



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
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Submission Cover Sheet

Inquiry into Building Quality in the ACT

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**INDIVIDUAL SUBMISSION TO THE
LEGISLATIVE ASSEMBLY'S STANDING COMMITTEE ON ECONOMIC
DEVELOPMENT AND TOURISM**

**INQUIRY INTO BUILDING QUALITY IN THE
AUSTRALIAN CAPITAL TERRITORY**

AUGUST 2018

Submitted by:

Raymond David



06 July 2018

Mobile:
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INTRODUCTION

1. Since 2013, we (Catherine Stoddart and Raymond David) had been exploring the possibility of settling in the Canberra area, or at least establish a residence that could become a foundation for other options in the near future. We spent more than 18 months looking at purchasing an existing home and met with multiple real estate agents and visited many open homes. We came to the conclusion that for the same price as purchasing an existing home and renovating it to meet our needs, we could build a new home.

2. On 29 August 2014, we purchased the lease for [REDACTED] in [REDACTED], ACT [REDACTED]. We spent the following 10 months looking at various display homes across the region to determine design and potentially a builder. We selected [REDACTED] based on their [REDACTED] display home at [REDACTED]. After working on our needs and wants with [REDACTED], along with an acceptable fixed price contract that was reviewed by [REDACTED], we signed a contract on 17 September 2015. The contract template used by [REDACTED] was the 2008 version obtained through Master Builders Association Canberra.

3. Within Annex 22 of our contract, item 2 states that “[REDACTED] have provided a display home quality guarantee and will where possible use the same tradesmen and provide the same quality as the display.” A copy of the Build Contract and Inclusions List is Attachment A.

4. [REDACTED] was recommended and engaged as the build certifier.

BUILD

5. Almost immediately, we encountered a delay with [REDACTED] informing us that the designated foreman for our build had left the company. Site preparation commenced during the last week of October 2015. This included trenches for drainage and foundations for the slab and retaining wall. A chronology of the build is at Annex A.

6. Throughout the construction period, [REDACTED] replaced our build foreman 6 times and interior designer 5 times. There were often long delays in the building process due to the absence of a foreman. More often than not, the foreman was absent while sub-contractors were on site. At different times throughout the build, [REDACTED] staff undertook the foreman role, including their lead salesman [REDACTED] and the company owner [REDACTED].

7. Only two time variation requests were submitted during the entire build. These, provided as Attachments B and C, amended the completion date to 21 October 2016. These are the only time variation requests submitted in accordance with Part 1 E and clause 13 of the contract.

8. Our joinery was subcontracted to [REDACTED], floating bamboo floor to [REDACTED], carpet to [REDACTED], tiles sourced from [REDACTED] and inclusions supplied by [REDACTED]. All were listed by [REDACTED] with no alternatives. Bricklaying, carpentry, plumbing, electrical and air conditioning were all subcontracted without consultation.

9. [REDACTED] issued the Notice of Practical Completion on 7 June 2017. Subsequent correspondence from [REDACTED] included a time variation request covering the duration

of the build (Attachment D), a Deed of Release and an application for the Certificate of Occupation. A final inspection of the house conducted on 8 June 2017 resulted in correspondence to [REDACTED] detailing a list of defects and rectification required before final payment. A series of emails followed. [REDACTED] stated their final position on the defects list on 7 August 2017. Attempts to engage an ACT licenced builder for a rectification estimate failed and on 25 October 2017 we provided Aulich Civil Law with an estimate from a NSW licenced builder. Aulich conveyed this list to [REDACTED] without response. A copy of this estimate is Attachment E.

10. On 8 November 2017, [REDACTED] were issued with a Notice of Dispute by Aulich Civil Law. A copy of this letter and Notice is Attachment F.

11. On 23 February 2018, [REDACTED] were issued an Arbitration Notice by Aulich Civil Law. A copy of this letter and Notice is Attachment G.

12. Advice from Aulich Civil Law estimated arbitration would cost between \$11 - \$15,000 and that although the arbitration decision would be legally binding, enforcement of the decision could only be guaranteed through litigation. We directed Aulich to offer [REDACTED] \$15,000 in exchange for the Certificate of Occupation and keys to the house. A Deed of Release was signed to this effect on 27 March 2018. A copy of this Deed is Attachment H. We received the keys to the house via Aulich Civil Law but found that none of the keys supplied would open any of the access doors. Our only access was through the garage until the house was re-keyed.

13. On 12 April 2018, we commissioned Surety Property to conduct a building inspection of [REDACTED] for ACT Standards, Australian Building Code and Contract compliance. A copy of this Report is Attachment I.

14. Based on Attachments E and I, we estimated our claim would exceed the limits stipulated by Australian Capital Territory Civil and Administrative Tribunal (ACAT) guidelines (\$25,000 - \$50,000). The only avenue available to us would have been litigation.

15. We lodged a complaint through Access Canberra ([REDACTED]) which has since been escalated and is now under investigation by Fair Trading. We are seeking from [REDACTED] restitution for the cost of rectifying the defects identified by Surety Property, reimbursement of settlement costs, payment for liquidated damages as stipulated in the contract from October 2016 to April 2018 and reimbursement for our legal costs. We are not claiming for anything over or above our contract; just for [REDACTED] to deliver on their contract obligations.

16. We understand that there are others who have had similar building experiences with [REDACTED], leading us to conclude that [REDACTED] business dealings as a licenced ACT builder has been significant in undermining consumer confidence of the ACT building industry. Should our conclusion be proven, we would expect Access Canberra to withdraw [REDACTED] building licence.

LEGISLATIVE ASSEMBLY INQUIRY

Certification Regime

17. **Compliance.** At various times during our build, we encountered what we considered to be builders' non-compliance of the approved building plans or the Building Codes of Australia.

18. On completion of earthworks required to prepare our site for building, we discovered that [REDACTED], the builder on [REDACTED], had levelled the entire block and backfilled, doubling the depth along the common boundary with uncontrolled earth fill that spilled over into our block.
19. Further, [REDACTED] failed to comply with Lend Lease building instructions and did not install the required drop beam at zero boundary before erecting the garage.
20. In building a two metre high retaining wall, [REDACTED] failed to submit a separate structural engineer assessed plan and obtain building approval for the intended retaining wall, given its height. The wall subsequently failed due to inadequate footings, concrete fill or steelworks within it. [REDACTED] attempted to invoice us and [REDACTED] for rectification costs.
21. **Inspections.** At our insistence, we met with [REDACTED] and [REDACTED], our designated certifier, onsite to discuss the way ahead for the retaining wall. It was at this meeting that we were informed that it was the first time our certifier had visited the site or that he was informed of the retaining wall issues. At this point of our build, the concrete slab had been laid, as had the major plumbing and drainage, framing and brickwork. Rough-in work had commenced for the electrical and internal plumbing.
22. We employed [REDACTED] to design an appropriate retaining wall which was passed to [REDACTED]. Failing to obtain the additional payment, [REDACTED] did construct a one metre high retaining wall, in accordance with the original approved plans. This retaining wall remains uncompleted as identified at Attachment I.
23. Concerned about the legal implications and possible structural integrity, we employed Land Data Surveys to determine the elevation changes at zero boundary between blocks 9 and 10, compared to Lend Lease data. Land Data Surveys determined that Block 10 had been filled by approximately 0.9 metres, and with a cut out of 0.95 metres on Block 9, resulted in the overall step of approximately 1.8 metres along the common boundary. A copy of this survey report is Attachment J.
24. **Regulatory Mechanisms.** We subsequently submitted a complaint with Access Canberra regarding [REDACTED] breach of building codes in that earthworks spilled over the common boundary and that said fill was uncontrolled. We also voiced concern regarding the elevation changes and its possible impact to our solar access. On legal advice, we employed AWT Consulting Engineers to inspect and review all the various building concerns to date and a summary report was provided at Attachment K. This, along with Attachment J, was submitted to Access Canberra as part of the complaint (Attachment L). To date we have not been informed of Access Canberra action or outcome regarding this complaint.
25. **Appointment of Certifiers.** Building a house for most is a once in a lifetime activity. Information on the quality of builders, certifiers and associated trades remains a surmountable task for most. We based our choice on the quality and design of display homes we had visited. We relied on [REDACTED] to recommend and ultimately subcontract throughout the build. Could we have done more to de-conflict by selecting our certifier and sub-contractors? Certainly. Would this have alleviated our defect list? We don't know.

Standard Contracts

26. **Master Builders Association Building Contract template.** [REDACTED] used a 2008 version of the Master Builders Association building contract. Despite having the contract legally reviewed prior to signing, there remained “back doors” which the builder could use to negate portions of the contract.

27. A standard contract, fair to both consumer and provider and linked to a central regulatory body for certification, dispute management and arbitration, would deter builders from breaching their contract obligations. An incentive to retain their building licence would dictate appropriate behaviour and go a long way to correcting builders’ undesirable business practices.

Industry Professional Development

28. **Customer focus.** We believe that the quality of all the work done on our house is not reflective of skills accreditation or professional development and education. It is more fundamental than that. Based on feedback from various trades and professions in the ACT building industry, [REDACTED] or more specifically [REDACTED], has established a bad reputation and is known for having little regard or appreciation for either customer or sub-contractor. He is on record for not paying his sub-contracts on time, and on occasion not paying them at all. We feel that this is the likely reason for the sub-standard work that has been produced on our house. We are not able to confirm who all our sub-contractors were and are unable to pursue rectification from them. We hold [REDACTED] responsible, as the builder overseeing the total build, for the sub-standard quality of work delivered.

Defect Identification and Rectification Processes

29. Throughout our build, we conducted site inspections accompanied by [REDACTED] representatives which often resulted in a list of defects for rectification. Some of these defects were in breach of building codes and more often than not were patched-up, as opposed to being rectified. We are not fully across the building codes or across the various trades that comprise a total build. We relied on the quality of the [REDACTED] display at [REDACTED] as the point of comparison to what was being delivered for us.

30. Based on our experience, we believe that trade specific inspections and certification would reduce breaches of both standards and codes and any defects identified during certification would be rectified before building would progress. We understand that such certification is mandatory for some trades already, including plumbing. However, our house was plumbed for bottom inlet toilets, instead of the current industry standard which is rear inlet, and as specified in our contract. Whoever laid our plumbing or conducted our plumbing certification may not have been current on industry standards or just ignored them, or may not have visited the site, but just rubber-stamped whatever was submitted by [REDACTED].

31. [REDACTED] was fully aware of the non-compliance to current standards. When they were unable to fit the delivered rear-inlet toilet suites, they returned said suites to [REDACTED] and ordered replacement bottom-inlet toilet suites without consultation. When this contract and standards breach was identified, [REDACTED] informed us that the selected model in the contract was no longer available and that in accordance with the contract, they had the right to replace with a similar model. On investigation, we were informed by [REDACTED] of what had happened, and received confirmation that the selected model was indeed still available. We even provided [REDACTED] with a [REDACTED] quote to supply the selected model. [REDACTED] response was to refuse our request for rectification and ignore us.

32. Had the certification process for the plumbing identified the inappropriate plumbing standard that was installed for our toilets, it could have been corrected before the plastering and the tiling. However, it was not and a simple job of re-plumbing was compounded to include plastering and re-tiling work.

33. We have been unable to identify any mechanisms that we could have used to identify or confirm the defects, then to compel [REDACTED] to rectify during the build. [REDACTED] and ACT builders in general, are aware of the lack of complaint mechanisms and the limits restricting ACAT (\$25,000) and of the high expense seeking due process through legal action.

34. The Surety Property Report lists a myriad of defects, some of which we have had to rectify (keys, water heater and bamboo floor) at our own costs before we could move in.

Cost Effectiveness

35. We are not in a position to compare how much it would have cost for inspections for each trade stage and identifying defects to be rectified before building proceeded to the next stage, or where we find ourselves now, with a list of defects that have been compounded, such as the plumbing example provided above. We are aware that such certification inspections are already factored in to the build time. Any extra time to allow for periodic inspections (even if 6 months was added to our build time) would have delivered our house in March 17, 12 months earlier than when we actually got keys.

36. A more prescriptive schedule of inspections and certifications at specific stages of the build, with each inspection and certification being mandatory for the build to proceed to the next phase, would have negated the majority of our defects or compounded any rectification costs. The current mechanisms for dispute resolution are currently to the builders' advantage given the restriction in amount (\$25,000) through ACAT or the costs for litigation.

37. We have found that self-regulation through bodies such as the Master Builders Association is ineffective given their inability to compel their members to engage in disputes. Current dispute resolution mechanisms do not include the building industry regulatory body. Legal consultation is often required to initiate dispute resolution and arbitration. Although legally binding, there is nothing to compel either party to comply with dispute or arbitration decisions, unless litigation action is taken.

38. The inhibiting costs of litigation as the only viable avenue for consumers and sub-contractors to take action enables unscrupulous builders like [REDACTED] to continue to take advantage without risk or consequence.

Dispute Resolution Mechanisms

39. Aulich Civil Law issuing the Notices of Dispute and Arbitration, in accordance with our contract, did little to encourage [REDACTED] to act. When we were advised that any arbitration decision was legally binding, but was not enforceable without litigation action, we finally understood [REDACTED] and more specifically, [REDACTED] attitude. Unless we were prepared to take legal action through the courts, [REDACTED] was untouchable. So, instead of spending money on a process that could not guarantee us getting our house, we opted to spend that money to settle. Had we not done that, our rising costs (legal, rent, mortgage and 2 x utilities bills), we would have had to claim bankruptcy. In short, current dispute resolution mechanisms are ineffective, unless one is prepared to take legal action.

40. Notices of Dispute and Arbitration processes should be centred around, and involve the regulatory body i.e. Access Canberra. As the licencing body, it becomes within the builders' interest to comply with dispute and arbitration decisions given the potential for their building licences to be withdrawn. The same incentive applies to the consumer in that a Certificate of Occupation would only be issued upon their compliance to any decision.

41. Certification, independent of the builder, at specific stages of a build should be coordinated and controlled by Access Canberra. This mandatory inspection and certification process would provide the first indication of potential problems that may result in disputes and arbitration. It could also inform of possible intervention points by which to short circuit issues such as defects and rectification costs compounding and becoming disputes requiring arbitration.

42. Access Canberra, as the central coordinator would be fully informed of the issues that would lead to a dispute and arbitration. Further, decisions would be enforceable to both builder and consumer. Benefits would include: a vast improvement in the quality of building in the ACT; a reduction in building related issues passing through ACAT; trades being paid for certified sub-contract work; reduction of building related issues being elevated to the court system; consumer satisfaction and enhanced confidence with the building industry.

Personal Experience and costs

43. Although we had the contract reviewed legally prior to signing, we were unprepared for [REDACTED] to actually ignore their contract obligations. No one would think to allocate a percentage of building costs to legal advice.

44. During the build, we hired Land Data Surveys to confirm elevation changes at a cost of \$770. We hired Advanced Structural Designs to design a retaining wall suitable for submission for building approval at a cost of \$800. We employed AWT Consulting Engineers for a site assessment and report which cost \$330.

45. We spent \$18,000 for Aulich Civil Law's services in the dispute and arbitration processes as detailed in the contract. In order to gain control of our property, we paid \$15,000 to settle with [REDACTED].

46. Since taking ownership of the house, we employed Surety Property to inspect the house for building code and contract compliance at a cost \$1,359. In addition, we employed Class Locks to re-key the whole house at a cost of \$572, the Plumbing Doctor to install a hot water system at a cost of \$1,910 and ACT Timbers at a cost of \$2,900 to rectify the incorrect installation of the floating bamboo floor. These issues needed to be resolved immediately before we could occupy and move in at the end of May 2018.

CONCLUSION

47. Throughout our build experience, we have been appalled at the behaviour and business dealing of [REDACTED], and in particular the company owner, [REDACTED]. We have correspondence from [REDACTED] stating that our house has been certified and "fit for purpose" when this was clearly not the case. We did not enter into a contract with [REDACTED] to build a house that was "fit for purpose". We contracted [REDACTED] to build us a house in the same quality and finish as their display home. Contracting [REDACTED] as a licenced builder should have guaranteed a house built in accordance with the ACT, building industry standards and Australian Building codes. The Surety Property Inspection Report identifies various breaches of building standards and codes and lists the substandard quality of

construction delivered by [REDACTED] and bringing into question the effectiveness of ACT's current certification processes.

48. The Surety Report also highlights various building code and contract breaches that demonstrate [REDACTED] blatant disrespect of building regulations and of their arrogance toward their customers. [REDACTED] refused to rectify the major defects, ignored our requests and simply abandoned the build, leaving us with rising legal costs, utilities for two houses, rent, mortgage payments and an unfinished house.

49. Litigation costs are not a factor considered when deciding to build in the ACT. Builders are aware of the consumer's financial obligations especially in the final stages of a build. With rising costs and reducing funds, [REDACTED] held us to ransom, taking full advantage of the fact that we were financially unable to take legal action.

50. In the end, we paid for a house that does not comply with certain ACT standards and Australian Building Codes. We have a house that was delivered 17 months past its completion date. We conservatively estimate \$80,000 worth of work to get the house compliant with the Australian Building Codes, ACT building standards, and our contract. We are also out of pocket for rent from October 2016 to April 2018.

51. We have an ACT licenced builder who has a history of inappropriate and unethical business practices who continues to conduct business in the ACT. [REDACTED] touts and takes advantage of the ineffectiveness of building industry regulation in the ACT.

52. [REDACTED] have badly tainted our views of the building industry and ruined for us what should have been enjoyable anticipation and experiences in the planning, building and moving into our own home following more than 25 years of renting. What should have been a positive experience moving into our own home was instead replaced with a sour taste in our mouths. We have a list of defects to be rectified that no new home owner should have to deal with or resolve.

RECOMMENDATIONS

53. The use of a standard building contract for residential dwellings in the ACT would remove the ambiguities and "back door" clauses currently built in and depended upon by builders.

54. A central regulatory body that enforces site inspections during the various phases of a build would guarantee building code and standards compliance (certification) and go a long way to improving consumer confidence in the building industry. A final inspection and report that accompanies and validates the Certificate of Occupation would ensure quality and eliminate the need for the three month rectification period most builders already ignore.

55. Site inspections at the various stages, while aimed to ensure compliance with ACT standards and Australian Building Codes also provides an avenue by which trades could engage the regulatory body on issues such as late payments or non-payment for work completed. This would discourage operators like [REDACTED] and [REDACTED] from taking unfair advantage of trades, especially those who work within thin margins.

56. It is logical then that the same central regulatory body, already informed by the certification processes above, manage the Notices of Dispute and Arbitration processes and make decisions enforceable on both parties and thereby negating legal costs, processing through ACAT or the courts.

57. Such a regulatory structure would also negate the current demerit system which is ineffective in discouraging or changing the culture of inappropriate or bad business behaviour the ACT building industry is reputed for.

58. Finally, we recommend that the Inquiry investigate [REDACTED] and [REDACTED] business history and dealings in the ACT as a case study. Based on its findings, we anticipate the Inquiry would recommend that [REDACTED] building licence be withdrawn and further recommend that he be prevented from registering as a business entity in the ACT in the future.

Chronology

DATE	EVENT
25/05/2015	Contacted Colquhoun Murphy Lawyers to review [REDACTED] contract.
06/07/2015	[REDACTED] commences build – [REDACTED] backfills to achieve a level building site.
10/07/2015	[REDACTED] dumps building material on [REDACTED]
12/07/2015	Erected temporary fencing around [REDACTED] to restrict unauthorised access.
05/09/2015	[REDACTED] construction dumps sand on [REDACTED] driveway impeding access.
07/09/2015	Lodged a complaint to [REDACTED] regarding unauthorised use of, and blocking access to, [REDACTED]
07/09/2015	Consulted with Colquhoun Murphy Lawyers regarding final draft of [REDACTED] building contract.
17/09/2015	Signed contract with [REDACTED].
24/10/2015	Building commenced with site preparation, cutaway and trenches for footings. Cutaway revealed depth of backfill on [REDACTED].
01/12/2015	[REDACTED] confirms increased cost of retaining wall due to its height.
01/02/2016	Time variations x 2 received from [REDACTED]
08/02/2016	[REDACTED] issues invoice for slab and retaining wall footings.
17/02/2016	Framing commenced.
29/04/2016	Work on retaining wall commenced.
10/08/2016	Completed retaining wall.
11/09/2016	Retaining wall braced to prevent collapse onto the house.
14/10/2016	Retaining wall demolished.
21/10/2016	Engaged a structural engineer to design appropriate retaining wall.
10/11/2016	Met with foreman and certifier on site regarding the retaining wall.
11/11/2016	Engaged Land Data Survey to survey building site boundary elevations
11/11/2016	Submitted a complaint to Access Canberra regarding the depth of backfill on Block 10, as confirmed by the Land Data Survey report.
25/11/2016	Requested a “please explain” regarding building completion (21 Oct 16) and a revised completion date.
28/11/2016	[REDACTED] issued invoice for retaining wall.
05/12/2016	Met with [REDACTED] regarding shared cost of retaining wall.
06/12/2016	[REDACTED] issues invoice to [REDACTED] for retaining wall.
14/12/2016	[REDACTED] does not pay invoice.
18/01/2017	Met with and retained the services of Aulich Civil Law
30/01/2017	AWT Engineering report following a review of the retaining wall issue.
07/06/2017	[REDACTED] issued invoice for practical completion.
08/06/2017	Site inspection conducted.
12/06/2017	Emailed response to practical completion notice.
14/06/2017	Received time variations from [REDACTED] encompassing the total build period, including 160 days inclement weather and amending completion date to 02 Jun 2017.
21/06/2017	[REDACTED] responds to defect list.
07/08/2017	[REDACTED] email – final position on defects list.
08/11/2017	Aulich issued a Notice of Dispute to [REDACTED]
23/02/2018	Aulich issued an Arbitration Notice to [REDACTED]
10/04/2018	Settlement and received keys
12/04/2018	Lodged a complaint with Access Canberra and submitted a copy of the Surety Property Report.