

Inquiry into Australia's Judicial system, the Role of Judges and Access to Justice.



My name is _____ and attached please find my submission with particular reference to the justice system.

I have lived in Australia for more than 30yrs. I have taken out citizenship, I have worked for many years and paid my taxes. I have never been in trouble with the law or done anything wrong. I was in my late 20's when I came to Australia and my English language skills were not very good. My ability to read and write were very poor at that time. My reading is better now but I still find writing very difficult. I have had to get help to prepare this submission as it is beyond my ability to put my thoughts down on paper.

After living in Australia for some time a friend of mine approached me to help him out with a business deal he had in process. My friend _____ was shipping _____ from Australia _____ and he needed to provide sufficient security for the bank to give him the credit needed for the short period before payment was made for the _____. He asked me to provide him with this security. I agreed to do this for my friend as it was a short term proposal and where I come from trust and your word is as binding as any contract. I was sent a "Bill of Mortgage" and told to take this to my solicitor, which I did. The solicitor said this is a "Bill of Mortgage" I said this is what my friend sent me. I was sent away and told to come back in a few days which I did, the solicitor brought me a letter and told me to sign it, I signed it, I did not read it the solicitor did not say what was in the letter or that I should read it. This scenario happened twice as my friend again requested another of my properties for security to set us (he and myself) up in a _____ exporting business. The business did not proceed. The first _____ shipment was paid and completed with no problems. My deeds for my properties where not returned to me and after some time I requested their return, they were not returned.

As a consequence of this action the bank took my properties as securities for all of my friend _____ business. At no time was I told I was guaranteeing _____ Business, I have never filled in a guarantee form or agreed to guarantee _____ business. My business was with _____ only. I had had no direct communication with the bank until they sent me the first letter of acknowledgment (I did not acknowledge or sign) for _____ bank debt and after that the letter of demand for the sale of my properties to cover _____ business debts.

There is much more to my case than this brief summary and attached is fuller explanation of my case with the bank.

There are several points in the inquiry that I would like to address.

The first point I would like to address is:

The Cost Of Delivering Justice – This point has particular relevance to those of us of meager means. In my case I engaged three solicitors before I found a solicitor who had some experience in litigation. Each solicitor of course said he could help and each solicitor charged accordingly. It did not take long to realize the first three solicitors were not of much help to me at all. Unfortunately this exercise chewed up much of my meager resources. As a novice with the legal system I had no idea where to go for help and I'm not sure if these solicitors genuinely thought they could help or just took advantage of my ignorance. To his defense the first of the solicitors

did say he was not able to handle this case. The second solicitor was and he did very little to help in fact he did me a great disservice. A summary judgment was ordered prior to the sale of my first property. did not even notify me of the summary judgment let alone contest it. When questioned at the trial said he was trying to save me money. He was also having to deal with a marriage breakdown, which had nothing to do with me but it did seem to me that his work suffered as a result. During questioning was not honest when asked if

had paid one of my invoices. had in fact not paid any of my legal expenses. I then engaged after some time it was revealed he also was way out of his depth. I then found a solicitor in Brisbane who had done a lot of litigation cases and he has worked on my case up until now.

In direct reference to my case the bank engaged in what I consider unfair and deceptive behaviour. As a third party in this case I had virtually no documentation supplied to me. When my legal team made their request for discovery documents, the bank was not forthcoming with many documents we had requested and after several deliveries of discovery documents still all were not discovered. The bank held many documents as privileged. How can the bank decide what is privileged and what is not. Should not an independent party be the one to judge. We had also subpoenaed the bank to provide various documentation. The response of the bank was: Not produced or I will have to check on that your Honour this happened several times during the trial.

Although the bank did not produce documents that were subpoenaed nothing was said by the Judge or our legal team. I cannot understand this. I was under the understanding a subpoena was a legal demand. Can those who can afford it get away with flouting a legal demand. I am to understand if an adjournment was asked for by my team to force the bank to provide these documents it would have cost me a significant amount of money that I did not have. I have also requested a realization account from the bank. Without this account I have no information to tell me if the funds from the sale of my properties was used correctly. I have not at any time been informed where this money has gone.

These delaying withholding and expense creating tactics should not be happening. How can a small person such as myself with very limited financial resources fight

against the endless resources of the bank. As a consequence of the actions of the bank I have had to borrow from family and friends just to get to trial and am then treated with utter contempt by the bank and its legal team.

The second point I will address is:

The Timeliness of Judicial Decisions – My case went to trial on _____ and lasted for 10 days and concluded _____. This trial was heard by a Judge only. It took 6 months to receive the judgment. It was _____ before I received the judgment.

My case went to appeal. The Appeal hearing date was _____. The judgment was not delivered until _____.

My legal team applied for special leave to the High Court.

Application for Special Leave to Appeal made

Notice of Appeal

Applicant;s Summary of Argument

Respondent's Amended Summary of Argument

My life, all that I owned and my future depended on this case. It seemed to me to take an inordinately long time to receive Judgment.

The third point I will address is:

The ability of people to access legal representation – I have no financial resources left to engage a private solicitor to continue with my pursuit of justice in this case. I have been to legal aid but they do not handle litigation cases. I have also been to the following government departments, also with no success.

ASIC

ACCC

QPLICH

Community Legal Services

Law Society

Law Commission

Bar Association

Banking Ombudsman

The Prime Ministers Office.

I have been referred from one department to the next. Not one of them will give me

any advise, answer any of my questions or give any practical help. They all say they do not handle this sort of case and refer me on to another equally useless department. I am sure I have tried every avenue available. There does not seem to be anywhere I can get legal representation because I have no money.

The forth point I will address is:

The adequacy of Legal Aid: - Legal aid may be beneficial to people who have minor legal problems to sort out but in my case it is quite a large case and quite complex. It is also a third party case which is setting a precedence for similar cases in the future. This case should be handled very carefully and the correct outcome should be achieved to make sure cases in the future are not prejudiced by an incorrect judgment in this case. I come back to the point that it seems to be if you don't have money you cannot get proper legal representation. Even when you can pay for legal representation whomever has the most money gets the best Lawyers. If a Lawyer has represented a respondent or had anything to do with them they are in conflict of interest and then cannot represent you. They may be the best Lawyer or Solicitor for your case but they are not available to you. The little people cannot play on a level playing field as those who are well resourced. It is not financially possible for them. Huge changes need to be implemented if that were to occur.

The fifth point I will address is:

Measures to reduce the length and complexity of litigation: - I feel if the law were to be tightened up and loopholes closed things might happen more quickly. The privacy act has been used to withhold information in a third party cases. If someone is subpoenaed and they don't provide the requested information in court, there should be ramifications for that action. Also in the discovery process delaying and indeed misleading tactics are used to withhold documents and hold documents as privileged which should not be privileged. If all the documents and information relating to a case are not presented how can a fair trial result and how can justice be served. These points need to be addressed. Who decides what documents can be held as privileged and what should not. Should not an independent third party who is qualified be set up in a position to make that judgment. This would speed up the litigation process a great deal saving time and money for all.

The sixth point I will address is:

The Adequacy of funding and resource arrangements for Community Legal Centers: - If Community Legal Centers were better resourced either by state or federal funding, that would perhaps make justice more available to those of us who are with out financial resources or who have used up all the resources they had. We supposedly live in a democratic society where Justice and Fairness is available to

all. In my case I certainly have not found that to be the case.

The last point I will address is:

Other Matters relating and incidental thereto: - There have been many things during my case that have cost me time and money and I feel have affected my case adversely. Some of these points I have already addressed but some I have not. When my property was put up for security for my friend business I had it valued by a registered valuer at the banks request. My block of land which had a lot of improvements made to it was valued at \$160,000.00. This block was sold by the bank for \$74,250.00. This block was again valued after the sale by registered valuer at \$84,000.00. When questioned about this at the trial and the huge discrepancy in value said "it could be a different figure for other purposes". This seems grossly wrong to me and it seems that the bank sets it own rules as it goes along.

Regarding the realization of assets as security for the business debt, I searched for the date, sale and transfer of all the properties held as securities for my friend business, I came across two of the properties (

which were sold by mortgagee power of sale the property was subsequently transferred for \$1.00 from one entity to another and then the property went under mortgage. Both of the properties were on the one transfer. This seems very strange to me. I am not sure if this has direct relevance to my case but it may be something you should be aware of. I feel that the bank may have retained control of this property long after the first transfer.¹ There were seven properties used as security I have been able to find a deposit after the sale of only one the these properties. Of the other six properties I have been unable to locate any of their sale deposits and the bank refuses to cooperate or communicate with me regarding this account realization.²

When my legal team sought special leave to appeal to the high court I had to deposit \$15,000.00 into a trust fund before we could apply. This was an estimate of how much the proceeding would cost. After our application was rejected the bank got the account taxed and the total came to a little over \$18,000.00. The bank sent us a letter saying that we did not need to pay the balance of the account as long as I signed a deed of settlement. I was not prepared to sign away my right to pursue them in the future and as a result they bankrupted me for approximately \$7,300.00 dollars I am now a bankrupt.

In conclusion:- These are the conclusions I propose the judiciary can correct.

1. They are all part of the customer banker contract and I believe that the judiciary by not enforcing elements of that contract in all bank actions are

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creating an injustice.

2. The bank did not discover documents which was to our disadvantage.
3. During later proceedings the bank then discovered documents which was to their own advantage.
4. Incorrect accounting was accepted as debt by the court.
5. Incorrect documents were constructed for the court, consequently bank evidence was incorrect.

To the extent that all these points can be sheeted home to the judiciary the banker customer contract needs to be put beyond doubt, beyond the discretion of the judiciary. It has long been a tradition that banks in Australia are given the benefit of assuming there is a debt owing. Unfortunately as shown above this debt can be manipulated and the initial manipulation should involve the penalty that equity does not prevail where financiers are shown to corrupt the quantum of the debt in any way. It has long been a fundamental mistake in English society to allow the judiciary the luxury of supporting corrupt debt collection practices based on the evidence of the entity claiming the debt. In Australia where it is law that bank statements are prima facie evidence then it should be statutory that any manipulation of a bank statement or quantum of debt by any process whatsoever to jeopardize any dealing should attract criminal penalties as part of the trade practices act and the companies act. The presumption that quantum's of debt are always correct was shown by the shadow ledgers inquiry of 2000 as a manipulated figure leading to claims of misleading and deceptive conduct. Where it can be seen from above the Bank by non disclosure has conducted processes pursuant that their conduct should be outlawed because judges have not been responsible enough to ensure the bank operated correctly.

Please bear in mind this is the first submission I have undertaken and I apologize for any inadequacies in its content or format.

Please do not hesitate to contact me if you require further information. I have all relevant backup information that may be needed. I am available to provide what ever is required of me to assist you in this inquiry.

Contact information: