



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

GRIEVANCE DEBATE

**Commonwealth Bank of
Australia: Thomson, Mr G.**

SPEECH

Monday, 23 August 1999

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Monday, 23 August 1999
Page 8826
Questioner
Speaker Andrews, Kevin, MP

Source House
Proof No
Responder
Question No.

Mr ANDREWS (Menzies) (5.10 pm)—I rise in the context of the recent revelation that the Australian banks had entered into an arrangement with the radio broadcaster, Mr John Laws, to downplay any negative perceptions of them and promote their image positively. More than a million dollars was involved as payment. Like many Australians, I was appalled at this revelation. What particularly concerned me was their preparedness to pay more than a million dollars to Mr Laws on the quiet, and who knows how much to others, while ordinary Australians continue to suffer at the hands of some banks. This afternoon I instance one case of unethical behaviour involving a constituent, Mr Gordon Thomson, and the Commonwealth Bank.

Briefly, the facts of the case are as follows. In 1985, Mr and Mrs Thomson purchased a one-acre block of land at Wonga Park in my electorate. In 1987, they approached AV Jennings to build a house on the block. A representative of Jennings proceeded to arrange a loan for the Thomsons through the Clayton branch of the then State Bank of Victoria, now the Commonwealth Bank of Australia. After considerable delays caused by Jennings issuing the wrong plans, a loan was finally issued by the bank. The bank's contract required bank forms to be completed for the release of moneys to Jennings. Jennings provided a series of forms to release moneys which they had had pre-signed by the Thomsons. After construction commenced, Mr and Mrs Thomson became alarmed that the work was of an extremely poor standard. In a letter dated 2 August 1988, the Thomsons advised the bank to 'make no further payments until they are notified that the Shire of Lilydale is satisfied and we are'—that is, with the building constructed by Jennings.

The Thomsons did not consent to the final payment, but the bank went ahead and paid Jennings on 8 December 1988. In March 1990, the local council—the shire of Lilydale—was forced to accept that the house was not fit for human use and cancelled their approvals. The bank was informed, but it refused to take action against Jennings. The owners, the Thomsons, were forced to take action themselves.

In defence to a claim for defects in the construction of the house, Jennings admitted to defects to the value of \$80,000. Jennings settled the claim for considerably more than this amount. This action indicated that the builder should never have claimed his final payment and should not have been paid, even for the first sub-frame payment. Moreover, the bank admitted that the Thomson's words 'and we are'—that is, satisfied with the construction—were deleted from a copy of a letter that it had. It would appear that this deletion, which prima facie constitutes fraud, was done by or with the knowledge of an employee of the bank. The matter of unauthorised payments was investigated by the Victorian Department of Justice. I quote from a report obtained under freedom of information laws:

This complaint centred on the experiences of one consumer . . . He was asked to sign documents stating that his intended house had been completed to various stages at the time of signing the building contract. This is an offence under s.31(3) of the House Contents Guarantee Act and appears to be Jennings' standard practice.

It was further alleged that if he did not sign those forms it would result in Jennings pulling out of the deal. This may be in contravention of s.22 of the Fair Trading Act—Coercion.

The last objection was to Clause 8 of the Jennings Home Building Agreement which states—

'Possession. The builder shall have exclusive possession of the land as from the Commencement Date determined in accordance with Condition 6, save that the Owner or representative of any mortgagee shall have access at all reasonable times previously approved by the Builder to enable the Owner or such representative to view the state of the Works.'

Advice from Legal Services Branch is that a person can sign away his/her right to access to the property under the terms expressed in this clause.

At first, it seems that this clause is harmless. But when considered along with the pre-signed forms allowing automatic payment to Jennings, it becomes a problem. The Owner when allowed to inspect the works may

identify faults. However despite this Jennings will be paid as soon as they present those forms to the Owner's bank unless that person formally notifies the bank that no payment is to be made without personal authorisation.

This scenario is not ethical behaviour and could be seen as a basis for taking action for unconscionable conduct.

The report from the justice department continues:

As the investigation has proceeded, another more disturbing practice has come to light. Several people have refused to pre-sign those progress payment authorisations at the time of signing the building contract. It is alleged that Jennings have directly approached the banks and attempted and at times been successful in obtaining progress payments from the banks. This has occurred without any authorisation from the account holders.

On most occasions when this has occurred, the bank concerned is the Clayton Branch of the State Bank. Prospective Jennings customers are referred to that Bank when finance is not forthcoming from their own bank e.g., Westpac, NAB. Jennings have permanent appointment times at that bank for their prospective customers. When the loan is approved, an account is started at the Clayton Branch.

Between November 1988 and November 1991, the bank received interest payments of almost \$100,000 from the Thomsons. Despite this, the bank offered no compensation. What the Thomsons are left with is a house unfit for habitation, falling down around them. Tragically, the Thomsons have separated and Mr Thomson is unemployed. Seven years later, the bank knows that it paid against instructions but proceeds now to sue the Thomsons for possession of the land, as they are now unable to pay out the loan.

Mr Thomson reported this matter to the police. The police completed their investigation without being able to speak to some of the key officials of the bank and without important documentation being produced to them. Hence, they are unable to proceed any further. It has been alleged that the person who arranged the interviews with the State Bank officers was dismissed by Jennings for dishonesty. It is further alleged that he was a friend of a key official at the Clayton branch of the Commonwealth Bank. Because of diary entries, the bank knows the identity of this officer involved in the matter at the time but appears to have done nothing to determine the truth.

The loan application completed by the Thomsons refers to progress payments being made upon receipt of 'a bank progress payment form'. Yet the bank officers were happy to accept different forms from the builder. Moreover, the bank officers knew that the progress payment forms were pre-signed and made payments even after being requested not to do so by the Thomsons. The Commonwealth Bank has received some \$230,000, much more than the value of the loan in this case. The bank also demanded and received the benefits of the legal action by the Thomsons against Jennings. There are other disturbing matters about this case, but time precludes me from mentioning them today.

Even before the revelations about payments to John Laws, I found this case quite disturbing. Essentially, the bank have been prepared to allow officers to engage in questionable conduct which, when raised with them, they have not be prepared to even investigate fully. Moreover, knowing that Mr Thomson is in necessitous circumstances, raising a child in premises that probably should be demolished and without work or even the resources to fight this case, he is being pursued by a greedy bank in a most unethical manner. The only positive element is that some members of the Victorian bar have been prepared to assist him pro bono.

In the circumstances, I call upon the Managing Director of the Commonwealth Bank, Mr Murray, to investigate this matter properly and for the bank to withdraw its action against the Thomsons. If banks can find more than \$1 million for the likes of John Laws, then how about a little justice for people whose lives have been wrecked by the incompetence, if not fraud, of banks? This is the sort of case that one would have expected Mr Laws to raise.