

To day is 10-02-2009. I am in a state of despair. I have just learned of the dismissal of Neil Austin Burnard's appeal against his sentence. That should make me happy. However, I have also learned ASIC's appeal against the severity of his sentence has also been dismissed. One would have thought Burnard's charade, complete with business cards containing the words Director, Kebbel Investment Bank, stationery and business cards bearing the letterhead with the same words, and the main office door of the North Sydney office emblazoned with the same words would have brought a stiffer sentence. Particularly when Kebbel Investment Bank did not exist, and his income derived, in the main, from a trusting older generation. However, I cannot blame the judge for the travesty of justice. The jury found Burnard guilty on all nine charges – despite ASIC's poorly presented case..

I sat through every day of the trial. The following are some of the observations arising from it.

During the pre-trial (the period before the selection and swearing in of jurors), the Judge and opposing counsel discussed what would be admissible evidence in the trial. During this period a couple of interesting things occurred.

The first relates to evidence presented in the form of APRA's Juanita Hoare (phonetic spelling) handwritten notes. In 2002 the NSW Kebbel website contained the words "boutique bank. APRA detected this breach, and her superior gave Ms Hoare the job of contacting Kebbel. She telephoned Kebbel and believes she spoke to Burnard, who claimed it was the fault of the website designer. He said he would have the offending words removed. She could not be sure she spoke to Burnard as she relied on her hand written notes, which were the basis of a report to her superior. **In the notes, she had used the word "spiel' to replace the unimportant words at the beginning of a conversation. The Judge indicated this was common practice within APRA.**

Ultimately the Court rejected the evidence on two counts: it was outside the period of the charges and Ms. Hoare was unsure if she spoke to Burnard.

I raise the following questions on the above incident.

- a). **Does the use of the word spiel appear in the APRA procedures manual in the above context?**
- b). **Why did the prosecution have to rely on Ms Hoare's notes and not on the report to her superior?**
- c). **Does any record of the report appear in the APRA report register?**
- d). **Although the breach involved the Banking ACT, Kebbel's business fell within ASIC's domain. Did APRA at any time contact ASIC on the matter?**
- e). **Why did ASIC not know this material was outside the period of the charges?**

The prosecution presented considerable evidence, both of an oral and tangible nature, that Neil Burnard represented himself at seminars and at other times as a Director of Kebbel Investment Bank. The defence made the claim Kebbel Investment Bank was merely a trading name to cover the various Kebbel Companies, and was therefore an intangible entity. As such, Burnard's use of the word Director of the imaginary entity meant he had no case to answer. The trial then

degenerated for almost a day and a half on the meaning of the word “entity” as defined in the legal dictionary (the legal system has their own dictionary).

While recognising the need for a specialised subset of English for a particular discipline, I found the exercise a waste of time in this instance. The substance of the charges was deceit in order to gain financial advantage. The weight of evidence was very difficult to defend.

### **Must our legal system ignore logic when semantic issues arise?**

During the trial, witness after witness claimed Richard Beck expounded the concept of using Keibel Investment Bank as the trading name of the group. He continued to do so with vigour - despite warnings from the compliance officer, and others inside Keibel. This was one of the reasons I believe the Judge was so lenient with Burnard.

Every one of the prosecution’s witnesses to whom I spoke were very upset with the manner in which the prosecution ran the case. Most related to the calculated manner in which Burnard deceived them to enrich himself. Whilst I agreed with them on that point, I do not know if the prosecution could have proved Burnard knew the true state of Westpoint at any stage.

While I am very disappointed with the Judge’s sentence, I can understand to some extent his verdict. ASIC failed to provide the prosecution with the necessary evidence for the prosecution to do its task and prosecute with vigour. At no time did it indicate the total amount of money Burnard extracted from his victims, or touch the depth of human tragedy he caused. I will not accept the current rules of evidence denied such an approach. One often hears of the judge in a murder trial taking into account the degree of suffering inflicted on the victim in arriving at a sentence.

**With the trial over and Burnard found guilty, in a moment when the defence was busy with minor bookwork, the Judge in an aside said words that were in effect, “Having heard all of the evidence in this trial, I presume it is the first in a series against senior Keibel personnel in Western Australia.”**

**The defence replied, “No Sir. We are proceeding with other matters in that area.”**

Given the evidence in the Burnard trial, it is almost certain a jury would find would Beck guilty if prosecuted. In my book, a crime is a crime and where there is reasonable evidence then a prosecution should ensure.

Having heard all the evidence in the trial the following sequence has disturbed me since.

- 1. Where is the report of Ms Hoare’s superior?**
- 2. Although APRA is responsible for the breach of the banking regulation in the 2002 Keibel matter, it also had ramifications for ASIC’s area of responsibility. Did APRA inform ASIC of the matter at any time.**

- 3. “Kebbel Investment Bank” operated openly in excess of three years without ASIC ever querying their bona fides. Where was ASIC’s monitoring?**
- 4. In Hansard, Jeff Lucy claimed ASIC first became aware of Kebbel Investment Bank in April of 2005, and informed APRA of the use of the word Bank. [Note Jeff Lucy made no mention of this at a meeting between ASIC and 70 WIG members on 23/02/2006, and ASIC’s then Head of Prosecution claimed she knew nothing about Kebbel investment Bank until I told her on the evening of 22/02/2006.**
- 5. In May of 2005 Richard Beck suddenly ordered the change of all Kebbel Investment Bank stationery and business cards. He also ordered the change of name on all company doors.**
- 6. APRA sauntered out to Kebbel Investment Bank almost three months after Lucy claims to have informed it. Naturally, they found no Kebbel Investment Bank stationery, and no signs with that name on the door. APRA told them they were naughty boys and not to do it again.**

I know I have a suspicious mind and time of the events above was just coincidence