


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

**Main Inquiry
Reference (a)**

Submission No. 195

Submittor: Mr Sydney Dwyer
1 Nutgrove Avenue
SANDY BAY TAS 7005
 - (03) 6225 2725

Ricza, Jade (SEN)

From: Syd. Dwyer [spdwyer@internettv.net.au]
Sent: Monday, 4 June 2001 11:18 AM
To: super.sen@aph.gov.au
Subject: Senate Select Committee Hearings on Solicitors' Mortgage Schemes

Referring to your recent letter I append below my submission to the Committee.
As required my name is Sydney Paul Dwyer, 1 Nutgrove Avenue, Sandy Bay. Tas 7005,
my telephone number is (03) 6225 2725.

My name is Sydney Paul Dwyer, retired Certified Practising
Accountant, residing at 1 Nutgrove Avenue, Sandy Bay.

I was appointed as the inaugural Trust Account Inspector for the Law
Society of Tasmania, taking up my duties early in 1984.

The purpose of the appointment of an Inspector was to visit all law
firms, as well as sole practitioners, in the state and to report to the
Society on any irregularities found as a result of the inspections. I
took the view that my work should be not only to discover errors, but, to be
of an educative role as well. With this end in mind seminars were
arranged by the Society, at various places in the state, practitioners and
members of their staff were invited to attend. The object of these
meetings was to give those responsible for trust account matters an
opportunity to familiarise themselves with the Rules of Practice
requirements and raise their general level of competency. The seminars
were, in the main, well attended by a number of practitioners as well as
relevant staff members.

At the time of my appointment practitioners were required to provide the
Society with a report by an approved accountant relating to the solicitor's
accounts. These reports were required to be made twice a year. As
far as I am aware these conditions applied up to the time of the
appointment of "an in house Inspector"

At the commencement of my work I found that, in my opinion at least, the
standard of compliance with the Rules left a great deal to be
desired. In the first year of inspections I was obliged to make
adverse reports on all offices, with the exception of one solicitor who had
been in practice only a few days and had not had any trust account
activity. The seriousness of my complaints ranged from relatively
minor, but, none the less reportable breaches, to the very grave. As
far as I am aware all the offices had been receiving "clean approved
accountants' reports". In fact, as time went by and further causes for
complaint were found, it was not uncommon for practitioners to pose the
question to me as to why their auditors had not found the shortcomings
that I uncovered. Of course I could not answer them.

After I had completed each inspection I went to pains to ensure that I was
able to discuss my findings with a responsible partner of a firm, or the
sole practitioner as the case may be. This gave us the opportunity to
fully examine the various aspects of my report which would be submitted to
the Society. I think that this, coupled with the co-operation of
most, led to a gradual, but, significant improvement in the overall quality of
recording etc. The result being less frequent need for serious
complaints.

Unfortunately, there arose cases which involved very serious, as I saw it,
breaches of trust as well as doubtful professional conduct. My
complaints were dealt with by either the Society itself or the Court.

I think that, apart from those who faced serious charges as to the propriety
of their actions, the vast majority of practitioners had reached the
conclusion that the introduction of random inspections had done a lot to
raise the standards of the profession. It should be noted here that
those who received severe penalties (including being removed from the roll
of practitioners) for their mis-deeds, according to general conversation
within the profession, were given no sympathy at all by their
colleagues. I am happy to record, that with the exception of a few
solicitors, most realised that I was doing only what was required of me and
I was treated with courtesy and respect whenever it was necessary for me to
re-visit their offices.

There was one notable exception to the above and that concerned the firm of Clerk Walker and Stops. I found it necessary to report very adversely on the firm and the members were charged by the Society in the Supreme Court with a number of serious allegations. Some of the charges resulted in the presiding judge finding that certain of the partners were guilty of unprofessional conduct. (Law Society of Tasmania v J B Walker Law Society of Tasmania v D B Walker Law Society of Tasmania v J R Hurburgh Law Society of Tasmania v P H T Stops Law Society of Tasmania v P B Walker (deceased) . Supreme Court of Tasmania Green CJ. 17/1989 List "A" Nos.298.299.300.301.303/1986). The Society was not content with the findings of the judge and accordingly appealed to the Full Court.(The Law Society of Tasmania v J B Walker D B Walker and J R Hurburgh. Supreme Court of Tasmania Full Court Nettlefold and Cox JJ 56/1988 List "A "16,17,18/1988) The appeal failed.

Some little while later it was decided that I should again inspect the firm which had been exempted since the first Court action was taken in, I think, mid 1986 until the handing down of result of the appeal in late 1988.

As was the custom I informed the firm that I wished to again inspect them and a date was arranged. However, before that time came I was instructed by the Executive Director of the Society that the firm did not wish me to carry out my inspection and had asked that another person be appointed to do the work. Accordingly I was told that I was not to go near the firm. I could not be given any reason as to why the firm raised its objection.

As this was a complete departure from previous practices, I wrote to the Society to express my view that if they insisted on my being barred from inspecting Clerk Walker and Stops they would be interfering with my independence as a duly appointed inspecting officer. Further, if they persisted with their stance I would have to seriously consider my position.

Eventually, the matter was considered by the Executive Committee of the Society, and I believe a decision was taken to reject the objection of Clerk Walker & Stops and to instruct me to proceed. However, before I received that instruction I believe a member of the Executive was able to persuade it that a member, who was not present at its previous meeting, wished to speak on the matter and that a decision should not be made until that person was heard. As a result of this the question went before a Council Meeting of the Society which reversed the Executive decision in favour of Clerk Walker & Stops.

I was verbally informed of the outcome, but, again on asking what reasons had been advanced by Clerk Walker & Stops I was told that none could be given to me.

The whole procedure appeared bizarre to me. For here we had the very profession, which prided itself on justice for all and its pursuit of that aim, refusing to give me any details of the objection raised against me, and for that matter an opportunity to defend myself. Resulting on the foregoing I had no alternative other than resign, which I did.

That ended the practice of independent inspections being carried out.

I was aware that there was a deal of dissatisfaction within the profession in regard to the quality, and cost, of the of six monthly reports prepared by various approved accountants. I understand the Society later took the opportunity to have the system of approved accountants reports discontinued, and appointed a salaried officer who would be responsible for the close scrutiny of all legal offices within the state and also act as an in house accountant.

I believe that situation continued until some 2-3 years ago when the office was abolished and the system of approved accountants reports re-introduced.

Whilst it is not my intention to reflect badly on the present make up of the Council of the Society, for most of whom I feel a certain sympathy, I feel my experience should be aired in the present climate when the merits of self-regulation of the body are being considered.

Shortly after my resignation as inspector I received a letter from a member of the then Council in which he said that, whilst he had only been a member of Council for some two and a half years, the decision re the audit of Clerk Walker & Stops was the most distressing matter in which he had been involved. He went on to say Council was split on the matter and those

who thought that I should be permitted to continue my inspection of Clerk Walker & Stops took the unusual step, for the Council at least, of asking for their dissent to be recorded to the motion that an alternative person carry out the inspection. In his opinion the role of an auditor was extremely important and one that should not be tampered with. He took the view that the society's random inspector should be apart from and not subject to the direction of Council, lest the value of the inspections be lost. He prophesied that the decision made by Council would ultimately cause problems with the random inspection system and may be one that could lead to more government control in the future. His criticism was that if that situation should arise those members, who were instrumental in seeking the appointment of an alternative random inspector, would have a great deal to answer for. In conclusion he said he would like to record his gratitude for the work that had been done and that there would be a great number of members in the legal profession who would very much regret my decision to resign as random inspector.

After my resignation had been forwarded to the Society representations were made for me to re-consider, however, for the above reasons I could not.