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Our Ref. MRB:BJD
Your Ref.

August 20, 1997

Mr Alan Smith
C/- Senator Ron Boswell
National Party
CANBERRA ACT
VIA FACSIMILE NO. (062) 773 248

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.


Ben Dunn