



29/4/09.

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100 Parliament House
Canberra ACT 2600.

Dear Sir,

Firstly, I do not quite know how this fits into the terms of reference of your committee, but it is a matter that has been brought before, and not been resolved, by Parliament or the NSW and Queensland Police Fraud Squads. That is the so called "foreign currency" loan issue. It is my belief that it has been waived aside by the Federal Parliament because on one side of politics a Prime Minister was involved in selling these loans, and on the other side of politics there was a grateful Prime Minister who had borrowed millions to buy a pig farm and had this waived by the bank [the "people's" bank at the time], and that the two State Police Fraud Squads are not interested because it is assumed to be a Federal Police matter. You can then conclude, that because of the lack of interest from above, fraud by banks assumes a low priority for our law enforcement agencies. Hopefully, your Committee can see it another way.

Virtually there were three frauds committed in relation to these loans. Firstly, there was no "foreign currency" loan. It was simply a currency swap done by the banks whereby they had no exposure to foreign currency whatsoever. However, they tied the borrower, by way of an elaborate loan agreement, into repaying the loan at the foreign currency rate applicable at maturity. I have various documents to prove this point; that there was no "foreign currency" loan. What is more damning than the following three liner from the 1985/86 annual report from the Commonwealth bank? "The Bank's net exposure to foreign currency risks is not material and the reporting of Australian dollar equivalents of long term foreign currency monetary items is therefore considered unnecessary". I have three reliable witnesses to confirm being told by a senior foreign currency department official of the Commonwealth Bank that the Bank raised it's loan money by way of a currency swap.

The second fraud. The banks had offices in Singapore and the loans were arranged through there. Why Singapore? Well the Singapore Government allowed them to operate there TAX FREE providing they did not trade in Singapore with Singaporeans. So not only did it seem to the Australian borrower that his loan came through Singapore as a "foreign currency" loan, but they avoided tax altogether. When this was brought to the attention of the ATO, the ATO sent a team up there to investigate. My understanding is that they were unable to ascertain what tax was avoided and they finally settled on a figure that the banks were "very happy" with. We were not able to see the results but no doubt you would be able to ask for and see the report.

The third fraud. The banks knew that the borrowers were not liable for withholding tax, but they levied this upon the borrowers. In my own case for instance, I paid \$18,686.78. I approached the ATO for its return. The fellow at the ATO with whom I met told me that the bank simply paid money into the ATO each month and there was no record submitted by the bank of it being paid in respect to anything other than their own tax. Now I make the point, even the secretary of the local kids football team would have a list of those that paid to play each Saturday afternoon. Judgement was given on the subject of withholding tax in the Queensland court but the banks said they would only return it to the borrowers if they were taken to court. Of course then, those borrowers who had been to court, had no money to follow it through; and the banks knew it. No doubt you would be able to access the information from the ATO.

My understanding of fraud is that there has to be an intent by one party to defraud, that party being aware of facts of which the defrauded party was not aware, and an actual loss by the defrauded party. I have adequate information to substantiate these factors in relation to these loans, and will produce this if you require.

Further reading to substantiate the above is the "Westpac Papers"

Now I will endeavour to fit this whole sordid affair into your terms of reference.

1] The financial advisor in relation to these loans was the bank manager, and at this stage I should refer, and most strongly advise, that your Committee obtain and study, a copy of the film "The Farm". This film was produced by the ABC and is spot on in depicting the role of the "financial advisor" [the bank manager], the events that followed, and the need for appropriate disclosure in relation to any loan. In relation to the

“foreign currency” loans and after you have viewed “The Farm” you might ask what disclosure? And because it involved fraud, why would they want to disclose anything that incriminated them?

2] I am not aware of any regulatory environment whatsoever for these products. There is then an obvious need for such regulation.

3] Bank managers were promoted and received bonuses for selling these loans. Upon retirement, a lot of them set themselves up as financial advisors. As you will appreciate, this led to a further conflict of interest by way of commissions, and the “you look after me and I will look after you” attitude between the now financial manager and his old bank.

4] The “foreign currency” loans were extensively advertised through journals that I, and obviously lots of others, did not regularly read. And if they did, they would obviously contact their “trusted” bank manager. This is obviously an area that would need to be addressed by your Committee.

5] The adequacy of the licencing arrangements would of course need to include all lenders and include the banks.

6] I think I have covered the point of appropriateness of information,

7] I do not know how you would cover the subject of consumer education other than to insist on appropriate and complete disclosure of the product.

8] Surely, the provision of indemnity insurance for the sellers encourages unscrupulous financial advisors to be even more reckless.

9] Under the heading of legislative and regulative changes, I feel quite sure that provision should be made for settlement of financial disputes rather than the present court system that is being manipulated by the lawyers and the big lenders. One has only to look at the law notices allocated for each day in the newspapers. In predominance in the commercial division list are the banks and other big lenders, and this is where the lawyers go into a feeding frenzy. If they are fortunate enough to be asked by the lender to run the case and they lose, they are dropped and are lucky to get back in favour. And if they are acting on behalf of a hapless borrower, and they are anxious to get back in favour with “the big boys”, their effort is half hearted. Their career future lies with “the big boys”.

Then there is the further manipulation of the court system by the big lenders by way of the judges allocated to the cases. It was quite obvious

in the cases run by the foreign currency borrowers. Other than my own case, I know of no judge that was allocated to another foreign currency case if he had declared in favour of a borrower. It is my understanding that the judge on my case had sat on at least one and probably two cases before mine and had ruled in favour of the bank. On the seventh day of the court hearing whilst the bank manager was giving evidence, he made the remark "I have not the slightest idea what managing a foreign currency loan is.....just a matter of looking at the exchange rate is it not? The bank manager could not believe his luck. His reply was to the affirmative and his evidence was well rehearsed, and when he stepped down, the supporting bank team almost kissed him. The judge soon after this called my barrister into his chambers and suggested I pull out. I was then emotionally and financially destroyed and did not have the finance to pursue the fraud side of the case.

A further manipulation of the court system by the banks is through their head office legal branch that is more than well versed in preparing cases and stretching the truth. When a borrower brings a case against the bank, the legal branch asks the manager to forward all documents to them. They then prepare the manager's written statement and sworn evidence for him to sign. It would include the loose leaf diary [and as you can imagine you can have a ball with a loose leaf diary!]. So in reality, it is not the bank manager's statement, it is a concocted statement made up by the legal department in the bank's head office. In one case I can well remember, the bank sent the statement the bank manager was to present to the court, to the bank manager to sign, but at this stage he had left the bank, had no further obligation to tell lies, and he refused to sign it. Not to worry, the bank had the timidity to even produce it in court as evidence.

Further manipulation of the financial system is by way of the Australian Bankers Association. They have a full time secretariat binding them together in a united front on all matters relating to banking and the economy in general. Something like stepping on a jumper ants nest. I need go no further than to remind you of the lobbying and the pressure they bring to bear upon the government of the day.

Financial advisors can only refer clients to lenders; most often the banks. If the non bank financial advisors are over curbed and reduced in numbers, this can only force the investor/borrower to consult his "friendly" bank manager for advice. "Come into my parlour" said the spider to the fly. A reminder. Obtain and view a copy of "The Farm".

Yours faithfully,

Ken Kingsford.