



Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a)

Submission No. 229

Submittor: Mr C E Clark LL.B., JP
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9 July, 2001

Ms Sue Morton,
Secretary ,
Select Committee on Superannuation and Financial Services,
Parliament House ,
Canberra,
ACT, 2600.



Dear Ms. Morton,

Inquiry into Solicitors' Mortgage Schemes in Tasmania.

I enclose my reply to the matters raised by Mr Jackson at the last Hobart sitting of the Committee together with the two annexures referred to.

Please advise me if the Committee requires any further information.

Yours sincerely,

Cyril E.Clark.

P.S. Will fax Tribunal order as soon as received from Supreme Ct.
C

COMMENTS BY CYRIL ELLIOTT CLARK ON EVIDENCE GIVEN ON BEHALF OF THE LAW SOCIETY OF TASMANIA BY MR PHILIP JACKSON ON 15TH. JUNE 2001.

Refer page SFS 1198

Mr Jackson made much of the fact that there was no finding of professional misconduct or unprofessional conduct against Clerk Walker and Stops.

This is strictly correct as these are technical legal terms. The court clearly found that there was improper conduct deserving of censure on the part of several of the partners of Clerk Walker and Stops and that is the reason that the Chief Justice expressed his disapprobation and strong disapprobation respectively in respect of the practitioners named by him.

It should be noted that this matter and that of Murdoch Clarke were not raised to revisit the rights or wrongs of the conduct of the two firms but in fact to show :

- a. There was in the mid to late 1980's a system of prudential supervision which exposed the practices complained of.
- b. The Society at that time was prepared to mount prosecutions against practitioners if it considered their conduct improper.
- c. That as result of these two prosecutions a course of action was pursued which led to Mr Dwyer being forced to resign and me being dismissed.

Whilst neither of these matters directly affected a mortgage investment fund it must be clearly understood that the prudential supervision of the Law Society extended to the whole trust account of which the mortgage fund was a significant part in many cases and especially in respect of the two firms mentioned above.

Refer SFS 1200

In paragraph 2 Mr Jackson says that my evidence was misconceived in referring to " a letter from the Law Society". Reference to my evidence at SFS 1185 will immediately show that I made no such statement.

In the same paragraph Mr Jackson says in respect of Murdoch Clarke “It was established at a hearing before the Disciplinary Tribunal in 1986that there was nothing wrong with what the firm had done.”

This is patently wrong as the Tribunal made no findings regarding the propriety or otherwise of the practice and simply dismissed the application by consent after the Law Society indicated it was not in a position to continue. A copy of the Findings and Order of the Committee in respect of Mr Fabian Dixon is enclosed.

In the last paragraph of SFS 1200 Mr Jackson alleges that my employment was terminated for incompetence. I comment on this as follows:

- a. As I was denied access to the council meeting on the 14 November 1992 called specifically by Mr Fabian Dixon for the purpose of terminating my employment and I was also refused the right to address the meeting to answer any allegations against me I have no knowledge of what allegations were put to the meeting . Suffice to say that no matters of alleged incompetence appear from the minutes of that meeting and none have been particularised to me. I do not believe that this was the reason for my dismissal.
- b. In November 1992 the society was in a very sound position financially – it owned unencumbered three heritage listed commercial properties in Hobart and a similar property in Launceston . In addition it enjoyed a healthy income from subscriptions, distributions from the Guarantee Fund and income from the banks in respect of what were known as the Westpac Monies. My recollection is that it also had a credit balance at that time of about \$600,000 with the bank. A staff of nine employees was required to carry out the various aspects of the Society’s business including the libraries and other associated bodies whose affairs it administered.

This is to be contrasted with the position in 1980 when I first took up my position with the Society. At that time it was housed rent free in old government offices, its only substantial asset was a poorly resourced and maintained law library and its level of service to its members and the public was minimal.

- c. During the time of my service I was congratulated and thanked by every president over a period of 12 years as is shown in the annual reports of the Society. I was

never at any time told by any president or indeed other officer that my work was unsatisfactory or my competence in question.

- d. It must be asked why the Society consented to the payment of damages and costs to me in respect of wrongful dismissal if it considered that it had the right to properly dismiss me for incompetence. I enclose a copy of the judgement which clearly shows that the Society consented to the payment of damages and costs in respect of the wrongful dismissal claim as well as the defamation claim.

Refer SFS 1216

Mr Jackson is splitting hairs when he says that the Solicitors Trust and the Law Foundation were not subsidiaries of the Law Society. This may be technically legally true in a corporate sense but the following should be noted :

- a. The administrative arrangements for both were handled by the Law Society staff including all financial dealings and recording.
- b. The Executive Director of the Law Society was secretary and CEO of both bodies.
- c. The offices of both bodies were situated in the Law Society's premises.
- d. Two of the three members of the Solicitors Trust were lawyers nominated by the Society and appointed by the Minister. In addition the members of the Trust were paid remuneration on a scale recommended by the Law Society and approved by the Minister .
- e. The Law Foundation always had a majority of members of the Society on its board including nominees of the Society, the Solicitors Trust and the Bar Association.



A handwritten signature in black ink, followed by the date 9/7/07.

IN THE SUPREME COURT OF TASMANIA

HOBART REGISTRY

No. 1211 of 1993

CYRIL ELLIOTT CLARK

Plaintiff

BETWEEN

- and -

THE LAW SOCIETY OF TASMANIA

First Defendant

- and -

FABIAN BROOKE DIXON

Second Defendant

CONSENT JUDGMENT

DATED AND ENTERED THE 15th DAY OF AUGUST 1997

UPON the filing of a memorandum of consent dated the 15th day of August 1997 IT IS THIS DAY ADJUDGED BY CONSENT pursuant to Order 43 Rule 7(1) of the Rules of Court that:

1. The Plaintiff recover against the First Named Defendant the sum of \$19,865.75 for damages together with costs in relation to his claim for damages consequent upon or resulting from his dismissal on or about the 14th day of November 1992.
2. That the Plaintiff recover against the First Named Defendant and the Second Named Defendant the sum of \$10,000.00 together with costs in relation to his claim for damages for defamation alleged to be contained in a letter or memorandum published on or about the 17th day of November 1992.

A. Walker
REGISTRAR

Filed on behalf of the Plaintiff
Gunson Pickard & Hann Solicitors
152 Macquarie Street
Hobart Tas. 7000
DJG:JH

DX 116 Hobart
Tel (002) 23 6199
Fax (002) 23 8283
Ref. Mr D J Gunson

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11 JUL 2001 11:26

SUPREME COURT HOBART

NO. 664

IN THE MATTER of ^{5) 15-02}
FABIAN BROOKE DIXON
a Legal Practitioner

AND IN THE MATTER of the Law
Society Act 1982

FINDING AND ORDER

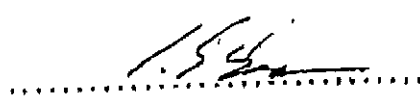
UPON the Application of Cyril Elliott Clark, Secretary and Executive Director of the Law Society of Tasmania, dated the 13th day of February 1986 and heard on the 14th and 15th day of April 1986 by the Disciplinary Committee of the Law Society constituted for the purpose of the hearing of the Application by Peter Ehrington Evans, Chairman, Brian Maxwell Lewis, Valentine Roy Smith, Patrick John Sullivan and John William Wilson AND UPON HEARING Mr. William Peter Maria Zeeman of Counsel for the Applicant and Mr. Edward Drummond Lloyd QC and Mr. Phillip Joseph Quinn of Counsel for the abovenamed Fabian Brooke Dixon (hereinafter referred to as "the Practitioner") AND UPON the Applicant consenting to the dismissal of the Application and the Committee being satisfied that such an order is appropriate,
IT IS HEREBY ORDERED

1. That the Application against the Practitioner be dismissed by consent.
2. That the Law Society of Tasmania pay the costs of the Practitioner from the date when the Practitioner's List of Documents was delivered to the Applicant, such costs to be taxed as determined by the Chairman, if not agreed between the parties.

AND IT IS FURTHER ORDERED that the time for filing this Finding and Order with the Principal Registrar and for sending a copy thereof to each party is extended until the 22nd day of April 1986.

AND IT IS RECORDED that the Finding and Order was pronounced by the Committee in private.

DATED this 15th day of April, 1986.




P.E. EVANS
Chairman
Disciplinary Committee.

AND IT IS FURTHER ORDERED that the time for filing this Finding and Order with the Principal Registrar and for sending a copy thereof to each party is extended until the 22nd day of April 1986.

AND IT IS RECORDED that the Finding and Order was pronounced by the Committee in private.

DATED this 15th day of April, 1986.


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F.E. EVANS
Chairman
Disciplinary Committee.