



**EDUCATIONAL PRESENTATION
GIVEN WITHOUT LIABILITY
THIS IS NEITHER LEGAL NOR VALUATION ADVICE**

INTRODUCTION

PETER BATES

Bates & Associates Limited – Consultant and Registered Valuer:

- ❖ forensic valuations, and;
- ❖ peer review.

Baker Law - Barrister, Solicitor and Arbitrator:

- ❖ commercial law, wills, trusts, property law, asset protection;
- ❖ consulting solicitor (to assist an existing litigation team), and;
- ❖ valuation arbitration.

Do not act as Valuer (impartial) and Lawyer (advocate) in the same matter as these are different roles and undertaken by different entities.

VALUER'S ROLE AS EXPERT WITNESS

Sources of obligations (contract, torts, legislation):

- ❖ NZIV Code of Ethics (under Valuers Act 1948)
- ❖ Any adopted standards (representations / contracts)
- ❖ Terms of Engagement
- ❖ Schedule 4 Code for expert witness High Court Rules
- ❖ *Other codes for other courts and tribunals -ask!*

Nature of the role and reporting:

- ❖ Balanced
- ❖ Within field, reliable, sourced and qualified
- ❖ Use of information (privileged, confidential, private...)
- ❖ Perceptions

ADVOCATES VS CREDIBILITY

- ❖ Advice at framing of instructions (can favour?)
- ❖ Terms of Engagement and 'scope of works'
- ❖ Research, sources, assumptions and reliance
- ❖ One valuer's report may better suit the other party
- ❖ Attendance at mediations
- ❖ The witness box – speak to the neutral (judge/arbitrator)
- ❖ Lawyer “puts to a witness” – testing the theory of the case and credibility – opportunity to clarify
- ❖ Treatment of witness by 'the other side' – who must be professional?
- ❖ Reflect and learn

LEAKY BUILDINGS

- ❖ “Market Value” = Valuer does not assess damages, but gives opinion on market value and market issues
- ❖ Risk of defects (indicators)
- ❖ What would a knowledgeable and prudent vendor and purchaser do? (see test for valuer)
- ❖ In 2001 the Nobel Prize in Economics was awarded to George Akerlof, Michael Spence and Joseph E. Stiglitz for their "analyses of markets with asymmetric information"
- ❖ Theory meets reality – case law
- ❖ Eg: Highest and best use for residential site in Auckland vs High Rise (10 yrs, joinery, deck steps etc)

CARLIN ENTERPRISES V FRIGHT AUBREY

Some issues apply to all valuations

- ❖ Joint instructions conflicting interests
- ❖ ToE and SoW
- ❖ Research and check sources
- ❖ Assumptions – make clear and qualify
- ❖ Field of expertise
- ❖ If you get it wrong should you correct it at an update?
- ❖ If you say no... judges may well be smarter than you think – they can calculate too... the truth will out

WHEN IT GOES WRONG

- ❖ Valuer Credibility
 - ❖ Witness Credibility
 - ❖ Client - contributory negligence [see from paras 200...209, 210, 211...]
 - ❖ Lawyers
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- ❖ Sometimes you might get it wrong – then what?
 - ❖ How should we deal with this in our processes?

DISCUSSION

- ❖ Client says is subdivisible and can get stormwater connection over back fence?
- ❖ Bank says don't need to search the CCC?
- ❖ Buyer says you don't need to search the CCC?
- ❖ Neighbour says...?
- ❖ Council planner says by phone?
- ❖ Agent says it does not matter?
- ❖ Ex-husband says derelict and no internal access?
- ❖ Senior valuer says house is inhabitable?
- ❖ Lawyer says?
- ❖ Title says, but lot plan shows? Huh?

\$167,500 HOUSE OR \$11M BLOCK

Contrast - What changes, if anything?

- ❖ Terms of Engagement?
- ❖ Scope of works
- ❖ You dislike / like the client or sympathise with the client?
- ❖ Need to check information relied on?
- ❖ Disclose assumptions and qualify them?
- ❖ Scope of report?
- ❖ Liability – NZIV COE and VRB issues?
- ❖ PI Cover?
- ❖ Quantum of damages?
- ❖ Valuation fees?
- ❖ Time needed?
- ❖ You are very experienced as a valuer?



ANY QUESTIONS?

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