality of life he has at Fern Court. In the absence of pressing reasons approaching necessity, I cannot think it justified to take such a leap in the dark.

## **II Supported accommodation**

99. If Derek Laming did not have the dedicated support of someone – his father, his mother, or an outside chance like Eric Pojari, then the best housing the community would have to offer him is the kind of supported accommodation spoken of by Bonnie Doreen Solly, who gave evidence in the case. Ms Solly is the Programme Manager of Sommerville Community Services; she has worked in disability services for some 30 years; she seemed to have a thorough knowledge of the services on offer from her organisation and others.
100. It would seem likely that one of these services, most probably Sommerville's, would suit Derek Laming pretty well. That is, he could be accommodated in a house-like environment, shared with other disabled people, the houses being staffed 24 hours per day. The carers would make informed efforts to teach Derek Laming the basic living skills necessary to get by in that situation, and no doubt there would be opportunities for further development of Derek Laming's life skills beyond that minimum, if he seemed to have the potential and the carer had the resources.
101. From all the material I have read and heard concerning Derek Laming, the presence of other residents at such a house would be something he might take a while to adjust to. Derek Laming has on occasion been violent towards Peter Laming and other carers (and occasionally members of the

public) when frustrated or thwarted, so there might be problems for others as he settled in to supported accommodation.

102. I cannot imagine that Sommerville, or any other provider of such accommodation, would permit Derek Laming to walk about as he does now. It is difficult to believe that they would have sufficient staff to follow him about (as his day time carers have, as spoken of by Mr Vitone), and equally difficult in these litigation-conscious times, to imagine any organisation having the nerve to let Derek Laming wander streets the on his own, when the alternative is to lock him up against his will. (As discussed above, some might consider that the better choice. I do not.)
103. It is quite likely that, eventually, supported accommodation will have to be found for Derek Laming. Peter Laming is 61, and it seems unlikely that he could continue physically to look after Derek for more than say another 10 or 12 years. Ms Sunana is 56. If she came to care for Derek Laming – as she may – and if she found she was capable of doing it as primary caregiver – as she may – then again there must come a time when she would physically be unable to continue doing so – perhaps in about 15 years. As I have said, there are reasons to doubt whether Eric Pojari, or Derek Laming’s brother would either want to, or be able to take the role on.
104. However, supported accommodation is certainly not an offer that is immediately available. Ms Solly’s evidence was (unsurprisingly) that there are no vacancies and a substantial waiting lists. Even if it were an immediate option, it seems to be the unanimous unreserved opinion of all reasonably informed sources – Dr Kenny might be a good example – that the superintending care of a dedicated family member in an ordinary domicile is much to be preferred to the best supported accommodation with strangers. For as long as Peter Laming, or Ms Sunana is able and willing, it is in my opinion clear that Derek Laming will have a better standard of life with one of them as his principal caregiver, than with anyone else.

## **PETER LAMING'S CARE OF DEREK LAMING**

105. Apart from the major issues - hygiene in the house, medication, finances and Derek Laming's wandering, there have been other concerns expressed as to whether Peter Laming is the best person to have in charge of Derek Laming's day-to-day care.

### **I Diet**

106. Ms Sunana wrote in paragraph 11 of her affirmation of 29/4/08 (Ex 10):

“I have asked Peter if Derek's carer can drop him off at my place so that Derek can have a cooked dinner with me. I would then drop Derek back off to Peter. This hasn't happened. I have proposed this as Derek is quite overweight and does not have any home cooked meals. All of his food intake is takeaway or fast food. Prior to January 2007 I was able to cook some meals for Derek. Since then his weight which had started to do down has crept back up. Derek does not sit at the table for any of his meals and I would like to re-introduce him to sit down meals.”

107. Peter Laming in his evidence does not disagree too substantially with this. A representative sample of his evidence is (from cross-examination by Ms Allan at p 74-76 of the transcript of 14/8/08):

“Do you know what he weighs at the moment?---Just it – it's about 90.

Kilos?---Kilos at the moment.

And in the past he's weighed up to 110 kilos?---More than that at some point in was, yes.

More than that at some point?---Up to about that, yeah at some stage.

And would you agree the he's 1.75 metres tall?---Yeah, about that.

So he's not an extremely tall person, he's sort of average height?---About my age – my height, yeah, about my height.

When Derek has put on weight what have you deduced as been the reason for him putting on weight?---Well, you know at various times there are different reasons - - -

Well, give us an example of what they've been?---Well, I don't – I can't think of any particular reason, I mean sometimes he just decides to eat a lot of something, and that seems to do it. but why he's actually eating that much in that particular time I really don't know.

Is it fair enough to say that when he's in your care – sorry, to interrupt (inaudible). Is it fair enough to say when Derek is in your care, Derek is able to eat whatever he wants, he's got sufficient money that he can go and purchase whatever take-a-way snack of junk food he wants and consume as much of it as he likes?---Well, no in practice, in practice no.

Well, what is different from that description, what is actually different from what I've just described?---Because he's – he's out buying lunch with his support workers and that's not totally uncontrolled and on other occasions he's out with me buying food from the supermarket. On some occasions we go through the – he asks, he specifically asked – on some occasions we'll go through the drive-in Red Rooster or something and I will ask generally what he wants and I will select on the basis of what he says I will select a small portion of what he wants. There are – you know there are all these contexts in which he selects food and buys food himself. At the restaurant I will ask him whether he wants beef, fish or chicken and he will nominate one and he will nominate spring rolls, he'll nominate that he wants rice and then I order an appropriate dish of like the one he chose. I mean - - -

If he's eating at a restaurant an evening meal once a week isn't he?---Mm mm.

Not more often than that?---No, no.

And the rest of the time his communication book shows he walks into take-a-way store or whatever and he selects whatever he wants, it's often chips, lollies, soft drinks food that is junk food it's not good for you?---He eats some of those, yes, he also – he also orders some chicken stuff (inaudible).

So, sometimes he might select something healthy, but what I'm suggesting to you is - - - ?---Well, he, often chooses something healthy, depending on your definition of healthy I suppose, but he often chooses something healthy. He often chooses fruit juice, at the moment he's choosing fruit juice, he says 'I want pear juice' or he says (inaudible), you see drinking cranberry juice and apple juice

that's all – that's all he's buying at the moment, it's only when he goes to a McDonalds or something that he buys a Coke actually.

But I'm suggesting to you in a situation where Derek's weight is increasing, sometimes very rapidly, no attempt is made and no plans put in place to modify his diet so that he maintains a healthy weight?---That's untrue, I - - -

Can you tell me what is being done to achieve that?---I will talk him out of it if he's – if he is pigging out on stuff then I will talk him out of it, we won't go to that (inaudible 4:20:29) or whatever, we will – I will make adjustments so that he doesn't get an excess of that much, and I will also encourage his – his exercise which of course is probably more important than what he eats.

But you've already described to us that you feel that it's appropriate for Derek to walk off to the shops unaccompanied with he's in your care, so you have no control over what he buys when he gets there, do you?---He hasn't done that very often totally by himself to buy food.

When you say you encourage his exercise, do you mean that you leave him free to roam the streets or do you mean something different to that?---Well, there's – there are various I mean when you say roam the streets, as I said Derek and I are having been to the restaurant in town we'll spend something in order of one to three hours walking around the city and sitting on the – sitting on the park watching the lights on the harbour and the stars and thoroughly enjoying ourselves, we can be there hours walking around that, I mean last – just a couple of Saturdays ago we parked at the – of an evening at the Dripstone Beach and we walked all the way, all the way across to the Nightcliff foreshore, and we walked all the around the Nightcliff foreshore to Woollies Nightcliff, he bought some cranberry juice and some dry biscuits and we walked all the way back again.

It's the case isn't it that cranberry juice is something that his mother has put him onto because of her concerns about his - - - No, not as – not from – he chose it as far as I can – as far as I remember he one day chose to do cranberry juice I don't think he was influenced in any other way as far as I know.

Now, there was a period when Derek went from in April 2007 he was 110 kilos and you're saying he's now 90, what do you ascribe that weight loss to, what has been different in Derek's life in that period?---Well, I don't remember (inaudible 4:22:38) did at the time,

but yes all of those sort of things I would put some pressure on and modify things so that he did more walking and did less eating.

All right, but do you go out – sorry, I withdraw that. What is the situation with Derek’s evening meal?---At this point in time he is mainly cooking his own fish and prawns and calamari things most of the time.

So he gets frozen food out of the freezer and he sticks it in the microwave?---He sticks it in the microwave sometime, (inaudible).

And there’s occasions when he eats food that isn’t properly cooked aren’t there, it’s still half raw?---There are occasions when he – it doesn’t get entirely cooked, yes.

And no one is sitting down with him for an evening meal where the table set or even there were plates and cutlery at the table?---When Derek and I go to the restaurant we sit down and we eat and use all the cutlery, cutlery etcetera, etcetera, at home neither of us sits down at the table and eats, I eat the stuff that I make, Eric eats the stuff he makes, Derek eats the stuff he makes, when we go to his mother’s village we sit down on the floor and we eat from the communal bowls and we use the cutlery that is provided.

But what I’m saying at the moment is - - - ?---You do.

Apart from the restaurant that you’ve described about, you’ve told us about, during the week there’s no occasion when Derek sits down at the table to eat a meal?---No, he doesn’t sit at the table to eat in the evening.

He stands in the kitchen and he may have microwaved a frozen fish fillet and he may eat half raw standing in the kitchen?---He might, but he also eats the cooked ones and sometimes I – well, when I see the half raw one hasn’t been eaten I’ll cook it for him in the frying pan and all (inaudible ) sort of think happens, yes.

And would you agree with me there was a period that you drove Derek around to his mother’s place and had an evening meal, the three of you with Derek for a period?---Are we talking two years ago?

I’m talking during the last two years has there been a time when that was the habit or that occurred more than once?---It’s only occurred once in the last sort of eight, ten months.”

108. There are many other references throughout Peter Laming's evidence. At times, especially when listing the sort of foodstuffs Derek Laming buys with his daily spending money, the impression created is of an overwhelming predominance of fast food, soft drinks and lollies. Elsewhere, when describing the food Derek Laming selects for taking home to eat there, the impression is of a more wholesome selection – see for example p77 of the same transcript:

“Is there any grocery list or attempt to have a weekly shop for healthy foods for Derek?---The foods that I have – I have a general list of my own. As I said Eric tends to buy his, I buy the stuff that I want and Derek at the moment is – is buying primarily his fish, he is buying the fruit juice, he is buying pasta – well, pasta which is – when we go to the supermarket he buys the rice pasta recently, he goes into that organic, he's buying the – he's buying the soy milk, I don't know why, but he's chosen to buy the soy milk, he sometimes buys the oat milk which is – tastes awful, he buys stuff out of the – what would you call I suppose, the health food section for some reason, I'm not quite sure why, but that's what he's buying.”

109. Peter Laming's evidence also touched on the restaurant meals mentioned in the first extract above. Apart from those meals, it did not seem to me that the evidence suggested Derek Laming ever sat down and ate a regular meal, at least since Ms Sunana ceased to cook them for him. As for the reasons for her ceasing to cook for them, they would seem primarily to be those that led to the almost complete breakdown in relations between Peter Laming and Ms Sunana in 2007 and 2008, during which Peter Laming issued the trespass notice. Derek Laming's now established frequent unwillingness to have much to do with his mother (whether that originated in, or was encouraged by Peter Laming's hostility to Ms Sunana, or not) completed the rejection of Ms Sunana's cooking.

110. For all that, the evidence is that Derek Laming is in rude good health and, much as one may deplore the sort of junk food Derek seems to prefer, this preference, like his regrettable preference for walking the streets, comes about from an exercise of his own powers of choice.

111. I need to remind myself, in a political climate that seeks to demonise junk food and cast maledictions upon obesity, that the former, far from being poisonous, harms by being too nourishing and too attractive, and while being overweight and *a fortiori* obese is associated with a somewhat shorter life span, and a somewhat increased incidence of some serious illnesses, notably diabetes and cardio-vascular conditions, there are many things done by many well-informed fully responsible adults which are far more life shortening and far more conducive to serious illness than being a bit fat. Some of these things – cigarette smoking, alcohol abuse, having unprotected sex with strangers – are quite legal.
112. Deplorable as Derek Laming's diet may sound, I see no reason to circumscribe his freedom to prefer it. And my view is very much the same on the question of his drinking beer now and again. Peter Laming's evidence is that when having a meal at a restaurant, Derek Laming sometimes likes to have a beer. On occasion he may have two. According to Peter Laming, this consumption of alcohol does not affect his behaviour.
113. Again, I do not criticise in the least those, including Ms Sunana, who are worried lest Derek Laming's behaviour, never orthodox, should be rendered even more outré by the disinhibiting effects of alcohol. Certainly if there were any reason to think that Derek Laming was intoxicated on his rambles around the streets of Darwin then the justifiable fears for his safety would be magnified many times. But on the evidence before me there is no reason to think that and, if it is the case as the evidence suggests, that Derek Laming from time to time likes to have a beer with dinner, my response is, why shouldn't he?

## **II Education and Training**

114. All the evidence in this case, from all of those who have meaningful contact with Derek Laming is to the effect that he continues to develop skills and practices that improve his functioning as a member of the community. No

one seems to doubt that he has the potential to develop further. No one expects him ever to be capable of independent living.

115. Since the move from Melbourne to Darwin in 1999, Peter Laming has been the principal care giver to Derek Laming in that Peter Laming has made the home where Derek lives, has looked after him on weekends and at nights and has enlisted others such as TCASS to look after him at other times. Peter Laming has also been the person most centrally concerned with devising a programme directed towards the development of Derek Laming's skills. Peter Laming brings many assets to this task. He has not only parental love and devotion that cannot be doubted, in the light of his subordinating his life to Derek Laming's needs for at least a decade. He also has the knowledge and understanding that come from his studies in psychology and his wide reading in the autism literature. He ought, by virtue of his studies and learning, be better equipped than many equally devoted parents, to contribute to the devising and carrying out of an educational programme for his son.
116. Peter Laming's dedication and thoughtfulness have won the admiration of some – Dr Kenny, Mr Vitone – and earned the respect of others – Mrs MacDonald for example. There are, however some who question whether more could be done for Derek Laming, and some who are of the view that Peter Laming stands in the way of more being done.
117. Ex 28 was a series of monthly reports by S B Wood (referred to elsewhere in the evidence as "Shane"). Mr Wood was the team leader of the workers allocated by TCASS to Derek Laming. The last of these reports, 10/2/2006 contains these general criticisms of Peter Laming's contribution:

“This will be my last report as I have resigned my position due to Peter failing to let me continue to do my job and also for financial reasons. In the past two years I have battled to provide for DL's needs. I have multiple scars and have had multiple injuries due to DL, but I stayed with it and continued to provide a high standard of

care. Yet Peter has now decided that all I have put in place should be removed and replaced with letting DL do what he wants when he wants. This has made it impossible to control DL's antisocial behaviour and with that in mind it is no longer possible for me (S.B.WOOD) to continue to work with DL.

I hope DL's future carers are able to communicate with Peter and bring back what is needed for DL's care".

118. In the report dated 3/9/05 Mr Wood went further:

"DL fathers lack of control with DL has increased, which has led to Peter running and hiding from DL. Peter has also left DL on the side of the road because he is not willing to wait or get DL into his car. This is causing a danger to DL, the public and staff. It is my opinion that Peter Laming is no longer able to care for DL". [my emphasis]

119. In the report headed 2005-09 (its date is uncertain, but perhaps October 2005) Mr Wood summarised Derek Laming's hostility thus:

"High this month, 90% of the time DL is happy and willing to do his routine. However 10% of the time, after walking the streets late at night, he is very hostile to direction of any kind".

120. And in an earlier report, dated 2/5/2005, Mr Wood wrote that "Peter has no control over DL nor is he willing to learn to control DL".

121. That there was a want of empathy between Mr Wood and Peter Laming is further evidenced by this somewhat gnomic comment in the report dated 2/6/2005: "Peter's treatment of staff is a problem at this stage and will hopefully be fixed this coming month".

122. Mr Wood was of the opinion that Peter Laming's manifold failures (in his opinion) derived from Peter Laming's fear of Derek Laming"

"DL has been testing this month due to his fathers lack of control and fear of his own son".

"DL fathers lack of control with DL has increased, which has led to Peter running and hiding from DL".

“...These outbursts are the reason for Peter’s fear of his son and his reason for changing DL care routine, but Peter allowing DL to do what he wants has increased the number of incidents”.

Mr Wood’s last report concludes:

“As of Sat morning the 11/2/2006 I will no longer be responsible for any of DL’s actions nor will I be available for comment or advice in relation to DL’s care. I emphasise categorically that I will not accept work with DL or his father in the future”.

123. Peter Laming’s evidence was unconvincing so far as it touched on the breakdown in his relations with Shane Wood. See, for example, the transcripts of 22/8/08 p26-28. But even there, Peter Laming concedes that there were disagreements between him and Mr Wood as to the best way of managing Derek Laming’s development. Peter Laming’s most frequently repeated criticism of Mr Woods approach was that he was too “rigid”, too wedded to a particular approach, irrespective of Derek Laming’s occasional adverse reactions. Elsewhere in his evidence Peter Laming describes Mr Wood as a very capable of physically coping with Derek Laming when Derek became hostile, aggressive, violent. Peter Laming’s commendation of Mr Wood’s capabilities to restrain and control Derek Laming at these times fits in with a comment Mr Wood made in his report of 2/5/2005 (part of Ex 28):

“The problem that greatly needs to be fixed is DL’s need to use violent actions to try and force his way on others. He knows this action will not work on staff but has become very aware that it does work on his father”.

124. Mr Wood there shows confidence that he, and other staff, can physically handle Derek Laming and that they will not back down from doing so. Mr Wood has it that Peter Laming was not capable, or unwilling, so to do. Peter Laming concedes, and Mr Vitone said in evidence too, that Derek Laming is stronger than Peter Laming, so I would have to conclude that Mr Wood was correct, so far as his comments are based upon Peter Laming’s physical capacity to tackle Derek Laming.

125. Derek Laming has assaulted Peter Laming on occasion, and once bit of the end of one of his fingers. I conclude that Peter Laming is afraid of Derek Laming's anger. Any sane man in his position would be. The question is whether Peter Laming's physical limitations and sensible caution are causing him to make choices regarding Derek Laming's development which are less beneficial than other options. That was Mr Wood's opinion.
126. A clinical psychologist, Mr Gary Radler, was retained by the Disability Resource Unit in 2004 to report on and made recommendations for the development of Derek Laming. Mr Radler's work was done during Mr Wood's time as team leader of the TCASS staff supporting Derek Laming and Mr Radler relied to an extent on material provided to him by Mr Wood, and it may be that in places Mr Wood's reservations about Peter Laming's usefulness have crept into Mr Radler's report (Ex 26). That may not be entirely fair to Peter Laming, but be that as it may I can see no reason to think that Mr Radler's Recommendations (p 30 of the Report) in any way depend upon any view of Peter Laming, adverse or otherwise.
127. Peter Laming has devised his own plan to increase Derek Laming's living skills. His plan includes some of the things Mr Radler recommended, and not others. Accepting as I do that Mr Radler is more expert in the field of autism than Peter Laming, the question is whether Peter Laming's divergence from Mr Radler's recommendations is occasioned more by Peter Laming's unique knowledge of and experience with Derek Laming, or whether it is occasioned by fears that Derek Laming will react badly to this or that aspect of Mr Radler's programme. In the former case, Peter Laming's knowledge of his son's particular needs and capacities may outweigh Mr Radler's general expertise, and the divergent practice may be in Derek Laming's interest. In the latter, Peter Laming's choice would be dictated by considerations of his own ease and safety, and he may, by shying away from unavoidable confrontation, be denying Derek Laming exposure to

environments and experiences and people likely to enhance his life and his life skills. That at least, is the theoretical question.

128. In practice, as is usually the way with human beings, things are more muddled, and motivations are mixed, complex and unclear. An apparently simple example of the complexities can be seen in this answer that Peter Laming gave to Ms Kase, counsel for the Public Guardian (transcript of 13/11/08 p 76):

Mr Laming, I think you gave evidence earlier talking about what happens or maybe not going so far as to talk about exactly what happens when someone imposes their will on Derek, when someone forces him to do something that he doesn't want to do. Could you just explain what would happen in that case, if someone were to impose their will on Derek? For instance, put a lock on the gate and shut it so that he wasn't able to open it if he wanted to leave?---Well, when confronted with something of the sort he will get agitated. He will start throwing things around, be destructive. If it continues then he can be violent towards the person concerned. In the case of the gate he may well attempt to break it open or he may well try to find a way out”.

129. It would in my view be fair, if crude, to put the following gloss on that answer: “...he will get agitated...” (which I hate to see because I love him and find it hard to bear his distress) ... “He will start throwing things around, be destructive” ... (we are not rich) ... “then he can be violent towards the person concerned” ... (which makes me afraid for me, or for the other person if it is someone else, and afraid that Derek will get himself locked up if he really hurts someone) ... “In the case of the gate he may well attempt to break it open or he may try to find a way out” (and if he does, what would the point of all the agitation, fear, pain, destruction etc).
130. Fear may play a part in all of this, perhaps sometimes a decisive one. Peter Laming's respect for his son's freedom of choice plays some part too. In the case of Derek Laming's freedom to roam, it is not certain which is the right choice, but, as has been seen, I am not persuaded that Peter Laming's is wrong. In the case of some other possible actions – things recommended by

Mr Radler or others, it is less easy for me to see a positive reason (such as respect for Derek Laming's choices) to justify Peter Laming's disregard of those recommendations. No doubt it would cause Derek Laming agitation were his routine changed in order to accommodate these additional things, but beyond a distaste for, and a possible fear of that agitation, no great reason to oppose these measures institution can be discerned.

131. Two matters of this sort, not centrally arising from Mr Radler's report are in my opinion so obviously desirable that I have referred to them in particular in the Orders I made on 9 December. The first, at Order (2)(c)(ii), is that sincere efforts should be made to see whether respite care in supported accommodation can be offered anywhere in the community. This, it seems to me, is desirable because, if such respite care is available, it should be used, to expose Derek Laming to new but not too quickly changing stimuli under fairly controlled and well supervised conditions, as well as giving him opportunity to familiarise himself with the kind of living circumstances in which he is likely to spend the latter part of his life. It would also permit those supervising the accommodation to explore what they can do for Derek Laming, and what problems he poses for them.
132. At the same time it would give Peter Laming chances to rest, and – who knows? – perhaps, with more rest, he may go on longer than he would otherwise as the main carer for Derek Laming.
133. The second comes in at Order 2(d), and seeks to regularise and increase contact between Derek Laming and his mother, Ms Sunana. I have referred to the evidence that Derek may be inclined to refuse such contact, and to the reasons – especially the recent incident when Ms Sunana picked Derek Laming up from the roadside – why I believe that his refusal may not be consistent or persistent. Looking to the future, it seems to me to be self-evident that it would be in Derek Laming's long term interest to be better acquainted with this mother. Ms Sunana would be, if Peter Laming became

unable or unwilling to go on looking after Derek Laming, his best chance of long term, individual, loving personal care.

134. Even in the short term he is likely to benefit from Ms Sunana's care, concern and devotion - by her cooking proper meals, to take a trivial example. And the more extensive her involvement, the more rest Peter Laming may get.
135. I tried for a while, but found that I could not frame any Order (beyond a general injunction to all parties to do their best) in relation to the details of ideas and plans for Derek Laming's future development, such as those in Mr Radler's report. I would anticipate that Peter Laming's response to any such programme would be to go on doing what he thinks best, and instituting the programme only insofar as it coincides with his own ideas. My hope is that the Public Guardian will be much more active in trying to persuade Peter Laming to try things recommended by others.
136. As far as I know the Public Guardian's office and its workers are not accustomed to being even slightly in *loco parentis* to their wards. Nearly all persons subject to guardianship orders suffer from intellectual disabilities which are profound and irremediable. Very few have any prospect of improvement. In a case of that sort, once arrangements have been made for the day to day care of the person (by, for example, Sommerville) then the Public Guardian can step back into a supervisory role. Such a case would rarely call for decisions to be made of the sort that Derek Laming's case will call for often - every week or two, perhaps. It may be that the Public Guardian's office will be somewhat alarmed at being asked to take so active a role, and one which may involve frequent debate and disputation with Peter Laming, but that is what I am expecting them to do. Perhaps they can find the resources to retain someone with the sort of knowledge and experience that, say, Mr Vitone has, and have that person do the hands-on

work. In two years time, when the matter is listed for review, if not before, the Court should find out how things are going.

137. On the evidence before me the dimmest possible view of Peter Laming's guardianship (finances aside) would be that it has not been bad. My opinion is that it has been at least very good. While it is possible that Ms Sunana could one day, somewhere, establish for Derek Laming conditions equally good, it seems to me very unlikely that she would do better. In any event she is not presently positioned to do even as well. Practicality impels me to order that Peter Laming continue as guardian, and I hope that Derek Laming's life and prospects will be improved by the contribution of the Public Guardian and by the other Orders I have made.

Dated this 30<sup>th</sup> day of January 2009.

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**R J Wallace**  
STIPENDIARY MAGISTRATE