

BUILDING PRACTITIONERS INQUIRY BOARD

Reasons for Decision

Building Practitioner:	Geoffrey Martin
Building Practitioner Category:	Building Contractor Residential (Restricted)
Referred By:	Director of Building Control
Proceedings:	Referral of Inquiry to the Building Practitioners Board in accordance with s 34F(2)(b) of the <i>Building Act (1993)</i> NT
Inquiry Board:	Maria Savvas (Presiding Member) Robert Cox Bede Rodeghiero
Date of Hearing:	13 July 2020
Date of Decision:	21 January 2021

Background

1. On 30 October 2018, the Director of Building Control (**the Director**) completed an audit of Geoffrey Martin (**the Practitioner**) pursuant to section 34A of the *Building Act (1993)* NT (**the Act**) and produced a Reaudit Report (**the Report**). The Report identified alleged breaches by the Practitioner of the following provisions of the Act:
 - a. Section 34E(1)(a);
 - b. Section 34E(1)(b);
 - c. Section 34S(c);
 - d. Section 55;
 - e. Section 62(3)(a); and
 - f. Section 62(3)(b).

(**the Alleged Offences**)

2. Section 34F of the Act relevantly provides as follows:
 - (1) On completion of the audit, the Director must decide:

- (a) whether or not there is evidence that a building practitioner the subject of the audit has committed an offence against this Act or the Regulations; and
 - (b) whether or not there is evidence that a building practitioner the subject of the audit is guilty of professional misconduct.
- (2) On making a decision under subsection (1), the Director may decide to take one or more of the following actions in relation to the building practitioner:
- (a) if there is the evidence referred to in subsection (1)(a) – prosecute the building practitioner for the alleged offence;
 - (b) if there is the evidence referred to in subsection (1)(b) – refer the matter to the Practitioners Board for inquiry.
3. On the findings made in the Report, on 8 May 2019 the Director referred the Practitioner to the Building Practitioners Board for Inquiry pursuant to section 34F(2)(b) of the Act (**the Referral**).
4. This is the decision of the Inquiry Board convened pursuant to s34J of the act to hear and determine whether the Practitioner is guilty of the Alleged Offences and guilty of professional misconduct pursuant to s34S of the Act.
5. Section 34S of the Act relevantly provides that:
- A building practitioner is guilty of professional misconduct if, on completion of an inquiry, the Inquiry Board is satisfied on the balance of probabilities that the practitioner:
- (a) has committed an offence against this Act or the Regulations; or
 - (b) is guilty of a pattern of negligent or incompetent conduct or serious negligence or incompetence in carrying out particular work; or
 - (c) has authorised or permitted an employee, or another person engaged to do work on the practitioner's behalf, to work as a building practitioner in a category of building practitioner in which the employee or other person is not registered; or
 - (d)

- (e)
 - (f) is guilty of conduct referred to in section... 34E(1)(a) or (b); or
 - (g) is otherwise guilty of professional misconduct.
6. On 16 September 2019 the Director and the Practitioner provided the Inquiry with:
- a. A Statement of Agreed Facts as between the Director and Practitioner; and
 - b. An Addendum of Extenuating Circumstance submitted by the Practitioner.

These 2 documents are marked Schedule A and Schedule B respectively and attached herewith.

7. The hearing before the Inquiry Board occurred on 13 July 2020. The Director appeared with Counsel, Hamish Baddeley. The Practitioner was self-represented.
8. Schedule A discloses the nature and particulars of the allegations supporting the Referral. Schedule A also sets out the following admissions made by the Practitioner:
- a. **Section 34S(c)**
 - (i) The Practitioner admits that he agreed for Mr Peter Yeend to do building work at Unit 1/24 Frangipanni Street, Nightcliff (**the Nightcliff property**), on the Practitioner's behalf.
 - (ii) The Practitioner admits that he knew Mr Yeend was not a building contractor.

In Schedule B, the Practitioner provides an explanation as to how Mr Yeend became involved in the building works for the Nightcliff property and concedes that he permitted Mr Yeends to undertake such works. The Board acknowledges that the Practitioner may have had an initial involvement in the building works and that the Practitioner did not receive any moneys from the proprietor of the Nightcliff property, but rather received an initial amount of money from Mr Yeends. This information does not excuse the conduct of the Practitioner. The Practitioner also admits that Mr Yeend was not at the relevant time a licensed builder.

The Inquiry Board is satisfied on the balance of probabilities that the Practitioner's conduct in authorizing or permitting Mr Yeend to undertake the building works for the Nightcliff property with the knowledge that Mr Yeend was not a registered building contractor, is a breach of s 34S(c) of the Act and finds the Practitioner guilty of professional misconduct.

b. Section 34E(1)(a)

- (i) The Practitioner admits that during the course of the audit carried out on 30 October 2018, he was requested to produce, but could not, the 8 categories of documentation set out in paragraph 4(a) to (h) in Schedule A.

In Schedule B, the Practitioner provides some explanation for not producing the category of documents referred to in paragraphs 4(b) and 4(f).

The category of documents referred to in paragraph 4(b) are pages 5 to 20 of the contract for work at 8 Alidade Crescent, Woodroffe (**the Woodroffe property**). The Practitioner explains that the original contract was lost by the proprietor's bank and the copy of the contract was subsequently destroyed by dogs.

The category of documents referred to in paragraph 4(f) are documents evidencing approval from the building certifier to proceed with the next stage of building works for the Woodroffe property. Initially the Practitioner stated that the approvals were given verbally, however in Schedule B he states that the original certifying engineers "closed up shop" and failed to provide the original documentation.

The explanations proffered by the Practitioner are not supported by any evidence and do not excuse the Practitioner from the breaches of s34E(1)(a), and the admissions made are noted by the Inquiry Board. The Inquiry Board is satisfied that the Practitioner breached s34(1)(a) and finds the Practitioner guilty of professional misconduct pursuant to s34S(f) of the Act.

c. Section 34E(1)(b)

- (i) The Practitioner admits that in response to a request from the auditor, he provided what he purported to be the missing pages 8/9 and 16/17 of the HIA June 2014 contract for the Woodroffe property. In fact, the pages produced to the auditor were not the missing pages for the HIA June 2014 contract for the Woodroffe property.

The Inquiry Board is satisfied that the Practitioner breached s34(1)(b) and finds the Practitioner guilty of professional misconduct pursuant to s34S(f) of the Act.

d. Section 55

- (i) The Practitioner admits that building work was carried out at the Nightcliff property and that such work required an amended building permit but he cannot recall whether a building permit was issued, or if one was issued, when it was issued.

The Inquiry Board is satisfied that the Practitioner breached s55 and finds the Practitioner guilty of professional misconduct pursuant to s34S(a) of the Act.

e. Section 62(3)

- (i) The Practitioner admits that the original certifiers for the Woodroffe property ceased trading and he did not obtain written inspection certificates for the Woodroffe property in accordance with s63 of the Act.

In Schedule B, the Practitioner advises that all documentation was eventually put in place by Annette Joseland (Certifier).

The Inquiry Board is satisfied that the Practitioner breached s62(3) and finds the Practitioner guilty of professional misconduct pursuant to s34S(a) of the Act.

Decision on Inquiry

9. The co-operation of the parties and the provision of Schedules A and B, and Director's written submissions dated 13 July 2020 greatly assisted the Inquiry Board in its work.
10. Section 34P provides as follows:
 - (1) On completion of an inquiry, the Inquiry Board must:
 - (a) decide, in accordance with section 34S, whether or not a building practitioner the subject of the inquiry is guilty of professional misconduct; and
 - (b) if the practitioner is guilty – decide the action to be taken under section 34T and whether or not to take additional action under section 34U.
11. The Inquiry Board has determined that the Practitioner has breached the provisions of the Act as stated in paragraph 1(a) to (f) herein and finds that the Practitioner is guilty of professional misconduct for the reasons as stated above.

12. Section 34T of the Act provides as follows:

If, on completion of an inquiry, the Inquiry Board decides under section 34P(1)(a) that a building practitioner is guilty of professional misconduct, the Board may take any of the following actions in relation to the practitioner:

- (a) reprimand the practitioner;
- (b) require the practitioner to pay all or a specified part of the reasonable costs of the Director in the inquiry;
- (c) require the practitioner to give an undertaking to do, or not to do, a specified thing:
 - (i) at any time or during any period; or
 - (ii) at a specified time or during a specified period;
- (d) require the practitioner to pay to the Territory a civil penalty not exceeding 40 penalty units;
- (e) suspend the practitioner's registration for a specified period (not exceeding 3 years);
- (f) cancel the practitioner's registration.

13. The objective of disciplinary proceedings are to promote the objects of the Act and to ensure adherence with the legislative framework by all building practitioners. The Inquiry Board endeavors to communicate to building practitioners its concerns regarding industry practices that don't comply with the Act. In particular, any intentional, reckless or negligent disregard of the statutory requirements of the Act is not acceptable and will likely attract serious penalties.

14. The Practitioner is entitled to consideration in his favour for his early admissions in relation to his offending and his cooperation in agreeing the particulars in Schedule A. The Inquiry Board agrees with the submissions of the Director that the Practitioner's early admissions has reduced the time and costs that would have been incurred had the Inquiry proceeded to a contested hearing. Further, the Inquiry Board has also had regard to the fact that the Practitioner has no known history of breaching the Act.

15. However this Inquiry Board considers that the Practitioner's admitted failures were serious and reckless. The Practitioner's conduct demonstrates a range of offending, namely:
 - a. Authorizing a person who is not a building practitioner to undertake building works on his behalf;
 - b. Failing to produce documents for an audit;
 - c. Knowingly providing documents which are false or misleading to the auditor;
and
 - d. Failing to obtain building permits and inspection certificates where required.
16. The Practitioner has demonstrated a willingness to intentionally or, at its highest, recklessly, mislead during the audit process. Furthermore, the authorizing of Mr Yeends to undertake building works with the knowledge that Mr Yeends was not a building practitioner amounts to licence lending. Licence lending will not be tolerated by the Inquiry Board and will attract a harsher penalty.
17. The Inquiry Board has had regard to the Director's submissions on penalty and the submissions made by the Practitioner at the hearing in this regard.
18. The Practitioner made submissions to the effect that at the time of the hearing:
 - a. He was 67 years old;
 - b. His builder's registration expired on 3 July 2020;
 - c. He retired at 65 years and hadn't worked since that time;
 - d. He was a pensioner;
 - e. He was reliant on his wife's income.
19. The Inquiry Board had determined that the appropriate action to be taken pursuant to s 34T is as follows:
 - a. The Practitioner is reprimanded and this reprimand is to be published.
 - b. The Practitioner is to pay a civil penalty of 1 penalty unit for the offence against s 55 of the Act.
 - c. The Practitioner pay is to pay a civil penalty of 10 penalty units for the balance of his professional misconduct.

- d. The Practitioner is required to give a written undertaking to the Building Practitioners Board that he will not apply for registration as a building practitioner before 4 July 2022.
20. The Inquiry Board has determined that no further action be taken by the Director pursuant to s34U of the Act.
21. The Inquiry board directs that a copy of this determination be published and distributed to the parties.

Rights of Appeal and Procedure for Commencing an Appeal under Division 4 of the Act

22. Section 35(d) of the Act states that a decision under s. 34P that a building practitioner is or is not guilty of professional misconduct is an appealable decision.
23. Under s. 36 of the Act, an appeal is to be made to the Local Court within 30 days of being notified of the decision.
24. Under s. 36A of the Act, subject to s. 36A (2), the appeal is to be a re-hearing of the evidence, or review of the information, before the Practitioners Board.
25. Section 36A (2) states that the Local Court may admit evidence or information that was not before the Practitioners Board only if the Court is satisfied there were special circumstances that prevented its presentation before the Board.
26. Section 36B states:
 - a) in determining the appeal, the Local Court may:
 - b) confirm the appealable decision; or
 - c) vary the appealable decision; or
 - d) set aside the decision and substitute another decision that could have been made instead of the appealable decision.
27. The Court may give orders it considers appropriate to give effect to its decision under subsection (1).
28. Section 36C states that the decision of the Local Court is final and is not subject to appeal.

29. Section 36D states:

- (1) Commencing an appeal does not affect the operation or implementation of the appealable decision.
- (2) However, the Local Court may make an order staying or otherwise affecting the operation or implementation of so much of the appealable decision as the Court considers appropriate to effectively hear and decide the appeal.
- (3) The order:
 - (a) is subject to the conditions specified in the order; and
 - (b) has effect:
 - (i) for the period specified in the order; or
 - (ii) if no period is specified – until the Local Court has decided the appeal.

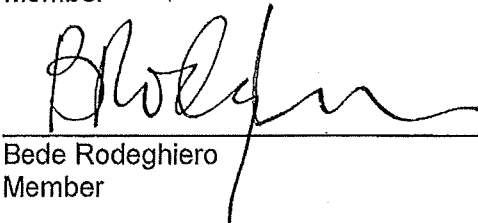
Dated 8 February 2021



Maria Savvas
Presiding Member



Robert Cox
Member



Bede Rodeghiero
Member

**INQUIRY INTO CONDUCT OF A BUILDING PRACTITIONER – GEOFFREY
MARTIN**

STATEMENT OF AGREED FACTS

Reaudit Report dated 30 October 2018

1. Mr Martin agrees with all of the facts outlined in pages 3 to 16 inclusive of the Reaudit Report (regarding the audit on 30 October 2018) **annexed** hereto. To be clear, Mr Martin maintains his explanations that are outlined in that document including, for example, that documents were not available because they were destroyed in a vehicle accident etc.

Allegation – Mr Yeend carrying out building work on Unit 1/24 Frangipanni Street, Nightcliff

2. Mr Martin agrees that he agreed for Mr Peter Yeend to do building work at Unit 1/24 Frangipanni Street, Nightcliff on Mr Martin's behalf.
3. Mr Martin agrees that he knew Mr Yeend was not a building practitioner.

Allegation - Failure to Produce documents in the course of audit

4. Mr Martin agrees that during the course of the audit carried out on 30 October 2018, he was requested to produce, but could not, the following documentation:
 - a. the contract for Unit 1/24 Frangipanni Street, Nightcliff - Mr Martin agrees that the reason he gave for this was that the copy of the contract was destroyed in a vehicle accident involving Mr Yeend (**the car accident**);
 - b. pages 5 to 20 of the contract for 8 Alidade Crescent, Woodroffe - Mr Martin agrees that the reason he gave for this was that these pages blew off his table and the dog ate it;
 - c. the building permit and the new application for building permit for Unit 1/24 Frangipanni Street, Nightcliff - Mr Martin agrees that the reason he gave for this was that it was destroyed in the car accident;
 - d. progress payment invoices for Unit 1/24 Frangipanni Street, Nightcliff - Mr Martin agrees that the reason he gave for this was that he thinks Mr Yeend

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was issuing the invoices on Mr Martin's behalf and Mr Martin does not know where the invoices are;

- e. records to evidence notification to building certifier that an inspection is required to be completed for Unit 1/24 Frangipanni Street, Nightcliff and 8 Alidade Crescent, Woodroffe - Mr Martin agrees that the reason he gave for this was that he keeps a diary of all phone bookings for inspection bookings but that he was unable to locate this diary;
- f. evidence of approval from building certifier to proceed to the next stage of building work for 8 Alidade Crescent, Woodroffe – Mr Martin says that reason for this is that the approvals were given verbally and so there was nothing in writing;
- g. plans, termite certificate and inspection certificates for 8 Alidade Crescent, Woodroffe - Mr Martin agrees that the reason he gave for this was that either his daughter (one of the property owners) or the certifier (Annette Joselyn) have copies;
- h. plumbing certificate for Unit 1/24 Frangipanni Street, Nightcliff - Mr Martin agrees that the reason he gave for this was that, while the plumber has issued one, Mr Martin has not seen it.

Allegation - Provide information or produce document that false or misleading

- 5. Mr Martin agrees that in response to a request from the auditor he provided what he purported to be the missing pages 8/9 and 16/17 of the HIA June 2014 contract for 8 Alidade Crescent, Woodroffe (permit 590/03422/4).
- 6. Mr Martin agrees that these were not actually the missing pages for the HIA June 2014 contract for 8 Alidade Crescent, Woodroffe (permit 590/03422/4).

Allegation - Failing to ensure work is carried out in accordance with building permit

- 7. Mr Martin does not agree with, but does not actually know of deny that, building work was not carried out on Unit 1/24 Frangipanni Street, Nightcliff in accordance with the building permit.

Sulu

8. Mr Martin agrees that building work was carried out at Unit 1/24 Frangipanni Street, Nightcliff which required an amended building permit, but cannot recall whether one was issued, or if one was, when it was.

Allegation – no Alidade inspection certificates

9. Mr Martin agrees that the original certifiers (Heiner certifiers) for 8 Alidade Crescent, Woodroffe ceased trading and he then had to engage Annette Joselyn such that he did not get written inspection certificates for this property.

Edith

Inquiry into conduct of a Building Practitioner – Geoffrey Martin

Statement of agreed facts

Addendum : Extenuating circumstances

Allegation – Mr Yeend carrying out work etc, on unit 1/24 Frangipanni st

2. Mr Martin agreed for Mr Yeend to do the building work on Mr Martins behalf. Mr Yeend had initially been asked to quote the works by Miss Stokes as they are family (cousins) and all part of the Darwin Chinese community. It was agreed that I would set out the site, do the initial demolition. Mr Yeend would then take over and Mr Martin would only check on site every few days. Mr Martin received an initial amount of money from Mr Yeend, No monies were ever paid to Mr Martin by Miss Stokes.

3. Mr Yeend is very competent in all facets of building but is not a licensed Practitioner.

Allegation – Failure to produce documents etc.

4. B, Pages 5 to 20 of the contract for 8 Alidade Cres Woodroffe. Pages blowing off the table and destroyed by dogs. **Explanation :** This is my daughter and son in laws house extension, they had acquired a loan from the "Com" bank. During this loan process the "bank" had requested an original building contract to check suitability. During this process a new loans officer was appointed. The loan process was delayed for many months, resulting in Mr Martin (builder) being financially stretched but continuing on with the project. When the overdue loan money finally came through the original "owners" contract docs were never given back and were apparently lost by the bank.

This is why the builders contract documentation was kept on site and the subsequent damage occurred.

4. F, In regards to building work at 8 Alidade cres, Mr Martin had engaged "Mick Hiener Certifying engineers. They had originally been the certifying and site engineers but had closed up shop at some time during the project. Mr Martin had then had to negotiate a new agreement with Annette Joseland who had at that time gone out as a private certifier. The original reports and documentation from Hiener engineers were not forth coming.

Allegation – No Alidade inspection certificates.

9. As previously stated, but all documentation was eventually put in place by Annette Joseland. Mr Martin is very happy with his and the other tradies standard of work to his Daughter and son in laws house and extension.

Conclusion:

In regards to unit 1/24 Frangipanni st: It became impossible to deal and reason with the client.

Both projects had their dramas, the main issue being documentation not being able to be produced at the time of audit, or completely missing/destroyed.

If penalties need to be imposed then I would prefer a none financial one, as I am now a pensioner (not self-funded) and am receiving a Centrelink pension.

Yours

Best regards

Geoffrey Martin



Please note:

1/ That both these matters, relate to projects of a personal nature. The Atidade Creek project was for my Daughter & son in law, and my paperwork was missing.

2/ The Prangipanni st project was related to me assisting a friend "Mr Yeend" doing work for his Cousin, Mrs Stokes, and note I received no payment from Mrs Stokes. And unfortunately Mr Yeend lost all our combined paperwork/documentation in his horrific car accident.

3/ I could not afford legal representation at the time of the first meeting.

4/ If this matter is to proceed. I will need my own legal representation.

