

The Hon. Michael D. Kirby AC CMG

9 July 2009.

Mr. Alan Smith,
Seal Cove Guest House,
1703 Bridgewater Road,
PORTLAND VIC. 3305

Dear Mr Smith,

On 2 July 2009, you wrote to me raising a complaint concerning the conduct of an arbitrator who is a member of the Institute of Arbitrators & Mediators Australia. You wrote to me in my capacity as President of the Institute.

In accordance with established procedure, I have referred the complaint to the Ethics and Professional Affairs Committee of the Institute.

In due course, you will be informed following this reference.

Please direct future correspondence to the Chief Executive Officer of the Institute, Mr. Paul Crowley, PO Box 1364, Law Courts, Melbourne, Vic. 8010.

Yours sincerely,

Michael Kirby

Cc Mr. Paul Crowley

Level 7, 195 Macquarie Street
Sydney NSW 2000 Australia
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30 July 2009

copy

Mr Crowley
Chief Executive Officer
Institute of Arbitrators and Mediators Australia
C/- The (IAMA) Ethics and Professional Affairs Committee
P O Box 134 Law Courts
MELBOURNE VIC 8010

Dear Sir

I am aware that the (IAMA) Ethics and Professional Affairs Committee are investigating Alan Smith's arbitration matters.

During my role as the CoT's (Casualties of Telstra) spokesperson, I was constantly briefed by the CoT participants during their respective TIO administered Fast Track arbitration procedures.

I clearly recall having many discussions with Alan Smith over his facsimiles that went missing/lost during his arbitration.

A copy of the letter dated 4 August 1998 that I sent to Alan Smith is enclosed.

Also enclosed is my statutory declaration addressing these matters in order to assist the IAMA in their current investigation into the Smith arbitration matters.

Yours sincerely


Graham Schorer

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C.o.T. Cases Australia

493-495 Queensberry Street
P.O. Box 313
North Melbourne VIC 3051

Telephone: (03) 9287 7095
Facsimile: (03) 9287 7001

4 August, 1998

Our Ref: 3915.doc

Alan Smith
Cape Bridgewater Holiday Camp
RMB 4408
Blowholes Road
Portland VIC 3305.

FAXED
4/8/98

By facsimile: (0355) 267 230.
Total pages (including this page): 2.

Dear Alan,

Re: Facsimiles transmitted to Hunt & Hunt, Melbourne Office, addressed to Dr Hughes, the appointed Arbitrator of the Telstra-TIO arbitrations.

Further to my telephone conversation with you on Saturday, 1 August 1998, I am confirming in writing what I was told by Dr Hughes in the early part of 1994, in response to an alleged missing facsimile.

During the period between late January and mid-April 1994, I had reason to have direct discussion with Dr Hughes on the contents of correspondence sent to him re the proposed Telstra-TIO arbitration.

On one occasion during this period, I rang Dr Hughes before 9:00AM on his direct telephone number to discuss contents of facsimile I had just sent to him. The facsimile had not been received at Hunt & Hunt, Melbourne's Office.

Dr Hughes, after making inquiries, informed me, expressed in words to the effect, the following:-

- Hunt & Hunt Australian Head Office was located in Sydney.
- Hunt & Hunt Australia is a member of an international association of law firms.
- Due to overseas time zone differences, at close of business, Hunt & Hunt Melbourne's incoming facsimiles are night switched to automatically divert to Hunt & Hunt Sydney office, where someone is always on duty.
- There are occasions on the opening of the Melbourne office, the person responsible for canceling the night switching of incoming faxes from the Melbourne Office to the Sydney Office, has failed to cancel the automatic diversion of incoming facsimiles.
- The diversion of incoming faxes to Hunt & Hunt Melbourne to Sydney Head Office has also been taking place when the Melbourne fax machine has been out of paper or when all of the incoming fax lines are busy.

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- It is the duty of Hunt & Hunt Sydney Office to redistribute received facsimiles to the intended State Offices it had received after hours and before commencement of the next day of business.
- The onforwarding of after hours facsimiles transmitted to State Offices received at the Sydney Office is not taking place.
- Thank you for drawing this matter to my attention, as the Management of incoming facsimiles to Hunt & Hunt Melbourne are not satisfactory.
- New procedures will be introduced to rectify this deficiency.

I have read all of your correspondence regarding missing facsimiles, interception of facsimiles and telephone calls. I have examined all of the documents attached to your correspondence, which in my opinion, support many of your assertions.

Alan, what you have managed to piece together by examining your telephone account, in conjunction with other people's telephone accounts, together with Telstra documents received under FOI and/or arbitration, is alarming. I believe you have produced a picture that demonstrates your telephone service has been illegally interfered with, before, during and after your arbitration.

I note you have allowed your findings to remain open when there is insufficient independent evidence to support what appears to be apparent.

I believe the incident that I experienced and explanation I received from Dr Hughes could be a reason and explanation why Dr Hughes did not receive all facsimiles sent to him.

What I experienced does not identify all of the reasons Telstra received 43 submissions less than what you sent to Dr Hughes.

In closing, I draw your attention to the testing performed by Telstra on yours and my facsimile machines in late 1993, as a result of our complaints about my office receiving blank pieces of paper, with the funny symbol on the top when you were faxing documents to me. As you will remember, Telstra, on completion of the tests, asserted there was nothing wrong with the telephone lines nor our facsimile machines.

Should you require further information, please do not hesitate to make contact.

Yours sincerely,


Graham Schorer

OATHS ACT 2001

STATUTORY DECLARATION

I, Graham Schorer of 493 Queensberry Street, North Melbourne,

do solemnly and sincerely declare on oath that my letter dated 4 August 1998 to Alan Smith of Cape Bridgewater Holiday Camp, Portland, Victoria 3305 and my correspondence dated 30 July 2009 to Mr Crowley, Chief Executive Officer, Institute of Arbitrators and Mediators of Australia are both a factual account of events that have taken place.


I make this solemn declaration under the *Oaths Act 2001*.

Declared atNorth Melbourne.....
(place)

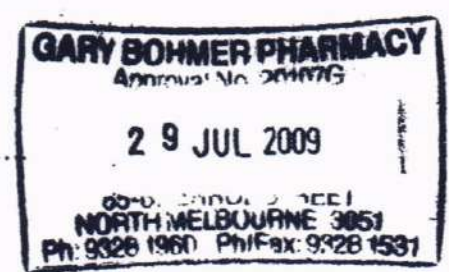
on30 July 2009.....
(date)


.....
Signature

Before me,


.....
(Justice Commissioner for declarations or
authorised person)

GARY BOHMER
Pharmacist 8132



The Hon. Michael D. Kirby AC CMG

21 February 2011

Mr. Alan Smith,
Seal Cove Guest House,
1703 Bridgewater Road,
PORTLAND VIC 3305

Dear Mr Smith,

YOUR COMPLAINT TO IAMA

Thank you for your letter of 17 February 2011, just received.

When I wrote to you in July 2009, I served as President of the Institute of Arbitrators & Mediators Australia.

In June 2010, I stepped down from this position. Mr. Warren Fischer was elected in my place.

A possible explanation for your not hearing from Mr. Paul Crowley is that, not long after my retirement as President, he resigned as Chief Executive Officer of IAMA.

I will send your letter and the attachment to Mr. Fischer and request that he respond to your enquiry.

With kind regards

Michael Kirby
Warren Fischer

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