

F.O.I. document AO3254 shows an internal TELSTRA letter from Don Pinel to Jim Holmes written on 28 September 1993. It indicates that a few weeks before TELSTRA agreed to a fast track settlement proposal they believed that "our best option is still to force these cases down a legal, structured path."

Holmes, Jim

From: Pinel, Don  
To: Holmes, Jim  
Cc: Parker, Harvey  
Subject: Letter to Schorer  
Date: Tuesday, 28 September, 1993 7:39PM

Jim,

Your proposed reply to Schorer is good although I assume it is more legalistic than I would like. I do not know of anyway to soften it without raising expectations.

One point not covered that you may like to consider is the question of "duress". This has been raised in a number of places and requires rebuttal.

Similarly the question of Telecom's regulatory and contractual protections from suit dont get a mention (it may not be necessary to raise these at this stage as they are certain to be provocative provided we dont allow expectations to form that we will relinquish such protection)

I also think that your section 2 sends conflicting messages. In one para you correctly identify the constraints on discussing a particular case with other than the specific customer. You do imply, however, that teh customers could give schorer some form of authority to act on their behalf. I am not sure that these two messages are consistent. Would a power of attorney, for example, allow disclosure to Schorer of settlement details covered by our form of release? I dont think so.

Perhaps I am getting too legalistic and defensive but we cant afford to let anything get away. However, our best option is still to force these cases down a legal, structured path.

Don

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Extracts from F.O.I. documents A00999, A01000 and A01004 state: "The whole process would be expeditiously handled, and would take ten-fifteen working days", there would be "a few days to report on each case and seek agreement", and that "Speed is of the essence"

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Date:

Wednesday, 21 April 1993 1:40PM

GREG,

I ACCEPT YOUR ARGUMENT. I GUESS I REACT FROM FRUSTRATION.

DON

From: Newbold, Greg  
To: Pinel, Don  
Cc: Wood, Don; Campbell, Ian; Pittard, Rosanne  
Subject: RE: COT cases latest  
Date: Wednesday, 21 April 1993 1:39PM

Don, thank you for your swift and eloquent reply. I disagree with raising the issue of the courts. That carries an implied threat not only to COT cases but to all customers that they'll end up as lawyer fodder. Certainly that can be a message to give face to face with customers and to hold in reserve if the complainants remain vexacious.

Other than that, I've got no probs with your suggestion except that to say we're happy to co-operate for a speedy resolution is not borne out by the COT case history and will be deriding mercilessly by the media. The briefer we are, the more likely we are to get a run on our own terms. However, the wording is clearly something for you guys to agree to with Ian Campbell. My main concern is about the overall strategy ie: not actively pushing the matter in the media.

Hindsight tells me that with Graeme Schorer we should have negotiated an agreed media statement with him as part of the settlement. It may be something to consider for future settlements. That way, we can go positively into the media with a resolution agreed to by all parties. This will make it very hard for COT case members to revisit the matter once a settlement has been reached and publicised.

Regards,

Greg.

C04094

From: Pinel, Don  
To: Beattie, Ken; Wood, Don; Pittard, Rosanne; Newbold, Greg  
Cc: Campbell, Ian; Anderson, Keith; Benjamin, Ted  
Subject: RE: COT cases latest  
Date: Wed, Apr 21, 1993 1:13PM  
Priority: High

GREG,

THANKS FOR THE NOTES. I FEEL THE MEDIA RESPONSE IS A BIT TOO ABRUPT AND DEFENSIVE. CANT WE INCLUDE THAT:

THIS IS A DISPUTE BETWEEN BUSINESSES AND THE APPROPRIATE PLACE TO HAVE IT RESOLVED IS IN THE COURTS. WE ARE HAPPY TO COOPERATE TO ENSURE A SPEEDY RESOLUTION. IN ADDITION TELECOM HAS OFFERED AN ALTERNATIVE PROCESS TO RESOLVE USING AN INDEPENDANT ASSESSOR (AS SUGGESTED BY AUSTEL) BUT THIS PROCESS HAS NOT BEEN ACCEPTED BY THE OTHER PARTIES.

THERE MAY BE OTHER POSITIVE MESSAGES THAT WE CAN INCLUDE.

DON

Why did the "Hon. Warrick Smith" allow Telstra to dictate their own terms of reference when here is yet another Telstra FOI document, that shows "Austel" always intended the "Cot Four" to be assessed by an "Independent Assessor" no mention of arbitration, as trained legal person "Warrick" would have known when he read Telstra's preferred rules of arbitration, we would end up as we did "Lawyer Fodder".

Was Dr. Hughes influenced by, or in collusion with, Telstra? The following letter may give the reader some indication of where these matters sit at present.

**LAW PARTNERS**  
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13 December 1995

Our ref: GV/9510820

Mr Alan Smith  
Cape Bridgewater  
Holiday Camp  
PORTLAND 3305

Dear Mr Smith,

**RE: ALAN SMITH FAST TRACK CONCILIATION WITH TELSTRA CORP.**

We refer to the above matter and our discussions of the events and circumstances surrounding your claim against Testra.

We have had the opportunity to carefully consider and evaluate the information you have provided to us in relation to the "fast track arbitration process" (FTAP) in which you were recently involved.

From the extensive discussions we have had with you and the correspondence and documentation we have had the benefit of considering it would appear that the FTAP failed to meet its objective of being a non legalistic, unbiased, speedy and cost effective form of resolving your dispute with Telstra.


It also appears that there may have been numerous breaches of the rules of natural justice during the FTAP. Certainly there are allegations against some of the key figures involved in the process which prima facie appear to be capable of being substantiated.

Allegations of impropriety are made against Telstra, the independent technical experts and the arbitrator. Unfortunately we have not yet had the opportunity of putting these allegations to the parties involved in order to obtain their response.

Overall however, we are of the opinion that the FTAP was fundamentally flawed given its objectives. The actions of Testra and other key figures in the process were to say the least, against the spirit of the FTAP. In short we believe it would be possible to set aside the arbitrator's decision on the basis of failure of natural justice during the course of the FTAP.

We enclose an account for our services to date and look forward to receiving your further instructions in relation to this matter.

Yours faithfully,

  
LAW PARTNERS  
per Gene Volovich

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Our Ref. MR8:BJD  
Your Ref.

August 20, 1997

Mr Alan Smith  
CA- Senator Ron Boswell  
National Party  
CANBERRA ACT  
VIA FACSIMILE NO. (062) 773 246

Dear Alan,

Re: Alan Smith v Telstra Corporation

Mr Smith has approached me to write this letter regarding my views of his dealings and difficulties with Telstra and his telephone services at Portland.

I have read Mr Smith's account of the affair together with numerous other documents including a report by a forensic accountant and source materials obtained from Telstra via FOI request. I was given the materials to enable me to advise Mr Smith regarding what legal remedies he may have in the matter. From the materials I have seen, there is little doubt that Mr Smith has a legitimate grievance and has been poorly dealt with by Telstra in trying to resolve his complaint.

The materials seem to me to disclose the following points:

- a) There was clearly a serious fault with the exchange affecting Mr Smith's service and causing him a loss of many calls and, consequently, business;
- b) From the outset, Telstra were either remiss in discovering the cause and extent of the faults or less than completely candid regarding them. One suspects the situation moved from the former to the latter circumstance over the course of their dealings;
- c) It seems clear that at the time of reaching the initial settlement with Telstra, Mr Smith had not been fully informed by them of the extent of the problems with the exchange and that Telstra, wittingly or unwittingly, withheld information relevant to the settlement to Mr Smith's detriment;

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- d) The conduct of the arbitration which followed was highly dubious and open to attack as inviting questions of bias since the arbitrator ruled out many relevant documents to the detriment of Mr Smith's claim, refused to acknowledge the problems with the original settlement and was from a legal firm which was in line for or had received large contracts from Telstra. All of these circumstances and the fact that the entire arbitration was conducted in a highly legalistic manner much in favour of Telstra on rules it forced into place suggest that Mr Smith was less than fairly dealt with by Telstra and the arbitrator;
- e) Telstra have implemented a "starve-them-out" obstructionist policy in dealing with Mr Smith and the other COT cases. This is amply demonstrated in their approach to the release of FOI material which they initially resisted handing over and then, when forced to, they released in unnecessary and overwhelming volume. It is also demonstrated in their internal memoranda obtained under the FOI report;
- f) It seems from the documents provided to me that Telstra have at times misstated the results of testing undertaken on the exchange and Mr Smith's service and even the fact of testing having been undertaken;
- g) Mr Smith has suffered losses as a direct result of the faults and further, from Telstra's dispute "resolution" strategies for which he has not but is entitled to recover.

Please note that I have not seen all the documents nor interviewed witnesses in this matter. Obviously the case is involved and extremely time consuming and Mr Smith lacks the resources to fund such an undertaking and, even with the best will in the world, I am not in a position to do so pro bono. That said, I have asked a member of Counsel here in Victoria to look at the materials on a pro bono basis and his view is also essentially that outlined above.

Undercover of these qualifications, I reiterate my view that Mr Smith has not had a fair go in this matter and is well and truly poorer for it.

Please feel free to call the writer to discuss any matter pertaining to these remarks.

Yours faithfully,  
**MICHAEL BRERETON & CO.**

  
Per Ben Dunn