

\UNDER

THE COMMISSIONS OF INQUIRY ACT 1908

IN THE MATTER OF

ROYAL COMMISSION OF INQUIRY INTO BUILDING
FAILURE CAUSED BY CANTERBURY EARTHQUAKES

KOMIHANA A TE KARAUNA HEI TIROTIRO I NGA
WHARE I HORO I NGA RUWHENUA O WAITAHA

AND IN THE MATTER OF

THE CTV BUILDING COLLAPSE

CLOSING SUBMISSIONS OF GERALD SHIRTCLIFF IN RESPECT OF
THE HEARING INTO THE COLLAPSE OF THE CTV BUILDING

DATE OF HEARING: COMMENCING 5 SEPTEMBER 2012

CLOSING SUBMISSIONS OF GERALD SHIRTCLIFF IN RESPECT OF THE HEARING INTO THE COLLAPSE OF THE CTV BUILDING

Mr Shirtcliff's Position as Construction Manager

1. Mr Shirtcliff gave evidence that, to the best of his recollection, he was employed by Williams Construction Canterbury ("Williams"), as its Construction Manager, in late September or October 1986¹. However, Mr Shirtcliff's Curriculum Vitae, which was produced by Mr Scott, states that he was employed by Williams in November 1986². It is not surprising that Mr Shirtcliff was unable to recall the exact month his employment commenced, given the length of time that has elapsed since the events in question.
2. At the time of Mr Shirtcliff's employment, construction of the CTV Building had already commenced. In this regard:
 - (a) Mr Shirtcliff gave evidence that when he commenced employment with Williams, the work on the foundations of the CTV Building was complete, and the project had been in construction for two to three months³;
 - (b) Mr Brooks, Mr Jones, and Mr Scott gave evidence that Mr Shirtcliff was not employed by Williams until after construction had commenced.
3. Mr Shirtcliff's job title was Construction Manager. However, there is no contract of employment, or other documentary evidence available that clearly delineates his duties and responsibilities. Aside from Mr Shirtcliff's evidence of the discussions he had with Mr Brooks at the time of commencement of his employment⁴, there is no evidence from any other witnesses as to any contemporaneous discussions in which Mr Shirtcliff's duties and responsibilities were discussed or agreed at the commencement of his employment.
4. Mr Shirtcliff did not have any role in the design of the CTV Building⁵.

Mr Brooks' evidence

5. Mr Brooks noted in his evidence, that other projects, such as the RNZAF museum at Wigram, involved the employment of a clerk of works by the client. According to Mr Brooks, the clerk of works "*carried out frequent inspections (almost daily) to a level of detail greater than normally carried out by the architect or engineer*".⁶
6. Mr Zarifeh suggested to Mr Brooks that a role similar to the clerk of works role was the type of role he envisaged for Mr Shirtcliff. Mr Brook's response was that "*I never thought of it that way, but you probably, you know, you probably make, you know, quiet a, quite a good point really*".⁷ The fact that Mr Brooks had never thought of it that way before suggests that Mr Brooks did not envisage that Mr Shirtcliff would be performing supervision duties similar to that of a clerk of works. Mr Brooks then said that the clerk of works and construction manager are two different things.⁸ Mr Brooks then asserts that Mr Shirtcliff "*just*

¹ Para 3 Shirtcliff Statement

² BUI.MAD249.0579.1

³ Para 16 Shirtcliff Statement.

⁴ Para 9 to 12 Shirtcliff Statement

⁵ Trans 20120808.36 L24-27

⁶ Para 75 WIT.BROOKS.0001.11 ("Brooks Statement")

⁷ TRINS. 20120808.26, L 23.

⁸ TRINS. 20120808.26, L26-27

*wasn't up to the job*⁹. This was the first time Mr Brooks had made such a suggestion –there was no such suggestion in Mr Brook's statement.

7. The following exchange then took place between Mr Zarifeh, and Mr Brooks:

Q. And would that have affected supervision of the job that should've been there if a construction manager was doing the right, doing a proper job?

A. Well this is where we start to sort of get misunderstandings in the business where we start using terms like "supervising" and so on. We had a team, you know, of foremen, and essentially they didn't need supervising but what they did need from time to time was guidance and mentoring, you know, and I think that's rather different from saying supervisor.

Q. So there wasn't the guidance and mentoring that you would have hoped for?

*A. Correct.*¹⁰

8. It seems clear from Mr Brooks' evidence that Mr Shirtcliff was not required to continuously supervise every aspect of the construction of the CTV Building. Perhaps unfortunately, Mr Brooks was not asked to, and did not explain precisely what "*guidance and mentoring*" Mr Shirtcliff was required to provide, nor does he explain precisely how often or when such "*guidance and mentoring*" was required, other than to say that it was required "*from time to time*", which seems to imply that the guidance and mentoring was only required intermittently.
9. Later in his evidence, Mr Brooks suggests that if a construction manager is doing his job properly, he should really be visiting the sites everyday¹¹. However, that statement seems to be inconsistent with his evidence that Mr Shirtcliff's role was not the same as a clerk of works, that the foreman did not need supervising, and that Mr Shirtcliff's role was only to provide "*guidance and mentoring*", from "*time to time*".
10. Mr Brooks claimed that he was sure Mr Shirtcliff was visiting all of the sites when he started his employment, but later, in response to a question from Justice Cooper, admitted that he did not know the answer to whether Mr Shirtcliff was visiting the site daily or thereabouts¹².
11. Mr Brooks was then asked about the other projects that Mr Shirtcliff was working on. He admitted knowing about those jobs, and, in response to a question as to whether that was what Mr Shirtcliff was doing at the time, said "*my understanding at the time was that he would have been visiting the sites more often than once a month*", which seems to be a retreat from his suggestion that Mr Shirtcliff should have been visiting each construction site daily.

Mr Scott's evidence

12. Mr Scott said in his statement that Mr Shirtcliff visited the CTV site on a daily basis¹³. However, whilst giving his evidence, Mr Scott conceded that he was not on the site himself, and therefore does not know whether or not Mr Shirtcliff was on the site on a daily basis¹⁴.

⁹ TRANS 20120808.26, L32

¹⁰ Trans 20120808.27 L 1-14.

¹¹ Trans 20120808.36 L-14

¹² Trans 20120808.37 L 1-5

¹³ Para 14 Scott supplementary Statement

¹⁴ Trans 20120808.94 L 28-30

13. Mr Scott asserts in his evidence that Mr Taylor, the contracts manager for Williams before Mr Shirtcliff commenced employment with Williams, visited all of the contracts on a daily basis¹⁵. However, Mr Scott does not depose to how he knew this. Mr Scott was not on the sites himself each day, and the question of whether or not Mr Taylor was visiting all sites on a daily basis is not a matter within his knowledge. This evidence is not persuasive.
14. Mr Scott says that¹⁶:-
- “...my impression through conversing with Gerald as a close team during that period that Gerald was attending to the matters on the CTV Building at that time. After all, it was our biggest structure. The other jobs that Gerald refers to were only single level and Riccarton Road was two level. The Durham Towers had already been closed in by the time Gerald took charge over Geoff Taylor so it wasn't as if it wasn't an insignificant job. We treated it as a fairly major job in the company”.*
15. The evidence that Mr Scott's “*impression*” was that Mr Shirtcliff was attending to matters on the CTV building is vague and uncertain at best. Further, his statement that the other jobs that Mr Shirtcliff refers to in his statement were “*all only single level*”, is patently incorrect. Nor was the CTV Building the biggest job that Williams was undertaking in terms of construction value. The comparative value of construction and number of employees and subcontract labour for each project is set out in the Construction Report as at 30 June 1987 produced by Mr Shirtcliff to the Commission.
16. Later in his evidence, Mr Scott described the CTV Building as a “*very straightforward*”¹⁷ job.

Mr Jones' evidence

17. Mr Jones gave evidence that Mr Shirtcliff might have attended the site once a month, and that he had very little contact with him¹⁸. Mr Jones does not express any view as to whether or not this was a problem. However, if Mr Shirtcliff was not attending the site as often as he should have, it would be surprising if Mr Jones did not raise that issue with Mr Brooks. There is no evidence as to whether or not Mr Jones raised the issue with Mr Brooks, or, if he did, what Mr Brooks' response was, or if he did not raise the issue with Mr Brooks, why not?

Mr Shirtcliff's Evidence

18. Mr Shirtcliff's gave evidence that although his job title was Construction Manager, the work that he was directed to undertake by Mr Brooks fitted better into the title of Project Manager¹⁹. Mr Brooks instructed Mr Shirtcliff to focus on specific projects, namely, the Quality Inn Chain, the RNZAF Air Force Museum, the Canterbury Manufacturer's Building Mancan House, and the AMP Society Office Block²⁰. Mr Shirtcliff gave detailed evidence of the work that he was doing on those other projects²¹. Mr Shirtcliff's evidence in this respect was not challenged – that is, it is not suggested that he was not working on those projects, for the amounts of time stated by him or that the amounts of time he was devoting to those projects was in any way unreasonable.
19. Mr Shirtcliff gave evidence that when he was at the site of the CTV Building, the purpose of his visits was generally to discuss any concerns that the foreman Mr Jones had, and to see if there was anything he

¹⁵ Trans 20120808.95 L 2-3

¹⁶ Trans 20120808.95 L 6 to 12

¹⁷ Trans 20120808.114 L 24-25

¹⁸ Trans 20120808.145 L17-20, and 32.

¹⁹ Para 5 Shirtcliff Statement

²⁰ Para 9 Shirtcliff Statement

²¹ Para 9 Shirtcliff Statement

needed²². This evidence seems to fit with Mr Brooks' evidence that Mr Shirtcliff's role was to provide "*guidance and mentoring*" from "*time to time*", not to supervise every aspect of construction.

20. Mr Shirtcliff gave evidence that it was not feasible for him to have a detailed involvement in all of the projects that Williams was undertaking at the time²³. This evidence was not challenged in any meaningful way, or at all.

Conclusions

21. It is submitted that the evidence is not sufficient to support the findings against Mr Shirtcliff suggested at paragraphs 572, 579, 582, and 590 of the submissions of Counsel Assisting the Commission, or any other adverse finding against Mr Shirtcliff.
22. With regard to the finding against Mr Shirtcliff suggested at paragraph 582, Mr Brooks gave evidence that the pre-cast beams would have been delivered to the site, and stacked for erection "*for some time, yeah, but probably only a day or two*"²⁴. It seems clear that only very regular inspections would have picked up the fact that the beams were not roughened. There is not sufficient evidence to support any finding as to precisely how often Mr Shirtcliff ought to have inspected the site, nor whether Mr Shirtcliff ought to have picked up the fact that the beams were not roughened, or any of the other construction defects (or possible construction defects) identified by the Commission.
23. There is no contract of employment, or other contemporaneous documentary evidence available that clearly delineated Mr Shirtcliff's duties and responsibilities.
24. Mr Shirtcliff gave evidence that at the time of commencement of his employment, he was instructed by Mr Brooks to focus on the projects referred to in paragraph 9 of his statement. There is no evidence from any other witnesses, including Mr Brooks, as to any discussions in which Mr Shirtcliff's duties and responsibilities were delineated at the commencement of his employment.
25. Even if Mr Shirtcliff's evidence is not accepted, the evidence of the other construction witnesses, namely Mr Brooks, Mr Scott, and Mr Jones, as to the extent of Mr Shirtcliff's duties and responsibilities in relation to the CTV building is vague and uncertain at best, and, in the case of Mr Brooks, inconsistent. This is not intended as a criticism – given the amount of time that has elapsed since the events in question, it is not surprising that the recollection of the relevant witnesses is less than perfect.
26. Mr Brooks, in parts of his evidence, gave evidence that that Mr Shirtcliff's role was not similar to that of a clerk of works, and that he was only required to provide "*guidance and mentoring*" from "*time to time*". However, in other parts of his evidence, he seems to suggest that to be doing his job properly Mr Shirtcliff should have been visiting the CTV building daily. Because of this inconsistency in his evidence, Mr Brooks' evidence as regards the extent of Mr Shirtcliff's duties and responsibilities in relation to the CTV building, is not persuasive.
27. Mr Scott's evidence seems to rest upon mere assertion. He asserts that Mr Shirtcliff should have been inspecting the CTV building daily, without giving evidence of any facts that would support a conclusion that it was in fact Mr Shirtcliff's responsibility to do so.
28. Mr Jones gives evidence that Mr Shirtcliff was not visiting the site often, but does not give any evidence that would shed any light on precisely how often Mr Shirtcliff ought to have been visiting the site, nor is there

²² Para 12 Shirtcliff Statement

²³ Para 8 Shirtcliff Statement

²⁴ Trans 20120808.42 L 15

any explanation as to why, if Mr Shirtcliff was not visiting the site often enough, Mr Jones did not raise that issue with Mr Brooks at the time.

29. Aside from Mr Shirtcliff's evidence, there is no persuasive evidence as to whether it would even have been feasible for Mr Shirtcliff to inspect each of Williams' projects each day (or if not, precisely how often), and if so, the level of detail and thoroughness that could reasonably be expected from such inspections, having regard in particular to the number of projects that Williams had in construction (at least 5 in total), the size and complexity of those projects, their geographic location (some of the projects were located outside the Christchurch CBD), and Mr Shirtcliff's other responsibilities. The size and complexity of the other projects that Williams was undertaking is demonstrated by the construction report as at 30 June 1987, the summary of variation claims for the Durham Towers Hotel, and the photographs of the Durham Towers Hotel and the Air Force Museum at Wigram produced by Mr Shirtcliff to the Commission.
30. Indeed, various witnesses have asserted (whether correctly or not and often without deposing to any supporting facts establishing what the terms of the contract between Williams and Mr Shirtcliff were) that Mr Shirtcliff's responsibilities included to ensure the satisfactory progress of all of Williams' contracts, co-ordination of sub-contractors, liaison with Consultants, the supply of labour and materials to the various sites²⁵, reporting to Mr Brooks, receiving updates from the foreman as to the status of construction, providing updates to the Smart Group on the progress of construction²⁶, liaising with City Council inspectors and Alan Reay Consultants, construction programming, quality control and any general problems²⁷. Although there is no detailed evidence on this issue, it seems improbable that Mr Shirtcliff could reasonably have been expected to supervise every aspect of the construction of all of Williams' projects, at various locations throughout Christchurch, and simultaneous discharge all of these other responsibilities.
31. It is easy, with the benefit of hindsight, to assert that Mr Shirtcliff ought to have been inspecting the CTV Building every day; however, whether or not it was reasonable at the time for him to do so, having regard the number of other projects that Williams had in construction, and his other responsibilities, is an entirely different question that was not addressed in any detail in the evidence.
32. Further, if as Mr Brooks said, Mr Shirtcliff's role was not the same as a clerk of works (which seems to imply that he was not required to supervise construction on a daily basis), it is unclear precisely what additional role was envisaged for Mr Shirtcliff (other than perhaps the ill-defined "*guidance and mentoring*" role), given that:
- (a) Mr Brooks was visiting the site two to three time a week;
 - (b) the engineer was (or ought to have been) certifying all structural works on the site in accordance with its contract with Williams; and
 - (c) the Council was conducting inspections as well.
33. In the absence of any detailed evidence as to these matters, it is submitted that the Commission ought not to make any finding as to whether or not Mr Shirtcliff adequately supervised the construction of the CTV Building, nor any finding as to whether any such alleged failure caused any of the construction defects (or possible construction defects) that have been identified in the evidence heard by the Commission.

²⁵ Para 12 Brooks Statement

²⁶ Para 8 and 15 Shirtcliff Statement

²⁷ Para 14 Scott supplementary Statement

34. Further, it is submitted that, given that the CTV building survived two major earthquakes in September 2010, and December 2010, and that it was determined after both of those earthquakes that the CTV building could safely be occupied again, if the Commission finds that there were any construction defects, there must be a serious and potentially complicated issue as to whether there is any causal link between the construction defects and the collapse of the CTV building, or whether a *novus actus interveniens* has occurred.
35. Finally, Mr Shirtcliff would like to express his sympathy to those who lost family and friends as a result of the collapse of the CTV Building.

Tucker & Cowen Solicitors
4 September 2012