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14 April, 1997

Gina Sanna
Legal Support Officer
Human Rights Commission
GPO Box 5218
Sydney 2001

Dear Ms Sanna,

Re: The Casualties of Telstra (COT) Australia
(Small businesses versus a Telecommunications Corporation)

The following items are included for your information:

1. Video tape, addressed to

2. Copies of two letters (and their attachments) addressed to Mr John Pinnock, Telecommunications Industry Ombudsman (TIO), Australia.

3. Copy of a draft of part of my forthcoming book titled "*Phoney Business*". Please note that this has not yet been proof-read.

A submission regarding this national disgrace has also been forwarded to Senator Richard Alston, Minister for Communications and the Arts. A contact met with Senator Alston, in his office at Parliament House in Canberra, before he received my submission. At this meeting Senator Alston told this person that he had read numerous documents which I had previously forwarded to him and had concluded that I had proof of a massive cover-up regarding my Arbitration.

It was after hearing of this comment that I forwarded to Senator Alston the submission referred to above. This submission was first assessed by a legal person who has also stated, in writing, that my Arbitration did not produce Natural Justice. Senator Alston has not yet acted on the information included in this submission.

Mr Pinnock (TIO), for reasons unknown, has actually slandered me when writing to Mr Laurie James, past president of the Institute of Arbitrators, Australia. In this letter Mr Pinnock gave the impression that I was not a person of good character, stating that I was 'troublesome' and turned an innocent event (an after-hours phone call to the Arbitrator's home) into a major incident.

This 'incident' occurred as follows:
I phoned the Arbitrator on 28 November 1995 after receiving a parcel of documents under Freedom of Information (FOI). These documents further supported my belief that Telstra technicians had deliberately introduced beer into a touch-phone telephone which had been removed from by business for testing by Telstra. It is quite clear that beer had not been spilt into the phone in question before it left my premises but Telstra used a 29 page report on this matter to support their defence of my claims under Arbitration. In this report Telstra state that the 'beer' had been the cause of my ongoing phone problems.

During my Arbitration, Dr Hughes (Arbitrator) refused to give my Forensic Document Researcher (Mr Westcott of Canberra) access to the working notes on which Telstra based this 29 page report although, only a matter of a few weeks previously, Telstra's Forensic Document Researcher was allowed access to my private diaries, creating a 72 day extension on the time Telstra took to assess my claim.

I am sure you can therefore understand how agitated I was when, six months after my 'Award' had been finally handed down, I received this parcel of FOI documents which proved what I had believed all along, and which resulted in my after-hours call to Dr Hughes's residence.

On this occasion I phoned at 8.02 pm, 28 November 1995 and spoke to Dr Hughes's wife who answered the phone and informed me that Dr Hughes was in Malaysia at the time. I was concerned not to alarm Mrs Hughes, being fully aware that Dr Hughes may have told her about my Arbitration and my anger at the results, and so, on the spur of the moment, I decided it was better not to leave my own name. I gave the first name that came to mind, John Rundell, a member of one of the resource units attached to my Arbitration, and told Mrs Hughes that I would contact Dr Hughes when he returned.

As I have already explained, when writing to Mr James of the Institute of Arbitrators, Mr Pinnock turned this harmless episode around, stating (incorrectly) that I rang at 2 am and gave a false name, as if I had plotted to frighten Dr Hughes family when I was actually attempting to do the exact opposite. Because Mr James and I had corresponded before Mr Pinnock wrote this letter, Mr James was already concerned at what had taken place during my Arbitration and so he notified me of Mr Pinnock's comments.

As Administrator to these Arbitrations, Mr Pinnock, however, could investigate the matters raised by the members of COT but he has failed to do so correctly. Why?

I have recently discovered that, during my Arbitration, Dr Hughes and I received different versions of the same Witness Statement and although I have notified Mr Pinnock of this I have not yet received any indication of what he intends to do regarding this serious matter.

Another member of COT, Ms Ann Garms, also had Dr Hughes as Arbitrator for her claim against Telstra. Ms Garms has had to sell all her possessions and borrow extensively in order to appoint a Queen's Counsel to represent her in the Supreme Court of Victoria, against Dr Hughes. Her case is yet to be heard. Unfortunately, I am not able to raise funds in this way and so I am not able to take my case to the Supreme Court. I am therefore writing today in an attempt to give a brief background to the situation and to demonstrate how the legal system in Australia is being bastardised by Telstra, under the very nose of the Australian Government, and with their acceptance.

I have so far written 74 letters to Senator Alston and 12 letters to Professor Fels of the Australian Competition and Consumer Commission in an effort to obtain some assistance. Professor Fels has at least responded to my letters (although others have not) and stated that he is powerless to investigate Telstra's use of flawed reports in their defence of my claims.

You will see from the enclosed video and documents that my Goldphone was disconnected two years ago, and remains disconnected to this day, even though Telstra's own fault data shows serious problems with this service. It appears that, in Australia today, Telstra has considerable power over our elected government: no one who challenges Telstra receives any support from this government even when they have proof of improprieties.

The two volumes of evidence which I submitted as defence documents to my Arbitration clearly shows incorrect charging in Telstra's network and yet this issue is one of three major areas which was not addressed at all by the Arbitrator. Dr Hughes conspired with Telstra to have these issues covered up.

Austel, the Telecommunication Regulator in Australia, has stated that they would address the issue of calls being continually incorrectly charged to my service, if I had not already raised them in my Arbitration claim. Austel asked the Arbitrator to acknowledge that I had raised these issues in my Arbitration but Austel FOI documents show that Dr Hughes did not respond.

Ted Benjamin of Telstra wrote to Austel 11 November 1994, stating that these issues would be addressed as part of Telstra's defence of my claims but, as stated above, neither Telstra nor the Arbitrator did address the issues.

My Award was handed down 11 May 1995. After deducting what it cost me to put my claim to Arbitration in the first place I was left with 6 cents in the dollar against what I had claimed, which is a similar amount to that awarded to other COT members in their Arbitrations. The amount I claimed had been calculated by two independent chartered accountants who each arrived at approximately the same figures for what they believed I had lost over the previous six and a half years with an unreliable phone service 'not fit for purpose'.

The Commonwealth Ombudsman's office in Canberra have found in favour of Ms Garms and myself in that Telstra did not abide by the FOI Act and thereby severely disadvantaged the presentation of our claims. This is the only area in which the Ombudsman's office can intervene.

As part of the continuing the quest to obtain FOI documents in support of our claims, I have been told by Mr John Wynack, Senior Advisor, Commonwealth Ombudsman's Office, that he has not rung my 1800 freecall number anywhere near as many times as it appears from my 1800 phone account. In fact, Mr Wynack suggests that he made only 30-35% of these calls charged for, particularly during December 1996. I use Mr Wynack's office here as an example only since the Ombudsman's Office is impartial. There are many other discrepancies as you can see from the attachments. All these discrepancies continued until at least December 1996 and, eighteen months after my Arbitration was completed these incorrectly charged calls have still not been addressed by the Arbitrator or Telstra although the incorrect charging has continued unabated from 1992, through the whole period of my Arbitration and into 1996. What then were these Arbitrations all about - if these faults continue right up to the present day?

I am forwarding to you the enclosed evidence because I believe that these matters concern more people than me alone. Fourteen other people have been through similar 'Fast Track Arbitration' experiences so far and have had similar results to my own.

I am not familiar with the law regarding conflict of interest but I offer the following points for your assessment:

a. Dr Hughes is a Senior Partner of an Australian legal firm. This firm received commercial favour from Telstra during the time that Dr Hughes was arbitrating my claim against Telstra.

b. Lanes Telecommunications were appointed to be the independent technical resource unit attached to my Arbitration. During the time they were investigating my claim against Telstra they were also involved in a partnership agreement with another company which is a major supplier contracted to Telstra.

c. The original four members of COT provided Austel with information which enabled Austel to write a report (April 1994) which criticised Telstra's handling of the COT saga.

d. Robin Davey was Chairman of Austel immediately before and during the signing of an agreement to have our claims commercially assessed (the Fast Track Settlement Process or FTSP). When I told him that Telstra had instructed me to register all complaints regarding my phone faults through their Solicitors, Freehill Hollingdale & Page, he told me that Freehill Hollingdale & Page WOULD NOT BE INVOLVED IN THESE SETTLEMENT AGREEMENTS. For 5 - 6 months during 1993/94 however, I still had to notify Freehill's, in writing, before Telstra would act on my complaints. I now have FOI documents which support my belief that this was an attempt, by Telstra, to break my spirit by forcing me to continually write letters to Freehill's.

On two separate occasions I was given false information by Freehill's. One of the occasions occurred during the FTSP which later became the Fast Track Arbitration Procedure (FTAP)

FOI document A32098 is a copy of the Settlement Proposal Mark II and was written by Robin Davey on 5/10/93, to the then General Manager, Telstra/Telecom Commercial, Australia. On page 8 of this document, at point 40, Mr Davey states:

> *"Finally, if the attached letter (attachment D) dated 7 July 1993 from Freehill Hollingdale & Page to one of the COT Case's solicitors is indicative of the way that Freehill Hollingdale & Page have approached the COT Cases in the past, I would be more than a little concerned if they were to have a continuing role."*

As it eventuated, Freehill Hollingdale & Page covered Telstra's defence in my Arbitration and were signatories to the Witness Statements made by Telstra employees and Telstra witnesses. I have already referred to one particular Witness Statement, witnessed by Freehill's: the Arbitrator and I received different versions of this document - my version was signed and the Arbitrator's was un-signed.

It is of some interest to note that, during the time of my Arbitration, a Solicitor who is now Senior Advisor to our Prime Minister (the Hon. John Howard), was attached to the Melbourne office of Freehill Hollingdale & Page. I have written to Mr Howard but no action has yet been forthcoming.

I have tried every avenue I know of to raise this issue in the public domain, all to no avail and so I am now asking your organisation if you will please assist us in our attempt to stop this from happening to other Australian citizens. Australians must not be stopped from speaking up against corporate thuggery, wherever it might occur, and those parties who take the easy course, and let the corporations get away with whatever they want, must also be halted.

I have attempted to keep this letter as brief as possible because the attachments really tell the story on their own however the following probably best summarises the evidence I have which proves Telstra's thuggery throughout this process:

During a visit to Australia by the ex-president of the USA, Mr Jimmy Carter, some years ago, the Australian Government hired a Mr Garry Ellicott as Mr Carter's bodyguard. Mr Ellicott stayed with me for some time in May and June of 1994 and told me he was aware that my premises were being watched.

The following information supports Mr Ellicott's belief:

(i) Telstra's own FOI documents clearly show that they were aware my movements in and out of my business, and the movements of members of my staff.

(ii) Other documents show that, during my Arbitration, Telstra officials were listening to my phone calls and documenting the times I left my business and where I went as well as noting, sometimes as much as three months in advance, when I planned to be away from the business in the future. These documents show that this was occurring as far back as 1992.

(iii) Telstra documents also indicate that they were aware of particular person ringing me from two different locations at different times.

(iv) At one time, when I was truly fed up with this whole saga, I rang the former Australian Prime Minister, Mr Malcolm Fraser. Telstra FOI documents state that they were aware of this phone call but *Mr Fraser has since confirmed that he did not discuss our conversation with anyone else.*

(v) Telstra have admitted to the Federal Police that they had listened to my phone calls during June, July and August of 1993.

(vi) Telstra FOI documents show that they continued to listen to my private phone calls from 1992, through 1993 to 1994, the entire period of my Arbitration.

(vii) Beer was introduced into my TF200 telephone after it was taken from my premises for testing. As already mentioned, the report on this testing, based on the beer in the phone, was used during Telstra's defence to infer that my personal habits were causing some of my phone faults.

(viii) Telstra also used other flawed test results to support their defence of my claim during my Arbitration.

(ix) Under the FTAP rules regarding discovery of documents, Dr Hughes ordered me to supply Telstra with more than 40 extra sets of particulars. This information was provided by Plummer Pullinger, my FTAP advisors, at a cost of many thousands of dollars (and I can supply their receipted accounts as proof of this cost). When I asked the Arbitrator for 13 further particulars from Telstra however, I did not receive even ONE document, even though I was making this request under the same discovery process, ie the rules of the FTAP.

(x) On 11 October 1994 I attended an oral hearing which lasted for five hours, without a break. At this meeting I provided some further particulars that were required and I also satisfied Telstra and the resource unit that I would provide other further particulars that they requested. I then sought to submit four exercise books of evidence. These books contained lists of clients who had written to me regarding their personal experiences when trying to contact my business by phone. I made four separate attempts to submit these exercise books as evidence but both Telstra and the Arbitrator refused to accept them. Who was actually running this Arbitration? (Of course we now know who!).

This incident is recorded on pages 98 to 102 of a transcript of this meeting but Mr Pinnock still has the gall to state, to the media and others, that the members of COT have received fair hearings.

(xi) Eighteen months after my Award had been handed down I requested FOI access to procedural Arbitration documents. As the attachments indicate, the Arbitrator breached the rules of the Arbitration on at least six separate occasions by not copying Telstra letters on to me during my Arbitration.

I have now learned that, like me, another COT member and his solicitor have received differing versions of Telstra's defence documents.

The only fair recourse for small business people who have a complaint against large corporations is through mediation, arbitration and commercial assessment processes but how can a private citizen expect to receive any Justice at all under this present system of law in Australia (where the costs are supposed to be minimal)?

The COT Arbitrations have been a bastardisation of the process by the Arbitrators who have breached their own rules and escalated the costs to each individual COT member up into the hundreds of thousands of dollars. Meanwhile Telstra digs into the bottomless public purse to defend themselves. My own costs are now in excess of $158,000 without taking into account the cost to my health and my personal life plus my partner's unpaid wages and the costs incurred in order to borrow money to keep going.

The costs just continue to rise and rise and still all my claim documents have not been addressed through Arbitration, particularly *short duration and incorrectly charged calls and recorded voice announcement faults.* Who pays for this continuing saga, which is supposed to have been settled, even to this day?

Will Mr Pinnock or Senator Alston call Mr Wynack, of the Commonwealth Ombudsman's Office, a liar regarding the number of calls he made to my 1800 freecall number? His notes sho that he made approximately 48 calls to this number in the process of viewing my claims and yet Telstra's account shows 96 calls as connecting from Mr Wynack to my business. Other calls to my 1800 freecall number are also incorrectly charged (refer attachments, 2 letters to Mr Pinnock) and these problems continued through 1995 and at least up to December 1996, 18 months after completion of my Arbitration.

Telstra told Austel that these issues would be addressed in my Arbitration. If this had actually happened there would be no need for me to be writing this letter today.

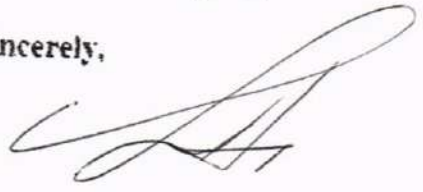
I can also supply a further 70,000 or so FOI documents, from two sets of FOI requests, which you are free to examine at your convenience, either in Queensland or in Victoria.

Because of the imminent sale of Telstra, my evidence of incorrect charging in the Telstra network must be addressed if we are to see justice done, not only for me, but also for the underwriters of this sale: all Australians have the right to state the facts as they truly are. My evidence shows an incorrect charging rate of between 9 and 30% on 600 calls to my business, over a two year period. This is a most alarming figure and my records show that this continues to this day. If I am correct then the portrayal of the value of the Telstra float must be questioned.

The members of the Casualties of Telstra just want to know why this saga has been allowed to continue, when all we ever wanted was to have our claims viewed on their merit, a decision made regarding the money we had lost as a result of our quest for Natural Justice and a phone service comparable to our competitors. As a result of this quest we have had to endure a heart-breaking saga that has now lasted many, many years. Why are the authorities so reluctant to investigate my claims? After all, if I am lying it would be so easy to prove.

I await your response.

Sincerely,



Alan Smith

continued .....

copies to:

The Hon. John Howard, Prime Minister, Parliament House, Canberra
Mr Robert Richter, Barrister, 205 William St, Melbourne

PS FELS.

Mr Prime Minister,

After I returned from a stay in hospital as a result of what was at first believed to be a heart attack but which was later diagnosed as stress, I received a phone call from Mr Paul Howell of DMR Group Canada. Mr Howell was part of the Technical Resource Unit attached to my Arbitration.

I believe Mr Howell rang in an attempt to clear his conscience regarding this Arbitration. Whatever the reason for this call, he told me that my Arbitration was the worst thing he had ever been involved with (or words to that effect) and that this saga would never have happened in North America.

Sir, do not allow democracy in Australia to suffer as a result of the behaviour of a few un-Australian citizens who only care about protecting their own interests.