

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON WEDNESDAY 30 AUGUST 2006.

Ms JANINE BRANSDEN, Mr CHRIS CARLSON AND Mr PHIL CONNORS WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Harriss) - We have indicated to all witnesses, and will continue to do so throughout our hearings, that we will be staying clear of the matters related to the service level agreement signed between John White and Bryan Green because they are matters for current deliberations by the Director of Public Prosecutions and we are very cautious about any activity of ours which may prejudice his consideration. We do have your written submission. We understand from that, I presume, the nature of your complaint and we now would like to hear your further verbal evidence and, just like with the last witnesses, we will ask you questions after that. Whichever way you like to make your verbal contribution, we'd be happy to hear it.

Mr JOSEPH - Janine has asked me to open. I have a short item to read, not as long as my last one, I might add, and it will help explain where we are at the moment. Janine Bransden's plight first came to my attention via an e-mail that was forwarded to me. Subsequently I then visited Janine and Chris at their home near Launceston late last year and saw it is clearly riddled with defects and incomplete work.

After completion in 1999 they have been fighting ever since to get it fixed. To date it is not fixed and they face legal debts of over \$150 000, with an imminent threat of losing their home as a consequence. Legal due process involved an arbitration that allowed the builder, a former MBA president, to effectively exploit the system in his favour. Consumer Affairs Tasmania encouraged them to follow this due process as they felt the home would be rectified. This was not the case and the home still remains defective. Although the home was completed before the TCC was established, it is clear that the TCC accreditation would not have changed the scenario as the accreditation scheme would still require Janine to pursue exactly the same due process.

The issue here today is to understand from a consumer's perspective the horrendous detriment that a flawed consumer protection regime can inadvertently deliver. Janine and Chris are typical of consumers Australia wide, excluding Queensland, that have tried to fight the system to obtain redress of their defective building works. The TCC accreditation and its underpinning home indemnity insurance simply offers no security for those consumers.

Please understand that this issue is far bigger than Tasmania and it is bigger than the TCC as well. This issue cuts to the core of consumer protection policy in this country and the trend to allow private companies to administer and manage building industry consumer protection policy. These private companies, as I mentioned earlier, include the HIA, MBA, insurers and in Tasmania the TCC. They are all private companies

that individually market, sell and profit from very poor consumer protection products and with no, or virtually no, public accountability. As a registered builder I am ashamed that our industry is treating our clients in this way. Janine will now give a more personal account.

Mr CARLSON - Before Janine does that, I trust that you will permit me to speak on behalf of consumers because I think we have been through seven years of lack of consumer protection. Janine is going to talk to the submission. I am just going to go slightly off that track, if you give me the permission to do so. Phil Connors was our representative through all the arbitration processes that we have been through. I am sure that he will be glad to answer any questions that you have in relation to some of the questions that we have heard prior to this in relation to TCC with complaints and those sorts of things. He has a fair bit of background in that as well. I have quite a few extracts from the Consumer Affairs and Fair Trading review of the Housing Indemnity Act 1992. If you wish, I can provide you with copies of those. I have highlighted some sections out of those. Would you like me to hand those out to you so that you can read through them?

CHAIR - Yes, please.

Mr CARLSON - We were mistakenly invited to a building industry forum which Consumer Affairs and Fair Trading were running in August/September of last year. I am not sure that consumers were represented at any of these forums. Whilst the MBAs and the HIAs of this world encouraged their members to attend these types of forums, I am not certain that consumers were adequately represented at these times. From the information that you have in front of you, on page 5 there is terms of reference and it covers things like community expectations of building standards, consumer protection and dispute resolution. Since they were the only stakeholders that were present at these forums I would have to question whether building practitioners could constructively represent consumer protection. I am just going to keep reading this out. On page 7, consumer protection from financial loss whether the builder is trading or not and insurers would intervene and arrange for completion of defects. Also on page 8, the owners are able to claim under the insurance policy. In our case, and no doubt Janine will cover it a little bit further in detail, building contracts contain arbitration and dispute resolution clauses and from our experience insurers will not intervene nor fix defects until contractual obligations are fulfilled. Intervention and rectification certainly did not happen in our case. Even the current legislation means that it will still not happen. On page 12 there is a little highlighted section on the Building Act 2000, which has been discussed here today already, with a requirement for accredited builders and for mandatory insurance for consumer protection. I am not going to talk anymore on that. There is another highlighted section on page 13, and I think that Russell and Phil have already spoken in detail on the Queensland model which we have also investigated and appears to be quite a good working model from a consumer protection perspective. On page 15 there is also information in there, 2.3.3 of a review and where the working partners envisage a framework that consisted of five different things - effective contracts, builder licensing, effective dispute resolution, effective compliance and enforcement, and effective consumer representation. With all five of these areas that they were looking at as far as the framework is concerned, firstly I would have to ask the question, do they protect consumers or have the industry associations developed contracts that merely look after a builder's interest and not necessarily a consumer's?

Builder licensing: my question is, is the current system fair? How much emphasis does the regulator, in this case the TCC, place, if any, on past conduct when accrediting builders or is it merely financial, technical and insurance requirements that determine accreditation?

The third one, effective dispute resolution - again, is it fair? Does it protect both builders and consumers and does it minimise financial loss to all parties? Is there a more efficient, effective and equitable method than the Queensland model appears to be and can insurance be accessed without the need for an expensive dispute resolution process?

The fourth one in there is effective compliance and enforcement. I understand from the information I have read that the regulator, in this instance the TCC, has refused accreditation to 29 builders for not acquiring mandatory insurance. The question I have to ask, and it is the same question that you've asked as well, is how many complaints has the TCC investigated? And have they used their powers that were seen from this review in the first place to fine, suspend and cancel builders' licences especially when they have found unscrupulous builders or conduct which has been of an unprofessional nature?

The fifth section there is effective consumer representation. Again, I go back to my original question: have consumers been asked to be involved in the review of this legislation? From our experience we would have to say no, that building industry stakeholders - that is the building industry themselves - have been encouraging their own people to become involved but consumers - and I guess when we look at our own life experiences we might build a house once, twice, three times in our life time so we only spend a very small amount of time becoming involved in it - aren't necessarily adequately represented, I believe.

I guess after all, what do we want? It is a professional service from skilled, competent and reliable practitioners rather than - and I guess again from our experience - the shoddy practices that we have come to expect.

Mr WILKINSON - I am just going through the history of it and I noted that the arbitration commenced in March 2001 and the arbitrator returned with a decision and that decision was that 85 per cent of your claims were accepted and that therefore it was stated that the builder had to either rectify or pay for the rectification of the problems, is that right?

Ms BRANSDEN - That's correct.

Mr WILKINSON - And he ordered costs against the builder?

Mr CARLSON - We didn't get to the end of that arbitration.

Mrs SMITH - Turn the page.

Mr WILKINSON - Yes, I can see on the page where it says 'arbitration abandoned' but it would seem to me that the decision was already handed down prior to it being abandoned.

Ms BRANSDEN - Eighty-five per cent of that arbitration was heard. It wasn't completed but we won 85 per cent of what was heard. One of those was a major problem which was

that the entire roof had to be removed, replaced, the gutters reinstalled and so on. That was a massive job. The roof of your house -

Mr WILKINSON - I understand that but -

CHAIR - Mr Connors might be able to assist.

Mr CONNORS - Am I allowed to mention the name of the first arbitrator? Is there any problem with that?

CHAIR - It is matter of the public record anyway.

Mr CONNORS - Okay, right.

It was run by a gentleman by the name of Mr Chris Bullard and he is on the panel that has been established by the MBA and Consumer Affairs with me - I am the chair of that particular panel. Mr Bullard indicated to me personally that this arbitration that he entered into here was the biggest one he had ever done. Prior to that all he had ever done was boundary fence disputes.

Consequential to that, Mr Bullard, from my experience when I came into it, was handing down awards on the way through the arbitration and that is a no-no, and you yourself would be able to understand why. If you see one, two, three, four going against you, what would you do if you were a builder? You would pull back into your shell, you would not contribute anything, and when I came in that was where the thing was at. You do not hand down awards throughout the process because all it does is cause tension. You wait right until the end, you hand down an interim award and then you deal with costs afterwards. So it was fraught with problems.

Mr DEAN - So had he handed down the interim award?

Mr CONNORS - He had - 85 per cent of the matters to be heard. Each one had an award and a direction given for that particular issue.

Mr WILKINSON - What I cannot understand, though, is if he has handed down an award, in legal parlance he is functus officio, he cannot turn back on those, the awards are handed down, and therefore the only way they can be objected to is if they are appealed. You cannot just suddenly say, 'We'll go to another arbitrator'.

Mr CONNORS - We have got a lot of issues there that Ms Bransden is going to deal with and that relates to the information and assistance that was given by Consumer Affairs to actually go through the second arbitration and even to enter into the second arbitration. That matter is up for dispute at the moment and was going to be appealed.

Mr DEAN - What my question mark is, is if he has already handed down a decision, no matter if he did it on the way through, if those interim decisions have been handed down I wonder how they can just suddenly on behalf yourself and another person say, 'We don't agree with that. We'll try someone else'. You can't do that.

Mr CONNORS - You are talking about two legal opinions here, and I think this will come out a little bit later.

Ms BRANSDEN - I have tried to compact seven years into seven minutes. I would like to hand out these folders because on my way through I would like to quickly brush over things and I would really sincerely like you all to read them later on. I hope mine is still here with all my scribble on it. Yes. I probably have an extra one that Chris will need. Plus I have other clients from the same builder that I will table at the end of this.

You will notice on the first page that I scanned in some photos to give you a bit of an idea of the state the roof was in from 1999, the black-and-white photo, to what it is like now. There are buckets in the roof, I will go down the left-hand side of the page, you can see a bucket - that is bird droppings all over the roof. We have had an infestation of maggots; they have dropped down into one of our bedrooms. We have had the house fumigated and birds removed four times. The next photo down is a windowsill that has been rotting out. I have that on video footage from 1999 and that has been lost. There is brickwork with no mortar between the bricks. It is very difficult to see the tile that is not sitting on a batten but if you go over the next page, you will see that the tiles do not even hook over the battens; the battens are laid out incorrectly. You see the flooding onto the roof. We have a portico that floods down the front door and you can see water lying on the grouting on the tiles inside the front door. Each and every time we have heavy rain we are going through this and we have gone through this for seven years. The next photo is cracked windowsills. I have photos taken in 1999 that you are welcome to look at. The cracking occurred then. It was fixed, they patched it up, they painted over it and the cracks reappeared. When we moved into the house it was defective. You can see me I am getting down with a bucket. I think you would all be happy to get up into the roof every time it rained and empty buckets. There is a side-on picture showing the date in 1999 before render went on the brick wall. That is taken off a video and then there is a photo on the right-hand side of tilt battens removed from the roof. The builder put the gutters in too low so he knocked the tilt batten out and then we had the dominoes effect up the roof of tiles. With gaps between them, it looks like somebody has got the blockbuster.

The next page is a black-and-white page and on the third page - I've got a very bad photo - you'll see there are birds' nests. The roof is full of birds' nests. There is a dead bird. I've put an arrow to show you that the roof's full of birds. It is not only a fire hazard, it is a health hazard and the roof leaks. It smells like a piggery when we have a lot of rain.

Our house was built in 1999 by a builder who was the President of the Master Builders Association when we signed the contract. We notified the MBA in writing during the construction of our house in 1999 that the builder was running amok. We were seeking their assistance. No support came. I refer you to a blue tag in the folder. It's got the MBA Australia, but there are a number of letters there that we wrote to the Tasmanian Master Builders Association seeking their help. The help didn't come.

On 24 October 1999 we believed the builder was in breach of contract, and he'd made another change in the construction of our house without authorisation, and on the last page of 24 October 1999:

'It has now become apparently that communication between client and builder is impossible and we are seeking the MBA to provide assistance in overseeing this project. Our only alternative is to source another to oversee what we consider to be an unethical attitude from an uncompromising builder.'

Max Seymour from the MBA who I addressed these letters to came out to the site, we went round and round in circles, and nothing was fixed. Nothing was achieved. Everything was buried. A letter to the Master Builders Australia - I'll come back to that later - basically says when they investigated it that MBA Tasmania were unable to locate any documentation. How convenient. Sorry if I sound hostile but there's a few hands I'd like to smack.

The builder denied responsibility for the faults. We lodged an insurance claim in February 2000 with the HIH. There is a green tag there right in the front of this catalogue that has documented defects in our house. Mr Keating, who is a member of the MBA, came to inspect the house. He later became the President of the MBA. He documented a number of defects. I can quickly go through a lot of them. One of the major ones was the roof tiling and associated works, the conservatory, sliding doors and windows, re-instate render below entry sill, installation of weather seals, framework, electrical work - we were without heating in a third of our house for four years - the construction of the portico, cracking in windowsills, kitchen joinery. This all could have been fixed in an assessment that we got - an independent assessor - for \$63 599. Instead we've outlaid over \$150 000 and the builder is trying to pursue us for his legal costs of approximately \$33 000 at the moment and we still haven't got our house fixed.

HIH informed us then that we couldn't make a claim. We had to abide by our contract. If you refer to the yellow-tagged contract there is a letter there stating:

'Prior to your client claiming a benefit under this policy they are required to exhaust the remedies available to them under their contract in accordance with conditions i.e. the insurer shall comply with the terms and conditions of the building work contract prior to claiming a benefit in respect to section 7 and 12 of the act'.

Those sections are attached with those. I am rushing it through - I'm sorry if I'm rushing you - as I have so much to get out.

There is a yellow tag with 'contract' written on it, right-hand side, and there is an editorial three pages over which forms part of this that Chris Atkins wrote. He wrote an editorial in response to one I had:

'The MBA contract does not contain any clause that requires that arbitration be completed before an insurance claim can be progressed'.

With that I sent via Kate Jackson of the Premier's office a response. As I got nowhere with the MBA, I sent it straight on to Kate Jackson who sent it to the Attorney-General's office who passed it on to Consumer Affairs and hence nothing was done. It seems that the MBA could make accusations. That's one point. There are a number there that are inaccurate.

I contacted Peter Patmore - there's a blue tag just below the yellow tag with 'Pat' written on it. I thought, 'I'm not going to go through all this rubbish. They're not letting me claim on the insurance. I was very concerned about the insurance company, why they wouldn't pay out, why we had to go through this horrendous ordeal.

Peter Patmore sought a report on our dealings with Consumer Affairs and the view of the Office of Consumers Affairs and Fair Trading is that the arbitration procedure must run its course and be resolved before the housing indemnity claim can be processed.

Hence we entered into arbitration on 8 March 2001 with 40 defects. I have an extensive report here of the 40 defects plus cost estimations to go with them and I would like to table, Mr Chairman, those reports so that they can be referred to by the committee later on. That will give you a good idea of what we've been through.

Once we signed up for arbitration we endured two weeks of phone calls between 12 midnight and 2.30 a.m. No-one was talking. I did get a threat that our gates were going to be towed and then the very first day coincidentally that we went in to arbitration we came home to find blood had been splattered all over our paths. I did show these photos to Premier Jim Bacon. For the record, I'm showing photos of blood. To come home and find that - it had been splattered and smeared - I guess was a deterrent for us. There's a letter in this folder that refers to a neighbour catching some contractors coming over our fence and told them they were trespassing. I believe that they were fiddling with some of our windowsills trying to patch them up, but that was later. She was watching to see whether anybody entered our property when we were in meetings.

This is the type of thing consumers have to endure. I've had other consumers come to me. I'm continually receiving calls. I stumbled across the Builders' Collective of Australia and it was through this that I've gained a little bit of confidence to try to deal with it as best I can.

We met with Jim Bacon and there is a red tag with 'Jim Bacon'. That was dated 23 August. There are two letters there from him. I've gone forward one page. On 21 March 2002 after I met with him he said:

'Your experience suggests that there are flaws in the current arbitration process for resolving building disputes. I have written to the President of the Master Builders' Association outlining my concerns over the operation of the current system and there is a need to put in place a more fair, equitable and affordable dispute process. A copy of the letter is enclosed. I also propose to further examine ways in which to improve building dispute arbitration processes and the way they can be implemented.'

The next letter I wrote to him. Nothing was progressing and he wrote:

'As you know, I have maintained a personal interest in this issue.'

Am I going to fast?

CHAIR - Janine, can I just interrupt there. We've just gone past the 30 minutes allocated for your evidence. Given that it's a very detailed list of what's happened, are there matters

that you want to outline that we can't follow in there when we have our private time to go through this to familiarise ourselves? The reason I ask that is this: it seems clear to me, and committee members will make their own judgments about this, that both your evidence and that of the last witnesses goes to the matter of inadequate or inappropriate building work that has not, in your view, been appropriately attended to and yet builders are still accredited. Is that a fair summation of where your evidence is leading us?

Ms BRANSDEN - Yes. Our builder became accredited just through being a member of the Master Builders Association, and whilst he was going through this process he formed other companies and now operates another company.

CHAIR - I am just trying to assist in terms of fairness to other witnesses who are here ready to go.

Ms BRANSDEN - I knew I'd go over time, that's why I was trying to hurry it.

CHAIR - No, that's okay. Feel relaxed about that.

Mr WILKINSON - Is there anything that is not in these papers because we will go through those?

Ms BRANSDEN - Well, there is something in here that I'll raise now. In this letter from Jim Bacon he said:

'I will be requesting the new Attorney-General to progress the matter.'

That was Judy Jackson.

'You will be invited to provide input into this important reform.'

Shame, shame. We were never asked. No consumers to my knowledge in Tasmania have ever been asked to participate in any reforms in Tasmania.

CHAIR - I was going to ask that because your submission to us suggested just that.

Ms BRANSDEN - Whilst I go through that, I researched before I came across the Builders' Collective, I took it upon myself and rang every State in Australia and went through their building dispute resolutions. There is a letter in this file dated 4 April 2004 to Judy Jackson, and I've highlighted the area where I say in Queensland arbitration doesn't exist as such. If a builder doesn't go in and fix a defect then his licence is taken away from him. With the Queensland system, the tribunal will step in, fix your house and then they will pursue the builder for the cost. We would not be going through this. Neither would other clients of the same builder. I will leave documents here, if I may, and they've given me permission. Mr Phillip Piner had my builder built between 1993 and 1994. He was left with a defective house. Ricky and Julie Lovatt are still suffering a defective house. They built after us. So this builder has continued on throughout a decade building defective houses. He will continue to do so and he sits on the panel at meetings and remains on the panel at the MBA. I do not think that he will ever be removed.

Mr WILKINSON - I read the history of what has happened. What I am suggesting is that it is just like if I go to court and somebody finds me guilty of something and says, 'You pay'. If I do not agree with that I cannot just say to that magistrate or judge, I do not agree with you. I will go to another one and see what that person metes out. Once that penalty has been handed down or once that order has been handed down, the only way that it can be changed is by appeal. I do not know the full facts of it so I could not advise. But what concerns me is where you said arbitration abandoned but already he had handed a decision in relation to 85 per cent of the matters. I can't understand why you can't urge that that 85 per cent be paid. You have gone on it would seem to a second arbitration without any ability to do it because you cannot renege what was on the first one.

Ms BRANSDEN - It is almost like a case of double jeopardy. That is a question that has been looked at. That advice came via Consumer Affairs.

Mr CONNORS - I need to give you a little bit of my background so that you know what I can contribute because you might like to have me back some other time if we run out of time. Do you want to hear that first?

CHAIR - We have gone 35 minutes and we allocated 30.

Mr WILKINSON - Can I just ask you then, you are getting legal advice in relation to it, are you? That would be my strong advice to you.

Ms BRANSDEN - We are seeking legal advice but we are in a financial position where we cannot afford to pay for that advice. The original advice in the standing down of the first arbitrator and the bringing on board of the second arbitrator came through Consumer Affairs. We were helped by them. That has put us in a position where we could possibly lose the house. We have not got any fighting funds. We are still living on concrete floors. We just cannot afford it. We are at the mercy of the Tasmanian Government basically.

CHAIR - Phil, you have indicated that you would need to give some background as to where you are at. Can I just then go back to my observation that the content of your submission to us is to highlight your concern that notwithstanding inadequate building work being delivered to consumers, builders are still nonetheless being accredited. That is the highlight of your submission to us, as I read it. I am just wondering - and committee members will make their own decisions about whether we need to have you back; we can decide that later - if that is the nub of what you are saying to us if any further evidence at this stage is going to do any more for us but to continue to highlight that which you already have done.

Ms BRANSDEN - I could read you my conclusion and then if Phil could -

CHAIR - I think in fairness to everybody we might need to have you back.

Mr DEAN - I would like to know the background very quickly if we could get that.

CHAIR - Let us go to the conclusion then, Janine. Committee members seem to be of the view that we should do that and that is a fair process.

Ms BRANSDEN - My conclusion is, this has cost us \$150 000. During the course of this I suffered a breakdown, Chris suffered a stroke that will affect him for the rest of his life and we remain living in a defective house, and in the words of Roy Ormerod, blind Freddy could see that it is defective. I have had the Attorney General, Steve Kons, through the house. He said, 'Yes, I can see that the roof needs to come off'. Without adequate or appropriate legislation in place to protect consumers we are here before you so that you can use this as a case study. You might see from the information provided today an indication of how things can go terribly wrong and how powerless we are as consumers. Our aim is to ensure that any subsequent legislation protects home owners from lengthy and costly proceedings and ensure that house builders are made accountable for poor workmanship and unethical and unprofessional behaviour. I leave it at that and thank you for your time.

CHAIR - Thanks, Janine. Should we proceed to go to Phil or should we hear him at another time?

Mr DEAN - I would just like to have known very quickly the background so that you can establish a strong position with us.

Mr CONNORS - So that you know how you could use me to assist in all these areas, I think if I can just give you a very quick summary of my background?

CHAIR - Thanks, Phil.

Mr CONNORS - I am a carpenter by trade; local government-trained as both environmental health officer and building surveyor; have left local government and gone into my own practice; run a building surveying company and also a general building consultancy which also handles dispute resolution. Under that dispute resolution heading I am on the MBA and consumer affairs panel that represents the MBA contract. Out of that contract there is a fast-track dispute resolution process proposed and I am also chairman of the six panel members that Consumer Affairs have nominated. I am also a member of the Institute of Arbitrators and Mediators, a graded mediator and arbitrator. With that experience I suppose I'm at the cutting edge of all these things that are going on. I also undertake housing indemnity insurance reports on behalf of people who are taking out those policies, so on pretty well every front I'm able to represent one of those elements somewhere along the line, especially if I was asked to contribute something in particular to the Bransden-Carlson case. I was here to do that today but we're out of time, but that's my background, so each one of the different proposals that is being put forward for a dispute resolution I am actually a part of what's going on there.

CHAIR - Just to set your minds at ease, there is a continuing process here because we are going to look at term of reference (1), the nature of the agreement between Bryan Green and John White. There is plenty of opportunity for us to continue on. I get the feeling that we will want to meet with you again to further progress this, and if that is the case, if my reading of that's right, we'll be in touch with you soon for the next round.

Thanks for what you've provided today, particularly the detailed information which you've tabled. You've got more for us there, Janine, as well.

Ms BRANSDEN - Yes, I've got two other cases.

CHAIR - Thanks very much.

Mr CONNORS - I am also on the panel of the TCC, three people that they've nominated for dispute resolution.

Mrs SMITH - When did you join that panel?

Mr CONNORS - I received a phone call late one afternoon just saying, 'Mr Connors, would you please go on the panel? It doesn't matter how much you're going to charge or what you do - I don't want to know, I just want to know that you would be on the panel.'

Mrs SMITH - When did you receive the call?

Mr CONNORS - It would have been five months ago. I would be able to give you the exact date if you want.

Mrs SMITH - Thank you.

Ms THORP - Has that group met as a panel?

Mr CONNORS - No.

CHAIR - We'll flesh that out later with you, Phil, thanks.

THE WITNESSES WITHDREW.