

Findings

[These are the Findings] of the Tribunal constituted by the Architects Registration Board of Victoria to hold an inquiry into the fitness of [the architect] to practice as an Architect and into his professional conduct. The inquiry was conducted on December 8, 9, and 16 1999 and February 16, 17 and 23, 2000. The Tribunal reserved its decision to be handed down on March 22 2000.

The Tribunal, having conducted an inquiry into the particular conduct or acts or omissions raised in the Notice issued pursuant to s.27 of the *Architects Act 1991*, and having considered the submissions made at that inquiry, makes the following findings in relation to each of these matters as follows.

(a)

- (i) The Architect failed to perform work in a competent manner and to a professional standard.

Finding:

The Tribunal finds this matter proved.

- (ii) The Architect did not set out in writing the description, terms and conditions of his engagement as an architect and supply a copy of that document to the clients before accepting the engagement to provide architectural services to them

Finding:

The Tribunal finds this matter proved.

- (iii) The Architect did not set out in writing the description, terms and conditions of his changed engagement as an architect and supply a copy of that document to the clients as soon as practicable after any change to the terms and conditions or scope of the engagement became known to you.

Finding:

The Tribunal finds this matter proved.

- (iv) The Architect did not ensure that he did not favour his own interests over that of his clients.

Finding:

The Tribunal does not find this matter proved.

- (v) The Architect did not fully disclose and explain to the clients the competing

quotations from [] and [] as to joinery to the extent necessary to enable the clients to make a fully informed and appropriate decision as to the competing merits of the quotes and which quote was the more appropriate for the clients to accept.

Finding:

The Tribunal finds this matter proved.

- (vi) The Architect did not supply sufficient, adequate and detailed documentation (including by way of working drawings, plans, specifications and instructions) appropriate to a project of this nature, complexity and value and so as to enable the builder to proceed with the project in a way which was expeditious, planned, certain, effective, workmanlike and in the interests of both the builder and the clients.

Finding:

The Tribunal finds this matter proved.

(b)

The Architect recommended to and advised the clients to accept the quotation of [] in preference to that of [] in circumstances where it was not in the interests of the clients to do so.

Finding:

The Tribunal finds this matter proved insofar as the Architect failed to apprise the clients of the comparative detail of each quotation and exercised his own judgement as to the quality expectations of his clients.

(c)

The Architect by reason of the above also breached Regulations 5, 6, 7 and 18 of the regulations and by virtue of Regulation 22 your conduct constituted unprofessional conduct in respect of whether it otherwise was.

Finding:

The Tribunal finds this matter proved in relation to Regulations 5 and 18 but not proved in relation to Regulations 6 and 7.

In view of the above findings the Architect has contravened Regulation 22 and is guilty of unprofessional conduct.

FINDING:

In view of the above findings, the Tribunal finds that:

- (a) the Architect was careless and incompetent in his practice;

- (b) the Architect's professional standards are demonstrably lower than the standards which a competent architect should meet;
- (c) the Architect is guilty of unprofessional conduct;
- (d) the Architect breached or failed to comply with Section 32 of the *Architects Act 1991* and of Regulations 5,18 and 22 of the *Architects Regulations 1993*.

21 March 2000

Architects Act 1991

**STATEMENT OF REASONS
FOR THE DETERMINATION OF THE TRIBUNAL
IN RELATION TO
REGISTERED ARCHITECT No []**

In November 1999 the Architects Registration Board of Victoria constituted a Tribunal to hold an inquiry in to the fitness of [the architect] to practice as an Architect and into his professional conduct.

The Board was represented by Counsel – [].

[The architect] was represented by Counsel – [].

This inquiry arises from a complaint lodged by [Mr A] to the Architects Registration Board on 1 October 1998. The complaint listed five major areas of complaint, relating to a renovation project at [address]. *Inter alia* a failure to provide the complainants with the terms and conditions of his engagement, in writing, as required by Regulation 18, prior to commencement of work and a breach of Regulation 7 that an architect must not favour his or her own interest over that of his client.

Following the issuing of proceedings under a Section 27 Notice the Architect's solicitors made an initial request for detailed particulars in correspondence dated 23 August 1999; this was responded to on 2 September 1999. A further request for Further and Better Particulars of the matters alleged in the Notice Pursuant to Section 27 was transmitted on 14 September 1999. The Board's legal representative forwarded those details on 7 November 1999. Many of the requests and responses were of a repetitive nature. The Tribunal reasons as follows in relation to both the Section 27 Notice and the request for Further and Better Particulars.

In August 1997 [Mr A and Mrs B] made an initial approach to the Architect, [], in a social context, in relation to proposed renovations to their property at [address]. This proceeded

to a more definitive relationship during the period October through to December 1997. Following a series of meetings and discussions with [Mr A and Mrs B] a series of schematic designs and preliminary plans were drawn up. The Architect also was also initially responsible for the preliminary compilation of the list of prime cost (PC) items.

The Tribunal accepts submissions that this was the first formal commission given by [the complainants] to the Architect. Documents (F, [Mrs B's] diaries, G and Q) sufficiently substantiate the formal contractual arrangements that existed in relation to the development of [Mrs B's] rooms [] with [Ms C]. Further that Doc L from [Mrs B] to the Architect is reasoned by the Tribunal to have been gracious acknowledgment of the Architect's assistance in a previous commission awarded to [Ms C] and in which the Architect played a supporting role.

In December 1997 [the builder] was invited to inspect the project site and a price was submitted in January 1998 following provision of a further set of architectural drawings and an original schedule of 14 PC items for the proposed renovations. The Builder had been initially provided with a one-page drawing dated November 1997. Following a site inspection, meetings with [the complainants], a list of works submitted by the Builder, negotiations and refinement of the PC list, further plans were documented and presented to the Builder in January 1998 for more definitive pricing.

The Tribunal accepts that the contract pricing was based on the plans supplied by the Architect in January 1998. A standard lump sum contract for simple building works was subsequently executed (for the sum of \$696,808.00, with an accompanying schedule of 15 PC items totaling \$250,000) between [the builder] and [Mr A], on 6 February 1998. . Legal advice sought by [Mr A], as to the form of the Building Contract, resulted in correspondence being sent directly from [the complainants solicitors] (pp. 198 & 199) to the Architect prior to execution. It noted the requirement for specifications and structural drawings to be attached to the Building Contract. This did not eventuate.

No formal contract existed in relation to the provision of architectural services and the Architect [] accepts this fact as a matter of record.

All parties submitted that [the architect's] architectural skills were not in question. The proceedings arose from execution of the contract, the implementation of design concepts and the procedural administration of the contract. [The complainants] terminated [the architect's] services in correspondence dated 12 September 1998, prior to completion of the project.

The site was occupied [the builder] from 9 February 1998, the property having been vacated by [the complainants]. At this time no building permit had been issued for works on the site. The Architect lodged a Preliminary Building Permit application on 10 February 1998 with []Building Surveyors. This was responded to on 13 February with a request list for provision of 15 items including structural drawings and a Form 13 certificate from the design engineer (Doc AA).

The Tribunal finds that no appropriate documentation was in place for either statutory or construction purposes relating to the project

No Project Specifications existed prior to the issue of the Building Permit (Doc D) in

April as the correspondence (Doc AA) from [] Building Surveyors nominates the necessity for their provision. The eventual Specifications submitted for the Building Permit did not correctly reflect changes, which had been agreed prior to permit issue e.g. roof construction. This fact was supported by those drawings tabled during the inquiry. Correspondence from [] Building Surveyors dated 13 February 1998 additionally supports the Board's contention that adequate documentation did not exist.

The first substantive change, with regard to the roof, to the contract was made almost immediately the Builder signed the Building Contract, following the Builder's recommendations. On this recommendation a decision, endorsed by [the complainants] and the Architect, was made to replace the entire roof (including the frame) at a subsequent cost of \$34,026.00. This substantive change was not documented in any detailed manner for contractual or construction purposes.

During February, March and April major demolition works occurred on the site and additional refinements and alterations to design concepts documented in the plans attached to the Building Contract were discussed with the Architect and authorized verbally by the client. The Tribunal finds these were not formally documented.

A series of faxes from the Builder to the Architect, for the period February to July 1998, were tendered as evidence. The Tribunal accepts that they and site meeting agendas and minutes prepared by [Mrs B], in the absence of any documentation provided by the Architect, provide a reasonably accurate record of the project's implementation. The faxes document multiple requests for provision of the drawings; specifications and building permit over a period of weeks in February, March and April, in addition to providing a record of variations initiated during this period.

Pages 242 to 244 of supporting documentation illustrate a clear delegation of architectural responsibility to the Builder in having to give effect to architectural concepts. The Tribunal considers the Architect's responsibility to the client and necessity for consistent standards to allow the project to proceed were abandoned for purposes of expediency best suited to the Architect and his adopted *modus operandi* on this project.

The professional responsibility of the Architect to provide such detailed drawing is not only inherent in his engagement but was also reflected in the scale at which his clients were being billed.

In the Architect's response to the complaint dated 2 December 1998 (p.73) he states

"The documentation of the works was certainly sufficient to obtain the necessary permits but it was clearly understood by all parties to the project that some specific details concerning the items covered under prime cost allowances would be further developed and detailed during the works."

The Tribunal finds that this statement does not reflect events as they transpired and the clients had a legitimate expectation of professional standards of the profession being upheld in such a way as to allow the works to proceed without hindrance. The Tribunal finds that many delays in construction occurred due to lack of adequate documentation and appropriate instructions from the Architect. This was particularly evident in relation to the atrium and the refinement of the PC List.

The Tribunal is satisfied the Architect did not present his clients with documentation that detailed the refinement of PC items. Lists relative to PC items were presented in evidence from the Builder, [the complainants] and [an expert witness] (Docs A, B, O, R and Y), which were fundamental to their individual expectations and responsibilities. None of these demonstrated any fulfillment of the Architect's responsibility to his client, in administration of the contract in an orderly, timely or professional manner.

The Tribunal concurs with the Architect's statement (p.74) in the same correspondence that "*contingent variations were minimal*" but his own statement that "*several significant variations were effected. Notable amongst these was the decision to replace the existing roof in its entirety including the roof frame. ...The airconditioning system was also replaced rather than extended. All the windows to the house were replaced.*" demanded that these be documented appropriately for both construction and contractual purposes. Evidence led by the Board at the Inquiry relating to item 1 (n) of the Further and Better Particulars of 7 November 1999 as not refuted. The Tribunal finds that the Architect failed to fulfill each of his obligations in this respect.

The Board demonstrated that computations required to allow construction of the atrium were delayed. The Tribunal accepts the decision to replace the entire roof was a significant factor in required structural changes. They were of a complex nature but this decision did occur prior to construction commencing and the prompt provision of the Architect's detailed drawings would have allowed the project to proceed in a far more orderly and less rancorous manner than transpired.

The Architect had a contractual responsibility to ensure production of the shop drawings for the atrium rather than issue on site instructions. His responsibility was contract administration and if the nominated sub-contractor was not capable of performing the works the client had a contractual right to be apprised of the situation. The perspective drawings submitted by the Architect in Appendix 6 pp. 155 – 164 to support his argument of adequate documentation in his response to the Board, are not dimensioned and cannot be construed as working drawings. The atrium is stated by the Architect to be "*central to the design*" of the project. The Tribunal regards the lack of detail and the Architect's approach to this element as further evidence of his flippant attitude to administration of the contract.

Much evidence was led and tested in relation to the fax forwarded from the Qantas Club (p. 239) and allegedly detailing the completion of the atrium. This document is not dimensioned, nor is there any material specification. Having regard to the Tribunal's comments above it is reasoned that rather than illustrate the Architect's acceptance of his clients' instructions it adds further to the evidence of inadequate and incomplete documentation and an inability to deal with his clients in a competent manner and to a professional standard. This fax was the Architect's response to the "*central feature*" and on the Architect's sworn evidence accompanied by verbal instructions only to his office architect, to be conveyed to the Builder, prior to the Architect's departure overseas. Specific reference to the inadequacy of documentation provided to the Builder in November 1997 was not supported by the evidence put as to his participation in the process of pricing the contractual works. The Builder was only initially requested to provide a preliminary price. The November plan did not include cross sections or elevations but evidence was given and accepted that the quotation was based on plans

submitted to the Builder in January 1998, following site inspection and negotiations on the list of PC items.

Much of the evidence given and tested in the Tribunal related to the Schedule of PC items that formed part of the Building Contract. The Tribunal does not view the list as extensive. The Tribunal finds that no different outcome would have been achieved to the project had the approach and methodology utilized for identification of PC items for inclusion in the contract been substituted by any alternative contract arrangements.

The Tribunal is satisfied the Architect and Builder collaborated effectively on costing of PC items for inclusion in the contract. Documents submitted to the Board and tabled as evidence point to a number of discussions between the Architect and parties, to the contract, prior to signing of the Building Contract. The Tribunal believes that PC allowances nominated in the contract were reasonable as at 6 February 1998. The identification of items for inclusion in the Schedule to the Building Contract did not result from inadequate and incomplete investigations by the Architect. It was reasonable for the Architect to rely on the pricing submitted by the Builder for stainless steel in his tendered price. It is noted that the Architect made an additional upward adjustment for the stainless steel following receipt of an amended PC list from the Builder prior to signing of the Contract.

The Tribunal accepts that there were 113 variations on the project, which in itself is not unusual, and that the majority of these (75) occurred during the Architect's engagement. The only documentation submitted to the Tribunal under the signature of the Architect and dated 27 July 1998 authorized only 10 of the 113 variations. The Architect was unable to demonstrate that there was any process adopted for the project to regularly and promptly issue substantive form of instruction in relation to these. The Tribunal finds the Architect relied substantially on his instructions issued orally or by transitory, informal or temporary sketches in relation to the items listed. The manner in which these variations were documented and administered was not competent or professional and did not meet the provisions of the Building Contract.

The Tribunal does not however concur that the Builder was "heavily" reliant on frequently occurring oral instruction, but rather partially reliant in that at certain times he lacked adequate detailed information from the Architect to proceed, with any clarity, with the implementation of the architectural concepts. The Tribunal is not entirely convinced that inability to schedule works can solely be attributed to an absence of Architect's instructions. As previously stated there were numerous and substantial variations instigated over various stages of the project. The scheduling was equally attributable to the substantive nature of variations to the project which had been, instigated by the Builder, the Architect or the clients and approved verbally by the clients, as noted in [Mrs B's] minutes of site meetings.

The methodology and practice of the Architect was not the sole reason for the extended construction period. Elements of the project required alteration as a consequence of the variations. Poor monitoring, documentation and communication with the clients led to ineffective containment of costs as they related to the original PC items of concrete, stainless steel, joinery and kitchen appliances. This together with any the lack of any transparent interaction with the clients to allow understanding of the difference between PC items and variations, and the direct consequences of these on the original PC list

and construction programme, contributed significantly to the breakdown in relationship between the client and the Architect.

The Builder's request for an extension of time was submitted and dated 27 April 1998 (p. 262), [Mrs B's] agenda and site meeting minutes of 8 May 1998 also detail the request and the rejection of that request. It is not clear to the Tribunal whether or not this request was dealt with objectively. It is however accepted that the formal request from the Builder required a formal response from the Architect. The Tribunal is satisfied this did not occur.

It is acknowledged the representations of the Architect in meetings between himself and his clients in December 1997 and January 1998 could not have foreseen the substantial alterations to many of the project elements and accordingly was not reflected in notes and minutes of those meetings. Although many consequential cost implications of the some project variations were unforeseeable and only became obvious as they were adopted into the project. The Architect was not rigorous, as admitted in his own evidence, in either his assessment of matters or interpretation of the specific detail. The increased costs of the concrete PC item was not revealed in a judicious manner to the clients and reflected the Architect's "laissez faire" attitude to his obligations. The Tribunal accepts evidence that the Architect sought to induce the Builder to refrain from communicating the eventual cost of the concrete PC to the clients.

The Board put certain matters regarding specific items on the PC and variation lists and the Tribunal concludes as follows in relation to these:

The quotation for the carpet was the responsibility of the carpet supplier. The value and quality of the specially milled product warranted a site visit and measurements being taken by the responsible contractor. Both the lighting and carpet costs were not in any way a direct responsibility of the Architect. The involvement and central responsibility of the Interior Designer in these concepts and material selection in other construction elements - and their ultimate approved variation further reflects the necessity for the specific duties of the role of contract administrator to be executed.

The airconditioning contract was a variation to the original contract and it is apparent it was discussed at great length at site meetings before approval, albeit without documentary evidence for contract adjustment. It was priced and warranted as to performance by the responsible contractor. The warranty implications as to performance are a matter to be pursued with the responsible contractor. The consequential implications of the variation on the building's design and construction were however of a major nature integral to both the carpet variation and the lighting.

This further highlights the lack of adequate monitoring and documentation and the Tribunal finds that the Architect in these instances failed to perform in a professional and competent manner.

Substantive evidence and argument was put relating to [Mr A's] major basis of complaint relating to the joinery quotation/contract. The joinery was an item on the PC list. Quotations were sought from two companies - [] (by the Builder) and [] (by the Architect). The Architect was familiar with the work of both companies. The Tribunal does not view the actions by the Architect recommending one supplier over another as unprofessional, however the Architect was not rigorous, as admitted in his evidence, with

regard to the joinery quotation, or in his assessment of matters and interpretation of the specific detail. As a consequence it follows that as the merits of the competing quotes were not thoroughly assessed or communicated effectively to the clients, the Architect exercised poor judgement in expressing his preference to the extent demonstrated. The Tribunal although satisfied that the clients did not receive copies of the competing joinery quotations is not satisfied that had full disclosure occurred that the clients would have accepted the quotation of [], despite the major difference of the inclusion of stainless steel in the [] quotation. This significant point of difference illustrates the Architect's inability to convey to his clients the detail of PC items and consequential budgetary impact. The Tribunal finds that the Architect did not perform in a professional or competent manner in relation to matters associated with the joinery.

Both [Mrs B] and [Mr A] gave evidence that the relationship with the Architect deteriorated over the construction period. Some evidence from the Builder supported this contention together with diary notes maintained by [Mr A]. The Tribunal accepts that [Mr A] attempted to restore the relationship via her prolonged phone call of Sunday 21 June 1998. The evidence also supported the Architect's conflicting interpretation of many of the contract's elements (design and construction) as to cost implications and consequences of variations. Additionally it was adequately demonstrated that there appeared to be insufficient appraisal of some elements e.g. design elements of the entrance hall. The Tribunal finds that decision making was often compelled by the urgency of construction processes rather than considered and informed.

The evidence of "verbal inconsistencies" referred to in [Mr A's] letter of complaint is found to have contributed substantially to the breakdown of the Client/ Architect relationship. The Tribunal accepts that correspondence to the Designer (p. 267) following the dismissal of the Architect was not refuted. Whilst the Tribunal acknowledges that some behavioral elements during the Architect's tenure was subject to personal interpretation, it also acknowledges that his contractual obligation imposed a realistic expectation on the clients of competent and professional behaviour. The execution and administration of the contract and the poor performance of many of the Architect's responsibilities did not meet this expectation and led to an irretrievable break down in the Client/Architect relationship.

Invoices rendered to the client by the Architect reference RAIA Fee Guide No.8 (July 1996). The Tribunal has not been able to draw any correlation to that Guide given the nature of the works. The lack of any contractual documentation relating to the terms of the Architect's engagement allowed the Architect unilateral interpretation of monies due and payable. Additionally the direct role played by [Mr A] in the payment of sub-contractors conferred an involvement on the client that did not allow for the Building Contract to be administered correctly. The Architect submitted to the inquiry he has since reviewed his procedure in relation to provision of written terms and conditions of engagement to ensure they are provided prior to commencement of work. The Tribunal finds that in the execution of his contractual obligations to [the complainants] the Architect failed render appropriately detailed invoices to his clients and to properly fulfill his role as Architect and administrator of the Contract.

The Tribunal reinforces the basic necessity of protection of the public in reaching its determination. The community expectation of competence and professional standards from the architectural profession demands a standard far high than that adopted by the

Registered Architect, []. In his dealings with [Mr A] and [Mrs B] it was demonstrated to the Tribunal these professional standards lapsed in the post-conceptual design stage.

Accordingly the Tribunal, having conducted an inquiry into the particular conduct or acts or omissions raised in the Notice issued pursuant to s.27 of the *Architects Act 1991*, finds

- (e) the Architect was careless and incompetent in his practice;
- (f) the Architect's professional standards are demonstrably lower than the standards which a competent architect should meet;
- (g) the Architect is guilty of unprofessional conduct;
- (h) the Architect breached or failed to comply with Section 32 of the *Architects Act 1991* and of Regulations 5,18 and 22 of the *Architects Regulations 1993*.

16 June 2000

Architects Act 1991
Section 32

DETERMINATION

This is the determination of the Tribunal constituted by the Architects Registration Board of Victoria to hold an inquiry into the fitness of [the architect] to practice as an Architect and into his professional conduct. The determination was made at the conclusion of the inquiry conducted on December 8, 9, and 16 1999 and February 16, 17 and 23, 2000 and after reconvening the Tribunal to take submissions as to penalty on July 11, 2000 following delivery of its Findings and Statement of Reasons.

The Tribunal having previously delivered its Findings and Statement of Reasons and having considered submissions as to penalty makes the following determination.

The Tribunal determines

- (i) to reprimand the Architect.
- (ii) to require the Architect to enrol in and satisfactorily complete the Royal Australian Institute of Architects Business and Practice of Architecture course (BPA1),

offered as distance education via the University of Newcastle - New South Wales, within a period of eighteen months from the date of this determination

- (iii) to impose as a condition on the Architect's registration relating to the Architect's practice, for a period of eighteen months from the date of this determination, that the Architect strictly comply with the Architects Registration Board of Victoria Guideline to Regulation 18 (Defining the Terms of Engagement), as published in *Information* 39 Newsletter of September 1996, in the formal documentation of all engagements
- (iv) to impose as a limitation on the Architect's registration relating to the Architect's practice, for a period of eighteen months from the date of this determination, that contract administration in the Architect's practice be overseen by an alternate Registered Architect with appropriate qualifications and experience for the size and nature of projects undertaken by the Architect's practice
- (v) to impose as a condition on the Architect's registration relating to the Architect's practice, that for a period of eighteen months from the date of this determination, that the Architect submit to the Board or its nominee, on a six monthly basis, a list of all current contracts confirming that each is subject to written Client/Architect Agreements and identifying the alternate Registered Architect overseeing the administration of each contract as required by paragraph (iv) of this determination.
- (vi) to impose a penalty of 30 penalty units, payable by September 30, 2000

18 July 2000

Architects Act 1991
Section 32

DETERMINATION AS TO COSTS

This is the determination as to costs of the Tribunal constituted by the Architects Registration Board of Victoria to hold an inquiry into the fitness of [the architect] to practice as an Architect and into his professional conduct. The determination as to penalty, dated July 18, 2000 was made at the conclusion of the inquiry conducted on December 8, 9, and 16 1999 and February 16, 17 and 23, 2000 and the taking of verbal submissions as to penalty on July 11, 2000. Written submissions as to costs were taken following delivery of the Tribunal's determination.

The Tribunal having taken written submissions as to costs, from parties to the hearing, [] Counsel to the Board, and [] Counsel for the Architect [], makes the following determination.

The Tribunal determines that the Architect is to contribute the sum of \$13,000 towards the costs incurred by the Architects Registration Board of Victoria in relation to the Inquiry

into his fitness to practice as an Architect and into his professional conduct. In addition the Architect is required to reimburse the Board for any GST liability on this Order for Costs and the monies paid by the Architect to the Board pursuant to this Order. This amount is to be paid to the Architects Registration Board no later than September 12, 2000.

The Tribunal has considered paragraph 8 of the submission of [Counsel for the Architect] dated 27 July and notes that the sections of the Architects Act referred to impose an obligation on the Registrar in the one case and vest discretion in the Architects Registration Board in the other case. This Tribunal has no role to play in the publication of the determination beyond that imposed by section 33(2) of the Act requiring its determination to be set out in writing and given to the person to whom it relates.

15 August 2000