A SUBMISSION IN THE NATIONAL INTEREST

BACKGROUND

My name is Andrew Garret, I am a winemaker of some 36 years experience, I allege that I, my family, my Family Trusts and related entities hereinafter The Andrew Garrett Group (TAGG), have suffered at the hands of Insolvency Practioners of the (...) of companies which collapsed in July 2003 as a consequence of total indebtedness to National Australia Bank of $6,350,000. (acknowledged by the bank in June 2003) This debt was at the time allegedly secured against assets worth between $50 million and $200 million; the latter value attributed to independent arms length third party valuations.

I do not require confidentiality in respect of my complaints and submissions to this honourable enquiry; I desire that my families' experience is available to legislators on an unfettered basis to assist them and their advisors to identify current flaws in the system of management of both Corporate and Personal insolvency especially as it relates to Bank Conduct and the failure of both ASIC and ITSA to properly police the conduct of Insolvency Practioners and their advisors.

The parties of whose conduct I complain are underlined.

TAGG entered into a first and subsequently a second contract of finance executed between the NAB and it in June 2002 and October 2002 respectively. This followed the receipt of a Letter of Offer from NAB by me to advance a total of some $10,350,000 in May 2002 in the normal conduct of my business.

The security documentation was prepared by the Bank's Lawyers in head office Adelaide while I engaged the firm of (...) to act on behalf of the Garrett related entities; this firm breached the duty of care in the advice provided and conclusion of relevant documentation which amongst other matters was ineffective to provide security over the property known as (...) .

(...) concurrently acted for National Australia Bank as well as (...) of the firm (...) , and (...) of the (...) in conflict with the best interests of its clients who at that time included the Garrett Related entities.

In December 2002, NAB discovered that its securities in respect of the advances made to TAGG were fundamentally flawed in a way that made the normal rights of contractual rectification applicable. Subsequently the NAB sought to vary the terms and conditions of the first and second contracts of finance in a way that breached those contracts.

In May 2003 the NAB sought to rectify its security position one month before the appointment of (...) as Receivers and Managers.

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At that time, myself and my wife were advised by the Bank manager involved that those additional securities would not result in a change in the level of securities available to the bank and that I would not need legal advice in respect to the execution of those documents .Such representations were fraudulent, misleading and deceptive consequently the taking of additional securities are avoidable pursuant to the Corporations act (2001).

In early July 2003 the then sole (...) entities and two consultants agreed to appoint administrators being (...) , which firm was also acting concurrently for NAB in respect of another task as a Receiver and Manager. This firm subsequently was appointed as liquidators to the group of companies.

On 17th July 2003 the Bank, by its agent (...) made representations from the bar table to His Honour Gray J in action 127 of 2004 which overstated that the amount owed to the bank by TAGG, he alleged that the debt owed was in excess of $10,000,000 thereby breaching his duties and obligations as a court officer while concurrently and knowingly being party to an act of Fraud.

In February 2004, a default judgment was made in favour of the Australian Taxation Office (in the absence of a defence) against me in my prior capacity as trustee of the Andrew Garrett Family Trust. This Judgment was made in respect of an alleged debt that at the time did not exist.

Subsequently, (...) at the conclusion of their administration in 2007 while acting as Receivers and Managers of the (...) (as agents of the Bank) alleged in his reports to ASIC that the debt owed by the group was in excess of $13 million in spite of evidence before them of collection of in excess of $20 million with regard to the initial indebtedness of $6,350,000.

In so doing (...) (agent) in his capacity as Receiver and Manager and NAB (principal) committed Fraud and so.

(...) and (...) as Administrators failed to act in the best interests of the Public at large and unsecured creditors as a consequence of a conflict in personal interests as a result of desire for ongoing appointments from NAB .

In September 2004, (...) was appointed as Trustee in Bankruptcy of my Bankrupt Estate.

In that capacity (...) has;

1. Sworn affidavits that he knows could not be true
2. Dealt with assets that he could have no possible entitlement to.
3. Relied on affidavits of NAB that he knew could not be true and in so doing acted only in his own self interest
4. Failed to act in accordance with the acts
5. Failed to contest affidavits that he knew could not be true
6. Failed to contest the default judgment that led to his appointment in the sole interests of Fee Generation.
7. Objected to the automatic discharge from bankruptcy in the sole interest of fee generation
8. Blackmailed me in to agreeing a Deed of Settlement in actions SAD 29 of 2005 and SAD 5 of 2006 in the sole interest of Fee Generation
9. Acted criminally
10. Failed to properly marshal the assets of the Bankrupt Estate

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11. Breached his duties and obligations as an officer of the court

In December 2004 (...) was appointed as the Trustee in Bankruptcy of the Bankrupt Estate of my ex-wife, Averil Gay Garrett.

In that capacity (...) has;

1. Sworn affidavits that he knows could not be true
2. Dealt with assets that he could have no possible entitlement to.
3. Relied on affidavits of NAB that he knew could not be true and in so doing acted only in his own self interest
4. Failed to act in accordance with the acts
5. Failed to contest affidavits that he knew could not be true
6. Failed to contest the default judgment that led to his appointment in the sole interests of Fee Generation.
7. Objected to the automatic discharge from bankruptcy in the sole interest of fee generation
8. Blackmailed me in to agreeing a Deed of Settlement in actions SAD 29 of 2005 and SAD 5 of 2006 in the sole interest of Fee Generation
9. Acted criminally
10. Failed to properly marshal the assets of the Bankrupt Estate
11. Breached his duties and obligations as an officer of the court

Complaints were lodged with ASIC by me in respect of the failure of (...) , (...) , (...) and (...) to act in accordance with the Corporations Act (2001) and the Corporations Regulations Act (2001). Concurrently the relevant insolvency practioners also lodged complaints against me with ASIC. The only advice received by me from ASIC was that they were not pursuing charges against me, no result was forthcoming in respect of my complaints against them.

Complaints were lodged with ITSA and ASIC by me in respect of the failure of (...) , (...) , (...) & (...) to act in accordance with the Bankruptcy Act (2001) and the Bankruptcy Regulations Act (1996). Concurrently the relevant insolvency practioners also lodged complaints against me with ASIC. The only advice received by me from ASIC was that they were not pursuing charges against me, no result was forthcoming in respect of my complaints against them.

Upon receipt of the Notice of Objection to discharge lodged with ITSA (on the last day allowed in accordance with the act) I made application to the Inspector General to review the grounds of objection to discharge, some of which were dismissed and others of which were upheld. I then commenced an application to review the decision of the delegate of the Inspector General before the Administration Appeals Tribunal.

OVERVIEW

Insolvency Practioners are appointed through two central acts, one of which governs the area of Corporate Insolvency and the other of which governs the area of Personal Insolvency namely;

1. The Bankruptcy Act (1966)
2. The Corporations Act (2001)

Often the two areas of insolvency are inextricable linked as the consequence of corporate collapse leading to personal insolvency.

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Each of these areas of insolvency requires practioners to utilise their powers in the Public Interest by virtue of the obligation to exercise quasi judicial discretion.

Trustees in Bankruptcy are appointed to manage the affairs of the Bankrupt Estate in respect of personal insolvency and are required to lodge reports with ITSA who are also responsible to assist in monitoring the conduct of Trustees in Bankruptcy and their assistants pursuant to the Bankruptcy Regulations Act (1996) and the Bankruptcy Act(1966).

In respect of the Corporations Act ASIC holds the relevant powers to police the conduct of Administrators, Liquidators and Receivers and Managers pursuant to the Corporations Regulations Act (2001).

In respect of each act and the relevant regulations acts an aggrieved party, for instance a shareholder, creditor, company officer or a bankrupt may make submissions to the insolvency practioners concerned &/or to the court and/or the relevant regulatory authority.

As the right of indemnity of Insolvency Practioners ranks as a first claim over assets of the corporation (subject to the secured creditors claims) or estate extends to pay the fees of the insolvency practioners along with the respective related costs including legal expenses it is in the interests of insolvency practioners to make a claim over as many assets as possible to ensure the payment (and overpayment) of fees generated.

Often the claims of insolvency practioners over assets can include unrelated assets that they know cannot be related to their appointment but by making those claims the goal of the practioners is not to act in the public interest or properly exercise quasi judicial power but rather to act solely in a personal interest resulting in the binding of all classes of assets in claims that will require resolution by a court.

As a result of binding all classes of assets (related and unrelated) in such a way; an aggrieved person is rendered impecunious. This has the unenviable consequence of resulting in an aggrieved party often being unable to fund the acquisition of legal advice and effectively contest the actions of insolvency practioners.

Insolvency practioners have the enviable ability to engage legal practioners on contingency as a result of the lien held over assets of a Bankrupt Estate or Corporate collapse. There is no drain on cash resources as are felt by the victims of improper conduct.

It is in the personal interests of insolvency practioners to generate as many fees as possible in respect of any particular appointment, the true motivation of insolvency practioners is the motivation for profit.

This Personal interest is at conflict with insolvency practioners duties and obligations to act in the public interest which generally requires practioners to exercise Quasi Judicial Powers. These are fundamental conflicting Juxta positions

It is worthy to note that the relevant State and Federal Court systems requires parties who exercise Judicial Powers to be appointed from the Ranks of Legal Practioners who have experienced the onerous duties and obligations to act as court officers pursuant to the various Legal Practioners acts and the conditions relating to entry to the bar. Generally, appointments to the ranks of the Judiciary comes after many years experience at the bar in which the character and performance of the persons in question is assessed by government.

Conversely an application by a person to become an insolvency practioners requires very little effort and absolutely no obligation to acquire knowledge of how to exercise quasi judicial powers in the Public's best interest.

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It is not possible to have a party who is motivated solely by personal gain to have any unfettered discretion to exercise quasi judicial powers in the public interest.

In the face of inability to fund legal advice as a consequence of binding of TAGG related & unrelated assets against Banks (with deep pockets) and insolvency practioners (who have no need to fund legal expenses) I made my best attempt to fight a corrupt system.

As a consequence of being a bankrupt, the causes of action became assets of the Bankrupt Estates of myself and my ex-wife, which actions were not pursued by the relevant Trustees with other personal self interest agendas that conflicted with the Trustees duties and obligations incumbent upon them.

I have endeavoured to represent myself and the parties for whom I act in Trust in an environment when I had not been previously personally involved in litigation. Through the passage of time and experience appearing before Courts I believe I eventually bettered my endeavours to comply with practice and procedure of Court Systems.

Unfortunately, my rate of learning came at a great personal cost as well as cost to the public purse; this learning proved to be to be totally inadequate.

It is a fundamental truth that the system as it applies to the application of legal aid is also fundamentally flawed with virtually no funds being allocated to fund litigants in the civil arena. As a consequence far greater levels of crime are being committed by white collar criminals on a daily basis as they remain unchecked.

In such an environment I have been adjudged to not have standing either personally or in my capacity as an officer of a company; it is little wonder that I have been now been adjudged a vexatious litigant and that arguments that carry weight have not been heard in the South Australian Courts.

In the civil arena the Statute of Limitations provides for an even greater disadvantage for unrepresented parties who run the risk of never having a fair hearing where both sides of an argument can be heard on a represented basis as a consequence of the passage of time.

By way of contradiction to the decisions of the South Australian Courts, the learned Justice Lander in the Federal Court has recognised that the parties I have represented do have a case to answer having adjourned SAD 185 of 2007 "sine die" pending the rewriting of a statement of claim by legal practioners. I do not wish to squander the opportunity presented by His Honour's decision to preserve the various claims against the passage of time and the restriction of the 6 year period in respect of limitations of Civil Claims. Of interest it is extraordinary that when a civil claim is the result of criminal action the Statute will not apply however this a function of a Court finding.

I welcome the opportunity to provide substance to the submissions with evidence as well as greater detail of the complaints I make, on an open basis with no restriction to the access by the press to my statements and evidence.

Sincerely

(...)

Andrew M Garrett; Winemaker, Discharged Bankrupt, Trustee, Corporate Director

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