

## **What You Need to Know About Misconduct and Going to the Building Appeals Board**

**Written by Stephen Williams, Lovegrove Solicitors**

The Building Appeals Board (BAB) plays a central role in the administration of building laws in Victoria. Despite the changing landscape and upcoming introduction of a new legislative framework which is to be introduced 1 July 2013, the significance of the BAB is still of the utmost importance for those who are coming before it or are exploring their legal rights. The Victorian Building Appeals Board (“VBA Board”) is set to replace the BAB, it will have wider-powers and a more defined mandate. Accordingly, the reader should pay close attention to this space for an upcoming piece on the VBA Board.

### **What is the Building Appeals Board and what does it do?**

The BAB is an independent body charged with the responsibility of administering the Building Act 1993 (“the Act”), Building Regulations 2006 (“the Regulations”) and the Building Code of Australia (“the Code”). It is responsible for overseeing and maintaining the standard of professional building services in Victoria.

The BAB hears appeals from the Building Practitioners Board (BPB), building surveyors, municipal governments and the Building Commission. The BAB also hears disputes in relation to the protection works, inspections and compliance with the Act, Regulations and Code. The BAB has broad powers, in relation to the orders it may make. It is not necessary to address all these here, however it is important that you are prepared before appearing at the BAB, especially if the matter concerns and appeal from the BPB in relation to a find of misconduct.

## **Going before the BAB**

Be aware that if you have received a penalty as a consequence of an adverse disciplinary finding, there are still options available to you. If you are seeking an appeal to the BAB, you may be successful in having the penalty overturned or at the very least reduced.

This author is of the view that being successful in a BAB misconduct appeal requires two pre-conditions to be satisfied:

1. Adequate preparation; and
2. Advocacy at hearing.

### **Adequate Preparation.**

When speaking of adequate preparation, it is meant that sufficient time and effort must be invested so as to allow you to do the following before hearing:

#### **1. Get Advice**

Get advice, especially if you are unsure of the grounds upon which you can rely or how to respond to the allegations.

#### **2. Review**

Conduct a full review of the allegations and summary submissions upon which the BPB will rely. This is critical for assessing the scope of the allegations made as well as the factual grounds that are relied upon to support of those allegations. This will allow you to assess how your case should be argued.

#### **3. Prepare Submissions**

The preparation of detailed legal submissions, which outlines your grounds of appeal, the factual basis upon which you rely and case law is essential. This will clearly and concisely state your case and why you ought to be successful.

#### **4. Evidence**

The production of evidence is critical especially, if it was not available at the time of hearing before the BPB. It will back up your assertions and disprove allegations.

#### **5. Who has to prove what and by what standard?**

Be aware of the onus of proof and burden of proof and prepare yourself accordingly, this is also an important consideration in the preparation of submissions.

### **Advocacy at hearing**

If you were self-represented at hearing it will be clear to you how important it is to have an advocate appear on your behalf. An advocate who is well verse in misconduct proceedings will greatly enhance your prospects of success. Specifically, a good advocate will be articulate and capable of presenting your case in the best light possible, consistent with the truth.

It is well known in legal spheres that self-represented parties often do not focus on the matters which are relevant and essential to their case. An advocate will ensure that only relevant factual and legal arguments are raised. This will allow the best case possible to be put forward, while avoiding time wasting and concerning the BAB with irrelevant considerations.

Additionally, an advocate will ensure that surprises are dealt with swiftly and appropriately. Ideally, this advocate will have prepared the legal submissions which support his or her oral submissions to the BAB.