

Presentation to the New Zealand Institute of Valuers Council Meeting
At Auckland Domestic Airport
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‘The lack of oversight and fair process – how to up our game’

Disciplinary Processes under the Valuers Act 1948 with two case studies

Presented by

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Not in my capacities as:

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With the written consent of **REDACTED**, file documents are provided to the NZIV Council.

New Zealand Institute of Valuers ('NZIV')

NZIV members do not need to be registered valuers (ss4, 5 and 6) and registered valuers do not need to be members (s11A).

s9 Incorporation of New Zealand Institute of Valuers

(1) ...a body corporate with **perpetual succession** and a common seal, and shall be capable of holding real and personal property and of doing and suffering all that bodies corporate may do and suffer.

s10 Functions of Institute

The general functions of the Institute are—

- (a) to **promote and encourage ethical conduct** among valuers and other members of the Institute; and
- (b) to **preserve and maintain the integrity and status of valuers** and other members of the Institute generally
- (c) to provide opportunities for the acquisition and communication of knowledge in relation to the valuing of land and related subjects; and
- (d) to **consider and suggest amendments to the law** relating to the valuing of land and related subjects; and
- (e) to **provide means for the amicable settlement of professional differences**; and
- (f) to **protect and promote the interests of the profession of valuing and the interests of the public** in relation to valuations of land and related subjects.

s13 Council of the Institute

- (1) **The affairs of the Institute shall be managed by a Council** of not less than 10 members of the Institute, consisting of a president, 2 vice-presidents, and not less than 7 other members, of whom one shall be a member of the Institute **appointed** by the Valuer-General before each annual general meeting of the Institute. All the members of the Council other than the **member appointed by the Valuer-General** shall be elected by the members of the several branches of the Institute by ballot from among their number in accordance with the rules of the Institute.
- (2) The president and vice-presidents of the Council shall be elected by ballot by the members of the Council from among their number.
- (3) In addition to the members provided for by subsection (1), the Council may on the retirement of the president appoint him to be a member of the Council, to hold office as such until some other person who subsequently holds the office of president becomes eligible for appointment as a member of the Council under this subsection.
- (4) The president shall hold office for 2 years. **The member of the Council appointed by the Valuer-General shall hold office for 1 year.** In every year one of the vice-presidents and 3 of the elected members of the Council shall retire from office. The vice-president who has held office longer as such shall retire 10 Reprinted as at 1 July 2013 Valuers Act 1948 s 16 before the other, and the elected members of the Council who have held office longest as such shall retire before the other elected members...
- (6) Every person may hold office concurrently as a member of the Council and as a member of the Board.

s14 Powers of Council

The Council shall transact all the ordinary business of the Institute, and shall cause to be kept proper minutes of its proceedings; and may appoint committees with such delegated powers as the Council thinks fit. Except as otherwise provided in this Act or in any rules or regulations made under this Act, the Council may regulate its procedure in such manner as it thinks fit.

s15 Officers of Institute The Council may from time to time appoint a secretary of the Institute and such other officers and servants as it deems necessary for the efficient exercise of its functions.

16 Rules of Institute (1) The Institute may from time to time, at a meeting at which not less than 20 members are present, make rules (not inconsistent with this Act) for all or any of the following purposes:

(a) for the regulation and good government of the Institute and of the members and affairs thereof:

(l) prescribing a code of ethics for regulating the professional conduct of members of the Institute:

(m) imposing a fine not exceeding \$500 upon any member of the Institute for the breach of any rule made under this section:

(3) No rules made under this section shall come into force unless and until they are approved by the Minister.

The Valuer General is not a member of the NZIV Council under the Valuers Act 1948. NZIV COE 1.3 says a valuer "should" report complaints to the Institute not to the Valuer-General or the VRB.

REDACTED

V THE VALUERS REGISTRATION BOARD [2015] NZHC 1312 [15 June 2015]

Per Justice the Honourable Justice Kós:

"[29]...Section 16 of the Act provides for rules of the Institute. Section 16(1)(l) provides for a code of ethics to be adopted, and s 16(1)(m) provides that the rules may provide for the imposition of a fine of not more than \$500 for a breach of rules. The Institute has made rules, and a copy was provided to me."

[32] As noted earlier, the Institute's rules also provide for a disciplinary process. In particular, rule 27 provides that a range of penalties, ranging from reprimand to removal from the roll of members exists in the event of improper admission, dishonourable conduct, or breach of the code of ethics, amongst other things. However this rule, both sides now agree, applies only to unregistered valuers.¹¹ [as they are set out – they could be added to] Only one Institute rule appears to exert disciplinary authority over registered valuers.¹² [footnote 12: Rule 133(4) permitting the Institute to fine (up to \$500) for breach of the code of ethics.]

Points for consideration

- A. The NZIV appoints two VRB members. Is NZIV Council prepared for this vetting process? Does it have standing nomination reports and regular records held? What if a VRB member dies or otherwise is unfit?
- B. Misconduct of VRB members – any monitoring or preparation for such an occurrence?

- C. NZIV run NZIV elections – where is the provision for campaigns and notification to membership as other professions do? Other professions provide early notice to all members about the election processes and timetables and invite publication of those standing. Wide participation should be encouraged to draw out a good range of candidates.
- D. The NZIV Council is responsible for the oversight of its investigators (who use NZIV letterhead). Where is that oversight? What processes and “proper” records exist (“shall cause to be kept proper minutes of its proceedings”)?
- E. How are any subcommittees appointed and rotated? Are its members acting lawfully?
- F. Is the Professional Practices Committee (‘PPC’) an NZIV or PINZ committee? A letter from NZIV indicates PPC is an NZIV committee but then shirks proper oversight. Is the profession developing a wide and strong range of current and former PPC members or is there a risk of deadwood?
- G. Who has the Valuer General appointed to the NZIV for one year? Consider the Interpretation Act 1999 s5:

“Ascertaining meaning of legislation

(1)The meaning of an enactment must be ascertained from its text and in the light of its purpose.

(2)The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.

(3)Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.”

Valuers Registration Board ('VRB')

s3 Valuers Registration Board constituted

(1) There is hereby established a Board, to be known as the Valuers Registration Board.

(2) The Board shall consist of— (a) the Valuer-General, who shall be the chairman; and (b) 4 registered valuers appointed by the Minister, of whom 2 shall be appointed on the recommendation of the Institute.

(3) The powers of the Board shall not be affected by any vacancy in the membership thereof.

(4) Every appointed member of the Board shall be appointed for a term of 3 years, but may from time to time be reappointed, or may be at any time removed from office by the Minister for disability, insolvency, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Valuer-General.

(5) If any appointed member of the Board dies, is removed from office, or resigns, the vacancy so created shall within 3 months after the occurrence thereof be filled in the manner in which the appointment of the vacant office was originally made. Every person so appointed shall be appointed for a term of 3 years.

(6) Unless he sooner vacates his office as provided in the last preceding subsection, every member of the Board shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

S4 Meetings of the Board...

(3) At every meeting of the Board 3 members shall form a quorum.

(4) Every question before the Board shall be determined by a majority of the votes of the members present at a meeting of the Board.

(5) In the absence from any meeting of the Valuer-General, he may authorise any officer under the Valuer-General's control to attend the meeting in his stead. While any person is attending any meeting of the Board pursuant to this subsection he shall be deemed for all purposes to be a member of the Board, but he shall not be deemed to be the chairman of that meeting by virtue of the fact that he attends as the deputy of the Valuer-General.

(6) At any meeting of the Board the chairman of that meeting shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

S5(3) During any vacancy in the office of chairman or whenever the chairman is unable to act, whether by reason of absence or otherwise, the deputy chairman may exercise and perform all the powers and duties of the chairman.

A When the Board goes into inquiry or makes a decision as to whether to make an inquiry, should one firm have 3 votes? Two Board members and a casting vote (s6)?

B Is it wise to have so much power in so few hands for so long?

C Would it not be better to have say 20 current and ex-VRB members available for appointment?

D The Minister has oversight of the VRB for misconduct (s3(4)). Is blatantly withholding the known fact of conflict of interest misconduct? It should have been volunteered by any VRB member in such a position (certainly on a second time).

E The Courts have oversight by way of the judicial review process also. But this is a very expensive process and the other proper oversight processes should be adhered to.

The Valuer General

Ill-founded charges:

31 Removal of name from register if registered valuer guilty of offence or grave misconduct

(1) The Board may cause the name of any registered valuer to be removed from the register if it is satisfied, after inquiry as hereinafter provided, but not otherwise,—

(a) that he has been guilty of such improper conduct as renders him in the opinion of the Board unfit to be registered under this Act, or has been convicted (either before or after his registration) of an offence punishable by imprisonment for a term of 2 years or upwards:

(b) that he has been convicted (either before or after his registration) of an offence which tends to dishonour him in the public estimation:

(c) that he has been guilty of such improper, unethical, or incompetent conduct in the performance of his duties as a valuer as in the opinion of the Board renders him unfit to be registered under this Act.

(2) Unethical conduct for the purposes of paragraph (c) of the last preceding subsection means conduct in breach of the code of ethics prescribed by the rules of the Institute.

NZIV COE 1.2

“A member’s conduct shall at all times uphold the reputation of the Institute and dignity of the profession and abide by all laws, statutes, regulations and rules relevant to their professional practice.”

The VRB, at an Ethics seminar in Auckland, recently suggested that they hear charges presented by the Valuer General for breach of the IVSC. It seems quite clear that NZIV Code 1.2 cannot have been intended to relate to IVSC.

The IVSC is a foreign organisation of which NZ Registered Valuers do not have a mandatory membership, nor direct control over, and nor do the NZIV Council or the NZ Parliament. I don’t believe that the IVSC rules or standards fall under 1.2. Rather 1.2 at narrowest refers to the Valuers Act 1948, any NZ valuation legislation, the actual Valuers Regulations and the NZIV Rules. A wider interpretation would relate to NZ consumer legislation or other such specific New Zealand law which is “relevant to their professional practice.”

The NZIV should engage on this issue as the NZIV can gazump the Valuer General’s investigation and prosecution if needs be.

s32 Inquiry by Board into charges of misconduct

(1) Every complaint that any registered valuer has been guilty of any act or default specified in the last preceding section shall be referred to the Valuer-General who shall investigate the matter and report thereon in writing to the Board: provided that the Council of the Institute may appoint a person to investigate and report in writing to the Board on a complaint that a registered valuer has been guilty of an act or default specified in subsection (1)(c) of that section, and if it does so the Valuer-General shall not investigate the complaint and report thereon to the Board.

(2) The Board shall, unless it is satisfied that there is no reasonable ground for the complaint, hold an inquiry into the matter, and shall give to the valuer concerned not less than 30 clear days’ notice in writing of its intention to hold the inquiry, and of the time and place of hearing, and of the nature of the charge to be inquired into...

(4) The Valuer-General or, as the case may be, the person appointed under the proviso to subsection (1) to investigate the complaint shall not be competent to act as a member of the Board for the purposes of the inquiry or of the deliberations of the Board thereon.

So, usually, the Valuer General is a member of the VRB (see s3(2)a above) but not when there is an inquiry (s32(4)). So, the oversight of the Valuer General as such is not the Courts through judicial review, but rather by LINZ (CEO and Minister). Any NZIV investigators working for the Valuer General as NZIV representative (and on NZIV letterhead) are directly answerable to the NZIV Council. This is quite different from the lack of oversight exhibited by LINZ and the NZIV Council in the attached letters.

(5) Every complaint shall be prosecuted at the inquiry by such person as the Valuer-General shall appoint, **except where the complaint is made in the first instance by the Institute and is prosecuted by the Institute** or is investigated by a person appointed by the Council of the Institute under the proviso to subsection (1). The person so appointed by the Valuer-General and the Institute may be heard and may be represented by counsel or otherwise at any inquiry held under this section.

Poor investigative work:

- double standards (no inspections and out of area valuers);
- no communication with most relevant parties (such as peer reviewer and complainant);
- lack of independence;
- “patently wrong”;
- very slow – delays and very poorly organised.

See the attached case studies as the complaints against:

- **REDACTED** as summarised to two pages of the High Court judgment, and;
- **REDACTED**, VRB member, as indicated by the file documents made available by **REDACTED**.

[Over 100 pages of case study notes were presented to the NZIV Council but are not published here online.]