


**Senate Select Committee on
Superannuation and Financial Services**

**Main Inquiry
Reference (a)**

Submission No. 139

Submittor: Mrs Janice Holland
10 Coolamon Road
TAROONA TAS 7053
 - (03) 6227 8536

The Secretary,
Senate Select Committee on
Superannuation & Financial Services,
Parliament House,
CANBERRA. 2600.

10 Coolamon Rd.,
TAROONA, 7053
6th May, 2001.

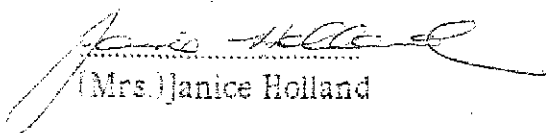
Dear Sir/Madam,

Enclosed please find my submission to the Senate Select Committee with regard to the investigation of the Solicitors Mortgage Fund fiasco in Tasmania. I believe there may have been unconscionable behaviour, professional misconduct and possible collusion to pervert the course of justice.

Although these allegations were stated in my affidavits sworn in the Hobart Supreme Court they apparently gave no cause for comment. It would appear that obstruction of justice and perverting the course of justice constitute acceptable behaviour in Tasmania even though they are listed as crimes in the enclosed Crime File Index.

My submission has been kept as brief as possible, but further information and fully detailed proof will be provided if required.

Yours sincerely,


(Mrs.) Janice Holland



ph. 6227 8536

Kingborough Council apparently did not understand the Land Use Planning Approvals Act 1993 or the Strata Titles Act and had no idea that enforcing their own regulations and Planning Scheme was legally binding for a Planning Authority under the law of Tasmania.

My solicitor apparently could not understand my four word instructions:-
"COMPLIANCE WITH APPROVED PLANS"
so apparently he decided to ignore them without telling me.

The Resource Management & Planning Appeal Tribunal was the correct avenue of appeal for breaches of Land Use Planning Approvals Act and Strata Titles Act.

It seems that the Tribunal did not understand that they were meant to uphold the laws of Tasmania, namely the Resource Management Planning System.

Perhaps they all DID understand the need to protect the Solicitors' Guarantee Fund and the Solicitors' Mortgage Funds from a possible financial meltdown caused by wildly excessive loans granted because apparently the Mortgagees did not understand Law Society guidelines for loans.

However it seems THEY DID UNDERSTAND that a widow (vulnerable by virtue of age and marital status) who was one hundred per cent in the right and who insisted that the law be upheld looked like an easy prey -

Assembled against her were:-

- 1) Kingborough Council
- 2) Solicitors' Guarantee Fund President
- 3) Murdoch Clarke (Hurburgh)
- 4) Murdoch Nominees (Mortgagees)

and resulting from the Tribunal's "mistaken assertion" letter stating that orders were sought IN MY NAME to demolish the Wallace unit when this was completely untrue

- 5) Solicitor Otlowski (Second Mortgage)
- 6) B&J Wallace

It would certainly appear that THEY DID UNDERSTAND how to use the law and their unified masculine power against a woman whose solicitor could NOT understand her four word instructions.

Legal legerdemain enabled heavy costs to be awarded against me.

SOLICITORS GUARANTEE FUND
(M.Crisp,President,retained by JM Holland)

ANDREW HURBURGH (\$9.6 MILLION MACQUARIE LOSS)
Solicitors'Guarantee Fund rumoured to be insolvent

JM HOLLAND V. J.H.HURBURGH

Hurburghs Solicitors (Murdoch Clarke) were also Mortgagees through their fund Murdos Nominees-the Mortgage Loan was \$530,000 on Govt.Value of \$377,000 and advertised asking price of \$500,000. There was NO VALID PLANNING PERMIT for this development- had Holland instructions "COMPLIANCE WITH APPROVED PLANS" been followed the development could have faced DEMOLITION with potential \$530,000 loss for Mortgagees. A SECOND MORTGAGE over only unit sold was held by Solicitor Otlowski. THESE SOLICITORS ALL HAD DOUBLE INTERESTS AS MORTGAGEES

HOWLETT V. HURBURGH

Supreme Court action against Hurburghs (dating from 1987 and believed to be in vicinity of \$600,000) was running concurrently with Holland case. Therefore it seemed prudent to act CONTRARY TO HOLLAND INSTRUCTIONS in order to prevent what could have been a financial meltdown for the Solicitors Mortgage Funds, and to set her up to meet most of the costs,since MURDOS NOMINEES could have had to meet costs of either demolition or making the development comply with the legal requirements.

Murdoch Clarke letter actually stated that the interest owed by Hurburgh already exceeded his income and they were providing extra money to meet his living expenses.

Apparently JM Holland was to be the sacrificial lamb to save the Solicitors, Mortgage Funds from the consequences of what seemed to be an excessive and very dubious loan to someone who (so I have been informed) has a history of bankruptcy- the loan conveniently in his wife's name.

Murdoch Clarke according to advice received,also act FOR the Kingborough Council which provided the Certificate of Completion for a development which was in blatant violation of:-
Kingborough Planning Scheme
Approved Engineering Plans
Approved Building Plans
Approved Development Plans
Strata Titles Act
Land Use Planning & Approvals Act

The Council had also accepted the VERBAL assurance of this man I had never even met, when he stated that my permission had been granted to obstruct a private Right of Way CONTRARY TO APPROVED PLANS.

When I requested removal of encroaching obstructions the Council told me it was a civil matter and I must take private legal action, whereas according to the provisions of the Land Use Planning & Appeals Act the Council as Planning Authority was legally bound to enforce their own regulations and Planning Scheme.

The correct avenue of appeal was the Resource Tribunal. They not only failed to uphold the law, but found most of the costs against me - due to some legal legerdemain. The Tribunal sent a letter stating that an order was sought IN MY NAME to demolish the only unit sold. This was untrue, but as a result of this "mistaken assertion" (euphemistically described as such by the Tribunal) the terminally ill owner of the unit became involved.

One notable item was the \$3000 costs awarded against me for this man (WHOSE SOLICITOR HELD SECOND MORTGAGE) to defend his NON-EXISTENT RIGHT (as per Stratum Plan) to VEHICULAR ACCESS over an UNMADE right of way BLOCKED BY LOGS AND COVERED WITH TREES and to unlawfully traverse land owned by St. Luke's Church. Apparently his solicitor, even after studying the Stratum Plan, failed to advise him that he did NOT have that right of access - he was quite unaware of this until I sent proof at his request, when the case was over.

If I had done, to a dying man, the things attributed to me by the FALSE USE OF MY NAME I would consider myself guilty of actions bordering on MANSLAUGHTER. I was unaware of the facts until I went on my own behalf to the Supreme Court - BECAUSE I DID NOT HAVE A SOLICITOR the information PREVIOUSLY CONCEALED, came directly to me.

(all over)

Ray White

REAL ESTATE

9

6 COOLAMON RD.

160,000

155,000

185,000

\$ 500,000 TOTAL

\$160,000

2 Bedrooms

A

\$155,000

2 Bedroom

B

\$230,000

House

WESTPAC IS
MORTGAGEE

SOLD

(Wallace)

C

\$185,000

3 Bedroom

D

Ray White

HOBART

71 Bathurst Street

Hobart Tas 7000

Phone: 03 6231 4488

Fax: 03 6231 0327

Internet: www.raywhite.net

When delivering the annual John West Memorial lecture, the Governor Sir Guy Greene (Examiner 29/4/00) stated that the Rule of Law ought to be inviolate, and if he were faced with a choice between accepting the advice of the Executive Council or of upholding the law, he would uphold the law.

The oath taken by Executive Councillors at the swearing in ceremony which reads "I do swear that I will well and truly serve Her Majesty the Queen" etc clearly seems to be a solemn vow to uphold Crown Law.

I believe I have been denied natural justice because the law has NOT been upheld, and that I have been subjected to discrimination in the area of administration of the law on grounds of age, gender and marital status.

It seems that also due to my widowed status I have been deprived of my civil rights, my property rights and my human rights - the most basic of which is my right to MY OWN NAME.

Very briefly:-

- 1) A man I had never met told a lie to the Council IN MY NAME
- 2) Council accepted that lie IN MY NAME
- 3) My solicitor, without consent, abandoned orders IN MY NAME and actions taken IN MY NAME caused stress to a dying man.
- 4) The Resource Tribunal sent a letter falsely stating that an order was sought IN MY NAME for demolition of this man's home, causing severe shock and distress which exacerbated his already terminal illness.

If I had actually perpetrated these deeds attributed to me I would feel guilty of little less than MANSLAUGHTER.

I have suffered financially and emotionally as a result of these acts of fraud and misrepresentation which generated huge potential liabilities and forced me to become involved in undeserved litigation because the law was not upheld by those entrusted with its administration.

The lawyer retained by me was one recommended by the Resource Tribunal from its "register of professional experts". Right from the beginning, I was deeply concerned with the aspect of bias or discrimination because the Resource Tribunal, with the same person acting as chairman, had found in the Respondent's favour in a previous hearing and in so doing had DELETED THE VERY CLAUSE THAT UPHELD MY RIGHTS AS OWNER OF THE LAND. I knew it was normal procedure for a judge to disqualify himself in such a situation, and I felt very uneasy. My disquiet stemmed from the fact that it did not seem to be procedural fairness.

Since I knew I was one hundred per cent right ACCORDING TO THE LAW and had absolute proof of the violations, I thought it should be a simple matter of the Resource Tribunal upholding and enforcing the law. MY ABSOLUTE PROOF WAS NOT ACCEPTED INTO EVIDENCE.

Parts of my claim referring to the lawyers and the Resource Tribunal were rejected by the Anti Discrimination Commissioner on grounds that the complaint may better have been dealt with by:-

- a)The Law Society
- b)The Supreme Court

THE LAW SOCIETY- my complaint read :-

"I request an investigation into the terms of the loans by solicitors as detailed on the grounds that they did not meet Law Society of Tasmania guidelines, and they may have had an adverse influence on legal action taken by me concerning a development financed by them".

Under Law Society guidelines investment money may only be lent on Tasmanian Real Estate, not exceeding 66 per cent of valuation.

The details of the Solicitors' Mortgage Fund loan referred to in my complaint come from their own costs submission and I quote :-

- a) "The units are mortgaged for approximately \$530,000."

The ADVERTISED VALUE was \$500,000, some \$30,000 less.

Had Law Society guidelines been observed, the Mortgage would have been AT MOST 66% of \$500,000 which was \$330,000.

Govt. valuation was \$377,000, so that was a conservative loan amount.

This loan exceeded those guidelines by TWO HUNDRED THOUSAND DOLLARS and was over 100% of the advertised value, presenting an alarming level of risk for investors in their Mortgage Fund.

Further quote:-

- b) "If the house (mortgaged to Westpac) and the units were all sold at Govt valuation there will still be insufficient funds to repay the mortgage indebtedness. In fact the borrowings are at the level they are in order to enable interest to be paid on the mortgage and provide living expenses."

The Law society was apparently unable to understand from these figures that a serious breach of their guidelines may have occurred. They were also very evasive about answering questions of legal ethics with regard to two members of the same firm representing parties with conflicting interests. After five months of these tactics I felt it was futile to pursue it further.

Since the Law Society enjoys "a monopoly of review of its members' conduct" and (quoting from print media) "the bottom line is Law Societies are set up largely to protect the interests of solicitors" perhaps they felt that an investigation of my complaint would NOT be in those interests.

It is also pertinent to note that the development had no valid Planning Permit and could have faced demolition if the law had been upheld.

THE SOLICITORS

Concurrently with the Tribunal hearings my solicitor, as President of the Solicitors' Guarantee Fund, was appearing in court regarding a rumoured two million dollar loss to investors in a failed Solicitors' Mortgage Fund.

ACTUALLY
\$9.6 MILLION
If my instructions had been followed, a demolition order may have been made for the whole of the heavily mortgaged development.

This information was withheld from me - apparently with good reason.

Perhaps such an order could have had a major financial impact upon the Solicitors' Mortgage Fund (Mortgagees) and the Solicitors' Guarantee Fund which, at the time, was rumoured to be insolvent.

By abandoning orders and failing to pursue matters on my behalf (all done without my knowledge or consent) it seems that my solicitor not only breached Duty of Care but managed to portray me as some flippant, flighty female prone to changing her mind at the last minute.

This set the stage for the Tribunal to find me frivolous and vexatious and order costs against me.

THE RESOURCE TRIBUNAL

When the Solicitors' Mortgage Fund involvement was revealed, I became even more apprehensive about the outcome of the Resource Tribunal hearing. These concerns were expressed in letters to the Legal Ombudsman four months prior to the final hearing - I felt the odds were stacked against me as a widow alone versus Respondents whose solicitors were also the Mortgagees - and my solicitor president of the Solicitors' Guarantee Fund.

As a direct result of the Tribunal's demolition threat two more Respondents became involved. Like myself, they were never told that the letter had given false information. This seemed strange, because their solicitor had phoned the Tribunal the same day and the duration of the call was fifteen minutes as per his itemised account. It seems that either the Tribunal did not tell him the truth or he involved his clients without any valid reason. It was at this point I began to sense that something was very definitely amiss.

One week later there was a Tribunal hearing which lasted 1 hour 15 mins. I was advised by letter ONLY AFTER it had taken place. The letter gave little information other than that Mortgagees had attended. In retrospect, I believe that this was highly irregular, and now wonder whether, in my absence, my fate may have been decided by men with vested interests.

In the final analysis, it seems that it was either them or me - and being a widow, legally inexperienced and naive, I was shrewdly outmanoeuvred.

THE SUMMONS TO THE RESPONDENT

The Summons was issued by the Resource Tribunal to ONE Respondent. That Respondent NEVER made an appearance at the Hearings. Apparently it was arranged for her husband to appear instead, thus ensuring masculine domination of proceedings-I was subjected to approximately SIX HOURS of cross examination while outnumbered TEN TO ONE. -I believe that this was blatant discrimination and unreasonable harassment. Conversely, the Respondent's HUSBAND was questioned for only ONE HOUR.

DURESS

There was an attempt to force settlement and I quote "Your matter must settle and settle before the resumed hearing date"--I believe the legal term is "duress". I resisted because I felt it was manifestly discriminatory.

Quite shockingly, costs were awarded against me even though I had been totally in the right and simply asked for the law to be upheld- yet I had been victimised and discriminated against for that request.

THE SUPREME COURT

Determined never to lose control of my life again, I went to the Supreme Court and appeared on my own behalf - I presented my proof of evidence in sworn affidavits. The Supreme Court judge granted a Writ for the Resource Tribunal to show cause why the costs decision should not be quashed, and I quote:

"on the ground that I was denied material justice as my lawyer acted contrary to my instructions".

Because I had no lawyer, all relevant information was sent directly to me. This was how I discovered decisions had been made in MY NAME without my knowledge or consent and other documents, previously unseen by me, provided evidence of possible misconduct-a veritable litany of betrayal.

The Resource Tribunal advised the Supreme Court that they would not show cause and would abide by the decision of the judge.....the judge did not make a decision, and the matter was adjourned "sine die".

Just prior to his death, I made a settlement on compassionate grounds to the man whose involvement was caused by the Resource Tribunal's letter. As soon as I discovered what had been done to him IN MY NAME I offered my heartfelt apology and assured him that I would never have consented to such actions, especially in the circumstances of his rapidly deteriorating health. I was shocked, disgusted and completely devastated by what had happened, but grateful I had found out in time to set the record straight.

Sadly it seems he was caused unnecessary pain and suffering judging from comments made in letters from a solicitor, and I quote:-

"The fact that no orders were then, or since, sought that would materially affect them, suggests that they had no need to participate in the proceedings at all" etc.

"Solicitors appeared on behalf of the owners of unit 3, and ON BEHALF OF THEMSELVES as the Second Mortgagee over the unit".

It seems significant that Westpac, (first Mortgagee) found no reason to participate - when I asked them I was advised that since the letter referred only to an application and no order had been made, they did not consider that the expense of legal involvement was justified at that stage.

FINAL COMMENTS

The Resource Tribunal Act states:-

"The Tribunal must hear and determine an appeal within 90 days of it being lodged". WHY did it take a whole year in my case?

The Governor, Sir Guy Greene, has stated

"WHEN THERE IS A CONFLICT, THE RULE OF LAW MUST PREVAIL"

I appeal to this Tribunal to investigate my claims that:-

- 1) I have been discriminated against in the administration of the laws of Tasmania
- 2) I have been denied natural and material justice because THE RULE OF LAW DID NOT PREVAIL.

*Criminal Investigation Branch.
TASMANIA.*

*10 Coolamon Rd.,
TAROONA.*

27-6-00

** I confirm my formal complaint made to the CIB Kingston Branch on 13th June with reference to the acts of Fraudulent Misrepresentation committed against me by:-*

DONALD HURBURGH of 171a Channel Hway, Taroo,na who verbally advised the Kingborough Council that he had obtained my consent for works on my property contrary to Approved Engineering Plans. As a direct result of that false statement I have suffered financial loss and acute nervous stres

RESOURCE MANAGEMENT PLANNING APPEALS TRIBUNAL, who sent a letter stating that a demolition order for the home of the late Brian Wallace had been sought by me when no such order was ever sought -this resulted in financial loss to me and stress related health problems both to myself and the terminally ill recipient of the letter.

Proof is provided by the enclosed letters from Kingborough Council and the Resource Tribunal, and further detailed information can be supplied when it is required.

*.....
(Mrs.) Janice Holland*

** 6/5/01 no reply to date.
JH*

Attachments
not authorised for publication.

Defininion of a crime:--

A crime is an act or a failure to act so that the law is broken.

In my case I believe the first crime committed against me was one of FRAUDULENT MISREPRESENTATION in a false verbal statement to the Kingborough Council (from a man I had never met), stating that he had obtained my permission for works ON MY PROPERTY even though these works were in blatant violation of the Approved Plans and the Kingborough Planning Scheme, and there was no valid Planning Permit.

The Council refused to enforce compliance with its own regulations and I appealed to the Resource Tribunal for removal of the illegal encroachments. FRAUDULENT MISREPRESENTATION was again committed against me by the Resource Tribunal in a letter falsely stating that an order was being sought by me for demolition of Unit 3 of the development. As a direct result of this "mistaken assertion" a third party became involved and I suffered financial loss and severe nervous strain.

However, apparently in order to protect the liquidity of the relevant Solicitors Mortgage Fund and the partners in that legal firm from the consequences of a very unwise and excessive loan granted to this developer in blatant breach of Law Society guidelines, I believe that the subsequent actions of the Resource Tribunal and the solicitors concerned, culminated in the crimes of:

- 1) CONSPIRACY TO OBSTRUCT JUSTICE
- 2) COLLUSION TO PERVERT THE COURSE OF JUSTICE

Legal ethics do not permit solicitors from the same firm to act for parties with conflicting interests. I believe that this fact alone could invalidate the costs order made against me by the Resource Tribunal.

Furthermore, I do not believe I had a legal right to make a decision which concerned land owned by St. Luke's Church, particularly when the Planning Scheme and the approved Development Plans denied any access over Church land. However, the Tribunal in its wisdom decided to grant costs against me to a solicitor acting outside legal ethics (but holding second Mortgage) for his client to defend a non-existent right (as per Stratum Plan and Development Approval) to VEHICULAR ACCESS over an UNMADE road already blocked by logs and covered with trees - even though their crime of Fraudulent Misrepresentation had actually caused the involvement of this person in proceedings.

I therefore request an investigation into apparently unlawful actions, unethical and unconscionable behaviour, the failure to uphold the provisions of the Strata Titles Act and Land Use Planning & Approvals Act 1993, as well as the violation of my Human Rights, my Civil Rights and my Property Rights