

## Legal Representation in the QBT

---

- **Brian Ernst, Partner, Construction Group, Corrs Chambers Westgarth, Solicitors, Brisbane.**

---

Although the Queensland Building Tribunal (“QBT”) functions like a Court in many ways, the right to have legal representation before the Tribunal is not automatic. A party is only entitled to legal representation in a proceeding before the QBT if:

- the matter is a disciplinary proceeding;
- all parties to the proceeding agree; or
- the QBT directs that such representation be allowed.

In a recent QBT matter, *Jeffries v Tschannen and Denham*, the QBT examined the circumstances in which the Tribunal will, in the future, exercise its discretion and direct the allowance of legal representation.

The application for legal representation was made by Tschannen and opposed by both Jeffries and Denham.

In his reasons for judgment, Chairperson Cotterell said that as the Queensland Building Services Authority Act does not provide specific guidance as to how the QBT should exercise its discretion, the QBT must determine “whether in all the relevant circumstances the interests of the parties and justice would be served by granting or refusal leave”.

### Considerations

Chairperson Cotterell cited the decision in *Commissioner for Main Roads v Leighton Contractors Pty Ltd*, unreported, NSW Supreme Court, Smart J, 4 July 1986, and held that the following eight factors should be considered when looking at whether legal representation should be allowed:

1. **The amount of the claim and of any counter-claim** - The higher the sum of money involved, the greater the standard of skill in representation required and, consequently, the more likely it is that legal representation should be allowed.
2. **The nature and complexity of the issues and the volume of evidence to be adduced** - The more complex the issues, the greater the need for the skills of the trained advocate.
3. **The questions of law which are likely to arise** - Questions in relation to the admissibility of evidence on the basis of relevance can arise and the presence of

legal representatives can assist the Tribunal to ensure that no party is disadvantaged.

4. **The nature and extent of the cross examination likely to be required** - The more detailed the factual investigation as to liability and quantum required, the more likely it is that legal representation will be permitted.
5. **The capacity and willingness of the party to represent himself or herself and his or her experience in doing so** - Factors such as the party’s level of education and training, previous experience in the QBT and proficiency with the English language are relevant in this regard.
6. **The effect of legal representation on the length of hearing** - Lawyers should be able to identify the issues more quickly and therefore avoid going into irrelevant material. The presence of a legal assistant rather than a legal representative may in fact delay the hearing while the party constantly seeks advice before asking questions.
7. **The cost of legal representation** - If there is a substantial sum of money involved the question of costs becomes relatively less important.
8. **The need to avoid allowing tactical ploys to unfairly disadvantage the other party** - Where a party opposing legal representation was represented by a person who was very familiar with the Tribunal procedures and /or the relevant law, the party without legal representation may be disadvantaged. Where legal representation is granted on the application of one party then all parties are entitled to legal representation of the hearing.

It is important to note that parties to QBT proceedings are entitled to be assisted in representing themselves by a legally qualified person at the hearing even where the QBT determines it inappropriate to direct that legal representation should be allowed.

If legal representation is not allowed, the legally qualified person is not entitled to address the QBT and the party would not be entitled to claim the costs of the legal assistance even if successful. □