

Cadastral Surveyors Licensing Board of New Zealand

Bulletin No 2 April 2009



Cadastral Surveyors Licensing Board
of New Zealand

Contents of Bulletin No 2

This bulletin continues in the vein of Bulletin No 1 and deals mainly with the disciplinary work by the Board. The cases heard in 2008 highlighted the fact that surveyors are still making some of the same types of mistakes that were exposed in earlier hearings. Bulletin No 2 reports on the complaints received in 2008, other disciplinary matters, and the Cadastral Survey Amendment Act 2008.

The process of hearing complaints

The Board can only deal with complaints related to cadastral competence as listed in Schedule 2 of the Act. On receiving a complaint the Board first decides whether or not it can accept it. It may then investigate the complaint by asking the surveyor for an explanation and then holding a hearing if the case proceeds. The Board may allow the surveyor to be supported at the hearing by another surveyor, a close friend, or be represented by a lawyer. The lay member of the Board must attend the hearing. The Surveyor-General however, does not act as a member of the Board at the hearing but in certain cases he may be permitted to sit in as an observer.

Membership of the Board is defined in s13 of the Act and consists of five members appointed by the Minister, and the Surveyor General. Of the five members appointed by the Minister two must be nominated by a body or bodies representing cadastral surveyors, one of these nominees must be a licensed surveyor. Another two must be or have been licensed surveyors, and are nominated by a body or bodies not representing licensed surveyors. The fifth person must not be or have ever been a licensed surveyor and is not employed in, and does not represent, the surveying profession. This person is often referred to as the lay member of the Board.

For a detailed discussion on the activities of the Board, surveyors are referred to the paper 'The Cadastral Surveyors Licensing Board' by the chairman Brian Coutts, published in *Survey Quarterly*, June 2008, Issue 54, p 9-11.

Professional misconduct hearings

During 2008 the Board considered six cases of alleged professional misconduct. Four cases were brought by the

Surveyor-General while a fifth was from a member of the public. Three of these cases were upheld, one was not, and one case was not accepted by the Board.

The sixth complaint was from a surveyor alleging professional misconduct by another surveyor. After considering the evidence that was presented the Board declined to accept the complaint and no hearing was held.

The Board noted with regret that two complaints were against surveyors who had previously appeared before the Board on similar cases.

Some key lessons that arise from these hearings are:

It is imperative to locate and incorporate into the dataset old marks critical to accurate boundary definition.

The Board expects every licensed cadastral surveyor to resolve problems, to report difficulties, and to document and explain in the survey report what he or she has done where there is any uncertainty about underlying data.

Two important criteria that must be satisfied before land in a limited title can be taken into a guaranteed title are: firstly, that the land was not within the documentary description of the abutting title and secondly, that the land was occupied by the owner of the current and predecessor titles when the land was brought under the Land Transfer Act.

If a licensed cadastral surveyor has not personally carried out a survey, she or he must 'direct' others in the overall cadastral survey itself, and in its related field operations. Depending on circumstances, and the measure of control, field checks by the certifier may well be required. Surveyors are advised to read the article by the Surveyor-General, 'Directing and certifying cadastral surveys' published in *Survey Quarterly*, December 2008, Issue 56, p 30-31.

Complaint 1

This complaint involved two separate surveys, the key failures of which were that the surveyor –

- Failed to locate witness marks that were critical to definition
- Failed to examine all relevant documentation
- Failed to meet the required standards of accuracy for adopted vectors
- Failed to supply sufficient information to ascertain the position of every boundary with the required accuracy, and
- Failed to show that the titles to adjoining land had been respected.

In the first survey the surveyor had relied on extensive adoptions, rather than searching for witness marks close to two existing boundary positions. The witness marks were later located and confirmed that the two pegs placed by the surveyor were 0.51 metres out of position.

In the second survey the surveyor had used adoptions which exceeded allowable tolerances, which he had not considered, resolved, or reported on in his survey report. This resulted in him missing a bearing correction of 08', which had been applied to other surveys in the vicinity. Other problems included not recording the occupation in relation to the two new boundary pegs, using an incorrect roadside distance which produced an error of 0.21 metres, and using two incorrect pegging ties in the captured data and on the plan that differed significantly from the traverse sheet ties.

With regard to the first survey, the Board found that the surveyor had not gathered sufficient information to enable him to properly certify the dataset as being correct.

In the second survey, the Board found the surveyor certified and lodged the dataset knowing that it did not comply with the Surveyor-General's Rules, but did not report on his methodology to explain the differences.

The Board was unanimous that the surveyor had been negligent and was therefore guilty of professional misconduct. The Board could make no order against the licence because the surveyor did not hold a current licence but made an order to help recover costs of the hearing.

Complaint 2

The key failures in this complaint were that the surveyor:

- Failed to investigate thoroughly and take proper account of all available documentary evidence
- Certified the survey as being correct without sufficient checks to ensure the accuracy of a survey which he did not undertake personally, and
- Did not direct sufficient field investigation to resolve the inconsistencies shown in the existing documentation.

The surveyor's dataset defined a boundary as a straight line that was shown on LINZ documentation and in LandonLine as having two distinct angles. The LINZ audit staff revealed the error from documentary evidence. They also located a fence line that confirmed the fence and the boundary were not straight. The boundary fixed by the surveyor was 18m off the true line.

The field staff undertaking the survey did not note any angles in the fence as it was in thick scrub. While the licensed surveyor had discussed the field work with his staff he had not properly examined all relevant documents. Nor had he followed accepted good survey practice to ensure the boundary definition was correct.

Had this error not been detected by audit before the plan was deposited then approximately 1000 square metres of the neighbour's land, from a guaranteed title, would have been included in a limited as to parcels title. It would also have left a small piece of land as a 'hole' between these two titles. Two important criteria relevant to bringing land into a limited title had been contravened. Firstly, the 1000 square metres of land was within the documentary description of the abutting title and secondly, the land was not occupied by the owner of the current and predecessor titles when the land was brought under the Land Transfer Act.

The Board found the surveyor guilty of professional misconduct by failing to investigate and take proper account of available documentary evidence, certifying a cadastral survey when he did not undertake or direct sufficient field investigation to resolve inconsistencies, and did not perform his duty imposed by the Surveyor-General's Rules.

The Board ordered that until 30 June 2009 every cadastral survey dataset lodged with LINZ by the surveyor be reviewed and certified by another licensed cadastral surveyor approved by the Board.

Complaint 3

In this case the certifying surveyor had agreed to review and lodge the dataset as a sub-contractor for another survey firm. The field work was supervised and directed by another licensed cadastral surveyor who worked for the contracting company at that time, but had since left. While the certifying surveyor undertook a thorough review of the work he missed one point that led to the complaint.

The key failures in this complaint were that the surveyor:

- Did not exercise either personal supervision or direction over the field work of the survey, and
- Certified the survey as being correct without sufficient checks to ensure the accuracy of a survey which he did not undertake personally.

The dataset showed incorrect pegging ties from a survey mark that was shown on the plan as being 2.63m different from its true position in the ground. The pegs purportedly

tied to from this mark were in the correct position - meaning that the ties shown on the plan from this mark to the pegs had been fabricated. It appeared the pegs had been placed from an entirely different mark. The field notes included two sets of pegging ties; one set showed the pegs in the correct position whereas the ties shown on the plan were on a different page of the field notes. This suggested that they were not measured but added after the field work was completed. The surveyor had certified the dataset nine months after the field work was completed.

The Board was satisfied that the surveyor failed to examine, with sufficient care, all relevant documents and was therefore guilty of professional misconduct by certifying to the accuracy of the dataset without having personally carried out or directed the survey, and that some ground marking was not in accordance with the standards.

The Board accepted that the professional misconduct was at the lower end of the scale and made no order against the licence of the surveyor but made an order to help recover costs of the hearing.

Complaint 4

A member of the public brought this complaint to the Board. The complainant alleged professional misconduct by the surveyor whose survey, to remove limitations from an adjoining title, incorrectly redefined one of the common boundaries by placing a 0.30m step in it. The complainant's title was also limited as to parcels.

Two independent surveyors, one employed by the complainant and the other employed by the Board, generally agreed that the boundary would be better defined as a straight line as shown on both titles. The step in the boundary occurred through the surveyor using measurements to the top of a fence which was leaning, rather than the base of the fence. The area around the fence was heavily overgrown and the fence leaned in both directions making it difficult to determine the exact boundary. The surveyor decided on this boundary position based on the evidence gathered by staff acting under his direction at that time.

On learning of the problem with the definition the surveyor lodged a correcting survey, but he was instructed by his client to withdraw this survey and let the original plan proceed. Titles were subsequently issued from the first plan, with a step in the boundary. Since that time the surveyor's client has changed his mind, and further examination of the evidence and consultation between the parties is underway to redefine the boundary.

The complaint was about the surveyor's declaration that that surveys to which the dataset relates are accurate and the dataset is in accordance with the Act and the Surveyor-General's Rules. The complainant however was seeking a change in the boundary as defined by the survey, so that the boundary was again a straight line.

The correction of errors in a survey, if they exist, is not

a matter for the Board in undertaking its disciplinary jurisdiction. The Board noted that the Surveyor-General had insufficient evidence provided to him to prove that the boundary definition was clearly in error. The Board also noted that difference of opinion might arise as to the definition of boundaries on a title limited as to parcels. However, the Board (and the Surveyor-General) accepted the surveyor's opinion that, on reflection, the boundary defined on his original survey was incorrect.

The Board accepted the surveyor's submission that any shortcoming in this survey was an isolated problem. It found that the surveyor had not been negligent and it unanimously found the surveyor not guilty of professional misconduct.

Significant failures

Throughout 2008 the Surveyor-General advised the Board of 15 instances (pursuant to s7(1)(d) of the Act) by different surveyors of significant failures in relation to the Surveyor-General's Rules. The Board wrote to each surveyor seeking explanations for the failures and the measures taken to avoid such failures occurring again. In each case the Board was satisfied with the replies it received. In terms of Section 3.2 of the Board's Standards, such advice from the Surveyor-General will be considered by the Board for the ensuing 3 years when renewing the surveyors' licences.

Other matters

The Board considered one possible breach of s58 of the Act, which relates to implying that a person is a licensed cadastral surveyor when they are not. The possible breach was about a firm implying, through its advertising, that the client may be directly engaging a licensed cadastral surveyor, who would be available for direct discussion with clients, when this was not the case. The firm was undertaking cadastral survey work under the direction of a licensed surveyor, but that surveyor resides in a different city to the firm and did not deal directly with the clients. The Board held some concerns about this practise. It advised the company that its advertising must make it clear to a member of the public that when discussing survey matters with the company they may not be talking to a licensed cadastral surveyor.

Cadastral Survey Amendment Act 2008

The Cadastral Survey Amendment Act 2008, which came into effect on 26 March 2008, makes four amendments to the 2002 Act. The amendments affect Part 4 Discipline, Part 5 Conduct of cadastral surveys, and Schedule 2.

Under Part 4, Section 34 is replaced with a new section that states, a licensed cadastral surveyor or cadastral surveyor includes a former licensed cadastral surveyor and a person who was a registered surveyor under the Survey Act 1986. It also describes professional misconduct as meaning professional misconduct as described in Schedule 2.

This means that a person that was previously a registered or licensed surveyor, but who is no longer licensed, can be subject to a complaint of Professional Misconduct in relation to earlier errors. Section 35(4) now requires the chief executive as well as the Surveyor-General to provide the Board with all the information that they hold relevant to a complaint.

In Part 5 a new subsection (2A) is included in Section 48 that requires a cadastral surveyor to provide cadastral survey datasets, or specified parts or classes of datasets, as digital datasets as required under subsection (1) unless the chief executive has determined that it is impractical or unreasonable to do so. Section 52(1), dealing with correcting survey errors, is amended to provide for the surveyor to undertake or, alternatively (for example if they are no longer licensed) to arrange for the correction to be undertaken by another surveyor. Section 52(1) now also includes a provision for the Surveyor-General to determine a reasonable time for the correction to be completed. A new subsection (3) is added to Section 52 stating that a cadastral surveyor includes a former licensed cadastral

surveyor and a person who was a registered surveyor under the Survey Act 1986.

Schedule 2 Clause 1(g) is amended to include the chief executive as well as the Surveyor-General in relation to the supply of erroneous information by a surveyor.

Surveyors should make themselves familiar with these amendments.

New Board logo

Surveyors will have noticed the brighter, more modern and generally improved Board logo on recent letterheads and certificates. The Board has had its logo redesigned in response to comments from surveyors.

The address for feedback to the Board is:

Cadastral Surveyors Licensing Board
PO Box 12241
Wellington
Email: Secretary@cslb.org.nz
Website: www.cslb.org.nz