



**LSO 19TH REAL ESTATE LAW SUMMIT
APRIL 6-7, 2022**

CASE SCENARIO

CASE STUDY ~ In the case of M. Arun

M. Arun (“**Arun**”), an incapable elderly man, was picked-up by his two daughters who were his attorneys for property and personal care (the “**Attorneys**”). The Attorneys informed Arun wife, Juliette, that they would return him to his home later that evening. However, they failed to do so. Despite Juliette having contacted the Attorneys to find out Arun’s whereabouts, the Attorneys refused to disclose this information. In response to the Attorneys uncooperative stance, Juliette contacted police services, however, police services offered little assistance as Arun was with his daughters and appointed attorneys—persons with seeming authority and power over Arun’s care and decision-making.

Despite Arun’s intention to revoke his existing power of attorney documents and create new ones in favour of his wife, given that Juliette had not been granted attorneyship under a power of attorney document and no formal assessment of Arun’s capacity had been conducted prior to his abduction, Juliette had very little power under the *Substitute Decisions Act, 1992*¹ (“**SDA**”) to have her husband returned.

With no other recourse available to her, Juliette brought an application under the *SDA* and *HCA* for Arun’s return. Juliette had evidence that her husband was confined and/or restrained of his liberty (e.g., she received a phone call from Arun in which he anxiously expressed that he wanted to come home but was unable to identify his location). Additionally, the following factors provided justification for bringing an urgent application seeking this extraordinary remedy:

- Juliette had proof that the Attorneys were preventing Arun from accessing his finances for the purpose of meeting his own personal needs.
- The Attorneys had a history of cancelling Arun’s medical appointments.
- Arun was suffering from Alzheimer’s and cancer—it was a legitimate concern that Arun’s health needs were not being properly met.

¹ SO 1992, c 30.

- The police were unwilling to get involved in a family dispute.

The Attorneys return Arun before the return of the application. The seriousness of the *Habeas Corpus* Application and severe consequences for disobeying a Writ may have provided sufficient incentive for the unresponsive Attorneys to return Arun without a court order. Accordingly, the potential success of this remedy remains untested in court.