

DMR CORPORATE

DMR

D M R Corporate Pty Ltd
40 Market Street
Melbourne
Victoria 3000
Australia

A.C.N. 063 564 045
Facsimile (03) 9629 4598
Telephone (03) 9629 4277
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6 December 1995

Senator R Alston
Level 2, Suite 3
424 St Kilda Road
Melbourne
Vic

Dear Senator Alston,

Re: Casualties of Telecom ("COT") - A Smith

Over the last 2 years I have acted as an independent accountant for Alan Smith and I prepared the independent assessment of his losses and damages which formed part of his submission to the arbitrator, Dr G Hughes.

In response to accounting documents and evidence submitted to the arbitrator, he appointed Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd ("FHCA") to support him in assessing the losses and damages.

The FHCA report was inaccurate and incomplete. I have since been advised by a staff member of FHCA that a large amount of information was excluded from their final report at the request of the arbitrator. This has left the report in an incomplete state and it is impossible for anyone to re-calculate or understand how the FHCA loss figures were determined. This effectively meant that it was impossible to challenge the assumptions, calculations and the time periods used in the FHCA report.

After receiving a copy of the FHCA report I responded with a letter dated 9 May 1995 and a copy of that letter is attached for your information. I have never been provided with a response or any further details in respect of this letter.

I consider that a grave miscarriage of justice has occurred in relation to the A Smith arbitration and that without a full and open inquiry it may be impossible to ever determine how the arbitrators award was calculated.

Yours sincerely

Derek Ryan

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22 December 1995

Mr J Pinnock
Telecommunications Industry Ombudsman
321 Exhibition Street
Melbourne
VIC 3000

Dear Mr Pinnock,

Re: Alan Smith

Further to your letter dated 20 December 1995 I respond to your request as follows:

1. The Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd ("FHCA") report was dated 3 May 1995 and I received a copy of the report on 5 May. After discussions with Alan Smith it was decided that I should reply to the report as soon as possible.

I worked all day Saturday and Sunday with Alan Smith trying to interpret the FHCA report. After this work I considered that the report was incomplete as the calculations of the FHCA loss figures were not included in their report.

2. On 8 May 1995 I telephoned FHCA and spoke to John Rundell and requested a meeting to discuss how the FHCA loss figures were determined. He was reluctant to talk to me at that time however we set a tentative date of 17 May 1995 for us to discuss this matter again. I have a note in my diary for the 17 May 1995 - John Rundle - Ferriers -604 5188.

My response to the FHCA report was lodged on 9 May 1995.

On 17 May I telephoned John Rundell and he stated that he was unable to discuss anything with me until the appeal period had expired. During that telephone conversation I told him that I was unable to recalculate the FHCA figures and that I felt that the report was deficient in that regard. He then stated that he understood my problems and that FHCA had excluded a large amount of information from their final report at the request of the arbitrator.

To the best of my recollection the above facts are exactly as they occurred.

Yours faithfully

Derek Ryan

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John W Rundell
95 Dandy Street
BRIGHTON VIC 3186

Private & Confidential

Mr John Pinnock
Ombudsman
Telecommunications Industry Ombudsman
315 Exhibition Street
Melbourne VIC 3000

COPY

13 February 1996

Dear John

Fast Track Arbitration Procedure - Alan Smith

Other matters: D M Ryan letter of 22 December 1995

I acknowledge receipt of your letter of 23 January 1996, enclosing a copy of a letter dated 22 December 1995, which you received from Mr Derek Ryan. I have reviewed his letter and refute that the statement that FHCA had excluded a large amount of information from their final report "at the request of the arbitrator".

I did advise Mr Ryan that the final report did not cover all material and working papers.

The Ferrier Hodgson report was prepared for the arbitrator and was provided as part of the Fast Track Arbitration to Mr Ryan and Mr Smith for comment and they did so in writing to the arbitrator.

I am surprised that it is only now some 8 months since my telephone calls with Mr Ryan that this matter has been raised with you.

Contact with Mr Derek Ryan

For your information, I now outline the details of my limited discussions with Mr Ryan.

1. On 8 May 1995, I received a telephone call from Mr Ryan and at the time Ms Susan Hodgkinson was in my office. The discussion was cautious and I was unwilling to meet with Mr Ryan at that time. I suggested that I would be happy to meet with him after the appeal period for the Smith arbitration had passed, but only to discuss the information required and preferred approach in relation to other claims. I felt this may be useful as Mr Ryan had advised me that he acted for a number of other COT

13:07

FERRIER HODGSON
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claimants and also I knew Mr Ryan professionally from his time as a partner of Touche Ross.

2. Further, on Thursday, 18 May (not 17 May 1995, as dated by Mr Ryan) I received two pager messages from Mr Ryan. I then returned his call early afternoon by mobile phone. I do not have a file note record of this call as I was in a car at Tyab on the Mornington Peninsula. I do not believe that I made the statement he has attributed to me. From my recollection of the call, Mr Ryan was attempting to make me commit to statements, which I was unwilling to comment on. Unfortunately, I can provide no further details of this call.

Other Matters

Further, I wish to advise that I am most concerned by the fact that Mr Smith engaged a private investigator, who visited me at my home on 27 December 1995, with the intention of discussing matters associated with the Ferrier Hodgson report. I find such an intrusion into my privacy and home (and also the tape recording of our discussion without advice) highly unusual and inappropriate.

As you may be aware, I have contacted the Brighton CIB in relation to:

1. damage to property at my home
2. the actions of Mr Smith impersonating me and pursuing me via the use of a private investigator.

You should be aware that the Brighton CIB intend to interview Mr Smith in relation to criminal damage to my property, but regard the matter of his impersonation and tape recording and telephoning me at home as civil matters.

Could you please provide a copy of relevant correspondence sent to Mr Smith advising him not to make contact with members of the resource unit to assist the police in their investigations.

You should also be aware that as a result of the actions by Mr Smith in contacting me at home. I have reluctantly found it necessary to install a private and silent telephone line at home. Although, Telstra offered to provide this without charge, I would not accept that and will be paying the cost on my account.

May I take this opportunity of wishing you and your staff all the best for 1996, and I trust that you will shortly receive resolution of these outstanding fast track arbitration's.

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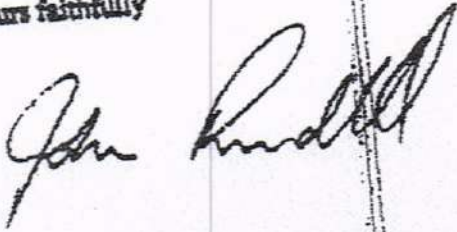
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Please do not hesitate to contact me directly at KPMG should you wish to discuss any matters associated with these arbitrations. My direct line is 9288 5457.

Yours faithfully



John W Rundell

cc

Ms Susan Hodgkinson
Project Manager
Resource Unit
Ferrier Hodgson Corporate Advisory

PROJECTIONS FOR THE CAPE BRIDGEWATER HOLIDAY CAMP
AND CONVENTION CENTRE

1. Accommodation - School Camps

- a. Most camps four nights - best possible if telephone service had have been at 100%. 36 weeks per year, average 50 persons @ \$25.00 per head times 4 nights = \$5,000.00 gross. Nett profit - average \$4,000.00. Therefore 36 times \$4,000.00 = \$144,000.00 nett per annum times 7 years (1988/89/90/91/92/93/94).

Also projected time to reinstate if phone service is made adequate - 18 months, therefore 8.5 times \$144,000.00 = \$1,224,000.00.

To be taken into account if business had have been run successfully with adequate phone service, the camp would have had the operating capacity of being able to have 2 camps at one time. Second camp would have been average of 20 persons, although this would have been a special camp @\$35.00 per head because of the special activities involved and the special type of persons, therefore gross \$2,800.00 per week, estimated nett profit \$1,700.00 per week times 20 = \$34,000.00. Once again multiplied by 8.5 = \$289,000.00.

Sub-total for weekday camps = \$1,513,000.00.

2. Weekend camps and Singles:

- a. Singles weekends would have operated from 1992 and if the phone service had have been at 100% operation then it would have been possible to have had singles weekends conservatively 42 weekends per year @ \$165.00 per head times 40 persons times 42 weeks = \$277,200.00 gross profit. Estimated nett profit \$105 times 40 persons times 42 weeks = \$176,400.00 per annum times 4.5 (3 years plus 1.5 to re-establish business) = total nett for singles \$793,800.00.

Sub-total = \$2,306,800.00.

We also have to take into account of course projected weekend trips from various areas around Portland, Warrnambool, Mt. Gambier.

3. Projected Cafe/BYO Restaurant/Devonshire Teas:

In now existing residential premises manager projected at possibly \$5.00 nett per head on an average of 20 customers 7 days a week 52 weeks per year = \$36,400.00 profit. The plans were drawn up in 1990 and the project would have been operative from 1991. Therefore, amount claimed—

We understand of course that all of these projections would have to be reduced somewhat by anticipation of poor weather, camps failing to confirm a booking and other associated economic matters. We also appreciate that a deduction would have to be made for the cost of improving the premises and also setting up of any other new areas. We would consider that 20% would adequately cover this amount. Other financial matters of course have to be taken into account. however I believe Mr. Sith has provided these to you.

E.B. 4

↙ We also need to take into account the fact that Mr. Smith has suffered stress and has been diagnosed as suffering from post traumatic stress syndrome. This disorder has been documented by his resident Psychologist in Portland, Kay Frankin, and also a psychiatrist he has visited in Geelong, Dr. Chris Mackie. We therefore would need to look at the travelling allowances, financial expenses and including any extra staff needed to be employed whilst Mr. Smith is seeking treatment and the length of time that this treatment will last for. Mr. Smith will report back with a Doctor's ideas as to the length of time that he needs to undergo treatment. It would be the considered opinion of the Medical Practitioners that Mr. Smith would need quite some time away from the business itself during the years ahead due to this ongoing post traumatic stress syndrome. We would therefore have to take into account the employment of possibly a Manager to run the business until Mr. Smith is adequately recovered from his mental condition.

Cost of preparation of this Statement of Claim: ↗

We need a full account from George Close, a full account from the Accountant, Derek Ryan, need a full account from ourselves, we need a full account from Mr. Smith of his costs incurred over the years in regard to preparation of this claim, the cost of the phone calls to other COT members, travelling expenses, meeting with other COT members, travelling expenses of travelling to Melbourne to meet with Telecom officials and meetings with anyone else in relation to this matter, his associated costs of correspondence and hours lost from his business in regard to preparation of this claim, travelling expenses incurred on behalf of myself travelling to Cape Bridgewater, costs incurred in the preparation of a video, costs incurred on himself travelling to here, costs incurred, make sure we include Rosie in our part your costs, the costs of photocopying, all the costs of extra stationery, the fax, the phone, travelling expenses, hours for GE, for Barry.

Supply the Accountant with details in relation to the JTN proposal in respect to Japanese school visitors.

ES 4

SELWYN COHEN
CHARTERED ACCOUNTANT

2nd February 1994

Stedman & Cameron
Solicitors & Barristers
455 Bourke Street
Melbourne 3000

Level 8
450 St Kilda Road
Melbourne, Victoria 3006

Telephone: (03) 866 3255
Facsimile: (03) 866 4314

Attention: Debra Trigg

Dear Madam

ALAN SMITH

Mr Alan Smith has requested I make the following information available to you.

Beds Available

122 x 365 x Average Rate/Night 25.00 =	\$1,113,250
Less: Catering Costs	\$311,710

Maximum Gross Profit Per Annum	\$801,540

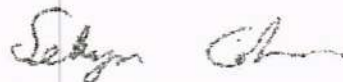
Assuming all communications were in order, the maximum possible gross profit might be 80% of this figure.

Our understanding is that operators in the area target an 80% occupancy rate.

This maximum gross profit is based on no new facilities built which the holiday camp could have benefited from.

Actual Gross Profit for the year ended 30th June 1992 was \$89,915. At this stage it is difficult to estimate losses due to telephone faults, but clearly from the Actual Gross Profit for the year ended 30th June 1992 for the Camp was under-utilised.

Yours faithfully



SELWYN COHEN

EX 5



Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

March 9, 1995

Mr. Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road
RMB 4408
CAPE BRIDGEWATER VIC. 3306

By facsimile: (055) 267 230

Dear *Alan*,

Re: Resource Unit - Technical Support

As the executive of DMR Group Australia Pty. Ltd. is unavailable to provide locally based technical assistance, I propose to utilise the services of Mr. David Read and Mr. Chris Soutter of Lane Telecommunications (based in Adelaide) who are suitably qualified and independent.

Messrs. Read and Soutter will assist Mr. Paul Howell of DMR Group Inc. (Canada) in the technical assessment under the Fast Track Arbitration Procedure. Mr. Howell the principal technical advisor to the Resource Unit will be in Australia within two weeks. The technical enquiries will commence on Thursday 16th March, 1995.

Could you please confirm with me in writing that you have no objection to this appointment so the matter can proceed forthwith.

Yours faithfully,

Warwick L. Smith
Warwick L. Smith
Ombudsman

"... providing independent, just, informal, speedy resolution of complaints."

TIO LTD ACN 057 634 787
National Headquarters
477 Exhibition Street

Rm 1909B
Colling Street East

CONFIRMATION

Telephone (03) 277 8777
Facsimile (03) 277 8787

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Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

16 July 1997

Mr W Hunt
Solicitors and Consultants
Hunts'
358 Lonsdale Street
MELBOURNE 3051

CONFIRMATION OF FAX

Facsimile 03 9670 6598

Dear Mr Hunt

Status of Lane Telecommunications ('Lane')

On 7 May 1997 Lane's business was purchased from Pacific Star by Ericsson Australia ('Ericsson'). Lane is now 100% owned by Ericsson and forms part of Ericsson's Services Corporate Business Unit as an independent telecommunications consultancy.

Lane is the Technical Advisor to the Resource Unit in various arbitrations administered by the Telecommunications Industry Ombudsman ('Administrator'). Lane is appointed by Ferrier Hodgson Corporate Advisory, the Financial Advisor to the Resource Unit, with the approval of the Administrator. The Resource Unit is appointed to assist the Arbitrator and the Arbitrator may request the Resource Unit to examine documents, inspect premises or systems, or carry out other enquiries or research.

↘ Lane is presently involved in arbitrations between Telstra and Bova, Dawson, Plowman and Schorer. The change of ownership of Lane is of concern in relation to Lane's ongoing role in these arbitrations.

↘ The first area of concern is that some of the equipment under examination in the arbitrations is provided by Ericsson. For example, the commander system and the exchange which are of primary concern in the Dawson complaint, are provided by Ericsson.

↘ The second area of concern is that Ericsson has a pecuniary interest in Telstra. Ericsson makes a large percentage of its equipment sales to Telstra which is one of its major clients.

It is my view that Ericsson's ownership of Lane puts Lane in a position of potential conflict of interest should it continue to act as Technical Advisor to the Resource Unit.

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M_MATTER314955_1 Telecommunications Industry Ombudsman Ltd ACN 057 634 787

Website: www.tio.com.au

Box 1809R

Telephone (03) 9777 2777

The potential conflict of interest clearly arises from the date on which Lane Management was advised that Ericsson had been chosen by Pacific Star as the preferred purchaser of Lane - 15 April 1997. It is arguable that the potential conflict of interest arose at an earlier time, perhaps between 25 February and 3 March 1997.

↓ The effect of a potential conflict of interest is that Lane should cease to act as the Technical Advisor with effect from a date shall be determined . An alternative Technical Advisor will need to be appointed, on terms yet to be decided, but with the agreement of all parties.

I am aware that this process will cause some delay to your arbitration procedure, but have determined that this is the most appropriate cause of action in the present circumstances.

Yours sincerely

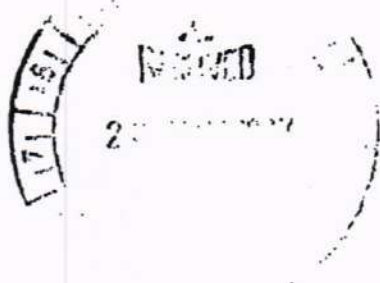


John Pinnock
Ombudsman

enclosure

cc Mr G Schorer
Golden Transport Agency
Facsimile 9287 7001

Mr Peter Bartlett, Special Counsel



27 May 1997

**CONFIRMATION
OF FAX**

**Telecommunications
Industry
Ombudsman**

Mr Graham Schorer
Golden Messenger Agency
493-495 Queensberry Street
NORTH MELBOURNE 3051

**John Pinnock
Ombudsman**

Dear Mr Schorer

Sale of Lane Telecommunications to Ericsson Australia


I have recently been advised that Lane Telecommunications business has been purchased from Pacific Star by Ericsson Australia. The settlement took place on 7 May 1997.

Lane Telecommunications will remain an independent telecommunications consultancy, forming part of the Services Corporate Business Unit of Ericsson Australia.

I have been advised that Ericsson business such as equipment sales to Telstra and other carriers is conducted by different Business Units.

I am of the view that the Arbitrators and all parties to the remaining arbitrations should be advised of the sale and I enclose a copy of the press release announcing the purchase for your information. I would be pleased to discuss this with you should you have any queries.

Yours sincerely


**JOHN PINNOCK
OMBUDSMAN**

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"... providing independent, just, informal, speedy resolution of complaints."

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The document identified some 70 circuits about 25 of which affected Telecom's Fortitude Valley exchange - an exchange which also services another of the *COT Cases*, Mrs Garms.

7.37 The contemporaneous reports reinforce the anecdotes of businesses attending the Brisbane meetings referred to in Chapter Two and in responses to Mrs Garms' questionnaire referred to in that Chapter about the difficulties they experienced when serviced by Telecom's Fortitude Valley exchange.

7.38 The problem was not confined to Brisbane. Telecom's February 1994 report indicates that the potential fault condition was detected in the vast majority of the suspect systems before it caused *call drop out* on a large scale and that only one circuit in a call path affecting traffic in Mitchelton (servicing Mrs Gillan) and one circuit in a call path affecting traffic to Maidstone (servicing Mr Dawson of Dawson's Pest & Weed Control) deteriorated to the extent that calls were lost. Again, the conflict between contemporaneous evidence of the extent of the fault in the Brisbane area and the more recent report is difficult to reconcile.

AXE network fault

7.39 In the period February to April 1993, Telecom staff responding to complaints lodged by Mr Smith of the Cape Bridgewater Holiday Camp recorded in their notes that there was a fault known to exist in AXE (digital) switching equipment which could give rise to a single burst of ring, followed by a busy tone to the caller and dial tone to the called party. For example -

"I spoke to Alan Smith He received one burst of ring at 1.15 pm and 5.05 pm yesterday, when he picked up the receiver he heard dial tone. This problem occurs intermittently through-out the Network and although it is recognised as a problem there appears to be no one person or group involved in resolving it."

(Customer Complaint Form, 4 February 1993)

"I rang Cape Bridgewater but Mr Smith was out, his assistant stated she had received several calls where on lift off all she heard was dial tone, this is after we shifted 267 267 and 267 230 into sys 3 in the RCM. I believe this may be tried [sic] up with the axe network problem which gives only 1 burst of ring and the calling party gets busy tone."

(Customer Complaint Form, 9 March 1993)

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"Rang Mr Smith to check on cordless phone he was still not entirely happy with its operation he then mentioned receiving one burst of ring and on lift off getting dial tone. I rang Gordon ... at Portland exchange who said it was a problem caused by the AXE at Warrnambool not having enough software blocks released and this was to be done on 26/03/93. I then rang Mr Smith back and he accepted the explanation that it was not just him suffering the problem."

(Customer Complaint Form, 25 March 1993)

"Visited Mr Smith, 6/04 to do end to end test calls. The first call in prior to me starting testing gave two bursts of ring and when the phone was lifted there was only dial tone. The receptionist said it was the 2nd call that morning with the same result. She also stated several people had commented they receive busy tone when they rang the previous evening when she knew the phone was free."

(Customer Complaint Form, 7 April 1993)

7.40 AUSTEL recently became aware that Telecom had prepared an internal document on the subject of this AXE fault and on 21 March 1994 sought a copy from Telecom.

RAM Relay Armatures

7.41 Telecom's *Victoria Work Specification V-T 3189* refers to -

"RAM relay armatures sticking in the unoperated position have been reported by Telephone Exchange since 1969. Complaints have been of 'sub busy when free' (SLM/S D and U relays), 'wrong numbers' (PBX rack relays), non-operation of vertical in GV Stage (GV-XY relays)."

This problem poses a special risk in services using the rotary hunt facility.

7.42 The fault was apparently first identified in 1969 and was managed by active maintenance. In 1982 a work specification which would address the problem by modification of equipment was issued by Telecom's New South Wales Administration. Corresponding specifications were issued considerably later in other administrations -

- Western Australia February 1983
- Queensland August 1983