

VALUERS REGISTRATION BOARD

IN THE MATTER OF

an Inquiry under

Section 32(2) of the Valuers Act 1948

AND

IN THE MATTER OF

Five charges under Section 31(1)(c) of the
Valuers Act 1948 against **Valuer G**

BOARD OF INQUIRY:

PA Curnow (Inquiry Chairperson)

HJ Puketapu

KR Taylor

COUNSEL:

T Gilbert for the Valuer General

Witness 1 for Valuer G

DATE OF HEARING:

13/14 April 2015

DATE OF DECISION:

22 December 2015

BACKGROUND:

1. The Registrar of the Valuers Registration Board received a complaint dated 21 April 2011 from the complainant in respect of the subject property that had been valued by Valuer G in their report dated 9 June 2010.
2. The requirement for the valuation arose in the context of a property dispute and the complainant had a registered interest on the title. The instructions to Valuer G had been received via one of their colleagues and the report was to be addressed to other clients. Valuer G had valued the property at \$375,000. The property described by Valuer G was a two level 1990s townhouse for which a cross-lease title had not yet been issued. Further, that proposed decks had yet to be constructed, basement was not enclosed and, further insulation was required along with the treatment of the weatherboards. Valuer G further stated that no Certificate of Acceptance or Code Compliance Certificate could be issued. Within that valuation was an allowance for remedial works, issue of title and contingencies of \$50,000. Following this deduction, Valuer G had made a further deduction of \$30,000 for saleability.
3. The complaint was that the valuation was too low, such that settlement of the matrimonial property claim based on the valuation was unacceptable. Further, that the valuer had misused their authority to "financially disadvantage the applicant" and "allow unjust enrichment of the respondent". The complainant said "this type of deceit and deliberate under valuing of property gives valuers a bad name and creates mistrust in the community".
4. Subsequently, on 1st April 2011 a valuation addressed to the complainant from Valuer 1, assessed the market value at \$465,000.
5. In November 2011 the complainant wrote to the Valuer General saying that the case was continuing and that it may ultimately be the subject of a court hearing.
6. Following several attempts to communicate with the complainant regarding whether the litigation had proceeded or settlement reached, the Valuer General sought two retrospective valuations, as at 8 June 2010, this being the date of Valuer G's inspection.
7. The first valuation was received from Valuer 2, who valued the property at \$475,000, this on the assumption a cross lease title is to be issued. The value however would reduce to \$465,000 should a potential purchaser be required to complete the title process. Should the proposed decks be included, these would add a further \$5,000, taking the valuation to \$480,000. It should be noted that Valuer 2's specific instructions from the Valuer General

were a retrospective valuation based on the cross-lease title being issued. A second valuation report was then obtained from Valuer 3 who assessed the property at \$463,000 without the cross lease title and \$473,000 with the composite cross lease title issued.

8. In summary, the Valuer General noted Valuer G's valuation was 19.35% below Valuer 2's and 19.01% below Valuer 3's. Alternatively, Valuer 2's and Valuer 3's valuations are 24% and 23.47% respectively above Valuer G's valuation.
9. The Valuers Registration Board concluded that it was satisfied that there was reasonable ground for the complaint and ordered an inquiry.

THE CHARGES

The Valuer General drew up the following two charges;

1. Section 31(1)(c) of the Valuers Act 1948:

*That you have been guilty of such incompetent conduct in the performance of your duties as a valuer as renders you liable to a penalty provided by the Valuers Act 1948 **in that** in compiling a valuation report dated 9 June 2010 with respect to a you grossly under-valued the said property.*

2. Section 31(l)(c) of the Valuers Act 1948:

*That you have been guilty of such unethical conduct in the performance of your duties as a valuer as renders you liable to a penalty provided by the Valuers Act 1948 **in that** in compiling a valuation report dated 9 June 2010 with respect to a property you failed to exercise the utmost care and good faith to ensure the maintenance of the highest standards in the preparation of that report and therefore breached Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.*

Particulars: *You failed to provide sufficient information to permit those who read and rely on the report to fully understand its data, reasoning, analysis and conclusion in breach of International Valuation Standard 1 Clause 5.1.4 Statement of Standards. In particular you:*

(a) did not provide sufficient information to permit those reading your report to fully understand the reasoning, analysis, and conclusion that a \$50,000 allowance should be made for "Remedial works, issue of title and contingencies' and/or

(b) did not provide sufficient information to permit those reading your report to fully understand your analysis of how the improved sales in the "Market Evidence" section of your report compared to the subject property, and therefore how, based on those sales, you concluded the "market value as if complete" was \$450,000.

10. The charges were dated 22 August 2014 and forwarded to Valuer G. The constituted Board of Inquiry held a teleconference with Valuer G and counsel for the Valuer General on 11 December 2014, at which time two hearing dates were proposed, the hearing process outlined, and counsel stated there were only issues of fact and none of law. Valuer G represented themselves at this teleconference. Subsequently, the hearing was set down for 13/14 April 2015.

THE HEARING

11. The Board of Inquiry was made aware on 10th April that Witness 1, a colleague of Valuer G's, and now representing them at the hearing, had forwarded a submission for dismissal of the charges.
12. The Board of Inquiry, through the Registrar, advised Valuer G that the submission would be received on Monday 13th April when counsel could make respective submissions.
13. Upon opening the hearing, the Board of Inquiry heard the application for dismissal of the charges from Valuer G.

Application for Dismissal

14. In essence, it was submitted Valuer G's conduct in the preparation of their report was not dissimilar to most valuers in 2010. Further, the retrospective valuers were not provided with Valuer 1's report where deductions made were not dissimilar to Valuer G. Also of consideration was the valuation completion in 2010, complaint lodged in 2011 and now only in 2015 the matter was being heard.

15. Valuer G made the point that retrospective valuers were given clear instructions that they were to meet the Standards and that there should be a clear link between the market evidence and the valuation conclusions. That this linking of the market evidence to the valuation conclusion was not a common procedure undertaken by many valuers in 2010. In point of fact, Valuer G contended in an article in the December 2013 edition of the Property Quarterly, the Valuer General made the comment that too many valuers were not adequately applying the requirements of the current standards.
16. It was Valuer G's contention that the retrospective valuers were given faulty instructions, in that the level of detail in their 2010 report was not given to them for their retrospective valuations and that it seriously disadvantaged them. Neither Valuer 2 nor Valuer 3 inspected the property in 2010 and that Valuer 2 had unfairly applied a perspective or standard that applied in 2013 and 2015 rather than one that applied in 2010. Further, that Valuer 2 had ignored the remedial works that needed to be done. In respect of Valuer 3 report, Valuer G believed Valuer 3 did not meet the standard that he (Valuer 3) expected Valuer G to meet.
17. Valuer G in their application for dismissal outlined they had a valuation report from Valuer 4, that supported their valuation.
18. In conclusion, Valuer G maintained there was insufficient evidence to find them guilty and that there were serious deficiencies in the way in which the expert witnesses had been instructed and in their valuations. Further, that few if any valuers prepared valuations that complied with the standards as referenced in the Property Quarterly article.
19. In response, the Valuer General said that to properly assess the charge in connection with the under valuation the Board of Inquiry needed to hear the evidence. In respect of the standards based charge, the Valuer General said the evidence was before the Board of Inquiry, the Board was aware of how valuers were operating in 2010. If it would be unfair or inappropriate to issue a disciplinary sanction, then that charge could be dismissed. The converse was, that the Valuers Registration Board set the standards, that these standards have been in place for a good number of years and that it was incumbent on the Board to make that clear to the profession and public. The Valuer General submitted that a half-way house may be to say there was technical non-compliance, so that in that sense, technically the case on one view could be made out. However, moving to the second step in the King¹ test, it's not going to be met because of the industry wide attitude to standards in 2010 and the unfairness that would result from disciplining Valuer G. However, the failing to link evidence and whether or not it could ever be appropriate to discipline Valuer G, is a matter for the Board.

¹ *King v Valuer-General* Valuers Board of Appeal, CIV-2009-085-32, 17th December 2009

20. In respect of the criticisms of unfairness by Valuer 2 and Valuer 3 towards Valuer G, the Valuer General made the observation that he had yet to meet a professional who likes to give evidence in these circumstances. The issues that Valuer G raised regarding the retrospective valuations were normally a matter for cross examination.
21. Further, that of the points made by Valuer G it doesn't change the fact that a valid complaint had been made and that the Board had ordered an inquiry.
22. If the Board were to dismiss one or both charges, particularly the standards-based charge, the Valuer General suggested it would be useful to the profession to have a written decision saying what is expected now.

Board of Inquiry Ruling

23. The Board of Inquiry after considering the application for dismissal of both charges gave the following ruling; "The Board of Inquiry, after hearing submissions from Witness 1 and Mr Gilbert on the application for dismissal of the charges, has determined that the matter will proceed on both charges".

Valuer General

24. The two registered valuers who had provided retrospective valuations appeared. The first was Valuer 3.
25. Valuer 3 relied on nine sales of improved properties and two vacant land sales. He had formed the opinion that upon "its own composite cross lease title and those areas of outstanding work identified herein had been completed, would warrant a market value of \$480,000. The outstanding works relate to decking, installation of some base board sheathing, further insulation and landscaping. We have attributed a cost to complete this of \$7,000".
26. Appendix B of Valuer 3 report showed a net rate analysis and itemized his deduction of \$7,000, this being;

▶ Decking 10m ²	\$3,000
▶ Base board sheathing	\$1,000
▶ Insulation	\$1,000
▶ Landscaping	\$2,000

27. As the property was still on its residual fee-simple title a further deduction of \$10,000 was made for providing a composite cross lease title including legal fees involved with registering the title and lease plus a margin for any unforeseen costs.
28. The retrospective valuation, taking these matters into account, was \$463,000.
29. It was Valuer 3's evidence in respect of Valuer G's deduction of \$50,000 for "remedial works, issue of title and contingencies", that there is "no real explanation of how this figure is arrived at and this, in itself, in my opinion is problematic particularly given the size of the deduction they apply".
30. Valuer 3 did concede in evidence that he was "arguably somewhat conservative given the issues identified in Valuer G's extract on the condition of the property, and that perhaps up to a maximum of another \$10,000 deduction could be factored in at this point".
31. It was Valuer 3's opinion that the work required on the property was not particularly difficult and a good handy person could have achieved it over a few months. It was not appropriate to discount the value based on what a contractor might charge. The market in this price bracket did not work that way.
32. In respect of Valuer G's \$30,000 "saleability allowance", as the building was constructed when Code Compliance Certificates were not required, "the market would not discriminate on this basis" and that it was inappropriate to apply a saleability discount.
33. With respect to Valuer G's compliance or otherwise with International Valuation Standards (IVS), more particularly Clause 5.1.4 of IVS 1 which states " ... the valuer shall provide sufficient information to permit those who read and rely on the report to fully understand its data, reasoning, analyses and conclusions", it was Valuer 3's opinion that Valuer G did not "provide sufficient information to explain to readers how their \$50,000 deduction for remedial works, issue of title and contingencies was arrived at".
34. Upon cross examination by Witness 1, representing Valuer G, it was put to Valuer 3 that Valuer G had allowed \$50,000 for certain works and title whereas Valuer 1, who had prepared a valuation report for the complainant, had allowed \$40,000 versus Valuer 3's now conceded \$27,000, up from the original \$17,000.
35. In answer, Valuer 3 said that "nothing sits on a knife edge", but was not prepared to quantify the breakdown of \$27,000 any further other than state a deck of 10m² would be \$3,000. That it was typical to itemise especially such as cross lease and issues of incomplete decks. Further Valuer 3 said in 2010 more than 50% of his valuations were showing such deductions.

36. Valuer 3 accepted that the contingency he allowed of \$10,000 for cross lease costs was a "grey area" .
37. In response to being questioned on his valuation instructions from the Valuer General, Valuer 3 said that normally instructions are not that prescriptive in confirming compliance or otherwise with Standards including the linking of evidence to the valuation conclusion or providing an analysis of evidence so as the reader can understand the valuation answer.
38. As to whether it was common practice in 2010, to comply as above, Valuer 3 couldn't say but it was his firm's practice to ensure the "reader has arrived at a logical conclusion".
39. It was put to Valuer 3 that Valuer 4's evidence will be that the "as complete" valuation is \$430,000 and the "as is" valuation is \$375,000. Thus Valuer 4 had allowed \$55,000 for the matters identified regarding;
- Repair works as necessary to weatherboards ...
 - Exterior staining and painting to barge boards, eaves etc.
 - Provision of decks ...
 - General tidy up of property
40. Valuer 4 had not itemised these, on an individual value basis, to which Valuer 3 response was that the revised \$27,000 he allowed was in his opinion the appropriate adjustments based on his instructions.
41. In answer to questions from the Board of Inquiry, Valuer 3 said the construction of a deck was not a major undertaking and he had used a market related cost of \$300m². In respect of the net rate of \$1,300m², Valuer 3 stated it was "difficult to ascribe a net rate to deal with all

the deductions". That the methodology that Valuer G had adopted of assigning a current market value "as complete", less deductions was a "reasonable valuation methodology".

42. Valuer 3 did say that it was a difficult valuation with a lot of issues involved. Valuer 3 thought the range between a valuation of \$450,000 and another at \$375,000 was far too high, but he was not prepared to say what may be an appropriate margin "with the complications that this property holds".
43. In respect of the construction of the decks some 19 years after the original plans were approved and the impact this would have on obtaining the cross-lease title, Valuer 3 was unsure what was required. Valuer 3 added that "with some degree of hindsight" he had increased his overall allowance by \$10,000.
44. In response to the Valuer General's final question, "that some decks where they were originally planned would be a good idea and that there has got to be a way of legally doing this", Valuer 3's response was "oh definitely".

Valuer 2

45. Valuer 2 \$475,000 on the basis that a cross lease title is in place. The market value would reduce to \$465,000 if the cross-lease title was not issued as the \$10,000 deduction would allow for possible survey costs, legal expenses and a margin to the purchaser for inconvenience.
46. It was Valuer 2's opinion that if the decks were included in the valuation, the assessment would be \$480,000, with the extra \$5,000 to account for the completion of 13.7m² of decking.
47. Valuer 2 confirmed that his valuation was on the basis of the condition of the exterior and interior as he understood that to be at the relevant date for the retrospective valuation.
48. The eleven improved sales had been analysed on a net rate basis to provide a range of \$1,064m² to \$1,900m² from which he adopted a rate of \$1,600m² for the subject property.
49. In evidence, Valuer 2 did not accept the deduction of \$50,000 made by Valuer G relating to "remedial works, issue of title and contingencies" for which there was no break down.
50. In effect this was an extra \$40,000 deduction by Valuer G as Valuer 2 had allowed \$10,000 for "sorting out the cross lease issue and contingencies relating to that".
51. It was Valuer 2's evidence that the deferred maintenance issues Valuer G noted in the report extract, provided upon instruction from the Valuer General were factored into the valuation. Had the property been in "particularly good condition", Valuer 2 said he would have valued it at a higher figure.

52. Valuer 2's opinion was that the property value was below the 2010 median price of \$552,000 for the subject area and "towards the lower end of the market where there are often outstanding maintenance and other issues".
53. In respect of Valuer G's \$30,000 "saleability allowance" Valuer 2 thought this was unnecessary. The property was built prior to the Building Act and as such no Code of Completion Certificate was required. All pre-Building Act properties were built under the permit scheme and would be treated the same in the market place.
54. It was Valuer 2's opinion that the \$90,000 difference between his valuation and Valuer G's was outside the usual variation between valuers and that Valuer G had under-valued the property.
55. In respect of Valuer G's compliance or otherwise with the International Valuation Standards, more particularly Clause 5.1.4 of IVS 1 and Clause 1.5. of the Code of Ethics, it was Valuer 2's opinion that Valuer G had not met the requirements of standards to provide sufficient information to readers of their report to fully understand their reasoning and conclusions. The reason for this view being that there is minimal explanation of how the \$50,000 deduction was arrived at, the size of the deduction relative to the value of the property and that some further analysis of the sales to derive net rates would have been useful. Also, a brief comment on how each of these sales compares to the subject property would have been helpful.
56. Under cross examination, Valuer 2 stated that in 2010 it was his practice to link evidence, even in a minor way such as superior or inferior to the subject. He did say that his practice was not universal and that it has evolved over time. Although the International Valuation Standards didn't state that a detailed analysis was required, it was Valuer 2's opinion you did need to explain your valuation.
57. In respect of the three decks that had not been completed as shown in the original plans, Valuer 2 did not consider this an impediment as the property was twenty years old and had been sold several times.
58. Valuer 2 did say that he assumed it had a building permit and had been signed off. In respect of the sales, he provided an analysis over a range of properties and accepted that some sales could have non-consenting issues.
59. It was his opinion that the net rate of \$1,600m² (assuming title) was a fair analysis from the sales. Further, he didn't expect it to be difficult to obtain the final cross lease. This was the valuation as he saw the property and there was no requirement to make an adjustment as Valuer G had.
60. Valuer 2 accepted that it is not mandatory to have a net rate analysis. It was the relationship of sales to the valuation that was mandatory. Valuer 2 further commented "we are required to provide a clean report".

61. However, when questioned, Valuer 2 did admit that he hadn't commented on all of the sales. He accepted that in connection with these individual sales he had breached the standards himself but had not breached the standards for the overall report.
62. In response to questions about his methodology, as expressed in the report, Valuer 2 accepted that the report addressed to the Valuer General did not have an explanation of what the net rate represented. This despite the Valuer General's instructions to comply with standards or explain any departure from the standards.
63. Upon further questioning as to the compliance or otherwise of the property and the lack of a cross lease title, Valuer 2 accepted that there were uncertainties and risks but it has had several sales over the last nineteen year period since construction.
64. It was Valuer 2's opinion that \$5,000 for decking and \$10,000 for title would be required to get a fully compliant building.
65. Valuer 2 was asked to consider Valuer 4 report, prepared upon instructions from Valuer G. Prosecution Counsel did again point out that Valuer 4's report was prepared using Valuer 1's description of remedial works which were not apparent in Valuer G's report.
66. The 10% difference between Valuer 2's "as complete" valuation of \$480,000 and Valuer 4's of \$430,000 was within an acceptable range for valuers in Valuer 2's opinion.
67. Valuer 2 had not previously read Valuer 4's report, but Valuer 4's deduction of \$55,000 from his "as complete" valuation included "total decks", which was different from what he considered. Valuer 2 also commented that he thought the "sorting of the title issue would change the main value but Valuer 4 had not changed that".
68. Valuer 2 acknowledged that he had been provided with extracts of Valuer G's report and these were not detailed in their valuation, with the inspection by Valuer 2 taking place in December 2013.
69. Upon re-examination by the Valuer General, Valuer 2 advised he knew of the purchase price by the new owners in the middle of 2013 and that it was his recollection that at the time of this sale the title had been sorted out.
70. Valuer 2 did say in reference to Valuer G's comments on condition in their report, that he had taken into account that fair condition indicates something less than average, that he had taken into account the incomplete decks and the insulation issue, whatever that was, however Valuer 2 understood the house was insulated as required.
71. Valuer 2 confirmed there was no magic formula as to the wording of the valuation standards as long as there is enough information to fully understand the report and the reasoning behind it.

72. Valuer 2 accepted he could have put in some more description of his methodology in the report however it is "fairly clear that its market based".
73. In answer to questions from the Board of Inquiry he stated there were a large pool of sales but he tends to stay as close as he can to the subject property. Valuer 2 was of the opinion that there would be sufficient buyers to attract interest in the property given the level of value and the work to do.
74. As to the works to be done, it was considered that a permit would be required for the decks. The base boards are a decorative feature, an optional, not a requirement to finish. The \$5,000 allowance by Valuer 2 was for the decking.
75. In terms of difficulty to value, Valuer 2 said it was more difficult than a property fully complete. As far as the variation between valuers, Valuer 2 hoped these differences are within 5% - 10% and that a 10% variation for properties of a similar style becomes a "wide variation".
76. In respect of having a nineteen-year-old building permit and then getting the building finished, Valuer 2 admitted he had no experience of such matters. He accepted that this process does create some doubt, nevertheless, he proceeded on the basis that it would be a straight forward consent to build the decking.

Further Application For Dismissal

77. Valuer G lodged a further application for dismissal of both charges on the basis that the prosecution had not proven their case on both points.
78. The Board of Inquiry ruled that it was necessary for the two quite separate charges to be specifically addressed by Valuer G.

Charge 1 (Grossly or Significantly Undervalued)

79. Several points made by Valuer G to dismiss this charge were;
 - Valuer 3 admitted the valuation was difficult;

- Evidence shows uncertainty with many issues relating to the remedial work, building compliance, title and condition of property and that the margin of variation between valuers would be greater for this property;
- The valuation range from Valuer G at \$375,000 and \$465,000 for Valuer 2's assessment, is a difference of 19%. This does not suggest gross undervaluation;
- There is insufficient evidence to support a gross undervaluation charge.

Charge 2 (Two parts) (a) did not provide sufficient information regarding the \$50,000 allowance; (b) insufficient information as to how the market value "as if complete" was concluded.

The following points made by Valuer G to dismiss this charge, in two parts, were;

- Inconsistencies from the prosecution experts on the standard of disclosure and reports;
- Valuer 3 taking one approach in terms of his description, analysis and clarity in his report;
- Valuer 2 taking another approach with his sales description and analysis;
- The profession has not been clear in educating valuers about Standards and valuers are interpreting these standards in different ways;
- It is unfair to suggest that Valuer G is incompetent interpreting Standards in 2010 as compared to what the Valuer General expected of valuers in 2014.

80. In response, the Valuer General stated that in line with his previous submissions on Valuer G's application for dismissal, the prosecution case had been heard.

81. In respect of Charge 1, the two retrospective valuers did not really move from their original assessments but did make some fair concessions about uncertainty with the dwelling condition. The valuers did acknowledge there were some complications with the valuation but there was still a level of difference between the various valuers and it would be up to the Board of Inquiry whether those differences and the explanations provided mean there was a case for Valuer G still to answer on the undervaluation. It was the Valuer General's submission there was still a case and that Charge 1 should not be struck out.

82. The second standards based charge had two components that the Valuer General viewed as important to consider separately. In connection with Part A, which related to the alleged insufficient explanation of the \$50,000 deduction, the Valuer General submitted that it was

clear from the two valuers heard to date, had they been given more information about some of the issues it may well have affected their valuations. This in a way exposes the deficiency in Valuer G's report. Although this information might help explain how they arrived at the value they did, the problem was Valuer G did not make that clear.

83. The second part of the standards-based charge alleges Valuer G did not provide sufficient information to permit those reading their report to fully understand the analysis of how the improved sales relate to the subject property. The Valuer General's submission was that the standard had been in place for a good number of years and on the face of it there has been a breach.
84. In fairness the Valuer General said that what had been bought out at the hearing to that point was a clear indication that compliance within the industry has been evolving and is now much better in 2015 than in 2010.
85. It was submitted there had been a breach of the standard but as to the second step in King², was the breach serious enough to warrant a sanction?

Board of Inquiry Ruling on Dismissal

The verbal rulings given were;

86. "In respect of Charge 1, on the evidence heard by the Board of Inquiry so far, the application for dismissal by Valuer G is declined".
87. "With respect to Charge 2, and that is again helpfully pointed out by Mr Gilbert in those two components of A & B, so we will deal with those separately. In respect of Part A in Charge 2, the Board of Inquiry is satisfied with the evidence given today that this part of the charge should proceed. In respect of Part B in Charge 2, there was a breach of the applicable standards by Valuer G based on the evidence of the two witnesses. These two witnesses did acknowledge that this compliance with standards is evolving and when asked, those two witnesses couldn't say the application of standards was understood and widespread in 2010 as it is today. As there was no widespread compliance, the Board finds it difficult that this part of the charge should stand and component B of Charge 2 is abandoned".

² Ibid

88. In answer to Valuer G's request for further explanation of Charge 2 Part A, the Board of Inquiry expressed the wish to hear from their witnesses as this may assist in understanding the explanation of the \$50,000 allowance, but for clarity this did not mean the Board had made a decision on Valuer G's guilt or innocence of the charge, it just meant the charge would proceed.

Defence Case

89. The opening defence witness was Valuer 4, who had inspected the property in late 2014. Valuer 4 had been provided with a copy of the title and abbreviated excerpts from a report completed in June 2010.
90. Valuer 4's valuation, in what he referred to as the "incomplete state" was \$375,000 excluding chattels. When cross examined Valuer 4 said the chattels would be \$5,000 depending on what the chattels were. Valuer 4 agreed the chattels would be in the range of \$5,000 - \$10,000.
91. Valuer 4's valuation "on completion" was \$430,000 exclusive of chattels. The works "to complete" were itemised in Valuer 4's report as;
- Repair works as necessary to various weatherboards and making good flashing detail or weather proofing to window joinery;
 - Exterior staining and painting to barge boards, eaves etc.;
 - Provision of decks where ranch sliders have been provided but decks not formed;
 - General tidy up of the grounds and planting.
92. It was Valuer 4's evidence that upon inspection he was "presented with something that was substantially better than was evident in photos that had been provided with my instruction".
93. Valuer 4 had been able to gain access to the interior and found the present owners had "completed a fair bit of work since the 2008 date internally and we are now presented with something quite different from what was valued".
94. It was Valuer 4's evidence that although describing the cladding as unpainted rusticated cedar weatherboard, he had reservations about the material. It may be cladding of Emira type weatherboard that he said was imported from the Pacific Islands but developed problems with weather proofing. Valuer 4 said this cladding had got steadily worse over the years.

95. Valuer 4 had observed a degree of excavation beneath the building that was not in line with his inspection of the Council plan. The lack of base boards in 2010 would have been unattractive and created a colder home as there was no natural wind break.
96. Further items Valuer 4 noted upon inspection included the eave lining being unfinished, junction between eaves and weatherboards wasn't correct and there was no effective paint on any of the timbers which should have been painted externally. The presentation was unattractive in his opinion.
97. Valuer 4 concluded that the property was poorly built and nineteen years on not finished in accordance with the building permit issued.
98. Further comments from Valuer 4 noted that two manhole covers were on site and one as part of the main entry was quite unsightly. What it meant looking at the plans was a sewer line passed beneath the building.
99. It was Valuer 4's opinion that anyone buying the property today, even despite the work that's been done, "would be buying a problem".
100. Valuer 4 stated he had considered sales within a reasonable radius of the property, these ranging from \$325,000 - \$523,000. His valuation was within that range.
101. Valuer 4 stated that his approach to the valuation was to analyse his sales in the field, do a "guess shot" at the value of the subject property and then back in the office go through the valuation in a detailed manner. This included a look at the replacement cost and then make adjustments to reflect both the age and work necessary to arrive at an answer.
102. Without a building report and someone to provide accurate costs, for the valuer to get "too accurate" would be misleading. It was Valuer 4's opinion, that you are better to look at these as a total quantity. Valuer 4 thought that at least \$30,000 - \$35,000 needed to be spent and that didn't include replacing all weatherboards. Further, there has to be a margin to reflect the effort and that it may cost more than estimated.
103. This meant the difference between the two valuations was \$55,000 and "sitting back looking at my evidence" he thought the two figures of \$375,000 and \$430,000 fairly represented the valuations requested of him.
104. That Valuer G's valuation of \$375,000 was subject to a charge of gross undervaluation was a surprise to Valuer 4. Valuer 4 also confirmed that prior to the hearing he had not seen Valuer G's report.

105. In response to questions about itemising in the report a deduction for remedial works, Valuer 4 said "it's just got to be a lump sum" unless you have specific costs.
106. The Valuer G report in Valuer 4's opinion clearly points out to a reader "you have got a fair level of costs involved in bringing the property up to scratch".
107. In respect of the valuation standards, in terms of reporting and providing a detailed analysis that enables the reader to understand the report, Valuer 4's opinion was that the valuer needs to demonstrate a knowledge of the market, demonstrate the properties that have sold and then provide your own detailed valuation of the property which shows you have considered those sales. Valuer 4 did not think it was necessary for the reader to see how you have broken up those sales.
108. Under cross examination Valuer 4 was asked "what does the Standard say". Valuer 4 was unable to quote the Standard but said he has provided reports in varying form for over forty years and that he considered what he was presenting in the report met the Standard.
109. In respect of Valuer 4's comment about "bringing the property up to scratch" and the specific matters noted in Valuer G's report, being the proposed three decks, installation of some insulation under the floor, basement enclosure, the treatment of cedar weatherboards and the matter of the title, Valuer 4 said there was a fair bit of time and cost involved.
110. In connection with the weatherboards Valuer 4 said you don't know the extent of the problem until you have a "proper building report and specifications put together". It was Valuer 4's opinion that Valuer G had "highlighted there's a problem".
111. In respect of Valuer G's end portion of the report stating that the valuation and any recommendations are subject to the structural building not containing any latent or patent defects which could result in weather tightness issues etc., Valuer 4's said it was "playing with semantics". That it was standard for every valuation and valuer to include such statements in their reports. What Valuer G has done, said Valuer 4, is pointed out some issues and they're assuming you are going to fix them.
112. In the price bracket the property sat in, Valuer 4 was asked if his valuation was based on contractors doing the work or the owners themselves. It was Valuer 4's opinion that contractors doing the work would be the "normal situation".
113. Valuer 4 was robust in his comments supporting Valuer G allowing \$50,000 for remedial work. He said that money doesn't actually go a long way in today's climate. Valuer 4 also said that if Valuer G had stated individual amounts they would be left exposed if their separate

amounts were wrong. That what Valuer G had stated would alert a "sensible reader" to speak to a builder and get extra costs and specifications.

114. When asked why his impression of the property was worse than Valuer G's, Valuer 4 said that Valuer G had given an honest impression using words like "fair condition".
115. In respect of matters that Valuer 4 detailed such as flashings and weather proofing requirements, he accepted those were not in Valuer G's report. Valuer 4 thought Valuer G's comments such as "remedial work and finishing requirements" were all embracing. Further, Valuer 4 accepted that Valuer G had not used the words "poorly built" as he had, that readers of reports prefer to see things politely stated and have them inferred.
116. With respect to the sales comparisons, Valuer 4 accepted that some sales may have defects or outstanding works, however the valuer is "looking at the bundle of evidence whatever it brings".
117. As to the deduction of \$30,000 Valuer G made for saleability, Valuer 4 agreed hadn't made this deduction but said "different valuers work in different ways". He did not see the point in allowing the saleability allowance as he had allowed a sum for remedial works and a suitable margin.
118. In respect of Valuer G's statement that "no sign off can be obtained", following on from previous comments in the same paragraph regarding "any building work carried out prior to 1 July 1992 was prior to the Building Act 1991 being in force and accordingly no Certificate of Acceptance or Code Compliance Certificate can be issued for the property", it was Valuer 4's opinion "no reasonable person would" refer to this, in respect of saleability.
119. In response to questions from the Board of Inquiry, Valuer 4 outlined his valuation approach and that he made a valuation in a saleable state with remedial works complete. This was arrived at based on a net rate of \$1,670m². He then made deductions to get to a net rate of \$1,350m². These were "roughly" looked at, being \$10,000 for weatherboards, \$5,000 for (transcript silent on this item), \$8,000 for painting, \$4,000 for decks and tidy up \$5,000. A total of \$32,000 rounded to \$50,000 for margins and unknowns.
120. As for the title, Valuer 4 said he was remiss not to make an extra adjustment but he thought, "well this should be a fairly straightforward exercise". Valuer 4 thought that it would eat into his margin and that \$5,000 - \$8,000 should have been included. This might bring his valuation down to \$370,000.

121. In connection with the sector of the market the property sat in, Valuer 4 said it wouldn't have been attractive to many younger people who want a property that's "all done and glossy". It is most likely to appeal to those fewer buyers who don't mind "doing some hard work". Or a builder or a speculator. They would want a margin on their costs Valuer 4 said.
122. With respect to the Standards, although Valuer 4 said he could not quote them, he was an expert "involved in this on a day to day basis". He went on to state"... I think now reading Valuer G's side probably meets those standards. But someone else might interpret that quite differently and think it should be inferred in a far stronger manner".
123. In respect of whether this was a difficult valuation, Valuer 4 didn't consider it that difficult. To retrospectively value though was always difficult he said.
124. Valuer 4 agreed with previously expressed opinions of witnesses, that a 5% - 10% range between valuers was normal. Any difference with another valuers report, be it 5% - 10% - 20% you would want to see were the differences are, he went on to say.
125. In respect of the methodology of valuing a property "as complete' and making adjustments to that, Valuer 4 said you generally don't get sales of incomplete properties. You are more likely to take the adjustment approach.
126. As to the "incomplete" nature of the property, Valuer 4 said he could see "no signoff" when looking at the Council property file. That what was presented today was not what was given a building permit.
127. In putting himself back in Valuer G's position in 2010, Valuer 4 said "you could get half a dozen valuers turn up on the site without any direction and might all draw different specifications as to what we consider should be done ".
128. Upon final questions by the Valuer General regarding Valuer 4's report, including the statement that the instructions had not included full inspection of Council records, when he had acknowledged he had seen the property files, Valuer 4 said that was the danger of having standard statements in your report. He had looked at the property file as "there were some questions that need to be answered".

Valuer G's Further Application for Dismissal

129. Valuer G chose not to give evidence in the witness box and instead sought dismissal of Charge 1. Valuer G said that Valuer 4 under cross examination had not resiled from his opinion. That Valuer 4 is a valuer of long standing and that this should carry some weight in the Board of Inquiry's decision.
130. The Valuer General responded by outlining that this approach for dismissal was unusual, but the Board of Inquiry can regulate its own procedures.
131. The Valuer General said that Valuer 4 had been validly instructed, although it appeared he was given some information that was not available to the two previous valuers, Valuer 3 and Valuer 2.
132. Valuer 4, the Valuer General said, had spent his years valuing in the subject area, assumes his valuation commands some respect from the Board and he had not resiled from his valuation.
133. Further, it was going to be hard for the Valuer General to show that Valuer G's valuation was outside the acceptable range.
134. The valuation did clearly have some complexity to it because of the title based issues and the remedial work. The Valuer General noted, that the Board of Inquiry will accept that there is a margin of error around the centre point of a valuation.
135. The Valuer General went on to outline that the second charge was validly laid and needed to be answered. From what Valuer 4 said about the nature of the property, the valuers instructed by the Valuer General did not get as complete a picture as they might otherwise have done. It is the Valuer General's submission that this reflected on the paucity of information in Valuer G's report, extracts of which had been provided to Valuer 2 and Valuer 3.
136. Valuer G then made an application for Charge 2 Part A to be dismissed. It was Valuer G's position that a full explanation of the \$50,000 costs may have been helpful but that it was not mandatory. Further, that their valuation reporting was in the same manner as other valuers at that time. That this matter was not significant enough to warrant pursuing and causing an impact on Valuer G's reputation and ability to earn a living.
137. If Valuer G was guilty, then the Board of Inquiry would probably find a large number of valuers guilty of similar practice.

138. In reply, the Valuer General said it would be inappropriate to dismiss Charge 2 Part A. The evidence from Valuer 4 did not support Valuer G with respect to the Standards charge, in fact, quite the contrary. That there were large deductions made to the valuations with sparse commentary or explanation. That the matter of deductions had only crystallised at the Board of Inquiry hearing, was a good demonstration of why there was a problem with Valuer G's valuation report.

Board of Inquiry Ruling

The verbal ruling of the Board was;

139. "The Board of Inquiry having heard all the evidence to date recognises the valuation did have some complexity dealing with remedial issues and the uncertainty as to the dwelling condition at the time of Valuer G's inspection. Accordingly, the Board is not satisfied that the charge of gross or significant undervaluation has been made out on the "balance of probabilities". The application to dismiss Charge 1 is successful. As to Charge 2 Part A, the Board of Inquiry has not heard any evidence to alter our view that consideration of this charge proceed. The Board of Inquiry declines the application to dismiss this charge".
140. Following the ruling Valuer G declined to give evidence that could be subject to cross examination. It was Valuer G's position that the brief of evidence had been previously tabled to the Board of Inquiry, this including the instructions to Valuer 4 (Appendix A) and Valuer 4's report (Appendix B). Further that, outstanding matters would be dealt with in written submissions.
141. The Valuer General submitted that as Valuer G was not able to be cross-examined that any weight to be placed on the brief of evidence should be severely limited. The Board of Inquiry advised in respect of this brief of evidence that they would deal with it as they saw fit.

BOARD OF INQUIRY DECISION:

142. Final written submissions were received from the Valuer General and Valuer G in respect of Charge 2 Part A.
143. The Valuer General submitted that on the "balance of probability" Valuer G had breached the Standards which for clarity, International Valuation Standard 1 Clause 5-Statement of Standard provides;

- 5.1 In performing and reporting a market value estimate the valuer shall ...
- 5.1.4 Provide sufficient information to permit those who read and rely on the report to fully understand its data, analyses and conclusions;
144. That in the Valuer General's submission, the \$50,000 deduction from the \$195,000 Total Improvements "as if complete", some 25% of that value, requires a proper and robust explanation. Further, that Valuer 4 was given information on the state of the property from Mr Valuer 1's report demonstrates that Valuer G's report was inadequate to convey the nature of what needed doing.
145. Relying solely on Valuer G's report led the valuers carrying out the two retrospective valuations on behalf of the Valuer General to under estimate what works were required.
146. Valuer 4 painted a very dim picture of the quality and defects apparent on the house for which a sizeable deduction in value was required, but this simply was not the picture painted by Valuer G.
147. The Valuer General concluded, that the explanation under pinning the \$50,000 deduction by Valuer G was insufficient by a wide margin to fully inform readers as to their reasoning, analyses and conclusions.
148. Valuer G's defence had several strands, these are summarised as follows;
- o That the delays in the investigation of the complaint were prejudicial to Valuer G;
 - o The reporting of valuers in 2015 was different to 2010 and that this reporting style was evolving with respect to interpretation of the Standards, more particularly IVS 1 Clause 5.1.4;
 - o Valuer 4 was robust in his opinion that it was appropriate to provide a single figure deduction. In fact it could be dangerous for any valuer to itemise out each estimate of costs, he went on to explain;
 - o That a full reading of the report would show that the \$50,000 deduction was for;
 - i. Installation of three decks.
 - ii. Fixing baseboards to the basement.
 - iii. Upgrading of underfloor insulation.

- iv. The treatment of the cedar weatherboards
 - v. Basic landscaping.
 - vi. Addressing title issues.
 - That Valuer 3 admitted his deduction of \$17,000 was conservative and may increase to \$27,000;
 - That the original complaint of under valuation had been expanded into one of non compliance with Standards. Further, the under valuation charge had been dismissed after hearing evidence from Valuer 4;
 - That reference to case law interpretation by the Valuer General was inappropriate, based on the prosecution at the pre-hearing teleconference stating there were no issues of law.
149. Notwithstanding the Valuer General's submission as shown in paragraph 19, the Board of Inquiry determined the hearing in respect of the Standards based charge would proceed.
150. It was only with the hearing of the evidence from both the Valuer General's witnesses and Valuer 4 on behalf of Valuer G, could the Board of Inquiry determine the issue of how valuers in 2010 applied IVS 1 Clause 5.1.4.
151. Apart from the valuer's evidence, no further evidence was offered by the Valuer General, such as decisions of the Board of Inquiry in 2010 regarding this matter. The Valuer General stated that the Inquiry's Board members were operating in their profession at that time and that the Valuers Registration Board get to set the Standards.
152. In the Board of Inquiry's view, the fact that Valuer G did not take the witness stand was their right, but it did leave their written submission untested.
153. Under those circumstances, the Board of Inquiry is unable to place undue weight on that written submission.
154. In requiring the hearing to proceed, following submissions for dismissal of the charges by Valuer G, the Board of Inquiry was not convinced on the face of the evidence at commencement of the hearing, that the original decision to hold a hearing was inappropriate.

155. The evidence from Valuer 2 was that in 2010 Valuer G did not explain their valuation, and that there had to be enough information to fully understand the report and the reasoning behind it.
156. Valuer 3's evidence was that whether it was common practice to comply with IVS 1 Clause 5.1.4 he could not say, but it was his firm's practice to ensure the reader had arrived at a logical conclusion.
157. Valuer 4's opinion was that despite Valuer G's polite wording, Valuer G had provided sufficient comment to highlight to the reader there was a problem. Further, Valuer 4's interpretation was that the reader should get a building report and specification put together as to what was required.
158. The wording contained in IVS 1 Clause 5.1.4 was not new in 2010, indeed the Board of Inquiry is aware of prior International Valuation Standards with similar, if not identical, wording.
159. It was not new to the practicing valuer in 2010, so in this respect the Valuer General's submissions are correct.
160. The Board of Inquiry does not accept Valuer G's submission that this reporting matter was not significant enough to warrant pursuing.
161. Valuer 4's evidence was more from a long-time practitioner that thought his reporting complied with Standards, rather than one very familiar with IVS 1 Clause 5.1.4. This stance is disappointing in the view of the Board of Inquiry.
162. This stance in respect of a practicing valuer today rather than in June 2010, when Valuer G completed their valuation, would not be an acceptable defence to a Standards based charge in the Board of Inquiry's view.
163. The position of Valuer G in terms of Standards compliance in 2010 the Board of Inquiry finds is very much at the margin.
164. However, in considering the first step of the King³ test, the Board of Inquiry finds on balance Valuer G has breached the relevant Standards.

³ I bid

165. Moving to the second step in the King⁴ test, whether the breach in relevant Standards is sufficient to warrant a disciplinary sanction, the Board of Inquiry must consider, in this particular case, whether to properly enforce appropriate Standards within the profession that this breach in Standards should attract a sanction.
166. From the evidence heard of compliance with Standards in 2010, the Board of Inquiry is not persuaded that a sanction against Valuer G is warranted.

Summary of Findings:

- (a) The Board of Inquiry finds Valuer G breached the relevant Standards.
- (b) On the evidence heard the breach was not sufficient that a sanction against Valuer G is warranted.

Costs:

For the purpose of clarity to both parties, the Board of Inquiry declines to hear any application for costs.



PA Curnow

Chairperson

⁴ Ibid