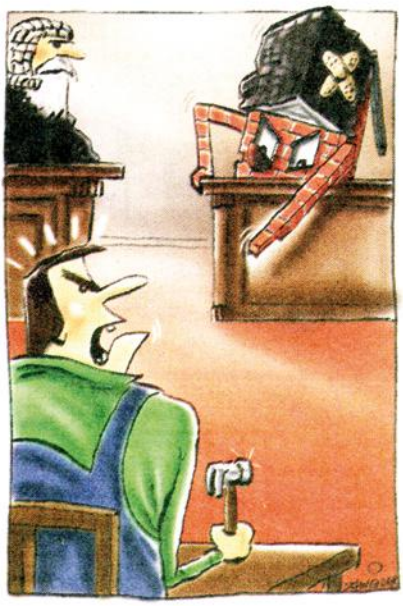
# Say you want a resolution

## the law

If you think resolving a building dispute will be easy then you should think again, writes **Kim Lovegrove**



BUILDING disputes are horrible. They are emotionally draining and cost a fortune to resolve. They test one's constitution, sometimes one's marriage, and can by all accounts cause a lull in libido.

If you have had the misfortune of becoming embroiled in a dispute, there are two primary avenues for resolution: the Victorian Civil and Administrative Tribunal; and Building Advice and Conciliation Victoria.

If resort is had to the BACV, the matter is then ordinarily referred to the Building Commission. The BC appoints a conciliator to inspect the site and prepare a report on the state of the building work.

The conciliator makes recommendations as to whether there is a problem. In the case of defects, the conciliator will recommend that the defects be rectified.

If the builder refuses, he or she can be reported to the Building Practitioners Board (a disciplinary body) for misconduct. If the builder is on the receiving end of an adverse finding, the builder can appeal to the Building Appeals Board if the finding appears harsh.

The other avenue is through VCAT and the remedies available under the Domestic Building Contracts Act 1995.

VCAT has a domestic building list that is presided over by tribunal members who specialise in building disputes. They are all qualified lawyers.

Disputes can range from the thousands to the millions of dollars.

To lodge a claim, a filing fee and a prescribed form must be completed. This calls for a summary of the claim.

The garden-variety disputes are over defects, time extensions, time overruns and disputes concerning money owed to builders. VCAT also can hear matters involving sub-contractors and building practitioners.

Many disputes are resolved at mediation, which is usually convened within a couple of months. A tribunal-appointed mediator holds a meeting where the disputants attend.

The mediator can't force an outcome but through a process of cajolement often brokers a settlement. Settlement requires compromise and a willingness to move.

The mediator invariably extols the virtues of early settlement as being closure, savings in legal fees and peace of mind.

If the matter doesn't settle, there is one further dispute breaker — the Compulsory Conference, which can take the better part of a day. A member hears submissions from both parties. Unlike mediation, where the mediator cannot volunteer an opinion as to who is likely to win or lose, the member can and generally does.

The advantage of the CC is that the parties are given an insight into the way the case may run and the likely finding if the matter were to conclude at trial.

Having appeared personally at many a CC, I have found this medium to be a potent dispute-resolution tonic.

If a matter can't be resolved, it then proceeds to trial. Matters normally take at least nine months to reach this point. Trials require deep pockets and steely nerves, and can take on a life of their own.

Consumers and builders should strive to resolve disputes through negotiation and mediation. If you want to get someone back, or if you want to exact your pound of flesh, be mindful of the old adage: "If you want revenge, dig two graves."

Finally, try to use a construction lawyer to resolve a building dispute, as these types of disputes require a level of expertise that is tailored to building disputation.

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