

## Building Consultants: Their Duty to Properly Inspect and Duty to Warn

*Collins v ACT Building Consultants and Managers Pty Ltd*, unreported, ACT Supreme Court, Gallop J, 4 August 1995

When a prospective purchaser decides to buy a particular house, it is common practice for them to obtain a pre-purchase report by a building consultant. This should highlight any defects or potential defects and enable the potential buyer to decide whether or not to proceed with the purchase. *Collins v ACT Building Consultants and Managers Pty Ltd* highlights the obligation of building consultants to provide a report that is accurate. They have a duty of care to their client to warn of real and foreseeable risks that may exist.

### Breach of a duty of care

Mr and Mrs Collins engaged, through their solicitor, the services of the building consultant to advise them so that they could form a proper opinion of the condition of the property and decide whether to buy it.

The report did not advise that the property had water leakage problems, nor did it advise of the need to have the watertightness of the roof investigated further. In order for Mr and Mrs Collins to make an informed choice, a reasonably prudent building consultant would have brought to their attention the likelihood of leakage problems and the need to have the matter fully investigated. Mr and Mrs Collins claimed that the building consultants were negligent in relation to their report and sued them.

Justice Gallop concluded from the evidence that the building consultant's inspection of the property was not carried out with the degree of care and skill expected of a person professing to have special skill inspecting buildings for the purposes of advising purchasers prior to their purchase. Justice Gallop was satisfied that the building consultants failed to properly inspect the property and to warn Mr and Mrs Collins of the significance of physical defects that would have allowed water to enter the premises. This failure was a breach of a duty of care. Justice Gallop concluded that the report issued by the ACT Building Consultants was not adequate.

### Duty to warn

Justice Gallop considered the question of whether building consultants need to warn of inherent defects or the need for further investigation as part of the exercise of a reasonable standard of care.

He held that the appropriate standard of care is not determined by reference to a practice followed or supported by a responsible body of opinion in the relevant profession or trade; *Rogers v Whittaker* (1992) 175 CLR 479. In this earlier decision, the High Court advised that the duty to provide information and advice takes its precise content from the nature and detail of the information to be provided from the needs, concerns and circumstances of the recipient of the advice.

### Conclusion

In this case, Mr and Mrs Collins had special needs or concerns and were seeking special information from a professional building consultant. The consultant's duty to warn of real and foreseeable risks was clear and they failed in that duty.

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