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SUBMISSION TO CREDIT CONTRACTS & CONSUMER FINANCE AMENDMENT REGULATIONS 2020

This is a submission to the draft regulations. Please publish my submission in its entirety. I do not have any objection to you publishing my name and contact information along with it. If you are concerned with privacy then just delete any parts you don't want to publish as long as it doesn't detract from the main content. For background I attach a letter from the banking ombudsman. You don't need to publish that.

Its very difficult to write this submission because you are asking for comments about how lending should be regulated through the Credit Contracts laws. I do not support the current lending systems because there are substantial loopholes which allow consumers to be taken advantage of. Your regulations do not go far enough to address those issues.

I attach a letter from the banking ombudsman which will give you an insight into how the banks currently lend to people. I also had credit card debt with ANZ bank and with BNZ. Not only did the existing Credit Contracts & Consumer Finance Acts not protect me but I also had no rights under them. Because of that I am bankrupt today.

It is the banking and insolvency systems that are harming people through their lending regimes. The substantial loopholes in lending laws are the point at which a person becomes in default of debt, if not before. In my case BNZ were able to pass credit card debt to a third party debt collector. That debt collector claimed to be acting as an agent on behalf of BNZ. Under NZ law agency laws mean that the agent must act as if they were the principal. But this does not happen with bank debt. A bank can onsell a defaulted debt to any other party (a debt collector) outside of the banking industry. They can do so without telling the borrower. The collector who will become the new creditor will state to the borrower that they act in an agent capacity but the reality is they have become the legal owner of the debt, which changes substantially the rights of the parties.

Debt collector harassment forces a borrower to agree to the debt, and the borrower unwittingly enters into a new contract with the debt collector. Harassment is a tool of debt collectors for the purpose of keeping hidden the fact that the bank is no longer a party to the contract and its the only way they can force a borrower to agree to their new terms of repayment. Banks literally pass entire accounts of their customers to third party collectors and the bank no longer has any obligation to the customer under not just under the credit contracts act, but any other contract or lending that they had with the borrower. The banks are literally absolved of any legal liability so claims cannot be brought against them. When I found out that the debt collector operating on behalf of BNZ deliberately falsified the tribunal application, the tribunal referee refused to even allow my counterclaim.

Have a look at the letter from the banking ombudsman and you will see even they tell me I needed to contact Baycorp. Why when I was never in debt to them. There is no ombudsman for the debt collection industry. Debt

Collectors are completely unregulated. Try and bring a claim to the commerce commission about a debt collector and they will tell you that they do not act on individual complaints.

What borrowers need to be aware of is that in the event of a default, only the original debt contract matters, and a consolidation loan is just an extension of the original debt. Also the banks treat small business loans as personal lending and the banks only care about whether the person has the ability to repay the debt - not the business. In fact most of the company lending I had with ANZ, they didn't care that my company was insolvent when they offered me free money, they just cared that I kept paying them money in any form even if I was getting further into debt to do so.

In other public submissions it has been revealed that banks turn an unsecured debt into a secured debt by not allowing a mortgage to be discharged until the credit card is paid in full. They don't tell the customer that of course. Well, its unethical for a start.

Borrower Rights - There was only one rule of law that gave people a little protection from not knowing who the real creditor is and that was a section under the Property Law Act. A few months after I tried to use that Act to defend the claims of the "bank" against me in court, the government changed that section so that clause can no longer be used to find out who is actually trying to bankrupt you in the court.

I am bankrupt today because banks and debt collectors do not have to comply with lending laws or what is required in the credit contracts act, simply because once a debt becomes in default, the status of it changes. Any bank contract only applies up to the point that the debt is not in default.

BNZ will tell you themselves and they have also stated in a letter to me that they are not required to undertake any assessment of ability to repay a debt that is already due.

I wonder if a fit and proper person check will apply to the banks. The issue is it will not be enforced, or it will act as the banking ombudsman does and only exist to protect the interests of the creditors.

Full Disclosure - Disclosure at the commencement debt collection. That needs to be stated at the commencement of the initial lending as well. The borrower needs to know all the way who has the legal rights to the debt including the equity. Including who is the legal owner of the debt, and in the event of a bankruptcy, who has the legal right to a dividend. Properly define Agency, debt assignment and debt transfer etc. Make it clear what it means legally. Make all bank and debt contracts, simple, clear and specific.

I know Christians Against Poverty have asked in other submissions that laws need to define the role of agents in the collection process. This has not been acknowledged or considered by the government.

Lawyers can also act for both the bank and the debt collector at the same time against a borrower for the same debt. The bank can also onsell debt to multiple debt collection agencies and all of those agents can ask you to pay them as well as the original creditor. Vodafone do this as well.

Once a person becomes in debt to any creditor including a bank, they literally waive their legal and privacy rights. Some non-bank lenders actually have clauses that contract outside of the bill of rights act. Those clauses are such that a borrower must agree to pay the lenders costs in the event of default and be subject to other harsh terms. Too bad about the rights to a fair hearing, or if there were any mitigating circumstances.

What about the rights of borrowers, the regulations are all focused on the rights of lenders and reducing their costs.

Affordability - There needs to be certainly that a borrower can repay the loan over the whole of the loan period and make allowances for unforeseen risk, has the borrower got insurance, what happens in the event of job loss etc. And enquiries should be make at regular intervals.

I believe the UK's banking association rules are actually legally binding. In NZ they are not. NZ banks are unregulated as to consumer lending and conduct and that is why credibility has been lost because they have abused that privilege.

Regulations - who would enforce them. The courts certainly won't. Borrowers don't have rights in court, if they could even afford to bring a claim against a bank or creditor. Even in the bankruptcy against me, I literally had to prepare all my own high court documents, memos, affidavits, defence documents etc because I could not afford a lawyer. And when you do that you will be deemed to have abused the courts process.

Borrowers must be allowed to negotiate debt and hardship arrangements with the original lender. Bankruptcy laws need to change in that Creditors including banks, IRD and debt collectors, will no longer be able to bankrupt a person. The only exception would be that the lender would have to prove with evidence that the person in default of debt has acted criminally. And the IRD bankrupting people in the High Court en-masse - look, there are no words to describe that. It's a shameful embarrassment for a government agent.

The reason for changing the insolvency and lending systems is because borrowers do not have any rights once they become in default of debt. The legal status of a debt changes once it moves to another party for collection.

Loan offers online - by this I mean companies that offer lending via the internet only. Some lending companies actually deceive people by using a .co.nz website address, but they are actually based overseas, as a result they hold personal and financial data in other countries. Lenders who operate remotely do not have to comply with NZ lending laws, including any affordability assessment laws. Borrowers have not protection from them.

Mediation service or some complaints resolution services - in the event of a dispute or the lender (including a bank) and a borrower cannot agree as to hardship or change of terms there needs to be an independent service that will provide a fair resolution process, because the court system is not accessible to many people due to the costs involved. The current Financial Resolution Services are only good for the members who are currently part of the scheme.

No contract should give any lender or debt collector the right to add costs to the existing debt including collection costs and solicitor fees. That automatically gives an unfair advantage to the lender, when a borrower has fallen into default because of hardship.

Credit reporting probably isn't included in the credit contracts act - by I would like you to know that credit reporting is unregulated and causes as much harm as the current lending and banking regimes get away with. Credit reporting should be banned including credit scoring.

Costs of collection - Costs also include the costs that the court can impose against a bankrupt. I was bankrupted for a debt of \$6,200. When I became bankrupt, that debt has literally turned into more than \$14,600. I also have new debt of more than \$20,000 because of bankruptcy administration costs. That debt is actually an asset in a bankrupt's estate and can be invested for profit. I don't get any benefit from that.

Financial mentors - Seriously! there are none in NZ. Have a look at this - <https://www.enableme.co.nz>

Debt Collectors and government debt - I know government agencies like the NZTA and the ACC use third party debt collectors. This needs to stop immediately.

Your draft document states the date that applications open for certifications of directors and senior managers as fit and proper persons. That process needs to be made public including the names and companies of the people applying for the certificates. And any person should be allowed to recommend that a person be deemed to be unfit or fit. If the process is made behind closed doors it will have no credibility.

Statistical reporting - all well and good if it has some other purpose. What good is it if nothing gets actioned from the information collected.

Conclusion

In April 2017 I was made bankrupt by the high court in Chch. Prior to and during that time I have been subject to the most cruel victimisation and harassment has come from the banks, collectors, courts, lawyers and government agents. I refer to that action as Collective Corporate Bullying. I know from researching the debt and banking industries that many suffer under the banking and insolvency regimes of NZ.

The corruption in those industries has destroyed the credibility of NZ's banking and financial sectors. My life and the lives of many others will never been the same because of what the banks and lenders are allowed to get away with. Today I speak out publically to warn others of the harms that borrowers will be subject to.

Lending in NZ is truly is a crisis of an extreme magnitude. As a result of what I know to be true about the banking and insolvency industries I am campaigning for changes to our human rights laws. I am also a member of the Australia & NZ Mental Health Association and I am speaking at their conference in March about the impact of bankruptcy on mental health. I am literally asking them for support to have bankruptcy and financial hardship formally recognised as a trauma, because of how we are treated by lenders and government agents. That simply is so we can access support. I am making suggestions to them of how new banking and insolvency systems need to be put in place and what real financial literacy skills we need.

Borrowers only have rights in a contract while a debt is not in default. Once in default, the lender is absolved of any legal liability. They can still enforce their rights under the contract, but the debtor relinquishes their rights once they become in default. The whole debt contract has new rights attached, all in favour of the new creditor. The debtor has no rights even in court. In a bankruptcy they are forced into further debt and are forced to sign legal documentation without being allowed a lawyer under legal aid.

Because of the way the banking and legal systems operate in NZ, I have lost faith in them. The failure of the government to properly address all aspects of the entire debt and lending process has compounded the issue and is the reason why I am taking other action to try and change the systems we have today.

I am also creating an Industry Integrity Rating Scale which operates similar to how the credit reporting regimes operate against consumers. But the IIRS system gives banks, businesses and corporations a rating based on their conduct and integrity. If they treat people badly they get rated as such. If they treat people well, then they are given a positive rating. The scale will help to even out the unfair advantage that the banks, lenders and corporations have over the NZ people.

Regards



Lisa Cowe

Today's Lending Regimes - Not Our Future!