Jeff Morris Exposes The Ways Banks Lie

Summary:
Jeff Morris is blowing the whistle even harder now. The Senate has been informed and anyone who reads Jeff's submission to the Access To Justice Inquiry will learn the truth about the way banks operate. Bank can no longer deny the bleeding obvious. BRN has cases in front of all the major banks ... and they involve matters exposed by Jeff right here.

Article Information**Category:** Banking News
Author: Jeff Morris - CBA Whistleblower
Source: Senate - Access To Justice Inquiry
Date First Published: 5 Apr 2019

Posted ByPeter Brandson
5 Apr 2019 - 11:48pm





All The Banks Lie - Jeff Morris Exposes The Lot

THE RESOLUTION OF DISPUTES WITH FINANCIAL SERVICES PROVIDERS WITHIN THE JUSTICE SYSTEM - SUBMISSION BY JEFF MORRIS

Banks Lie

The first thing to be borne in mind is that banks lie. This is in many ways a difficult thing to get one's head around. Indeed, despite my experience as a bank whistleblower over the past decade, two decades ago I would not have believed that banks lie. Back then I believed that banks were solid institutions who treated their customers fairly and the people complaining about banks were just seeking to blame them for their own problems. In fact, even at that time, I would have been wrong. **The rot set in from the late 1980's and through the 1990's with the fallout from Foreign Currency Loans marketed mainly by CBA and Westpac. These loans were marketed to unsophisticated borrowers such as farmers, for whom they were totally unsuitable,** by bank managers who simply didn't understand the risks either. Truly it was a case of the blind leading the blind. When things inevitably went wrong, the banks went to war with their trusting customers and their weapon of choice was the legal system. Farmers who had always relied on what their bank manager told them and who signed documents without reading them because "they trusted the bloke" found the bank using the fine print of loan documents to pulverise them in court and take their farms. An epidemic of amnesia swept through rural bank managers who "couldn't recall" the advice they had given to farmers, including Senator John "Wacka" Williams, who lost a 5-generation family farm. This was **all set out in a book called "Bankers and Bastards" by Paul McLean and James Renton, published in 1992.** Paul McLean, now aged 81, was a NSW Democrat Senator who moved unsuccessfully for a Royal Commission into the Banks in 1991. James Renton [deceased] was a Barrister who ran many cases for bank victims.

The Westpac Letters

The book also included, in full, **the "Westpac Letters" which set out how, even though it was recognised that the bank was in the wrong on the Foreign Currency Loans, Westpac could use the legal system to run a dirty tricks campaign involving obfuscation, attrition and exhaustion, to deny the victims justice.** The Westpac Letters, read into Hansard in the SA Parliament after this was denied to Paul McLean in the Senate, are the blueprint for the Banks' abuse of the legal system that has continued to this day and thus, I would suggest, a good starting point for this Inquiry. They constitute an extraordinary admission of deliberate malfeasance.

We have a legal system, not a justice system - it's the economics

This is a common misconception but the harsh reality is that our legal system is inherently incapable of dispensing justice to individuals or small businesses, including farmers, in a conflict with a bank. Obviously, the resources [funds] available to each side are so hopelessly disproportionate as to preclude any possibility of a fair contest. Part of the bank's playbook is to make this discrepancy absolute wherever possible by completely depriving bank victims of any funds by the manner in which they sell them up – prolonging the process, stripping them of all assets, depriving them in effect of the sinews of war. As if this were not enough, in rare cases where victims have some funds with which to launch a case, **the bank's then engage in deliberate attrition warfare long before the substantive Hearing is reached to run the victims out of funds and their lawyers out of time** - numerous Mentions and bickering over the preliminaries heard before Registrars, attempts to guillotine Plaintiff's evidence without having given proper discovery of documents etc etc etc

The Legal System really is a Paperchase – the Quest for the Documents

The current system for commercial litigation appears to be designed to facilitate gladiatorial contests between large corporations with bottomless funds and resources. It also involves a system of "Discovery" whereby relevant documents are discovered and exchanged between the parties, to provide a level playing field. **Litigation involving a bank is fundamentally different to the norm in that, in such cases, one side, being the bank, has most or all of the documents. Banks ruthlessly exploit this fact by routinely flouting the requirements of discovery to deny bank victims the documents they need to stand any chance of fighting their case.** Banks will be tardy, forcing victims to go before a Registrar to compel Banks to provide victims with

the documents to which they are entitled. Documents will then get “lost” or be “difficult to locate” and incomplete documents will then be grudgingly handed over, forcing another appearance before a Registrar. Often a flood of documents will be “discovered” and handed over during the actual Hearing, too late to be of any use and simply overwhelming the victim’s small legal team at the crucial moment.

The Claim for “Privilege” – the Banks’ Joker off the bottom of the deck

Nowhere is the banks’ cynical abuse of the legal system more apparent than in the way they seek to claim “Legal Professional Privilege” over all incriminating documents. This is particularly potent in evading the requirements of discovery when it is remembered that one side has most or all of the documents. In an article in The Sydney Morning Herald, by Adele Ferguson AM, concerning the CBA Financial Planning Scandal, in which I was the whistleblower, an internal email was reproduced which was a directive to staff to route all communications via CBA Legal Department “so that we have privilege over the documents.” Later, after years of lying and obfuscation, when CBA finally set up the “Open Advice Review Scheme” to compensate victims, all relevant documents were supposedly given to victims advocates “except those subject to legal professional privilege.” Adele and I were later defendants in a defamation action brought by NAB rogue financial planner Graeme Cowper. One of the key issues was whether he had been sacked by NAB. Of course, he had been, as NAB confirmed to a Senate Inquiry – but that evidence couldn’t be used in court. **NAB had struck a deal with Cowper to ostensibly let him “resign” which of course suited them in terms of deceiving his victims and denying them compensation. The true agreement was contained in a grubby side letter – over which NAB shamelessly claimed Legal Professional Privilege.**

Case Study – James Harker-Mortlock

This case against CBA was in the NSW Supreme Court - Court of Appeal on 27 and 28 February 2019. Proof, if any were needed, that 5 minutes after the Hayne Royal Commission let the banks off, they are **back to their old tricks using the legal system to bludgeon victims into submission. This case includes all the usual dirty tricks, including “late” and indeed probably only partial discovery.** Hardened as I am to legal chicanery, I found this case to be particularly depressing. The simple facts are that when James, a farmer, lost his main source of income in London, the bank moved him to the Credit Management Unit [“CMU”]. To meet his commitment to the bank, James suggested that he sell some of his sheep immediately to reduce the debt and then sell a portion of his three properties to reduce debt and later restock his herd with the working capital obtained from the sales. In response, the bank demanded that James sell all his stock, broke a commercial bill (charging him $6,000 in costs), demanded that he sell two of his three properties and when one property was sold, they kept ALL the proceeds of sale, depriving him of working capital and rendering his farming operation completely unviable. They then pressured him to sell more property. To add insult to injury, CBA attempted to charge him a $150,000 break fee on a bank bill when the bank demanded that a further property be sold. The bank announced that it would retain all the proceeds of that sale also. James did not proceed with the sale. The bank also acted to deny James Farm Debt Mediation. All the time of course the bank was secretly working to an “Exit” strategy, meaning they intended to sell him up. The bank falsely stated in evidence that this was just a document drawn up by one employee and not bank policy. In fact, as emerged from the internal CBA strategy documents also marked “Exit” published by the Royal Commission in relation to farmer Mel Ruddy, this was very much a standard bank policy. A similar approach was taken in depriving Mel Ruddy of working capital to set him up for the “Exit”. CBA staff admitted at the Royal Commission that Mel Ruddy had not been treated fairly. This is the rule, not the exception and looks likely to continue for farmers who were not one of the few case studies at the Royal Commission. Needless to say, CBA’s lawyers fought tooth and nail to prevent evidence being admitted from the Royal Commission. In fact, it seemed to me that all the bank’s efforts – using the court’s rules -were directed to keeping evidence out that the victim was trying to get in – which is very telling. I can only suggest that James Harker-Mortlock and his barrister Peter King would give an invaluable perspective to the Inquiry as to the manner in which CBA has conducted this litigation.

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Case Study – Julie Ryan Schramko

Julie's husband Matt Schramko died in 2012. When a CBA financial planner rolled his super over to CBA's Colonial in 2002 he ticked the box for "Death Cover" on the application form. This was presumably to replace the $400k existing death cover he lost when the super was rolled over. Unfortunately the cover was never put in place, which is something the financial planner, having allowed the previous cover to lapse, should have attended to. The CBA as usual has gone into a welter of denial, initially saying it had no documents. After spending $25k on a lawyer the bank coughed up some documents, including a very blurry page of the application form with the box for "Death Cover" ticked. In my experience such forms normally have a place where you indicate the amount of death cover you want, which suggests that at least one page of the document that has been handed over is missing. In my experience, if you have a copy of a document you normally have all the pages. Despite being forced to acknowledge that the deceased had requested insurance, the CBA's response was to blame the deceased and say he should have noticed that the premiums were not being deducted from his statements [of course most people don't read these statements line by line] and say that anyhow, he should have had a medical examination. The product disclosure statement showed that in fact a medical examination was only required if the cover applied for was over $400,000. So, either CBA was disingenuous not mentioning this qualification or they know [from the "missing" page on the application form] that the cover applied for was over $400,000. From past experience within CBA Financial Planning I don't believe they don't have the documents. The financial planner who dropped the ball here still works in the same branch and this was an active [superannuation] account. In this case the original hardcopy file would still be in the branch. Every financial planner knows it is a cardinal sin, even gross negligence, to lose a client their insurance cover when rolling over their super. It is so easy to safeguard against. Rather than take responsibility for the shoddy work that left a father of 4 with no life cover and has caused his widow untold distress over the past 7 years, the bank has had recourse to the old "we have no documents" ruse. I have seen this first line of defence many times. The widow, having spent $25,000 on a lawyer did not have the means to pursue the matter further. How can you go to Court if you can't get any documents? **CBA offered a derisory $10,000 "go away" payment to the distressed widow, standard operating procedure when they know they have done something wrong but don't want to take responsibility.**

Experience of Banks Lying – Which drives their conduct of litigation

When I worked at CBA Financial Planning staff were expected to lie to clients, to make complaints go away. I also saw file sanitation carried out by – of all people – the compliance staff, among others and the outright fabrication of documents. From the moment I blew the whistle publicly on CBA an ongoing backchannel smear campaign of lies to journalists and politicians was carried out in an attempt to discredit me. Former Senator Sam Dastyari has recently gone public about this. I know other whistleblowers have suffered the same. NAB financial planning lied to clients about Graeme Cowper, telling clients he was on a special project when he was suspended, telling them he had resigned when they had sacked him for misconduct, telling them there was nothing wrong with his advice. **When I tried to get loan documents in relation to Cowper victim Veronica Coulston, the bank said they had been lost in "Iron Mountain". Years later former NAB executive Andrew Hagger admitted to me they had had the documents all along.** The culture of lying is instructive of the way the banks approach litigation. This is not isolated or a matter of a few rogue employees, it is part of a general malaise. It drives the bad faith with which the banks approach litigation. In particular, since the banks control the documents, they can fabricate at will and cajole staff into making false affidavits. The Royal Commission didn't go near any of this and in fact didn't do more than scratch the surface about the banks' appalling culture generally.

Conclusion and Recommendation

It is simply a misnomer to refer to the current legal system for resolving commercial disputes as in any sense a "justice system". While it may be fit for purpose between evenly matched corporate titans, in a system which effectively allows "justice" to be purchased by the highest bidder, David is

apt to get squashed by Goliath. The solution is to take cases involving most financial services customers out of this rigged arena. This could be done by expanding the jurisdictional limits of AFCA. AFCA is however the heir of FOS which had a very patchy record and often delivered grotesque decisions that failed consumers. FOS was under the thumb of the banks and even had bank executives sitting on its' board. The Royal Commission uncovered examples where banks often simply refused to provide evidence and even in the case of CBA's CommInsure, were caught red handed fabricating documents provided to FOS. It is important to understand that these cases were not, as the banks would have it, rare exceptions but rather almost universal practice. Just as ASIC was a doormat on which the bank's wiped their feet at will, so was FOS also subservient. **Many of the key staff at FOS have simply transferred AFCA and taken their complacent record of failure with them.**

Beefing up AFCA to be fit to discharge its current role, let alone a larger role is thus not just a matter of throwing more money and powers at it but also requires changing its' people and therefore its' culture.

Jeff Morris 1 March 2019

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BRN Comments

What an amazing man Jeff Morris is. Guts, determination and honesty. In America many more bank insiders spill the beans .... and they get rewarded for their sacrifice. In Australia it is very different. Lives and careers have been destroyed. Most of the media and most of the government does not care. Too much concern about upsetting the bankers. Worry about potential lucrative post-politics jobs. Bankers have purchased protection.

This submission from Jeff comes out at just the right time. He mentions the work of previous Australian Democrats Senator Paul McLean. BRN has made mention of this work to CEOs and executives in all the banks. Some of the Foreign loan scandal cases are still to be remediated. All the banks have admitted to abuses of the legal process. They were not model litigants so those cases must be properly reviewed. The old story of "It's been to the Courts - we won - you lost - piss off..!!" Does not work anymore. The CEOs and executives of the big four have been personally handed cases that cannot be so easily dismissed with form letters. Some can be seen in the links below - there are many more that can be seen on our website.

Bank executives exist in a culture that makes it almost impossible to fully compensate victims. Careers and bonuses are at risk. Self interest often trumps ethics and decency.

Remediation involves a client being put into the position they would be in today had the bank bastardry not occurred. In the current environment only a bank CEO with the board's support can sign off on full and proper compensation.

Jeff Morris raises very interesting and important issues. If banks lie and hide documents it confirms they are not model litigants (see article re: CBA and Matt Comyn linked below). It also means we need to add something to our preferred Model Litigant model. If a bank can't find a critically important document for a client where a dispute exists it should be automatically considered that the material in the document supports the client's position. What does that mean? Well right now banks should and do have robust document storage procedures. So if there is a stuff up and a genuine error has occurred which loses a document that's bad luck for the bank. That would be so rare that it would be a minor cost of doing business.

The interesting ramifications for the banks exist due to the other possibilities for documents to be "missing" or "destroyed." Again .... tough luck for the bank and shareholders if evidence goes missing. It doesn't matter whether the documents vanish due to: a rogue employee, a rogue bank lawyer, a CEO who authorises destruction of documents - the bank is still held responsible. The client gets the benefit of the doubt and can legally claim the upper hand.

Here is how our Preferred Model Litigant Requirement would now look -

The bank commits to -

a) Acting honestly, consistently, and fairly in the handling of claims and litigation;

b) dealing with claims promptly and not causing delay.

c) prompt provision of all required and requested documents. If any critical documents are missing for any reason the missing information will be considered to support the client's position.

d) making an early assessment of the prospects of a matter;

e) Paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid;

f) keeping the costs of litigation to a minimum by:
(i) not requiring the other party to prove a matter the litigant knows to be true;
(ii) not contesting liability if the real dispute is about quantum;
(iii) using appropriate methods to resolve litigation including settlement offers or alternative dispute resolution; and
(iv) ensuring that a person participating in settlement negotiations can settle on behalf of the litigant.

g) Not taking advantage of a claimant who lacks resources;

h) Not relying on a merely technical defence against a claim;

i) endeavoring to avoid, prevent and limit the scope of litigation (including by participating in alternative dispute resolution where appropriate);

j) Equality of Arms - thereby agreeing to fund their client's legal expenses equal to their own expenditure; and

k) apologising where the litigant has acted wrongfully or improperly.

It is important to note that some elements of the above requirements can be made enforceable. The government should pass the required legislation. We need to see concrete action. Phony inquiries, crocodile tears and weasel words are not tolerable now that the people are much more aware of the malfeasance existing in the finance sector.

Websites For More Information: Tony Rigg - CBA Victim
https://www.bankreformnow.com.au/node/290/
Dr Robert Cooke - CBA Victim
https://www.bankreformnow.com.au/node/545/
Rory O'Brien - Bankwest / CBA Victim
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