

**VALUERS REGISTRATION BOARD**

**IN THE MATTER OF**

an Inquiry under

Section 32(2) of the Valuers Act 1948

**AND**

**IN THE MATTER OF**

A charge under Section 31(1) (c) of the  
Valuers Act 1948 against **Valuer L**

**BOARD OF INQUIRY:**

H J Puketapu (Inquiry Chairperson)

ME Gamby

PA Curnow

**COUNSEL:**

Ms Sally Carter for the Valuer General

Witness 1 assisted by Mr Steve

McNamara for Valuer L

**DATE OF HEARING:**

5 December 2016

**ORAL DECISION (PARTIAL):**

5 December 2016

**WRITTEN DECISION:**

30 June 2017

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## Complaint

1. On 25 May 2015, the Owners engaged the services of Valuer L's employer to assess a current market valuation, for mortgage purposes, of the property. The Owners proposed to carry out certain works based upon architectural plans to extend the dwelling on the property by about 123 square metres. The Owners also requested a current market value upon completion of these works.
2. Valuer 1 on behalf of Valuer L's employer carried out an inspection of the property on 29 May 2015.
3. Valuer 1 is an unregistered valuer. Therefore, as the valuation was for lending purposes their valuation report was countersigned by Valuer L, a registered valuer. A current market value of the property was assessed:
  - (a) \$740,000 as is (including chattels of \$6,000) and,
  - (b) \$1,050,000 as if complete (including chattels of \$10,000)

Both assessments are inclusive of GST.

4. The Owners were provided a copy of the valuation report via an electronic link on 3 June 2015.
5. In email correspondence to Valuer L on 4 June 2015, the Owners outlined "*a number of concerns regarding the accuracy and correctness of the comments and records included in the report*" - and referred to these being:
  - (a) Iron cladding incorrectly recorded
  - (b) Incorrect reference to particle board
  - (c) Incorrect reference to bi-folds, French doors and windows being aluminium
  - (d) No reference to full insulation (installed in December 2013)
  - (e) No reference to stopped and painted walls and ceilings
  - (f) No reference to polished matai flooring
  - (g) Incorrect reference to gravel path
  - (h) Single garage was not noted as being larger than normal with a bench and laundry
  - (i) No reference to the walk in shower with double shower heads - the bathroom was upgraded in December 2013
  - U) The roller blinds are not accurately reflected in the chattels
  - (k) No reference to the drawer dishwasher or spa pool in the chattels

- (l) Incorrect description of the kitchen cabinets
  - (m) Inaccurate description of the timber paling fencing
  - (n) No reference to the house being on gas mains for hot water and heating
  - (o) No reference to the imminent connection of Fibre cabling
  - (p) Incorrect reference to electric hot water cylinder
  - (q) Incorrect reference to log burner being connected to gas mains
  - (r) No recording of the property's scenic views of surrounding areas
  - (s) The location is narrowly described
  - (t) No reference to two off-street car parks
  - (u) No comparisons to properties in the area
  - (v) No reference to the local authority's Unitary Plan (subsequent email sent by the Owners to Valuer L)
6. Accordingly, the Owners maintained that they were unable to rely on the valuation report and provide it to their mortgagee.
7. The Owners requested Valuer L to *"personally come and redo the valuation, or alternatively provide us with a full refund so that we can engage another registered valuer to carry out a valuation report that we can actually use."*
8. Two further reports (completed 5 June 2015, and 8 June 2015 respectively) were subsequently provided by Valuer L to the Owners to address their concerns, with the latter report also amending the current market assessments for the property as at 29 May 2015 to:
- (a) \$770,000 as is (including chattels of \$6,000) and,
  - (b) \$1,100,000 as if complete (including chattels of \$10,000)
9. Still not being satisfied that their queries were addressed, the Owners forwarded an email complaint to the Valuer General on 9 June 2015, outlining their dissatisfaction with the report(s) received and advised *"ultimately, we just want our money refunded so that we can engage a professional valuer that is able to carry out a valuation that we can provide to our mortgagee"*.

## Valuer Generals Explanation

10. The Valuer General wrote to Valuer L on 18 August 2015 advising he would be investigating the matter for the Valuers Registration Board and requested from them a statement for the Board's consideration, including a scope of work and any other relevant (and supporting) correspondence.
11. Valuer L provided a response by way of notes to the Valuer General giving a detailed account of the communication between them and Valuer 1, the unregistered valuer, and the events that followed thereafter. The following is an outline of Valuer L's notes:
  - (a) Valuer L advised that they received the first email of complaint from the Owners on 4 June 2015 when they were at a conference in Christchurch. They forwarded the same to Valuer 1 for comment and any amendment, after which the report was sent back to Valuer L for signing. On the understanding this updated report reflected the concerns of the complaint, this report was completed, and the Owners were provided access via a weblink to an updated valuation report on 5 June 2015. The current market values "as is" and "as if complete" respectively remained unaltered.
  - (b) Concerned that this updated report still did not fully address their concerns (mention was made that their suggested changes to "iron" clad dwelling and "gas hot water" were not made) the Owners forwarded a further email to Valuer L. The Owners confirmed that within the updated report *"most of the mistakes that we noted to you have not been corrected"*.
  - (c) A second updated valuation report was carried out which, at this time, also amended the current market value and was sent to the Owners on 8 June 2015.
  - (d) Valuer L considered the email communication from the Owners to be somewhat aggressive and some of the items listed in their complaint were not relevant. They advised that Valuer L and Valuer 1 were always happy to amend the minor details in their report. They also made mention that they had previously valued the property in 2012 and that their client at the time had no issue with their report.
  - (e) Valuer L commented that the software system that is used by their employer does hinder their ability to cross reference updates. The amendments made to their updated reports were not fully reconciled in the process and some corrections were overlooked.
  - (f) Valuer L concluded that they have a good understanding of the locality and have valued a number of properties nearby located within the same future zoning area. They noted that the subject area is a predominantly established locality with generally older type housing. Therefore, comparable sales used in their "as

if complete" portion of the report included newer dwellings in neighbouring localities

- (g) An email chain of communication provided by Valuer L between them and the Owner was provided in support of their assertions.

12. The Board notes that all three valuation reports had the same inspection and report issue date.

### **Retrospective Valuation**

13. As part of his investigation, the Valuer General engaged Valuer 2 to undertake a retrospective market valuation of the property on an "as is" basis, and "as if complete" basis.

14. Valuer 2's assessments as at 29 May 2015 are as follows:

- (a) \$730,000 as is (including chattels of \$15,000) and,
- (b) \$1,150,000 as if complete (including chattels of \$50,000)

### **Peer Review**

15. The Valuer General also obtained a peer review of Valuer L's report from Valuer 3, who was instructed to consider:

- (a) What is required of a registered valuer who has countersigned reports by an unregistered valuer;
- (b) With regards to the valuation report counter-signed by Valuer L, are there any breaches of the New Zealand Institute of Valuers Code of Ethics or breaches of the International Valuation Standards 2013; and
- (c) Whether there are any other issues under the New Zealand Institute of Valuers Code of Ethics.

16. Valuer 3 provided a written report dated 27 June 2016 wherein he outlined the basis of his review, a brief background to the complaint and a summary of valuation issues.

17. Valuer 3's conclusions were:

- (a) Code of Ethics (COE) 1.1/1.2/1.5; the requirement to be responsive to a client's reasonable expectations and to correct the errors identified in valuation reports (a minor breach);
- (b) COE 1.2/1.5; the requirement to clearly distinguish between multiple reports with the same effective date (a moderate to serious breach);
- (c) COE 1.5 Requirement to provide a scope of works for the valuation assignment (moderate to serious breach);

- (d) COE 1.5 and IVS 103(L); the requirement to provide land value sales to justify the adopted land value (minor to moderate breach);
  - (e) COE 1.5 and IVS 103 (L); the requirement to clearly explain the "as if complete" valuation approach and reasoning including evidence to support the value conclusion (moderate to serious breach);
  - (f) NZ Real Property Guidance Note 2 "Countersigning of valuation reports prepared by an unregistered valuer" (moderate breach of section 4 NZRPGN2).
  - (g) Electronic report template - contributed to a breach of the Code of Ethics.
18. The Valuers Registration Board (The Board) concluded that the retrospective valuation assessment of Valuer 2 was consistent with the valuation assessments provided by Valuer 1 and Valuer L. The Board finds there are no issues with the quantum of the valuation assessments. However, the Board was satisfied that there were reasonable grounds for the matter to proceed to an inquiry in relation to International Valuation Standards and the New Zealand Institute of Valuers Code of Ethics.

## The Charges

19. Valuer L was advised in writing of four charges on 19 July 2016.

1. Section 31(1)(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 providing a valuation dated 29 May 2015 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 the report and therefore breached Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.*

**Particulars:** *You allowed more than one report (under the same instruction with the same date of inspection) to be in existence, with no explanation as to why the valuation was different or that there existed another valuation by you under the same instruction.*

2. Section 31(1)(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 providing a valuation dated 29 May 2015 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/he report and therefore breached Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.*

**Particulars:** You failed to include a written scope of works within the report in breach of IVS 101 and ANZVGN1.

3. Section 31(1)(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 providing a valuation dated 29 May 2015 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 the report and therefore breached Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.*

**Particulars:** You did not explain in the report the basis on which the "as if complete" market value assessment had been made and there was no linking of the comparable sales evidence to the valuation assessment in breach of IVS 103.

4. Section 31(1)(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 providing a valuation dated 29 May 2015 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 the report and therefore breached Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.*

**Particulars:** (i) You failed to include any details of any land sales evidence when the land Value component of the total valuation was a significant contributor to the overall value in breach of IVS103; and/or

(ii) You failed to ensure the accuracy of the valuation report in breach of Section 4 of NZRPGN2; and/or

(iii) You failed to adequately supervise on the countersigning of the valuation report

## Prehearing Telephone Conference

20. The Notice of the charges did not set a date for a hearing. A pre-hearing directions conference call was held 15 September 2016 to set a hearing date suitable to the parties and any witnesses. A proposed hearing date of 5 and 6 December 2016 was confirmed.
21. A timetable and procedure for the hearing was discussed. The Valuer General advised that he intended to call Valuer 3 to give evidence, and that there would be no brief of evidence from him, other than his peer review submitted as part of the Valuer General's investigation.
22. Valuer L advised that they would defend the charges.
23. At the commencement of the hearing the charges were read. Mr McNamara acting at the time for Valuer L denied the charges.

## Submissions

24. Ms Carter set out the background to the complaint, referring in her opening submissions to the report of the investigation by the Valuer General. Specific reference was made to:
  - (a) International Valuation Standards 2013 IVS 101
  - (b) International Valuation Standards 2013 IVS 103
  - (c) Australian and New Zealand Guidance Notes 1 (ANZVGN1) Valuation and Procedures Real Property; and
  - (d) New Zealand Real Property Guidance Note 2 (NZRPNZ2) Countersigning of valuation report prepared by an unregistered valuer.
25. Ms Carter outlined that all charges allege a breach of Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics which states:

*"A member shall exercise the utmost care and good faith to ensure the maintenance of the highest standards in the preparation of statements, reports and certificates, as these constitute one of the most valuable assets of the profession, being relied upon by clients, employers, shareholders, investors, creditors and the public".*
26. Charge 1 - More than one report under the same instruction with the same date of inspection and same date of reporting were in existence, with no explanation as to why the valuations were different or that there existed more than one valuation report.
27. Ms Carter submitted there was clearly more than one report, and two with different market values, referring to the original report of Valuer L where the valuation was assessed at \$740,000 for the property "as is", and \$1,050,000 for the "as if complete" including chattels, or \$1,040,000 excluding chattels. A later report stated the valuation for the property "as is", assessed at \$770,000, and for the "as if complete", a value of \$1,100,000 including chattels or \$1,090,000 excluding chattels. Ms Carter further submitted that if there is more than one

valuation report in existence then, at the very least, there should be some reference to the earlier valuation so that, effectively, those valuation reports can't be used for different purposes.

28. Ms Carter supported this assertion with a cross-reference to the case in Q<sup>1</sup> at page 35;
- "The Board makes no criticism of the need to correct information in successive reports or to take into account additional information when that is provided. Similarly, the Board is not concerned that this may give rise to a different valuation as a result of the different information. The fault lies in allowing two valuation reports to remain in circulation followed by a summary report, with identical dates without any apparent effort to clarify which, if either reports, was to be relied upon for financial reporting purposes or to provide a final single figure ... "*
29. Ms Carter did not distinguish between valuations for financial reporting purposes (as in Q) and valuations for mortgage purposes as in the reports of Valuer L, or to differentiate a final single figure in Q, or different valuations for the "as is" and the "as if complete" assessments in Valuer L's reports.
30. As to its relevance, Witness 1, by then the advocate on behalf of Valuer L, submitted that the Q case is "hardly comparable" in that the valuer released several versions of the same report with largely differing values, different valuation approaches, and making miss-statements in each of these.
31. Witness 1 further refuted the charge of multiple reports of different values as at the same date on the basis that there is no specific reference made in any Standards regarding this requirement. By way of written submission, Witness 1 stated that Valuer L's employer's internal controls record changes to reports, including email notification to clients that reports have changed. Only one current copy is available for download/view online at any time. Prior versions are archived and are no longer accessible.
32. Witness 1 provided an email transcript to the Board from "Corelogic", being an instruction to remove a comment around there being a second version of the report.
33. The Board understands that the original report was not delivered to the bank/borrower. It is not clear what happened thereafter when a third report was produced.
34. When Valuer 3 was questioned by the Board as to what "a reasonably prudent practitioner" would be required to do if the original valuation report was changed and a second report is prepared", he pointed out that there should be comment as to why there is a second report and perhaps reference this so as there is no conjecture.
35. Valuer 3 remarked that the third report that was provided by Valuer L had more connotations because the value had changed and a couple of new sales were inserted. Nonetheless there was no reference in that report either as to why the value had changed.

36. Witness 1, on behalf of Valuer L, produced a valuation report carried out by Valuer 3's employer dated 5 August 2015. The reference being to a Version 2 (September 2015) notation on the foot of each page of the report. Valuer 3 commented that this was a template document. Whilst somewhat confusing in light of an inspection carried out in August 2015, the Board did not see any direct relevance to the matter concerning the multiple version reports of Valuer L.
37. Witness 1 advocated Valuer L's employer as having one of the best methodologies of controlling document versions from the perspective of history, archiving and retrieval.
38. Witness 1 confirmed that Valuer L's employer was a Firm accredited by the Property Institute of New Zealand in Real Property Valuation.
39. Charge 2 - Failure to include a written scope of works within the report in breach of IVS 101 and ANZVGN1.
40. Ms Carter asserted that a scope of work is a mandatory requirement under IVS101. A scope of work shall be prepared and confirmed in writing and it is to address all matters ..... namely:
- (a) The identification and status of the valuer
  - (b) The identification of the client and any intended users
  - (c) The purpose of the valuation
  - (d) The identification of the asset to be valued
  - (e) The nature of the source of information to be relied upon
  - (f) Any assumptions
  - (g) Any restrictions on use, distribution or publication of the valuation
  - (h) Confirmation of accordance with IVS, and
  - (i) A description of the report
41. Ms Carter further submitted that IVS103 at paragraph 5, recommended a scope of work be referred to in the report, so while it is not necessarily mandatory that it is within the report it is clear that the scope of work is in writing and, if it's not in writing elsewhere, one would expect it to be in the report. Ms Carter reinforced this by commenting that at para 1.2 ANZVGN1, whilst being a guidance note, is intended to recognise good practice and "will serve as a comparative measure of the level of performance of a member."
42. Witness 1 affirmed by way of a written response to this charge, that "*Valuer L's employer's reports have been peer reviewed and no issues over Scope of Works has been raised to the attention of the Valuer.*"

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<sup>1</sup> Q [2012] VRB01

43. Witness 1 was of the opinion that Valuer L's employer had complied with all the requirements under a Scope of Work. The matters outlined by Ms Carter as being a scope of work were systematically pursued by Witness 1 in his questioning of Valuer 3. Whilst Valuer L's employer do not specifically reference a scope of work in the body of their reports, Valuer 3 affirmed that a scope of work is contained in either the instructions, email exchanges or in the reporting by them - albeit marginally.
44. The Board put to Valuer 3 whether a scope of work is required to be within a report. Valuer 3 responded - "no". With reference to his comment about "marginally", Valuer 3 remarked that he is aware of small firms that do not send out a scope of work so, in his view, the way that this is dealt with by Valuer L is "marginally better" than those smaller firms.
45. Valuer 3 said that his employer provides a scope of work and terms of engagement document to their residential clients, it is not included in the valuation report.
46. The Board reiterates the General Principle of a requirement for a written scope of work under IVS 101, *"All valuation advice and the work undertaken in its preparation must be appropriate for the intended purpose. It is also important that the intended recipient of the valuation advice understands what is to be provided and any limitations on its use before it is finalised and reported."*
47. There is piecemeal evidence by way of emails, the valuation report and instructions that do suggest a scope of work of sorts as required under IVS101. The Board therefore accepts the submission of Witness 1 and evidence of Valuer 3 that there was a scope of work of sorts. Nevertheless; there is room for improvement with respect to there being a clearer understanding by the intended recipient of the valuation advice by way of written agreed Scope of Work.
48. Charge 3 - Did not explain the basis of the "as if complete" market value assessment and no linking of the comparable sales evidence to the valuation assessment - in breach of IVS 103.
49. Ms Carter submitted that there must be transparency to any report. She stated that as a General Principle, IVS103 is relevant;
- "The final step in the process is communicating results of the assignment to the commissioning party and any other intended users. It is essential that the report communicates the information necessary for proper understanding of the valuation or valuation review. A report should not be ambiguous or misleading and shall provide the intended reader with a clear understanding of the valuation or other advice provided ... this standard applies to all valuation reports and reports on the outcome of the valuation review whether printed on paper or transmitted electronically."*
50. She commented that the "as if complete" part of Valuer L's report has no explanation at all, and no linking with comparable sales. While Valuer L's report notes that the client proposes

to extend the dwelling by about 123m<sup>2</sup> to include the ground floor, there is no explanation or transparency within the report as to how the "as if complete" valuation has been arrived at.

51. Ms Carter further referenced paragraph 5L of IVS103, which states that;
- "To understand the valuation figure in context, the report shall make reference to the approach or approaches adopted, the key inputs used and the principle reasons for the conclusions reached these requirements do not apply if it has been specifically agreed and recorded in the scope of work that a report should be provided without reasons or other supporting information."*
52. Ms Carter said that by not outlining the process within the report, there had been a clear breach of the Code of Ethics clause 1.5.
53. In support of her assertions, Ms Carter referred to Valuer L's report at page 80 of the bundle of documents confirming a market value "as if complete" of \$1,100,000 including chattels. There is no reference in Valuer L's report as to how this assessment is derived.
54. It is of concern to the Board that the only reference to a market value "as if complete" is contained in Section 1, Valuation Summary of Valuer L's report/s. The Board understands that Valuer L was provided with a set of architectural plans, as referenced in the Valuer General's Investigation report. However, this is not referred to at all in their report/s.
55. Valuer L's original report and first update report, referred to two comparable sales. These are the only sales that make a comparison to the subject property "as if complete" and both sales are reported as being "inferior in overall value due to smaller dwelling size and inferior outlook".
56. However, in the second update report, a further sale, is recorded and one of the previous sales no longer appears. Valuer L reports the newer sale as being "slightly superior in overall value to the subject "as if complete" due to the superior outlook".
57. The market value "as if complete" was amended from \$1,050,000 to \$1,100,000 including chattels. There is no indication as to whether this figure is inclusive or exclusive GST.
58. Unlike Valuer L's explanation and assessment of value for the subject property "as is", a reader of the report would have little understanding as to how they arrived at their market value of \$1,100,000 "as if complete" or any explanation to understand the process.
59. The Board concludes that Valuer L's "as if complete" assessment appears to be little more than a "site valuation". This in itself, without explanation, does not provide a reader of the report with a clear understanding as to how the value is derived.
60. While Witness 1 alludes to there being a linking of comparable sales evidence to the final assessment, the Board finds Valuer L falls short in their explanation as to how the value is derived and why it was amended from the original and first update reports.

61. Valuer 3 considered this charge to be of a moderate to serious nature and a clear breach of Code of Ethics 1.5.
62. Charge 4 (1) - Failure to include any details of any land sales evidence when the land value component of the total valuation was a significant contributor to the overall value in breach of IVS103.
63. Ms Carter submitted this related to a combination of matters. There were no land sales included within the report to support a land value of \$530,000 (referring to Valuer L's final report) nor was there anything to explain how that land value was reached.
64. Valuer 3 indicated that if no land sales are available, and one has carried out an analysis regarding land, a commentary in the report including any assumptions should be made.
65. When questioned by the Board as to whether the provision of land sales is a requirement of a valuation report, Valuer 3 responded that it was not a requirement.
66. Witness 1 referred to various valuation reports by others in Valuer L's defence being reports where land value sales were also not recorded and an assessment of value was provided without explanation.
67. The Board similarly notes that the Valuer General's evidence with respect to Valuer 2's valuation also does not provide any land sales to explain how the land value was derived.
68. The Board has concluded that, if there are no reported land sales yet the valuer has provided a land value, it is imperative for the valuer to disclose to the reader of the report how that land value is derived. In the same way, the reader must be able to understand how any assessment of value is arrived at.
69. Valuer 3 concurred that this part of the charge is a minor to moderate breach of the Code of Ethics. The Board, on the evidence it has heard in this matter, finds this part of the charge not proven to the required standard.
70. Charge 4 (2) - Failure to ensure the accuracy of the valuation report in breach of section 4 of NZRPGN2
71. In referring to Section 4 of NZRPGN2, which is recognised best practise, and statements regarding the countersigning of reports, Ms Carter noted as outlined below:
  - (a) 4.1 - It is recommended that the registered valuer countersigning the report, inspect the property being valued and be familiar with all the physical and valuation aspects pertinent to the property.
  - (b) 4.2 - It is recommended the countersigner liaises with the other parties responsible for preparing the report to ensure accuracy and competency.
72. The errors in Valuer L's report that were complained of by the Owners were not addressed to their satisfaction.

73. Valuer L stated in their submission that they were familiar with the property having previously valued the property in 2012 and that their client had no issues with this report.
74. It is clear that, following advice of an accumulation of these errors contained within Valuer L's report, albeit prepared by Valuer 1, the Owners were concerned and specifically required and requested Valuer L to inspect the property themselves. The Valuer General submitted that, by not inspecting the property, Valuer L permitted the errors within the report to remain unchanged.
75. The Board also noted during questioning of Valuer 3, varying commentaries made under the "Risk Assessment" in each of Valuer L's reports and changes to each report with respect to the Unitary Plan.
76. When questioned by the Board, Valuer 3 confirmed that while there had been a breach of the Code of Ethics in this regard, in his view they were minor. That was because, he said: "...We all make errors" ... in reporting and "Even reading my report out I had noted a couple of small errors". However, there were errors in Valuer 1's reports that needed to be sorted out and they were not sorted out that well.
77. The Board agrees with Valuer 3 that, while it is acceptable for a report to be updated where errors or inaccuracies are identified that are not minor and require the issue of a new updated report, there must be a reference in the later report that an earlier report had been superseded and an explanation provided of what the errors were and how they have been corrected.
78. It is of concern to the Board that where an error is made repeatedly in an updated report and not adequately dealt with in a successive document or documents, this reflects poorly not only upon the valuer, but also on the profession.
79. Charge 4 (3) - Failure to adequately supervise on the countersigning of the valuation report
80. Ms Carter submitted for the Valuer General that there was not the appropriate supervision of the unregistered valuer in allowing the report to go out with a combination of errors as were already identified in Charges 1, 2, 3.
81. The Board heard that Valuer L was out of town at a Conference at the time of the subject valuation being carried out. Valuer L was required to "counter-sign" Valuer 1's original report and subsequent updates whilst they were out of town. While the Board accepts that Valuer L responded as quickly as they were able, the lack of supervision was evident as inaccuracies were repeated and Valuer L, who was the valuer responsible, had no way of knowing if they had been correctly addressed.
82. It is the Board's view that it is insufficient for Valuer L to rely upon having previously valued the property some three or so years before as the basis of supervising Valuer 1's work. The Owners' complaints as to the continued reporting errors were not addressed satisfactorily.

## **Burden and Standard of Proof**

83. The Board recites the following from Ms Carter's submission on behalf of the Valuer General:

*"The Valuer General must prove the charges on the balance of probabilities.*

*The balance of probabilities means more likely than not. The balance of probabilities test is to be flexibly applied depending on the seriousness of the allegations. The more serious the allegations are, the stronger the evidence needs to be to prove the allegation, but the test remains the same, namely proof on a balance of probabilities.*

*To find a charge proven, the Board must be satisfied both that Valuer L had breached the required standard of professional competence and that the breach was sufficient to warrant a disciplinary sanction.<sup>2</sup>*

*A range of sanctions is available to the Board under section 33(1) of the Valuers act. Given the way the Act is expressed, the range of possible sanctions should be kept in mind when considering whether the departure from standards is serious enough to warrant disciplinary sanction."*

84. The Board also comments that the purpose of disciplinary regimes is to ensure that appropriate standards of professional conduct are maintained in the occupation concerned. It is not to punish the professional (although that may be an inevitable result).
85. Having considered the submissions and evidence from Counsel for the Valuer General, and Witness 1 and McNamara for Valuer L, the Board issued the following interim oral decision.

## **Boards Interim Oral Decision**

86. *" Valuer L faces 4 charges of incompetent conduct in the performance of their duties as a valuer in compiling a valuation report dated 29 May 2015 with respect to a property.*

*With respect to charges 2 and 4, the Board of Inquiry makes the following comments.*

*In connection with Charge 2, the evidence of Valuer 3 is that the written Scope of Work within the report being in breach of IVS101 was incorrectly drawn. This Charge fails and is dismissed.*

*With respect to Charge 4i, the evidence of Valuer 3 and the questions from the Board indicate that this matter was not a significant factor in this particular complaint. With respect to Charge 4ii, Section 4 of NZRPGNZ relates to recommendations that the registered valuer countersigning the report inspect the property, not the accuracy of the valuation. That is not to say the Board condones the reporting as seen as there were clearly uncorrected errors in successive reports. With respect to Charge 4iii, there has been no evidence of any Standards*

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<sup>2</sup> King v Valuer General Valuers Board of Appeal, CRV-2009-085-32, 17 December 2009

*breached; however again all unregistered valuers should be adequately supervised.  
Accordingly, Charge 4 is dismissed.*

*Therefore that leaves Charges 1 and 3, and the Board invites written submissions on those."*

## **Written Submissions**

87. Charge 1 - More than one report (under the same instruction with the same date of inspection) to be in existence, with no explanation as to why the valuation was different or that there existed another valuation.

88. Ms Carter for the Valuer General reinforced the Board's decision in Q [2012] VRB 01 at p35 - previously recited at paragraph 28 herein. Ms Carter went on to note the evidence of Witness 1 as repeated by the Board at p24-25 of the Q decision:

*"Witness 1 was concerned that there were two opposing valuations with different values prepared under different market criteria. The existence of two reports was not linked or qualified with respect to each other which Witness 1 described as ".a most unusual and dangerous practise which can lead to confusion and misunderstanding" and "...it seems likely to me that one report must have been written prior to the other and then for some reason there was a requirement to reassess the valuations".*

89. Indeed, the evidence of Witness 2 giving evidence for Q confirms:

*"Where there are changes made to a valuation in a subsequent report due to some form of re-assessment those changes should be clearly documented, explained and referenced in the subsequent version of the valuation. This was not done in the copy made available in July 2005, and should have been. This is simply version control and avoids the situation of two copies of a property valuation existing with similar content but different valuation figures. I note the signature on the valuation report does not have the date on which the signature is made. This alone would have assisted in differentiating the two copies of the valuation. I further suggest that the signature should have included a statement such as "copy supplied on" or "amended copy supplied on" to clearly represent the circumstances under which the copy was generated."*

90. The Board was then referred to the Inquiry Board decision in Q

*"...one matter stands out clearly from the evidence of all three independent valuer witnesses. Q did not qualify their valuation reports in any way that would have enabled a party to determine which valuation report or value figure should be preferred for financial reporting purposes."*

91. The Board agrees with current Witness 1 in that the background to the charge against Valuer L and that in Q are very different. More so, the outcomes were also diverse. There was no financial loss by these Owners, whereas in Q, there could have been a financial loss outcome. That

does not overcome the fact that there was more than one report in existence with no explanation as to why the valuation was different or that there existed another valuation report.

92. Witness 1 raised the obvious that, irrespective of there being subsequent reports, albeit properly referencing perhaps an earlier report, issuing a report does not preclude there being further updated versions. He contended that controlling multiple versions would be near impossible.
93. The Board is sympathetic to this stance, especially where Valuer L had, the Board was told, been required by Corelogic (an ordering house) to remove a form of version control from their second document. This, the Board reiterates, does not remove the obligation of Valuer L to link successive reports, albeit by way of comment in their report.
94. The Board finds this charge against Valuer L is proven but, given the facts in this particular case, not to the extent that a disciplinary sanction is warranted.
95. Charge 3 - Did not explain the basis of the "as if complete" market value assessment and no linking of the comparable sales evidence to the valuation assessment - in breach of IVS 103.
96. The Board refers to paragraphs 48-61 and the matters raised with respect to this charge.
97. There has been no material submission brought to the Board's attention that proves that there had been no breach. To recite paragraphs 68 and 69:

*"To find a charge proven, the Board must be satisfied both that Valuer L had breached the required standard of professional competence and that the breach was sufficient to warrant a disciplinary sanction.*

*A range of sanctions is available to the Board under section 33(1) of the Valuers act. Given the way the Act is expressed, the range of possible sanctions should be kept in mind when considering whether the departure from standards is serious enough to warrant disciplinary sanction."*

98. Paragraph 5L of IVS103, is restated in part;

*"To understand the valuation figure in context, the report shall make reference to the approach or approaches adopted, the key inputs used and the principle reasons for the conclusions reached these requirements do not apply if it has been specifically agreed and recorded in the scope of work that a report should be provided without reasons or other supporting information."*

99. While the Board did not find the matter in Charge 2, being failure to include a written scope of work within the report in breach of IVS 101 and ANZVGN1) proven to the required standard, there has been no evidence provided in charge 3 that satisfies paragraph 5L of IVS103. To this end, the General Principle as stated in IVS 103 (in part):

*"The final step in the process is communicating results of the assignment to the commissioning party and any other intended users. It is essential that the report communicates the information necessary for proper understanding of the valuation or valuation review. A report should not be ambiguous or misleading and shall provide the intended reader with a clear understanding of the valuation or other advice provided ... this standard applies to all valuation reports and reports on the outcome of the valuation review whether printed on paper or transmitted electronically."*

100. The Board finds charge 3 is proven and that the breach is sufficient to warrant a disciplinary sanction.
101. The Board invites submissions as to penalty on charge 3 only and submissions on costs.

### **Board of Inquiry Decision**

102. The Board confirms its' interim oral decision with respect to charges 1, 2 and 4.
103. For clarity the Board invites submissions as to penalty and costs on charge 3 and costs but not penalty on charge 1.

**Evan Gamby**



For the Inquiry Board

30 June 2017