

# 1: A Letter From D. M. Ryan – Corporate

In December 1996 Mr Derek Ryan wrote the following letter to Ms C. English at the Consumer Law Centre - Victoria.

## D M RYAN CORPORATE

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Ms C English  
c/o Consumer Law Centre Victoria  
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Dear Caitland,

Re: Alan Smith

I have been working as an independent forensic accountant for Alan Smith for approximately 2.5 years and during that time Alan has kept me informed of the weekly developments in relation to his arbitration case and the subsequent events as they have unfolded.

I am an independent professional I find it extremely difficult to take sides in this dispute without impairing my independence.

Up until now I have not aired my views to any person other than the four original COT case individuals however I cannot sit and do nothing while I see the basic democratic principles of this country breaking down before my own eyes.

This whole fiasco should and must be disclosed in a public forum to ensure that these events will never occur again.

I was in America when the Watergate investigations were on television and the events which have occurred in Australia in relation to the COT cases is very similar to Watergate. It is not so much the original act as the cover up which has taken place since that time that is my greatest concern.

From my knowledge of Alan Smith and the Cape Bridgewater Holiday Camp & Convention Centre I believe that the events may be summarised as:

1. Alan bought the camp in early 1988 and his advertising and marketing plans were not attracting the responses which he, or anyone else, would have expected.
2. The problems were in the Telstra network configurations for his area. This problem is also common to most other rural areas where there had been growth in the population without an upgrading of telephone exchange equipment.
3. Telstra knew of the problems and how to solve them however they refused to publicly admit that there were any problems so that they could defer capital expenditure in the rural areas.



4. Telstra is one of Australia's largest companies and it has assumed a position of community respect as most individuals have no knowledge of telecommunications technology. Individuals believe that Telstra technicians would not lie or deceive them as there is nothing to be gained. For this reason the word of a Telstra technician is taken to be gospel and if a technician states that there is nothing wrong with your service then that must be the case.
5. Telstra used their position to bluff most individuals into believing that their service was operating efficiently and effectively. When this was disputed or fought in any way then it was Telstra's policy to fight the accusations for as long as possible to tire and eventually wear down the opponent. This process was in a financial, time and personal commitment perspective. After a long drawn out battle a small compensation settlement would be offered as a once off settlement to close the case. Generally by this stage the claimant was so frustrated that he would accept the settlement rather than pursue the matter through the courts.
6. The same strategies were pursued by Telstra in their fight against the COT cases. The only difference was that Austel had been incorporated and that it took an interest in the matters raised and after an investigation it issued a report dated April 1994.
7. As a result of this study an investigation had to be conducted and Telstra worked behind the scenes to coerce and manipulate the COT cases into accepting the arbitration process which Telstra thought would benefit Telstra the most.
8. The rules of the arbitration were framed against the COT cases and they became legalistic and proof had to be obtained to support all assumptions. This was contrary to Austel's original objective of having a four month non legalistic arbitration process whereby the COT cases would be given the benefit of the doubt in the quantification of their losses.
9. The arbitrator has not, in my opinion, acted fairly and honestly in carrying out his duties and I believe that he has been unduly influenced by Telstra. Many breaches of the arbitration rules have occurred and in recent months we have witnessed senior people taking early retirement from Telstra rather than face the possibility of a law suit for lying under oath or for lodging information which they knew was false and misleading.
10. I reviewed the arbitrators award after it was issued and I found a major error of logic in the main calculation of losses performed by Ferric Hodgson Corporate Advisory (Vic) Pty Ltd on behalf of the arbitrator. I responded to the arbitrator in a report dated 9 May 1994 and to this date I have never had a telephone call, letter or a request for a meeting in respect of the matters which I raised in this report.
11. In my opinion the arbitrators award is incorrect and improperly based on figures which would not have been representative of the figures of the Cape Bridgewater Camp had it not been for the telephone problems.

The arbitrator has placed the burden of proof on Alan Smith to quantify his losses rather than to take a global picture and to work from a position (which Austel had determined) of stating that there were telephone problems and thereafter quantifying what the business would have been generating had it not been for those problems.

12. The question of costs is another area in which the arbitrator has erred. It was Austel's intention that the professional costs of claim preparation would be treated as a consequential loss and form part of the claim and the arbitrators award. If this was not the case then how could the COT cases afford to have their claims prepared by professionals with the relevant experience. These costs were not included in the arbitrators final award.



I have now been advised that the matter of the professional advisers costs may be reviewed and that a percentage of the original amounts which were invoiced may be paid as "reasonable costs". This position is ludicrous as the costs were consequential to the arbitration, they were professional rates and they should be paid in full. I would be prepared to accept a discounted fee if the same discount principles were also applied to the legal and accounting advisors to the Arbitrator and to Telstra.

Telstra has used its position of dominance, its financial strength and its network of employees to deceive, exploit and suppress the COT members and those who have supported them for their own corporate benefit.

They have attempted to prolong the fight so that the COT members become bankrupt or suffer from a physical and/or mental breakdown and then have to stop their action against Telstra.

I do not believe that one of Australia's leading corporations should be permitted to act in the above manner and the sooner this form of corporate thuggery is exposed the better.

The above is a lay persons perspective of the Alan Smith case and I believe that the whole truth will only be unveiled in a court of law or in a parliamentary inquiry

I would be pleased to discuss the above with you at a mutually convenient time should you so wish.

Yours sincerely



Derek Ryan