

# ROYAL FACULTY OF PROCURATORS IN GLASGOW

## SEMINAR SEPTEMBER 2017

### TALK BY DONALD B REID

## NEIGHBOUR AND BOUNDARY DISPUTES

### Preliminary Overview

- What, really, is the dispute? Is it really about an issue? Or is it a personal vendetta? Often there is a bully present. Is it your client or the other party?
- Who, really, are the parties? Sometimes your client is actually the puppet of a family member or another neighbour. Ditto sometimes the other party. Get to the truth early.
- What, really, are the prospects of a resolution? This might depend upon answers to these earlier questions. But sometimes the actual merits of the dispute do not admit of any realistic prospect. For example a property owner wanting a right to repair a septic tank outfall pipe which now lies under a motorway.
- Fee implications. Run a mile from a client who says "It's the principle of the thing." Always quote pessimistically. Never quote fixed. Frighten the client into an early cost-benefit analysis.
- Legal Expenses Insurance: always ask if client has this. Sometimes he won't know without checking. Tell client that using such insurance usually means a different solicitor on the insurer's panel and consequent loss of immediacy.
- Bargaining Strengths. Who benefits if the status quo is maintained? Who has more money? Who is more aggressive or "nasty"? Who has the moral high ground?
- Bargaining Chips eg quid pro quo, money offer, publicity etc..
- Litigation routes: courts, lands tribunal, arbitration, mediation etc

## **Types of Dispute**

- Tenements eg roof space, basement. Combined effect of title provisions and Tenements Act.  
Screen illustration 1
- Burdens enforcement: direct, third party, common scheme etc..  
Screen illustration 2
- Boundary encroachment: plans, measurements, boundary features, possession, surveyors  
Screen illustration 3
- Access rights and other servitudes  
Screen illustration 4
- Builder/developer blunders; solicitor blunders; keeper blunders  
Screen illustration 5

## **Tools Available**

- Rectification  
Contractual: LRMPA 1985  
Register: 2012 Act S80ff; 1979 Act S9  
Negotiation: threat of rectification can focus the mind
- Prescription: 1973 Act
- A non domino: 2012 Act S43 – practical impossibility
- Indemnity: often a pragmatic solution
- Fresh or fortifying dispositions: watch intervening links or deaths or insolvencies
- Money or money's worth
- Fairness and equity (often a paper tiger)
- Meetings and discussions: seek a meeting wherever possible; having it can often bring a result; having it declined sometimes does as well.