

# The road to hell is paved with good intentions - Andre Pizzuto

Systemic failures within Malta's construction sector cannot be papered over


Architecture

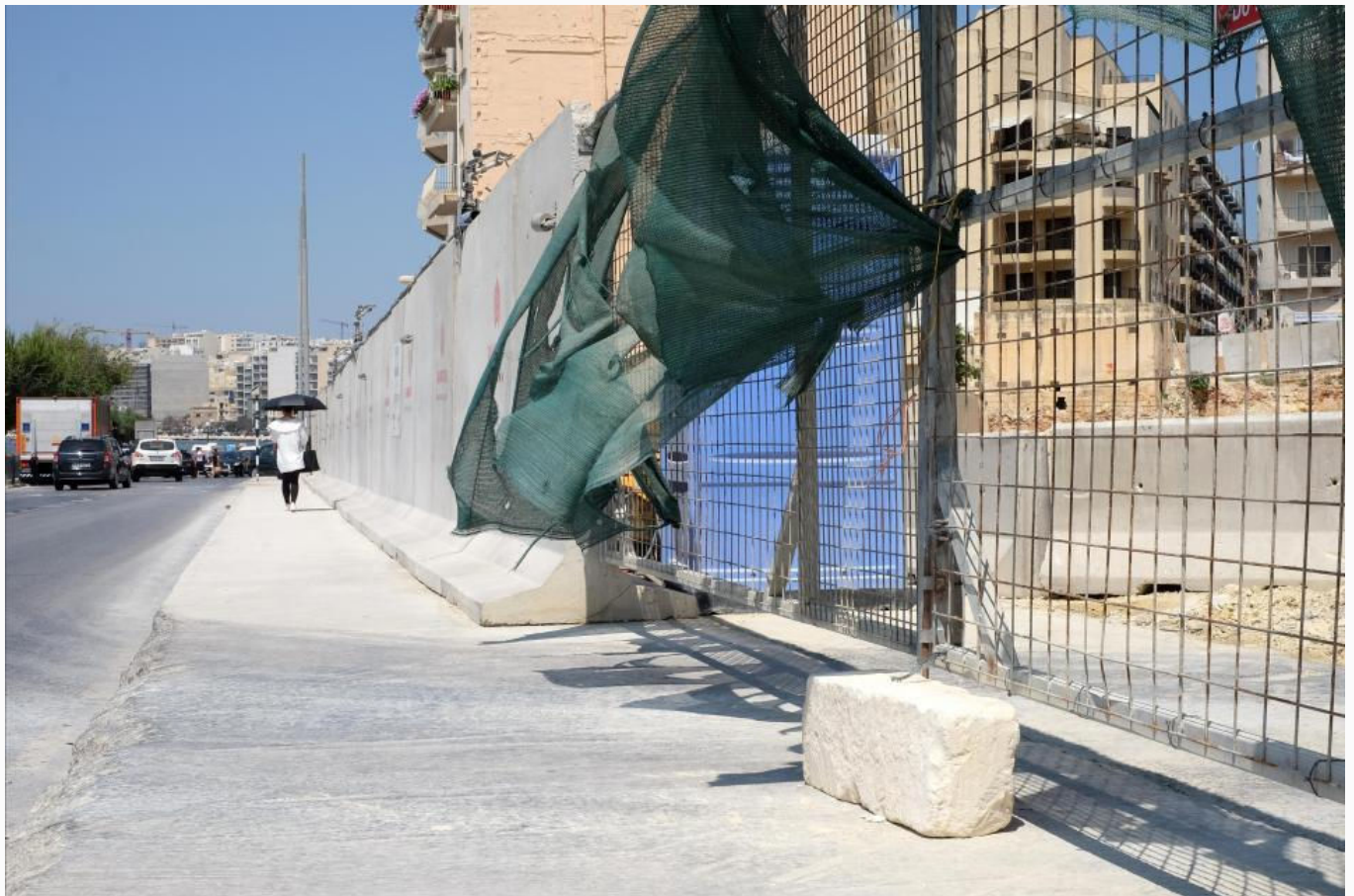
Opinion

Comment

Construction

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The construction sector is typified by a failure of leadership. Photo: Danielle Grillage

Few will deny that over the past few decades the quality of design and of fabrication in the construction industry has declined drastically.

The industry is suffering from grossly insufficient care for the health and safety of labourers, a wanton disregard for our cultural heritage and environment, the abject failure of our planning system, a complete disregard of international standards and best practices

in building, and especially from the failure of successive governments to properly regulate it. These failings are also the failings of the industry's leaders.

One of the many consequences of this failure in leadership is overwhelming public mistrust of the industry. A [series of building collapses](#) over the past fifteen months has transformed this mistrust into fear and contempt. In an attempt to apply a quick-fix solution to restore the industry's reputation and allow a return to operations after a temporary halt to all demolition and excavation works, last year regulations were hastily drafted, in a matter of days, purporting to reassure the public.

The Kamra tal-Periti remained consistently and vehemently opposed to these "regulations" on technical grounds, since it was anticipated that they would render construction sites even less safe than before. In late June and early July of last year, the Kamra organised two Extraordinary General Meetings, attended by record numbers of architects and civil engineers, during which the proposed regulations were unanimously rejected. This led to intense discussions with the government which led to [a Letter of Commitment](#) stating that it would be implementing a series of reforms that the Kamra had been pushing for since 2007.

Among the many aspects of these regulations that make construction processes less safe is the requirement, retained from previous regulations, that *periti*, and not contractors, must draw up method statements outlining how contractors should do their job.

Method statements are essentially a step-by-step guide for contractors to follow, including which machinery to use, and how to undertake the works in some detail. A lay person may find nothing wrong with this, or might even find this reassuring.

"Of course a *perit* should instruct a contractor on how to do his job!". "Isn't it the architect's or civil engineer's job to make sure that the contractor is doing things safely?"

Not quite.

While this system may have worked in the pre-war period, when contractors fulfilled simple tasks, today's buildings are far more complex, requiring specialisations within the profession of *periti* as well as among contractors. Indeed, traditional buildings were far easier to fabricate, employing modular or standardised building components made of a

limited selection of materials, such as fixed-sized stone blocks, stone slabs (*xorok*), arches, and timber or steel beams.

The simplicity of construction meant that it was sufficient for builders to learn how to put these building blocks together safely. Evidence of this acquired skill came in the form of the mason's licence. *Periti* traditionally also took on the role of project managers and surveyors, controlling cost, payment certifications, and monitoring closely the implementation of the design specifications by builders.

As building projects became more complex, and market pressure for swift turnaround increased, the traditional architect-builder pairing was no longer able to cope, and the system began to unravel. The profession began to specialise, largely due to the foresight of our University which opened courses in civil engineering, road engineering, and urban design, among others, way back in the 1990s. On the other hand, the contractors' only formal training remained that offered to masons over a century ago. To this day, builders learn how to construct buildings using traditional techniques, but are not taught how to carry out deep excavations or demolish constructions in between buildings, or assemble multi-story buildings made of concrete or metal frames.

This legislative and skills vacuum gradually crept onto *periti*, who found themselves filling the regulatory void created through the inertia of the political class, and who were unwittingly thrust into performing quality control on unskilled and unlicensed contractors, while also retaining the real function of the profession, which is that of designing and specifying buildings, and overseeing works to safeguard the design intent.

Rather than addressing this unsustainable situation, legislators thought it wise to consolidate further this impossible, if not dangerous, industry practice by gradually shifting more of the contractors' responsibilities onto *periti*.

Rather than issuing regulations on how to carry out building, demolition and excavation operations, and training and licensing contractors accordingly, consecutive governments have chosen to carve a new role for *periti*: that of drafting method statements as instruction manuals for which they also carry professional liability.

When the legislators realised that this system was failing, rather than addressing the problem properly as recommended in the comprehensive reform proposals published by the Kamra tal-Periti, they devised the new figure of [the Site Technical Officer](#) (STO), whose

role is to enforce the method statement on the contractor, whilst concurrently being in his employ. The justification superficially uttered by politicians and certain stakeholders in public for the creation of this new persona is that periti are too busy or lazy to ascertain that contractors are doing their job properly. The truth, however, is that the legislator understands that without adequate training and licensing, contractors cannot be expected or trusted to carry the same responsibilities as their counterparts do in other industrialised countries.

So rather than addressing the real problem, a fall guy was born.



Construction has become more complex over the years. Photo: Danielle Grillage

To compound matters further, it has recently emerged that the Building and Construction Agency [does not have the resources](#) to review the content of the method statements. In order to address this problem, the legislator created yet another devious mechanism: transferring the onus of vetting the method statements away from the regulator, and onto a perit appointed by the owners of properties adjacent to construction sites. Failure by neighbours to object within two weeks is legally construed as a de-facto acceptance of its contents.

This part of the regulations is wrong on so many levels. This article attempts to highlight some of the more glaring issues in this respect.



While the *perit* responsible for a project would be aware of the characteristics of the site for a year or more prior to the start of the works, the neighbour's *perit* would need to understand the site and draft a written professional opinion within 14 days. Clearly the two *periti* are not on an equal footing and, by inference, nor are the clients they represent.

If a neighbour's *perit* overlooks a defect in the method statement drafted by the project *perit*, who carries responsibility for an accident? Is it the *perit* who drafted it? The neighbour's *perit* for not having identified the defect? Is it the STO who, in theory, should also be qualified to review it given that his/her role is indeed to ensure its implementation? Is it the contractor who proceeded with a faulty method statement and without drawing attention to the error? Is it the BCA for issuing clearance on a badly drafted method statement? Or is it government for having issued inadequate regulations, not sufficiently resourcing the BCA, and failing to license contractors?

What happens if there are several neighbours, each with their own *perit*, who in turn may each have a different opinion on the method statement?

When there is disagreement between *periti* about a method statement, the current practice is for the BCA to withhold the commencement of works indefinitely until agreement is reached. This opens yet another can of worms: are all the *periti* involved now jointly liable for the revised method statement?

What is the role of the STO and contractor, who according to the regulations should be drafting the method statement with the *perit* in charge, in this case?

Quite naturally, the public and several NGOs, most notably Moviment Graffiti, have objected to burdening neighbours with the cost of vetting these method statements.

Cue the [Safe Neighbourhoods Scheme](#) announced a few weeks ago by the Malta Developers Association, which comes into force this Tuesday. The scheme, which effectively is a directive to MDA members, requires that "in those cases where a third party cannot afford to pay the *perit*'s fee, the developer will hand to the third party the amount to be paid to the *perit*, upon presentation of a fiscal invoice by the third party".

Failure by MDA members to comply with this directive may result in their being placed on a public blacklist. Putting aside momentarily the lack of clarity on how the MDA, or the developer, will determine who can or cannot afford to pay for their own *perit*, and the

inconsequential “punishment” for transgressors within its membership fold – all matters about which we have already sought clarifications from MDA – the scheme is effectively consolidating the devious mechanisms outlined above.



Revised construction rules introduced in 2019 have only confused matters further. Photo: Mark Zammit Cordina

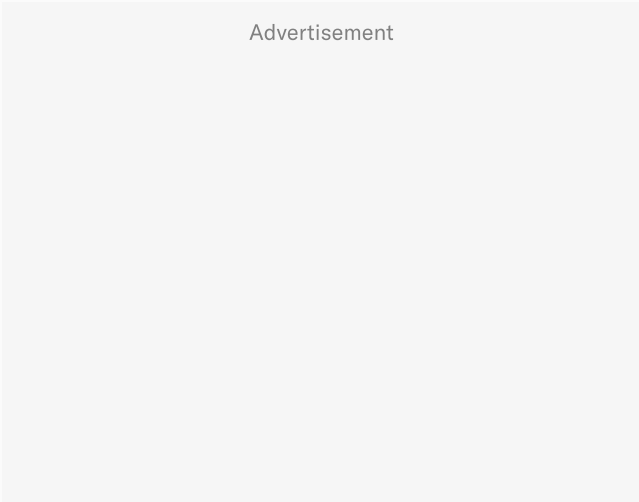
While I am confident that the MDA’s intentions in promoting this scheme are good, the role of industry leaders such as the Kamra tal-Periti and the MDA is that of addressing the systemic problems within the industry. Consolidating the status quo does nothing to reassure the public and restore confidence in its operators.

Other industry leaders, such as the Chamber of Engineers and the Chamber of Commerce have already publicly endorsed the final version of the Kamra’s reform proposals A Modern Building & Construction Regulation Framework for Malta [published in June](#). It is high time for all stakeholders to pull together with conviction and determination to see this much-maligned and dysfunctional industry transform itself in line with that of competing markets to ensure that public safety and quality become our new hallmarks.

Andre Pizzuto is vice-president and treasurer of the Kamra tal-Periti.

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