

## ***On Wednesday 16 September 2009, the Building Dispute Practitioners' Society held a Discussion Evening at the RACV Club.***

The guest speakers for the evening were the Victorian Civil and Administrative Tribunal ("VCAT") **Deputy President, Cathy Aird** and **Senior Member Roger Young**. Both Deputy President Aird and Senior Member Young currently sit in the Domestic Building List of the VCAT.

The topic for the evening was *"Expert Evidence in the Domestic Building List – VCAT's Guide to Practitioners and Experts"*.

### **Expert Reports**

Deputy President Aird noted that the expert has a paramount duty to VCAT and an overriding duty to assist the Tribunal (and not necessarily the parties). The expert is not to be considered as an advocate for their client.

VCAT has noted a trend in recent times that a number of expert reports have failed to comply with the provisions set out in the Practice Note, which has led to some frustration during hearing. Practitioners have been requested to ensure that their expert evidence complies with the relevant VCAT Domestic Building List Practice Note.

Deputy President Aird made particular reference to paragraph 18 of the Practice Note, which deals with the format of the report, ie. A4, numbered paragraphs, cover page, colour photographs (not black and white).

Deputy President Aird asked that practitioners think critically about the material that they are providing to VCAT. Experts should not be providing opinions on damages or compensation for their clients.

### **Experts Conclave**

One method of attempting to clarify technical issues between experts is to conduct an Experts Conclave. An Experts Conclave is a meeting of the experts, either with or without a VCAT Member present. The experts meet and discuss the alleged defects in the property and otherwise try to agree on a proposed rectification method.

Senior Member Young noted that Conclaves at VCAT were in their infancy and he has been working with experts to prepare a template for future Conclaves.

In a Conclave, Senior Member Young noted, it is not the role of the relevant VCAT Member to get the experts to agree on all issues.

However, the VCAT Member is required to have the experts concisely summarise their position when they do agree. Where there is disagreement between the experts, the disagreement must be sufficiently particularised for the benefit of the practitioners and the VCAT Member who ultimately hears the matter.

Senior Member Young said that at Experts Conclaves he had started requesting experts to prepare a joint expert report. A joint expert report sets out all the areas of agreement and disagreement, including each experts' opinion on the proposed rectification method and cost.

A joint expert report will reduce the amount of time experts will be required to give evidence at the hearing of the dispute, thereby reducing costs to the parties.

Senior Member Young noted that it was his experience that in cases where a joint expert report had been produced, there was an increased chance of the case being settled.

Senior Member Young noted that VCAT was continually looking at ways to improve its processes to become more efficient and cost-effective to practitioners and their clients.

It will be up to the practitioners to ensure that they follow the Practice Notes and take advantage of the processes offered by VCAT to ensure that the dispute is dealt with expediently for their clients.

### **Kate Devenish**

**Lawyer**  
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L to R: Roger Young and Cathy Aird