From: [redacted]
To: AFCA Review
Subject: AFCA review
Date: Friday, 26 March 2021 3:28:40 PM
Attachments: [redacted]

AFCA Review Board, please read attached, please google THE TRUE STORY OF TONY AND DOROTHY RIGG vs COMMONWEALTH BANK, with 144 sets of documents, videos, photo's and more.

Read doc 80 with over 130 pages of evidence. I showed 3 AFCA lawyers doc 80 at Stocklands in Nowra, NSW. They said they cannot help us because of some AFCA rule.

As far as I am concerned AFCA is useless, who owns AFCA ?

Can anybody help victims of bank FRAUD ? It is a waste of time going to court as judges deny victims access to evidence then write judgments against bank victims knowing the victims case has never been heard.

Weir AFP is very important. High Court S271, 1 to 38 carry a prison sentence, how could we have lost ?

Regards, Tony Rigg [redacted]

29 January 2019

Mr Tony Rigg
[redacted]

Dear Mr Rigg

Complainant: Tony Rigg
Financial firm: Commonwealth Bank of Australia
Case number: 609256

We are progressing the complaint

We are progressing your complaint to our case management stage.

What happens next?

The complaint will be allocated to one of our staff who will review the information provided by you and Commonwealth Bank of Australia and then contact you.

Any questions?

If you have any questions, please quote the case number when you:

call: 1800 931 678
email: info@afca.org.au

Regards

Registration & Referral Unit
Australian Financial Complaints Authority

29 January 2019

Mr Tony Rigg
[redacted]

Dear Mr Rigg

Complainant: Tony Rigg
Financial firm: Commonwealth Bank of Australia
Case number: 609256

We are progressing the complaint

We are progressing your complaint to our case management stage.

What happens next?

The complaint will be allocated to one of our staff who will review the information provided by you and Commonwealth Bank of Australia and then contact you.

Any questions?

If you have any questions, please quote the case number when you:

call: 1800 931 678
email: info@afca.org.au

Regards

Registration & Referral Unit
Australian Financial Complaints Authority

Gmail

Tony Rigg <[redacted]>

Thank you for contacting the Australian Financial Complaints Authority

1 message

Info@afca.org.au <info@afca.org.au> Mon, Feb 11, 2019 at 9:00 AM
To: Tony Rigg <[redacted]>

Thank you for contacting the Australian Financial Complaints Authority. Please accept this response as acknowledgement that we have received your email.

Please note the following:

- Emails relating to an existing case will be forwarded to the relevant staff member for follow up and added to the case file.

- Emails about lodging a complaint will usually be responded to within two working days. However, if we experience a large volume of emails, it may take us longer to come back to you – we thank you in advance for your patience if this occurs.

- All other emails will be responded to as appropriate.

Once again, thank you for taking the time to contact us.

Yours sincerely

Australian Financial Complaints Authority
1800 931 678 (free call)

1300 56 55 62 (Members)
https://www.afca.org.au/

17 December 2018

Mr Tony Rigg
[redacted]

Dear Mr Rigg

Complainant: Tony Rigg
Financial firm: Commonwealth Bank of Australia
Case number: 609256

This letter confirms that we have registered the complaint you lodged against Commonwealth Bank of Australia. The AFCA case number is 609256.

What happens next?

Before we review your complaint, Commonwealth Bank of Australia must be given an opportunity to respond. So, we've sent details of the complaint to Commonwealth Bank of Australia and asked it to respond to you and to us. Commonwealth Bank of Australia may attempt to resolve the complaint directly with you. If a representative of Commonwealth Bank of Australia contacts you to try to resolve the complaint, we encourage you to participate in the discussion.

Timeframe for Commonwealth Bank of Australia to respond

We have asked Commonwealth Bank of Australia to respond by 31 January 2019. This is based on information you provided to us about what has happened previously, including when you complained and whether you've received a final response to your complaint in writing.

Debt collection activity

If the complaint is about a debt, Commonwealth Bank of Australia should suspend any collection or recovery action in relation to the debt now that the complaint has been registered with us. If you receive any letters of demand or debt collection phone calls from Commonwealth Bank of Australia, please report this to Commonwealth Bank of Australia's IDR area. If you keep receiving them, you should contact us.

Jurisdiction –can we consider the complaint?

Please note that we have not yet assessed whether we have jurisdiction to consider your complaint. Our Rules define the types of complaints we can consider, and are available for you to read on our website at www.afca.org.au in the 'About Us' section. We will assess whether your complaint falls within our Rules if the complaint is not resolved directly with you by Commonwealth Bank of Australia and it progresses.

We will contact you again

We will contact you again when we receive Commonwealth Bank of Australia's response, which we expect to receive by 31 January 2019.

Any questions?

If you have any questions, please quote the case number when you:

call: 1800 931 678
email: info@afca.org.au

Regards

Registration & Referral Unit
Australian Financial Complaints Authority

Gmail

Tony Rigg [redacted]

Thank you for contacting the Australian Financial Complaints Authority

1 message

Info@afca.org.au <info@afca.org.au> Tue, Dec 11, 2018 at 10:53 AM
To: Tony Rigg [redacted]

Thank you for contacting the Australian Financial Complaints Authority. Please accept this response as acknowledgement that we have received your email.

Please note the following:

- Emails relating to an existing case will be forwarded to the relevant staff member for follow up and added to the case file.

- Emails about lodging a complaint will usually be responded to within two working days. However, if we experience a large volume of emails, it may take us longer to come back to you – we thank you in advance for your patience if this occurs.

- All other emails will be responded to as appropriate.

Once again, thank you for taking the time to contact us.

Yours sincerely

Australian Financial Complaints Authority
1800 931 678 (free call)

1300 56 55 62 (Members)
https://www.afca.org.au/

Gmail Tony Rigg [redacted]

Complaint about CBA

1 message

Tony Rigg [redacted] Tue, Dec 11, 2018 at 10:52 AM
To: info@afca.org.au

I would like to make a complaint to AFCA about our treament by CBA staff lawyers receivers and others against my wife and I.

Wth the support from Austrade, Lysaghts, BHP and others we had inquiries from companies in 33 countries.

Our company would have been of great benefit to the whole community as we live in a high unemployment area.

I would be happy to address AFCA with suporting documentary evidence.

Regards, Tony Rigg, [redacted]

16 April 2019

Mr Tony Rigg
[redacted]

Dear Mr Rigg

Complainant	**Mr Tony Rigg**
Financial firm	**Commonwealth Bank of Australia (CBA)**
Case number	**609256**

I refer to the above complaint with CBA.

Your complaint has been referred to me to review and respond.

We wrote to you on 18 February 2019 and 21 February 2019 to explain that we do not have jurisdiction to consider your complaint. I have reviewed your most recent submissions, but they do not contain information which overturns our previous assessments. I confirm we cannot consider your complaint for the reasons set out in our previous correspondence.

Your complaint has been reviewed in accordance with the process outlined in paragraph A.4 of our Rules. You have now exhausted the appeals process for this complaint and your file will remain closed.

Should you wish to pursue this complaint further, your options are now external to AFCA. You may wish to seek independent legal advice about what alternative options are available to you.

Yours sincerely,

[redacted]

[redacted]

Australian Financial Complaints Authority

E

IN THE HIGH COURT OF AUSTRALIA
SYDNEY OFFICE OF THE REGISTRY

No. S271 of 2001

BETWEEN

Anthony Thomas Rigg and Dorothy Anne Rigg
Applicant

TRUE COPY

and

The Commonwealth Bank of Australia
Respondent

SUMMARY OF ARGUMENT

Summary of argument in support of an application for special leave to appeal from the full court of the Federal Court 271/2001 heard 5th November 2001 delivered Sydney 9th November 2001.

PART 1 - SPECIAL LEAVE QUESTIONS

Question 1: Did the Full Court err in its decision in saying that no basis in fraud existed, when there was clear uncontradicted evidence of instances of fraudulent and unconscionable conduct over a long period of time.

The documents in Volumes Exhibits 1 to 4 (before Beaumont J) and in Exhibits B1 to B60, C1 to C35, D1 to D21 and E1 to E4 and in a further volume exhibited before Madjwick J in answer to purported requests for particulars.

All these documents proved inter-alia:

(1) the Commonwealth Bank of Australia used created credit outside the Reserve Bank guidelines and has persued those who gave evidence to the banking inquiry relentlessly, on these issues; and

(2) Politicians, judges, law enforcement officers and lawyers have all sworn an oath to act on Her Majesty Queen Elizabeth II's behalf which they have clearly failed to uphold. Her Majesty swore the Coronation Oath on June 2nd 1953. A part of the coronation oath is:

> Archbishop to Queen Elizabeth II: 'Will you to your power cause law and justice in mercy to be executed in all your judgements … and in particular in relation to Australia.'
> Queen Elizabeth II replies: 'I will.'

Filed by: Anthony Thomas Rigg
Address for service: [redacted]
Telephone: [redacted]

However, in judgments handed down by judges in the Supreme Court of NSW, and the Federal Courts against A.T. & D.A. Rigg the judges have allowed the following: fraud, perjury, apparent forgery, extortion and more which are repugnant to their oaths of office.

The judgment of the Full Court clearly establishes that as a proposition:

1. It is not a crime to apparently forge signatures e.g. cut and paste;

2. It is not a crime to alter documents;

3. It is not a crime to change account numbers from a private investment account to a company account which are two separate legal identities without the victims knowledge then deny knowledge of same until it suits C.B.A. to transfer commercial bills (on C.B.A.'s counsel advice transfer $750,000-00 from company to Rigg before litigation);

4. It is not a crime to open a No. 2 Account in the Rigg's company without their knowledge or authority. The bank statement for the No. 2 Account was sent to the Rigg's by 'mistake';

5. It is not a crime for bank staff and bank lawyers to swear false affidavits false statements and commit apparent perjury in trying to cover up;

6. It is not a crime to apply ***troublesome*** interest at 25% then backdate troublesome interest and not to send bank statements and no advice to Riggs (over $500.000-00);

7. It is not a crime to withhold evidence on subpoena or on a notice to produce repeatedly;

8. It is not a crime to give apparently false evidence under oath;

9. It is not a crime to charge shadow ledgers without the victims knowledge (over $500,000-00). This document on shadow ledgers was sent to our lawyers while we were in litigation, we had no prior knowledge of shadow ledgers. Shadow ledgers ***are*** a deliberate fraud on the Commonwealth and each and every taxpayer and the Riggs in particular;

   [redacted], a C.B.A. lawyer, signed this document and also signed a letter to the Sheriff to have the Riggs evicted from their home;

10. It is not a crime to sell foreign currency loans, Swiss Franc loans or simulated foreign currency loans. These loans were promoted by the Commonwealth Bank Treasury at seminars, however, the funds did not exist and were created with no financial backing. Not one dollar of foreign indebtedness was incurred. C.B.A. then used the falling Australian dollar to increase interest rates to their victims. It was a contractual pretense (the loans were created).

Swiss bankers have confirmed that no Swiss Francs came into Australia and they were prepared to give evidence at the House of Representatives Standing Committee on Finance and Public Administration (Reference: Australian Banking Industry) in 1990 – 1991 ('the 1991 Inquiry'). Mr Rigg addressed this matter to the 1991 Inquiry in his verbal evidence and his submission of 1700 pages. To date, the 1991 Inquiry has only released 334 pages of Mr Rigg's submission Volume 13. Mr Rigg wrote to the House of Representatives asking for a copy of C.B.A.'s reply to his submission. The House of Representatives replied stating that C.B.A. had asked that their reply be held ***commercial in confidence***. The 1991 Inquiry was, however, a public inquiry. Mr Rigg has never been able to get a copy of C.B.A.'s reply even under subpoena ***why?***;

A comment from a Swiss banker which is in Hansard 'the bank officers in Australia who enticed Australian business people and farmers into Swiss loans in 1984 to 1986 are nothing short of criminals and should be in gaol.' Senator Paul McLean addressed this matter in the Senate when he tabled approximately 80 cases of bank malpractice including Tony Rigg's case history and the Rigg Incident. This evidence was filed in the federal court;

11. It is not a crime to sell victims properties to C.B.A. or receivers mates at fire/sale rates for example a private treaty sale. [redacted] assisted in the ***private*** sale of our factory complex by arranging a sale to Zenix Pty Ltd. Mr [redacted] admitted under cross examination that there was no 'for sale' sign on the factory and it was not advertised for sale. Mr [redacted] admitted in the Supreme Court of NSW that [redacted] are ***family friends*** of the purchaser (Zenix directors are J & M Gray) of the Rigg's factory complex and that their ***daughter worked for C.B.A.*** as secretary to the C.B.A. manager.

At inception, C.B.A. valued the Rigg's factory complex in 1986 for $1.3 million dollars then sold it in 1994 for $725,000-00 to Zenix Pty Ltd.

Our home was sold to [redacted] in conjunction with [redacted] (<u>at fire sale prices</u>).

C.B.A. valued the Rigg's home in 1986 at $180,000-00 and sold to S & N Gould for $187,000-00 in 2000. We do not know how it was sold as we have ***again been denied discovery.*** C.B.A. then leased the Rigg's home from S & N Gould with a C.B.A. manager now the tenanting the Rigg's home;

12. It is not a crime to destroy healthy businesses that would have been of great benefit to the community at large and to earn export dollars. [redacted], assisted in the destruction of the Rigg's business when the sheriff evicted the Rigg's from their factory. The sheriff handed the property to [redacted] on C.B.A.'s instructions. [redacted] Locksmiths changed the locks on the factory;

13. It is not a crime to destroy the Rigg's healthy business that was not in default and had the financial support from Austrade and BHP and other companies for exports (defrauding the Commonwealth). This is in evidence and in Hansard.

    Evidence given to the 1991 Inquiry and to the Supreme Court action by Austrade, BHP, Shoalhaven City Council and others show that the Rigg's company was a market leader in it's field of expertise. The Rigg's could have built hospitals and houses for third world nations, with the help of the United Nations, and had 10,000 homes to build in Malaysia. BHP and Austrade paid for advertising throughout South Eastern Asia. Many Australian companies would have supplied expertise and materials in support of these actions. With all this expertise, the Rigg's company could have assisted the rebuilding of East Timor;

14. It is not a crime to force victims onto welfare when those victims would have been self supporting and would have assisted with creating jobs for the unemployed;

15. It is not apparently a crime for courts to deny full and open discovery;

16. It is not apparently a crime for courts, to strike out subpoenas issued by the court;

17. It is not a crime for law enforcement agencies (officers of the crown) to turn a blind eye to these crimes.

    Senator Stone read a letter into Hansard from [redacted], former Managing Director of C.B.A., which mislead the Senate, the Court of Appeal NSW and the people as ***it was not the truth***;

18. It is not a crime to sell commercial bills and not present them for payment to the victim or not to sell them on the open money market and apparently forge the victims signature on the bill of $750,000-00 (see Tony Rigg case history in Hansard) This is contrary to the Bills of Exchange Act;

19. It is not a crime to act contrary to the Reserve Bank Act which states 'it must be good for Australia and Australians';

20. It is not a crime to have victims arrested and charged with a crime when the victim did not commit a crime and was then found guilty;

21. It is not a crime for Receivers of Rents to act in dereliction of duty. [redacted] was appointed as Receiver of Rents by C.B.A. C.B.A.'s Memorandum to Mortgage T340042 clearly states 'the receivers are responsible to the mortgagor.' The Rigg's did not know of the existence of this Memorandum to Mortgage until they were in litigation. C.B.A. used this

document against the Riggs. Although C.B.A. appointed Mr [redacted], he has never given the Riggs any documentation or informed them of defaulting tenants, the lapsing of leases or the sale of the factory premises to his mates. Mr [redacted], C.B.A. lawyer, phoned our former solicitor Mr [redacted] saying C.B.A. had accepted an offer of $725,000-00 for the factory complex;

22. It is not a crime for real estate agents to arrange private treaty sales of victims properties to their mates at fire sale prices (refer to no. 21);

23. It is not a crime for Mr [redacted], a senior C.B.A. manager in Nowra, to demand an additional $80,000-00 to settle ***(extortion)*** after the agreement had been signed. Mr [redacted] name appears on the troublesome interest documents. The Riggs were to pay C.B.A. $980,000-00 in two installments in 1990 but the Riggs could not pay this amount in the time frame because of the Receiver of Rents dereliction of duty. C.B.A. then evicted the Riggs and sold the factory complex in 1994 for $725,000-00. C.B.A. valued the factory complex in 1986 at $1.3 million dollars. The Riggs had to sign a public apology written by a C.B.A. lawyer Mr [redacted] saying that the Rigg's lawyers had seen the banks files and that there was no fraud (***this is not true***).

The Rigg's lawyers had not seen all of the C.B.A.'s files and even today cannot get the evidence ten years later. The public apology appeared in the local papers of the South Coast Register and the Nowra News. The Riggs were prepared to go along with this and get on with their lives but did not realise that C.B.A. would set them up again;

24. It is not a crime for C.B.A. lawyers not to produce documents, especially when they are officers of the Commonwealth under section 75(v) of the Australian Constitution Act 1901 (Imp);

25. It is not a crime to charge compound interest to victims (see Tony Rigg Case History in Senate Hansard);

26. It is not a crime for judges claiming to 'act on behalf of Queen Elizabeth II and the Coronation Oath to hand down judgments against the laws of the land and against the Queen's wishes.' A quote from the Coronation Oath is:

> Archbishop to Queen Elizabeth II: 'Will you to your power cause law and justice in mercy to be executed in all your judgements.'
> The Queen answers: 'I will';

27. It is not a crime to commit crimes against humanity, shatter lives, steal properties, cause suicides with the protection from authorities and without fear of prosecution (e.g. Parliament, the Australian Competition and Consumer Commission, the Federal Police, Australian Securities and Investment Commission, State Police, State & Federal Attorney-Generals, State and Federal Ministers for Justice, State and Federal Directors for Public Prosecution, the Independent Commission Against Corruption, the National Crime Authority, the Reserve Bank, the Australian Tax Office and others). All of these agencies were asked to act with all refusing.

It is a waste of time going to law enforcement agencies, when you are a victim of bank crime in Australia?

28. It is not a crime to charge nearly 50% interest when the victims sign a contract to pay 6% to 7% interest (**usury?**);

29. It is not a crime for C.B.A. to sell a victims home at a firesale price then C.B.A. lease the victims home and have a C.B.A. bank manager live in the victims home. ***Is Keech v Sandford (1726) as referred to in Chan v Zacharia (1984) 154 CLR 178 no longer applicable law in Australia?;***

30. It is not a crime to bankrupt victims on forged documents;

31. It is not a crime to force victims to live in rented accommodation after being asset-stripped and to live below the poverty line;

32. It is not a crime to use the sheriff to evict C.B.A. victims from their factories and homes based on forged documents;

33. It is not a crime to inflate debts by troublesome interest, backdating troublesome interest, shadow ledgers, compound interest to deliberately mislead the court and give false testimony for tax benefits to C.B.A. and without providing proof of debt to the victim.

We cannot get evidence and we still do not have the bank statements, despite the Senate Inquiry of 2000 by Senator Chapman into Bank Statements and Shadow Ledgers. We still do not have disclosure on how this bank reached its figure on the alleged indebtedness.

34. It is not a crime to put a healthy company into liquidation by forged documents. Price Waterhouse were the liquidators who corresponded with C.B.A. lawyers;

35. It is not a crime to have Mr Rigg arrested in a public carpark and charged under the Enclosed Lands Act. The property was not enclosed and Mr Rigg has an all grounds appeal in place;

36. It is not a crime for a C.B.A. lawyer Mr [redacted] to have a subpoena struck out by the magistrate before Mr Rigg's trial in a criminal matter, telling the court the documents sought were irrelevant;

37. It is not a crime for a magistrate to change the date of the trial and say Mr Rigg has to pay for new subpoenas although subpoenas had already been paid for and served by Mr Rigg; and

38. It is not a crime for the police officer to change his story in the witness box under oath **(perjury)** so Mr Rigg would be found guilty and the magistrate saying that Mr Rigg should have known where the boundary was. The

property was not enclosed and the magistrate refused to allow Mr Rigg to use Hansard in his defense.

Mr Rigg was standing outside the District Court in Nowra with his brother after the Court was closed talking to Snr Constable [redacted], the officer that arrested Mr Rigg. C.B.A. bank manager Mr [redacted] then emerged from the closed court sometime later.

1 to 38 are all contrary to the Commonwealth Crimes Act but are also in breach of the Commonwealth Criminal Code 1994 as in effect in 2001.

Officers of the crown have apparently abandoned their oaths of office and abdicated their positions of office.

We believe this was a deliberate asset-stripping operation by C.B.A. (see no.9) deliberately undermining the economy of Australia when C.B.A. was a wholly owned subsidiary of the Federal Government.

Mr Rigg wrote to Queen Elizabeth II and received a reply from Her Majesty's Private Secretary saying that the letter had been sent to the Governor-General of Australia (at the time Sir William Deane). Mr Rigg received a reply from the Governor-General saying that the letter had been forwarded to the Treasurer and that he would reply direct to Mr Rigg. That was in February 2001. To date there is no reply. Mr Rigg wrote twice to the Treasurer asking for a reply to his letter. Mr Rigg wrote to the Prime Minister John Howard seeking his help in getting a reply from the Treasurer but also to date no reply either from the Prime Minister or the Treasurer has been forthcoming.

Mr Rigg sent further evidence to the Queen about corruption in C.B.A.. Mr Rigg received a reply from Mrs Deborah Bean, Chief Correspondent Officer for Buckingham Palace on 17th October 2001 stating that the documents had been forwarded the same day to the Governor-General of Australia Dr Peter Hollingworth. Mr Rigg has not yet received a reply from the Governor –General.

Consistent with that we were refused trial by jury by this court, no reason was given other than inconvenience. Is it because juries would not be sympathetic to banks?

We have been refused legal aid as have nearly all bank victims in Australia and have without hardly any available funds attempted to fight on.

And yet despite all these matters being in evidence before the Full Court of the Federal Court, in effect they said that there was no evidence of fraud nor can we find any basis to say the primary judge was wrong and we can find no basis for going behind the judgment.

The transcript of the appeal discloses that the thinking of this court (by questions to counsel) was in effect, even if there was a history of malpractice, it doesn't matter because you apparently borrowed the money, that's your fault, if you didn't repay. The fraud commenced the day the Riggs signed the contract in June 1985.

PART II - BRIEF STATEMENT OF FACTUAL BACKGROUND.

1 as summarised by primary judge; and
2 as attached by exhibit N7676/2000 (three pages).

PART III - BRIEF STATEMENT OF THE APPLICANTS ARGUMENT.

We have set out under the four questions in issue the statement we wish to put in relation to each issue.

PART IV - REASONS WHY SPECIAL LEAVE SHOULD BE GRANTED.

1 The proper construction of the powers of the Federal Court Act are in issue;

2 Equally the power to order particulars under the Federal Court Act and Rules are in issue, when bank fraud or serious misconduct, in light of legislative change;

3 The issue of jury trial under the Bankruptcy Act; and

4 To determine the questions set out in 'special leave questions'.

PART V - COSTS THE ISSUES ARE OF MAJOR IMPORTANCE IN THE LIGHT OF INCREASING PUBLIC CONCERN OVER BANKING ISSUES.

PART VI - REQUEST FOR ORAL ARGUMENT.

The applicants wish to supplement this submission with oral argument.

Signed

Anthony Thomas Rigg and Dorothy Anne Rigg

b) The bank is not bound to serve notice of the default. The monies are deemed to be immediately due and payable. The bank is not bound to allow a reasonable time for the customer to rectify the default or to find alternative finance.

c) The bank may take possession of the mortgaged premises without notice, and may thereupon sell or lease the premises, pull-down or alter buildings, and the like. The only requirement at law would appear to be service of a statutory notice and Order for possession prior to physical eviction by the Sheriff.

d) The bank may appoint a receiver without notice. The receiver's powers are conferred by the security document, together with such other powers as the bank may confer. The receiver is empowered to take possession of the assets and undertakings of the customers business and the books of account, trading records and statutory records. No order of the Court is required.

e) The receivers may and do exclude directors from the premises and refuse access to company records. The directors are prevented from performing their statutory duties or seeing to the survival of the business.

f) The receivers have no duty to disclose the current or contingent liabilities of the business to the directors or to continue negotiations with suppliers or contractors, perform or enforce contracts, service liabilities or she trade debtors.

g) The receivers have no duty to advise unsecured creditors of their appointment and, apparently, have no duty to account to unsecured creditors. In one case, they did not egen account to a secured creditor.

h) The receivers are deemed to be the agent of the borrower. The bank is not responsible for the conduct of the receivers. The receivers owe no duty of care to a borrower company.

i) The receivers and the bank have no duty to account to the customer, for the sale of the assets of the business. Accordingly, the bank may and does make a claim against the customer for the full amount of the debt and proceed to execute against the collateral securities, namely the matrimonial home and personal guarantees.

5. <u>How the "System" Works</u>.

There are two sets of laws in Australia-one for the rich and one for the poor.

a) If a bank purports to appoint a receiver, the customers only recourse is to apply to the Court for an injunction. The injunction will be refused unless the customer is able to pay the full amount claimed by the bank, into the Court. That the customer cannot do. The assets and undertakings of the business will be sold; there will be a short-fall; the matrimonial home will be sold and the customer bankrupted. That sequence is inevitable. It matters not whether the customer was in default. It matters not whether the receivers were validly appointed. It matters not whether the customer has a set-off or counter-claim. Once the receivers

265 A 135

are appointed, the customer is finished. The judges know that. The following scenario has elements from various case histories:

b) The customer applies for Legal Aid. The application is refused on the grounds that the case does not come within appropriate guidelines.

c) The customer sues the bank. The bank applies to the Court to have the statement of claim struck-out. After much delay, the application fails. The customer has paid legal expenses up-front.

d) The customer seeks discovery of documents. The bank withholds key diary notes. The customer applies to the Court for further discovery. The application is successful. The customer has paid further legal costs up-front. The diary notes were falsified to conceal a fraud.

e) The customer serves interrogatories. The bank does not answer. The customer applies to the Court for an Order for answers. The application is successful. The answers are inadeqate. The customer applies to the Court for an Order for further and better answers. The application is successful. The customer has paid further legal costs up-front.

f) The customer applies to the Court for an expeditious hearing. After much dealy, the case is fixed for hearing. The customer has exhausted his financial resources and his legal advisors withdraw.

g) The bank appeals on spurious grounds.

h) The receivers had sold an item of plant that had been leased from a finance company. The receivers did not pay-out the finance company, which sued the customer on his personal guarantee.

i) The customer is bankrupted by the finance company. The trustee in bankruptcy refuses to fund the appeal.

j) The customer complains to the Fraud Squad. The Fraud Squad refuse to investigate the case because, it is claimed, they do not have the staff.

k) The customer complains to the Australian Federal Police. The AFP refer the matter to the DPP for advice. The DPP advises that there is insufficient evidence to lay charges.

l) The customer complains to his member of Parliament. The matter is sub Judice and cannot be pursued.

m) The customer takes his case to the media. The story is not published because, although his allegations are true, they are defamatory.

n) The appeal does not proceed. That is how the system works.

266

A
136

6. The Case for review.

Farmers and small businessmen are vulnerable. They invariably borrow a fixed principal sum, repayable with high interest by fixed instalments. The capacity to service the loan is usually limited to income derived from the enterprise funded by the bank. That income, unlike the terms for repayment, is usually variable, and therein lies the problem.
The borrower stands to lose his life's work and his livelihood as a result of a crop failure or a shift in the market.
There is no legal mechanism whereby the terms of the loan may be varied to allow for contingencies beyond the control of the borrower.
On the other hand, a frequent contributing factor to the failure of small business, is a lack of management skills on the part of the entrepreneur/borrower.
There is no legal mechanism whereby receivers are obliged to provide supplementary management skills to assist the business to trade out of its difficulties.

260

A
132

To Senator Paul McLean,

Fax No. (043) 246468

PRELIMINARY NOTES ON BANKING INQUIRY 30/01/1989

1. [redacted]

1.1 The late [redacted] was a Sydney accountant in private practice. It is alleged that he corrupted senior officers of the Commonwealth Bank of Australia ("CBA") and for some fifteen years co-ordinated corrupt practices by some thirty senior officers. The existance and activities of this syndicate are widely known to the Sydney business community, but denied by the CBA. In particular, CBA has specifically denied drastic staff relocations, occasioned by Australian Federal Police ("AFP") investigations into the syndicate.

1.2 AFP have reported that Weir and the syndicate were investigated for ten years, but insufficient evidence was forthcoming to lay charges. AFP have refused to release some one hundred and forty documents under the Freedom of Information Act on technical grounds relating to protocol with Interpol and other international law agencies.

QUESTION 1: Did the AFP conduct a proper and sufficient inquiry?

QUESTION 2: Were the officers of AFP hindered in their inquiry by officers of AFP and/or CBA?

QUESTION 3: Have the evidence and the findings of the inquiry been improperly withheld from the public?

QUESTION 4: Is there prima facie evidence upon which charges should have been laid?

QUESTION 5: Were the documents improperly withheld from disclosure under the Freedom of Information Act?

QUESTION 6: Did officers of AFP and/or CBA, corruptly use their office to cover-up the activities of the syndicate and allow the discrete re-location of staff?

QUESTION 7: Did any cover-up prejudice the capacity of aggrieved customers of CBA to issue proceedings for damages?

1.3 It alleged the officers of CBA corruptly use their office to pass confidential information, relating to the financial standing of customers, to corrupt professional advisors and financial consultants, who used that information in conjunction with their informants, to their own commercial advantage, but to the detrement of CBA, the customer and the unsecured creditors.

A
131

1.4 It is alleged that the information is used,

a) to Appoint receivers to the assets and undertakings of the customer's business, whereby the assets are sold at a discount to pre-arranged purchasers, with the "kick back" being shared by the CBA officer, broker and the receiver.
Huon Valley Springs could be a contemporary example of this method; or

b) By the broker, to negotiate a controlling interest in the business to a fraudulent joint venturer; with the acquiescence of CBA.
The joint venturer fraudulently refuses to provide joint venture capital or service liabilities, but strips the realiable assets out of the business. CBA then proceeds to appoint a receiver.
Once again, the "kick-back" is shared by the corrupt parties.
Mighty Chef Products could be a contemporary example of this method.

QUESTION 8: What are the ascertainable elements of the corrupt practices?

QUESTION 9: Is there any evidence of these elements of corruption being questioned of officers of CBA at this time?

QUESTION 10: What civil remedies, if any, remain available to the victims of these practices?

2. CO-INCIDENCE OR CONSPIRACY?

2.1 During some investigations, the preparation of expansive chronologies and flow-charts have pointed strongly to a conspiracy between bank officers and brokers, but the evidence has remained circumstantial. The most likely source of evidence would appear to be the files of the bank; which can be tampered with to suit the bank.

Suggested areas of inquiry:

2.2 The timing of the formal demands and appointment of receivers.
In some cases the banks have closed-down potentially valuable manufacturing industries during the critical start-up phase.

In some cases the customer has not been in default at all, but had made substantial pre-payments of interest.

In one case the customer owed an interest instalment of $10,000, whilst the bank held $350,000 on interest bearing term deposit.

In some cases, the timing of the close-down is very suspicious. Capital expenditure funded by a registered equitable mortgage has been fully drawn. Start-up working capital, funded by a varying limit operating overdraft, is heavily drawn. The business has potential as a market leader, has negotiated supply contracts, is about to go into production, is within budget, but the bank pulls the plug at this point.

2.3 Pre-arranged sale:
There is reason to believe that the timing relates to the imposition of undue pressure by the bank on the customer, to sell-out to a pre-arranged purchaser nominated by the bank officer. The customer is in his weakest bargaining position and the business at its lowest value. The purchaser acquires at a substantial discount. Alternatively, if the customer does not co-operate, receivers are then appointed who sell the assets on a forced sale basis to the pre-arranged purchaser. The bank, the customer and the unsecured creditors all miss out.

2.4 Sales at a discount.
Before banks appoint a receiver, they instruct the prospective receiver to undertake a preliminary investigation of the financial standing of the business and value the assets on a going concern and forced sale basis. Invariably, the accountants will advise that the bank would lose heavily on a forced sale basis, but could recover all if the accountants were appointed as receivers to keep the business trading for sale as a going concern. Invariably the receivers sell the assets on a forced sale bases to associated interests, without attempting to keep the business trading. The bank, the customer and the unsecured creditors all miss out.

2.5 Mock Tenders.
There are cases where receivers have slipped-up by admitting to a sale to the pre-arranged purchasers, before tenders have been called or, alternatively, before tenders have closed. There are cases where receivers have failed, in the tender documents, to provide a full inventory of major items of production plant, thereby ensuring a convenient pile of losing tenders. This is one area where corruption is rife and the accounting firms particularly sloppy.

2.6 Undue Influences.
In some cases the Deed of Equitable Mortgage prohibits a borrower from assigning a 51% interest in the business, for joint venture capital, without the prior written consent of the bank. Where the bank has negotiated with a pre-arranged purchaser, a bank officer may induce the customer to accept the offer by threats of receivership and bankruptcy. In one case, the bank had accepted an offer from a joint venturer and agreed to allow the customer to accept the joint venturers offer. A bank officer induced the customer to accept the offer by a combination of fraudulent mesrepresentations and threats, when the joint venture failed, the bank officer alleged the decision to accept the offer had rested with the customer.

2.7 The Role of Currupt Brokers.
It has been alleged that in Sydney there is a small group of corrupt lawyers, accountants and brokers offering professional services and venture capital to bank customers in financial trouble. These people offer professional services they are incompetent to perform and offer venture capital they do not have. It is frequently alleged that they have inside information from banks and, posing as advisors to the customer, work in league with the banks. It is beleived this relationship between broker and banker is maintained by blackmail. It has been alleged that these brokers perform two roles, for a "kick-back".

263

A
133

a) Fraudulently inducing the customer to accept an unworkable financial package, so that the business fails and the receivers sell the assets on favourable terms to the pre-arranged purchaser,

b) Fraudulently inducing the customer to accept a joint venture that is not consumated, so that the business fails and the receivers sell the assets on favourable terms to the pre-arranged purchaser.
It is also alleged that these brokers induce the aggrieved customer to accept incompetent or biased legal representation.

2.8 Disclosure of Confidential Information.
The alleged disclosure of confidential information by corrupt bank officers to brokers and prospective purchasers, is central to allegations relating to the close-down of businesses. The evidence of breach of fiduciary duty by the bank is invariably circumstantial. It has been alleged that some well known law firms in Sydney specialise in the falsefication of bank records and tutoring of the participants to commit perjury. It would appear appropriate to initiate a broad-based, long-term investigation into a multitude of case histories and analise the legal and financial structuring, prepare expansive chronologies, and search for discrepencies in the banks files.

2.9 Manipulation of Funds.
In some cases, the compromising financial standing of the business seems to have been caused or aggravated by the banks illegal use of loan funds. It has been alleged that funds properly payable by the bank to the borrower have been unlawfully withheld; that banks have made improper use of their purpurted power to consolidate accounts; that funds representing working capital have been illegally transferred by banks, that operating overdraft accounts have been illegally debited; that loan funds have been misapplied at settlement.

3. The Terms of the Contract.
A question which arises is whether the customer was in default to the bank at all. A bank providing an operating overdraft facility, invariably casts around for all the security available and approves a small limit; not specifying terms for repayment or a repayment date. The facility may be extended by a temporary increased limit to cover a contingency; again not specifying terms of repayment or a repayment date. The initial limit and increased limit may have been settled on the basis of an agreed or amended business plan or cash-flow budget. In those circumstances, the banks right to dishonour cheques and call on the securities may be determined by complex questions of fact.
In addition, in some cases, capital expenditure monies have become intermingled with working capital, further complicating questions of fact. In some cases, banks have arbitrarily frozen working overdraft accounts at times when a pre-arranged purchaser was in the wings.

4. Review of Banking Practice.
The standard terms of CBA security documents are both harsh and unconsciable.
a) If any default is made, in the repayment of any instalment of principal or interest, or in the performance of specified covenants, the whole of the principal sum and interest thereon, including future compound interest, becomes immediately due and payable. The specified covenants could include maintaining insurances, paying rates and taxes, and the like.