



Complaint regarding Rules for Cadastral Survey 2010

Report of the Regulations Review
Committee

Forty-ninth Parliament
(Charles Chauvel, Chairperson)
November 2010

Presented to the House of Representatives

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1 Introduction

Recommendation

The Regulations Review Committee, having not upheld the complaint, recommends that the House take note of its report.

Background

In May 2010 the committee received a complaint from the Institute of Cadastral Surveying Incorporated about the Rules for Cadastral Survey 2010. The rules were made by the Surveyor-General, Don Grant, with an effective date of 24 May 2010.

The Surveyor-General's functions are set out in section 7 of the Cadastral Survey Act 2002.¹ These functions include maintaining a national geodetic system and maintaining a national survey control system. Cadastral surveyors must comply with the rules when carrying out cadastral surveys and when lodging cadastral survey datasets with Land Information New Zealand (LINZ).

In summary, the complaint made the following allegations:

- When making three particular rules the Surveyor-General did not consider the matter he was required to have regard to under section 7(2)(c) the Act.
- When making one particular rule the Surveyor-General did not consider matters he was required to have regard to under section 49(3) of the Act.
- When making the rules the consultation requirement in section 49(2)(b) of the Act was not met in relation to the Institute.

Complaint process

The committee can receive complaints relating to regulations under Standing Order 311 where they appear, on the face of it, to relate one of the grounds on which it may draw a regulation to the special attention of the House. The grounds are listed in Standing Order 310(2).²

Rules made under the Act are regulations for the purposes of the Regulations (Disallowance) Act 1989.³

The two Standing Order grounds relied on by the Institute are that certain rules

- appear to make some unusual or unexpected use of powers conferred by the Act

¹ Appendix C contains the relevant statutory provisions.

² Appendix B contains the relevant Standing Orders.

³ See Appendix C, section 49(4)(b).

- were not made in compliance with the particular consultation procedure prescribed by the Act.

Evidence

We received written submissions and heard evidence relating to the complaint on 20 October 2010 from representatives of the Institute and of LINZ, including the Surveyor-General.

Our role

Some of the evidence we heard involved disagreement between the parties about policy issues related to the rules. We cannot help the parties to resolve these issues. Our role is limited to consideration of the Standing Order grounds. Our focus is technical scrutiny, not scrutiny of policy. Therefore, it would not be appropriate for us to comment on any policy aspects of the rules.

2 Unusual or unexpected use of powers

Complainant's view

The Institute said that the assessment required by section 7(2)(c) was not made by the Surveyor-General when making rules 4.1(a), 6.2(a)(iv) and 6.4 and nor were the factors listed in section 49(3) considered when making rule 4.1(a).⁴ For these reasons, the Institute says, the use of powers conferred on Surveyor-General by the Act was unusual and unexpected.

The Institute also says

- there is no documentary evidence that the Surveyor-General made the assessment required by section 7(2)(c) when making the rules
- the documentary evidence that the matters listed in section 49(3) were considered by the Surveyor-General consists of one mention of section 49(3)(e) in minutes of a meeting on 28 and 29 February 2008 of the expert committee appointed to assist him
- it has significant concerns about the composition of the expert committee in terms of the experience of the members.

The Surveyor-General's view

The Surveyor-General told us that he took into account the matters he is required to consider under the Act primarily by establishing and participating in an expert committee, the model for which followed Standards New Zealand practice. He said that the minutes of the expert committee meetings do not reflect the discussion of the committee but primarily record the decisions that were made, and that the expert committee developed the draft rules and also advised him on points raised in submissions.

Regarding the section 7(2)(c) assessment, the Surveyor-General said that costs and benefits were matters addressed by submitters; for example, some submitters said he had gone too far in minimising compliance costs and had effectively imposed a cost on future generations. In response, some changes were made to the rules where he had been persuaded by the cost-benefit arguments; for example rule 6.2(a)(iv) was changed to expressly target parcels where the land value and intensity of use were considered to justify the compliance costs. However, in some cases he was not persuaded to make changes.

We were informed that the expert committee included representatives of the Crown, the Law Society, territorial authorities and cadastral surveyors, including two experienced private practitioners who had been recommended by the New Zealand Institute of Surveyors.

⁴ Appendix D contains the relevant rules from the Rules for Cadastral Survey 2010.

Our view

We are of the view that there is no good reason for concluding that the Surveyor-General did not consider the matters he is required have regard to under section 7(2)(c) and section 49(3) of the Act.

However, we also note the lack of documentary evidence that he considered these matters and find this surprising given the nature of them. We also note the heavy reliance of the Surveyor-General on the work of the expert committee. We remind him of the important principle that the lawful exercise of power requires that it be exercised by the authority upon whom it is conferred. A decision-maker can consult or seek advice but may not surrender a discretion.

We recommend that in any future rule-making process serious consideration be given to documenting more clearly and comprehensively decisions made applying statutory criteria such as those in section 7(2)(c) and section 49(3).

3 Compliance with particular consultation procedure

Complainant's view

The Institute says that the Surveyor-General failed to consult adequately with it as required by section 49(2)(b) of the Act. There was some consultation, but the Institute considers that a single round of consultation was not enough. A draft set of rules had been released for comment. The Institute made submissions but it argued that insufficient information was provided at the time to allow the parties to understand each other, and that consultation means the party being consulted must be able to understand the document and must be able to offer meaningful comment and advice on it.

In February 2008, the Institute advised the Surveyor-General in its written submissions on the draft rules that no meaningful comment could be made on some of the draft rules and detailed comment would need to await the redrafting of those clauses. It also argued that changes which were made to the rules following the single round of consultation ought to have been consulted about separately; for example rule 6.2(a)(iv) was never the subject of any consultation document.

The Institute advised the Surveyor-General at a meeting on 12 March 2010 that it did not consider that discussion constituted consultation. It also argued that correspondence between the parties did not constitute consultation and that the cost of taking part in the expert committee was so prohibitive that it had not done so but had chosen rather to provide advice through the consultation process. The Institute had advised the Surveyor-General that it would take this approach.

The Surveyor-General's view

The Surveyor-General told us that the Act requires only one round of consultation, and that this consultation took place over a period of four months. Further, a detailed consultation booklet was released in 2007, and a summary of submissions was made available to all submitters.

The Surveyor-General also told us that much information was exchanged with submitters, particularly the Institute, to clarify points and that in 2008 he attended the Institute's annual general meeting to discuss some of the preliminary decisions that had been made. He also pointed out that the Institute had been invited to participate in the expert committee, and that the expert committee provided additional consultation with stakeholders, but this was not part of the section 49(2)(b) process.

Our view

In our view, the consultation undertaken by the Surveyor-General was adequate in this case.

However, we believe the Institute is justifiably concerned that the initial consultation document did not contain sufficient detail for it to respond meaningfully to some matters, and there appears to have been no formal follow-up about its stated concerns. Further, we do not accept that the Act requires only one round of consultation as argued by the Surveyor-General.

In *Wellington International Airport v Air New Zealand* [1993] 1 NZLR 671, 676 the Court of Appeal said that for consultation to be meaningful, there must be made available to the other party sufficient information to enable it to be adequately informed to make intelligent and useful responses. In that case the consultation process involved the provision of an initial package of information, a meeting, the provision of further information, and a second meeting at which all those who wanted to speak were given the opportunity to do so. The decision-maker then considered all the information and announced a decision. We note that the case involved a less complex decision than involved in this complaint.

However, a similar process was undertaken regarding the rules. The Institute was provided with a draft set of rules. It made a submission about the draft. Following the formal submission process there was correspondence between the Institute and LINZ and at least two meetings with the Surveyor-General.

We do not accept the Institute's view that the correspondence and meetings following the formal submission process were not part of the consultation process. We also note the *Wellington Airport* case states that consultation cannot be equated with negotiation. Nevertheless, we have sympathy for the point made by the Institute that it could not participate in the expert committee because of the costs involved. The Surveyor-General relied heavily on the work of a committee which lacked representation of at least one party the Act required him to consult when making the rules.

We recommend that serious consideration be given in any future consultation process to ensuring that any party who has a statutory right to be consulted is given an opportunity to make meaningful comment on a final draft of such rules.

4 Conclusions

As a result of our consideration of the matters raised in this complaint, we have concluded that

- Rules 4.1(a), 6.2(a)(iv), and 6.4 of the Rules for Cadastral Survey 2010 do not appear to make some unusual or unexpected use of the powers conferred by the Cadastral Survey Act 2002.
- The Rules for Cadastral Survey 2010 were made in compliance with the particular consultation procedure prescribed by the Cadastral Survey Act 2002.

Appendix A

Committee members

Charles Chauvel (Chairperson)

Amy Adams

Jacinda Ardern (until 22 July 2010)

Aaron Gilmore

Chris Hipkins (from 22 July 2010)

Rahui Katene

Tim Macindoe

Moana Mackey

Appendix B

Relevant Standing Orders

309 Functions of Regulations Review Committee

- (1) The Regulations Review Committee examines all regulations.
- (2) A Minister may refer draft regulations to the committee for consideration and the committee may report on the draft regulations to the Minister.
- (3) In respect of a bill before another committee, the committee may consider—
 - (a) any regulation-making power,
 - (b) any provision that contains a delegated power to make instruments of a legislative character, and
 - (c) any matter relating to regulations,—and report on it to the committee that is considering the bill.
- (4) The committee may consider any matter relating to regulations and report on it to the House.

310 Drawing attention to a regulation

- (1) In examining a regulation, the committee considers whether it ought to be drawn to the special attention of the House on one or more of the grounds set out in paragraph (2).
- (2) The grounds are, that the regulation—
 - (a) is not in accordance with the general objects and intentions of the statute under which it is made:
 - (b) trespasses unduly on personal rights and liberties:
 - (c) appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made:
 - (d) unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal:
 - (e) excludes the jurisdiction of the courts without explicit authorisation in the enabling statute:

- (f) contains matter more appropriate for parliamentary enactment:
- (g) is retrospective where this is not expressly authorised by the empowering statute:
- (h) was not made in compliance with particular notice and consultation procedures prescribed by statute:
- (i) for any other reason concerning its form or purport, calls for elucidation.

311 Procedure where complaint made concerning regulation

- (1) Where a complaint is made to the committee or to the chairperson of the committee by a person or organisation aggrieved at the operation of a regulation, the complaint must be placed before the committee at its next meeting for the committee to consider whether, on the face of it, the complaint relates to one of the grounds on which the committee may draw a regulation to the special attention of the House.
- (2) The person or organisation making the complaint is given an opportunity to address the committee on the regulation unless the committee agrees by unanimous resolution not to proceed with the complaint.

Appendix C

Relevant legislation

7 Functions and duties of Surveyor-General

- (1) The functions and duties of the Surveyor-General are—
 - (a) to maintain a national geodetic system:
 - (b) to maintain a national survey control system:
 - (c) to determine how the spatial extent (including boundaries) of interests under a tenure system must be defined and described, by setting standards under section 49:
 - (d) to advise the Board of any significant failures by cadastral surveyors to comply with the standards referred to in paragraph (c):
 - (e) to set standards for integrating new cadastral surveys into the cadastre by the chief executive:
 - (f) to set standards for the structure, storage, and provision of cadastral survey data by the chief executive:
 - (g) to set standards for determining when cadastral survey datasets may be used to define interests under tenure systems:
 - (h) to provide advice to agencies or officers responsible under any enactment for tenure systems on matters relating to the spatial definition of interests under those systems:
 - (i) to undertake research and liaise with persons and organisations for the purposes of his or her functions:
 - (j) to audit compliance by cadastral surveyors with the standards referred to in paragraph (c):
 - (k) to audit the exercise of the chief executive's functions under section 9(a), (d), and (e):
 - (l) to perform any other functions conferred on him or her by this Act, any other enactment, or the Minister.
- (2) In exercising his or her functions, the Surveyor-General must have regard to—
 - (a) the risks to the Crown and owners of interests in land of inaccuracies in cadastral surveys; and

- (b) the efficiency and effectiveness of measures to manage risks to the accuracy of cadastral surveys; and
- (c) the efficiency with which the costs and benefits of those measures will be allocated among the Crown, cadastral surveyors, current and future owners of land, and other parties; and
- (d) the use of cadastral survey data for purposes other than cadastral surveys.

49 Surveyor-General may make rules about conduct of cadastral surveying

- (1) The Surveyor-General may, by notice in the Gazette, make rules specifying—
 - (a) standards for the conduct of cadastral surveys (including the use of survey marks):
 - (b) standards for cadastral survey datasets.
- (2) Before making any rules under this section, the Surveyor-General must consult—
 - (a) the Board in relation to rules that have implications for the standards set by the Board under section 11(1)(d); and
 - (b) the body or bodies representing cadastral surveyors; and
 - (c) if the standards will affect a tenure system, the agency or officer responsible for the tenure system.
- (3) Before making rules under this section, the Surveyor-General must have regard to the following matters:
 - (a) the extent to which the proposed standards will promote the purpose of any tenure system:
 - (b) the costs and benefits of consistency in standards relating to more than 1 tenure system:
 - (c) the costs and benefits of maintaining the accuracy of the cadastre:
 - (d) the costs involved in cadastral surveys and cadastral survey datasets complying with the proposed standards:
 - (e) maintaining public confidence in the cadastre.
- (4) Rules made under this section—
 - (a) apply subject to regulations made under this Part; and
 - (b) are regulations for the purposes of the Regulations (Disallowance) Act 1989.
- (5) The Surveyor-General must—

- (a) notify rules made under this section in a publication of a body referred to in subsection (2)(b); and
- (b) supply, on request for a reasonable fee, a copy of rules made under this section.

Appendix D

Relevant rules

4.1 Horizontal datum - orientation

- (a) Every bearing in a cadastral survey that defines or marks a new primary parcel boundary point must be oriented in terms of an official geodetic projection applicable to the area.
- (b) The requirement in (a) does not apply if the survey does not make a new field measurement.
- (c) Every bearing in a cadastral survey must be expressed in terms of the same horizontal projection.
- (d) The requirement in (c) does not apply to magnetic bearings for boundaries that are accepted in terms of rule 6.3(a)(iv).

6.2 Boundaries to be defined by survey

- (a) Unless permitted to be accepted by rule 6.3, the following boundaries or boundary points must be defined by survey:
 - (i) a new water boundary or irregular boundary,
 - (ii) a new boundary point, including the terminal point of an arc boundary,
 - (iii) an existing irregular boundary that has been converted into one or more right-line boundaries,
 - (iv) an existing class A boundary or boundary point on a primary parcel that is less than 0.4 ha, except where all that parcel's boundaries are primary parcel boundaries defined in approved CSDs and are right lines or arcs, and all the boundary points meet the accuracy standards in rule 3.3.1(a)(ii),
 - (v) an existing boundary point that is being marked,
 - (vi) a boundary or boundary point that is subject to conflict, unless it is a class C boundary in terms of rule 3.2.3,
 - (vii) a boundary where its extent and location as defined in an approved CSD are insufficient for the determination of its compliance with the applicable accuracy standard,
 - (viii) an existing boundary point of a parcel where its limitation as to parcels is being uplifted,

- (ix) an existing boundary point of a parcel subject to a claim for adverse possession,
- (x) an existing boundary point of a parcel where the interim nature of a Hawke's Bay interim title is being removed, and
- (xi) a point that is on the boundary of a parcel which was created on a CSD previously approved under LINZS10000: Interim standard for computed cadastral survey datasets for Māori freehold land.

(b) Boundaries and boundary points not specified in (a) may also be defined by survey.

6.4 Boundaries defined by adoption

A boundary or boundary point that is not defined by survey or accepted must be defined by adoption

Appendix E

Corrected transcript of hearing of evidence 20 October 2010

Members

Tim Macindoe (Deputy Chairperson)
 Shane Ardern
 Aaron Gilmore
 Chris Hipkins

Witnesses

Bruce Speirs, Secretary, Institute of Cadastral Surveying Inc.
 Simon Jenkin, President, Institute of Cadastral Surveying Inc.
 Don Grant, Surveyor-General, Land Information New Zealand (LINZ)
 David Crawford, General Manager Policy and Regulatory Frameworks, Land Information New Zealand (LINZ)
 James Mowat, Manager Regulatory Frameworks and Processes, Land Information New Zealand (LINZ)

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| Macindoe | Welcome, ladies and gentlemen. My name is Tim Macindoe. I am the deputy chair, and acting chairperson today, of the Regulations Review Committee. I have an apology from Charles Chauvel, the chairman, who is ill. Welcome to you all. <i>[Introductions]</i> I think you have been allocated 15 minutes for the opening gambit. It's up to you whether or not you wish to take the full time just to summarise and present to us, or whether you would like to make a shorter summary of your submission and allow more time for questions. We will try to keep to the times, which means we will be going to about 10 minutes past 4, and then we'll wind up and invite the other party. |
| Jenkin | My plan is to read for approximately 5 or 6 minutes, then take any questions. |
| Macindoe | Sounds good. Great. |
| Jenkin | In summary, Bruce Speirs, the secretary of the Institute of Cadastral Surveying .wrote to the Regulations Review Committee and the committee has determined that core parts of the complaint that we submitted in our letter dated 6 May 2010 may infringe Standing Order 310(2). These are set out in its letter to the institute of 4 June 2010. The CEO of Land Information New Zealand made a response to those four allegations by letter dated 16 July 2010, and the survey institute subsequently offered comment on that response in our letter of 6 October 2010. The Land Information New Zealand response was unable to offer the Regulations Review Committee any evidence to rebut the four allegations set out in the |

committee's letter to the institute dated 4 June 2010. The conclusion of the institute to the Land Information New Zealand response dated 16 July is set out in paragraphs 34 to 36 of the institute's comments dated 6 October 2010.

These read: "LINZ has been unable to provide any evidence that the Surveyor-General complied with the requirements of section 7(2)(c) of the Act in promulgating the Rules for Cadastral Survey 2010." On the second item: "LINZ has been unable to provide any evidence that the Surveyor-General complied with the requirements of section 49(3)(a) to 49(3)(d) of the Act in promulgating the Rules for Cadastral Survey 2010." The third item: "The Surveyor-General in conducting a single section 49(2)(b) consultation event ignored the concerns of the institute, highlighted in paragraph 31 above. These concerns should have been treated as either a request for additional information or, at the very least, alerted him to the fact that serious confusion on the content of a significant portion of the draft rules existed for at least one party in the section 49(2)(b) consultation process. The institute therefore believes that in terms of New Zealand case law, the Surveyor-General did not comply with the section 49(2)(b) consultation requirements of the Act."

The conclusion: the Institute of Cadastral Surveying Inc. is represented here today to further assist this committee to determine if Standing Order 310(2) has been infringed in promulgation of the Rules of Cadastral Survey 2010. I'm open to questions.

- Gilmore I just want to get an understanding of—let's assume that this committee upholds your statement of claim. What do you think should occur?
- Jenkin Are you looking for a remedy?
- Gilmore I guess that's my fundamental point. If we look at all of the evidence that you have read, there is a fundamental problem here with surveying data points across the country in terms of accuracy, and that flows through in terms of the—LINZ have come up with a solution and you're uncomfortable with that solution. You have various reasons for that. You're also uncomfortable with the process that has got to that solution. I guess that's led to your complaint. So fundamentally you must have an alternative solution that you see may be appropriate.
- Speirs We have a two-part solution, of course. There is High Court action involved in a major section of the rules as they are promulgated. However, this committee has decided that's a policy issue, and we will have to go through the courts before we can come back to you on those matters.
- Gilmore Are you saying there is a solution that's currently being disputed before the courts?
- Speirs For one part. That doesn't affect the four issues that we've got here today. We do have a suggestion, of course. You as a committee have a raft of

options, from basically doing nothing to disallowance, of course. That's really rather an extreme measure to go to. I'm sure we all agree on that. We have a recommendation that perhaps would resolve the issues, notwithstanding that proper process wasn't followed. The recommendation that we could offer to this committee is that if the Surveyor-General was to issue four rulings in terms of section 47(5) of the Cadastral Survey Act, section 47(5) allows the Surveyor-General to lessen the requirements of the rules that have been promulgated. The first one would be that rule 3.1, table 1, item (b), of the rules as they presently stand be altered to delete the words "including adopted non-boundary mark" and the addition of an item (d) to read: "for adopted non-boundary marks." That is the first of two parts to a box. The second part: "the regulation requirements of the survey from which the adoption takes place." I doubt many of you have much knowledge of cadastral survey technical—

- Gilmore I don't want to interrupt you, but what you just said probably is Greek to most of this committee. Going back a step, LINZ has put forward a solution which they believe suits 98 percent of New Zealand—98 percent of the surveys undertaken in New Zealand.
- Speirs Of the surveys undertaken, perhaps.
- Gilmore But not 98 percent of the land area of New Zealand; 98 percent of the surveys. Your complaint basis is that you don't think it's suitable for the work that your organisation represents, and you don't think that consultation was satisfactory. So your solution is to modify the rules, which would be suitable for yourself, your members, but may not be suitable for 98 percent of the surveys undertaken in New Zealand.
- Speirs I believe it would be suitable for 100 percent of the surveys undertaken in New Zealand.
- Gilmore Right. The next issue I want to deal with is the issue of compliance costs. One of the fundamental issues is that you're against the proposal, and you believe it is around the consultation process, and one of the reasons is the cost involved. You referred to an \$80,000 piece of equipment that is required to meet the standard as the rules have been promulgated.
- Speirs That's one method to meet them.
- Gilmore OK; sorry. The next issue to come back to is, are you saying that for 98 percent of surveys undertaken spending that money, that \$80,000, can be justified, but for 2 percent it can't?
- Jenkin I should respond to that. The current requirement under previous regulations is to, if possible, link a survey to a new datum. What's involved is that a long time ago when surveys were done, there were several different origins of surveys. Over the years that has been tried to be minimised, and ultimately the ideal would be for one origin, so everything is in terms of everything else.

- Gilmore Right.
- Jenkin What happens is that when we go out to do a survey, it might be an isolated survey, a particular survey we're doing a subdivision for, and there is a certain origin for that survey which isn't in terms of the ideal origin. So we have to do additional work to bring that into line. It doesn't affect the pegs in the ground or the land the person owns. It is a mathematical requirement. What happens is there's ways of doing that by linking to the correct origin or the updated origin, which could mean traversing, doing observations a kilometre away or 2 kilometres away, or whatever, and bringing that information to the particular survey that we're doing. The extra work to do that is of no benefit to the landowner. What we're doing is upgrading the survey data for that particular site.
- Gilmore Right. When you say there's no benefit for the landowner, are you saying there's no benefit for the landowner in some instances, or are you saying in all instances?
- Jenkin In all instances. For example, if we didn't bring that datum correction in, the land owned would be no different for that person. They still own the same piece of land between the same pegs and with the same external dimensions.
- Gilmore So your belief, from the evidence given us today, is that there are accuracy benefits that occur to a landowner of very high-value pieces of land. That's obviously very valuable bits of information. Your premise is that you don't believe that is actually of value to the landowner, this additional accuracy which imparts the additional costs, and it then flows through to "you're upset about the consultation processes."
- Jenkin There's two issues there. The extra accuracy is not the issue that I'm talking about. It's the requirement to bring a mathematical correction to a survey. The \$80,000 worth of equipment—I'm sorry to come back to that—the piece of equipment is a GPS machine for example, which you can use to set up your correct mathematical origin right at the site. You wouldn't have to go 2 kilometres away with your observations to bring some other origin through to your site. So it's an alternative—and there's different ways of bringing that correction into the site, either by observations from a known point that's correct, or a known baseline that's correct, or by setting up your own baseline at the site with the GPS. That's where the \$80,000 comes in. If you're rural, the only real way to do it is with a GPS.
- Gilmore OK. I also want to talk about the consultation process, compared with that decision which we're familiar with. I understand that your fundamental dispute is on the solution it came up with, but also the process. They are two quite separate things that it's about. We can't deal with the issue of the policy decision-making that arose from the rule book; we deal with the process and the consultation. One of the issues raised is that that consultation process—can you describe to me why you think it was

- unsatisfactory in a bit more detail? I know you touched on it. From what we've read, it seems that one of the reasons why you are uncomfortable with the consultation process is because you didn't agree with the outcome, rather than the process itself. They're two quite different things.
- Jenkin Yes, most definitely. In particular, we had an issue with the rules that relate to the identification of the cadastral survey data set. Until that is actually defined and clarified, the rules that have been promulgated do not make any sense to us. There's a consultation—
- Gilmore OK, I just want to understand what you mean by that, because you're using words that we don't understand. What you're saying is that the information when undertaking the consultation process was not correct.
- Speirs It was not sufficient for both parties to understand what the other one was talking about.
- Gilmore OK, sorry. You had a second point that you were going to say?
- Jenkin The second point is that if changes occur to a rule as a result of a consultation process, if those changes involve new items, new requirements, new tolerances, or new specifications, we believe that should be consulted on again. That should be addressed again. Otherwise there is a rule sitting in there with information or a requirement in it which has never been consulted on.
- Gilmore Finally, it seems to me your issue is not so much the process followed in the consultation, but the information provided throughout the consultation process.
- Speirs The consultation process was one event. There was only one section 49(2)(b) consultation event. While we identified in that consultation process that there was a large chunk of the rules that were not understood by one or other of the parties, there was no additional consultation from LINZ to try to clarify that.
- Macindoe Mr Speirs and Mr Jenkin, in the response we had from Land Information New Zealand they make the point—and this is the response of 16 July, which I presume you've got in front of you—that the rules that came into effect on 24 May resulted from a comprehensive review by the Surveyor-General, which took an optimal regulation approach. There were two main benefits that were identified: first, optimal regulation is intended to encourage self-regulation, and, second, the key benefit of optimal regulation is to enable cadastral surveyors to enjoy the maximum benefits provided by new technologies and new initiatives and innovation that will reduce the costs of compliance. Do you have any comments generally on that response? The optimal regulation approach is the one that the department has adopted.
- Jenkin The last statement in there—

- Macindoe The reduced costs of compliance?
- Jenkin Yes.
- Macindoe Or prior to that?
- Jenkin No, that particular statement. My question is, what is that based on? There may well be information to support that, but we have not seen anything, and because of issues we have raised and because of the need, for example, to bring in the mathematical correction to a survey what we're seeing is that in fact the cost of compliance is increasing.
- Macindoe Well, I dare say that LINZ _____ will be happy to address that issue as to why they made that claim. Further on, on page 3 of their response to the grounds for the complaint, they made the point that the Surveyor-General established and relied heavily upon the advice and involvement of an expert committee, and that that expert committee included representatives from the Crown; cadastral surveyors representing not only themselves but also their clients, as owners of land; the Law Society, whose members act for owners of land; and a representative of the territorial authorities. Just as a general point, and to members of this committee who have no prior knowledge or professional experience of these matters, that would appear to be a reasonably balanced and responsible professional group of advisers. Would you like to comment on that? I'll not be judging you. If I could just make this point: that seemed a reasonable basis for the establishment of an expert committee.
- Speirs I could reply to that one. To my knowledge, not one member of that committee, at the time of its appointment, had any actual knowledge of lodging cadastral survey data sets into the *Landonline* system—not one of them. So they had no practical experience of *Landonline*, and they had limited recent cadastral experience. Very few of those people have recently undertaken cadastral surveys.
- Macindoe Did your institute express any concerns to LINZ at the time that the expert committee was being recruited? Were you aware of the fact that they were being recruited and would be relied upon for their advice?
- Speirs We were advised that the expert committee was to offer advice, and that it was not part of the section 49(2) consultation process. LINZ requested us to nominate a person to attend those. At the time it was believed it was going to be four 2-day meetings, and quite honestly our organisation could not withstand the financial imposition of having one of our members attend 8 days of expert advice, including accommodation. We advised LINZ that we weren't prepared to subsidise them to the tune of \$15,000 to \$20,000 for that advice, and we would retain our expertise for the section 49(2) consultation process.
- Macindoe Right; thank you. Are there any other questions from members at this point? Are there any concluding remarks you would like to make? Thank

you for that, Mr Speirs and Mr Jenkin. I now invite the representatives of Land Information New Zealand to come to the table. [*Introductions*]

Crawford

I joined LINZ as a department part-way through the process of the development of these rules, and I came to LINZ with over 25 years' experience in the development of regulatory and policy, and also operational, functions across Government, as well as in the private sector. I've had an opportunity to review the process, and I'm now going to talk to some of the key elements of the concerns that they have raised.

One of these seems to be around the process, and has natural justice been done in terms of the development of the rules? The institute of cadastral surveyors talk about a section 49(2)(b) consultation process, so this is the minimum requirement in statute for the Surveyor-General and the department to consult with a listed number of parties that are affected by the rules. I point out that these are minimum requirements, and in the way in which this process was set out there was an expert committee established before to assist with the development of the rules. Then the rules were sent out to the parties, the section 49(2)(b) parties as well as other interested parties. That met the minimum statutory consultation requirements from a legal perspective. But in the department's interests we weren't interested in doing just that; we also wanted to be able to add some extra steps. The expert committee was retained, post that, to also help provide advice to the Surveyor-General around some of the points that have been raised.

So our conclusion is that in fact a Surveyor-General did meet the requirements for consultation on the rules, and in particular section 49(2)(b). That requirement only requires one round of consultation, and the consultation means that we went out with some end points, but we were not foreclosed in our minds. We did change the rules after that consultation, but our understanding is there was no requirement to go back and have further rounds of consultation, because that becomes a never-ending process of negotiation about "We don't agree. Therefore we want you to keep talking to us."

Notwithstanding that, the Surveyor-General did consult bodies. We did provide additional information to the ICS. There was a lot of correspondence, and I have been through the file. There has been a tremendous amount of correspondence where we have provided further advice. While they said, unhelpfully from our perspective, this is not section 49(2)(b), we did have that 49(2)(b) consultation upfront. We did not have to come back many times, but we did seek further advice. In particular, I would just like the Surveyor-General to outline one aspect of that before I go on to the other areas of their submission.

Grant

Yes, I'd just like to provide a general overview of how that consultation worked. The proposed rules were sent out for consultation in 2007, including to the parties that are specified in section 49(2)(b). They were deliberately designed to be the minimum level necessary to adequately

manage the risks to the cadastre from uncertainty in property boundaries, which affect property rights for current and future landowners. In many cases, this resulted in a considerable reduction in the requirements and prescription in the 2007 proposals, when these are compared with the previous 2002 rules. The overwhelming response that came back from that consultation, especially from surveyors but also from the legal profession and from terrestrial authorities, was that the proposed rules did not adequately account for the benefits to the current and future landowners or surveyors acting on their behalf.

The surveyors believe that significant costs would be passed on to future landowners as a result of the general reduction in the extent of regulations that we proposed in those 2007 regulations. There was a strong desire by many submitters to reintroduce many of the requirements where such relaxation had been proposed. In some cases I was persuaded by the cost-benefit arguments in those submissions, and therefore I partially reintroduced some of the existing requirements or something similar to them. In other cases, I was not persuaded that the requested additional regulation was justified by the benefits. In those cases the proposed relaxations that came out of the consultation process were wholly or partially retained.

Crawford There are a couple of interesting points within the approach here. One of those is that we started out from the position of as little regulation as we could, but as much as is necessary. On that point, the Surveyor-General talked about how through that consultation process he added some bits in. This brings me to the second point around the cost and the cost-benefit. One of the reasons we established the expert committee and invited the institute to participate—and we understand some of the cost issues for them with that, but nevertheless it still enabled us to get a real sense of that—was to take a lot of these proposed changes through the expert committee, including their assessment of what the costs would be associated with that. So there was a considerable amount of discussion, consultation, and analysis of what these changes meant, particularly where they were being strengthened as a consequence of the submissions that we'd received.

As an example of that—we covered this is our submission, but I would just like to draw that out—rule 6.2 was originally broader in its scope of coverage and would have applied an imposed compliance cost on most surveys. However, after the consultation and advice from the expert committee, the Surveyor-General subsequently decided that in many cases the compliance cost could not be justified by the benefit, so limited the scope of the rule to medium to small urban parcels. That is a specific example around parcel size. We also considered compliance costs with some back country surveys, and that was one of the points about the geodetic network—sorry if that is Greek for you, but that is how we reference—

- Macindoe We had to look it up.
- Crawford Yeah, I've had to learn that word since I've been here, as well.
- Macindoe I'm actually glad you've said it, because we weren't even sure how to pronounce it.
- Crawford Geodesy and geodetic network, yes. They are our reference points, and it is important that every boundary that is surveyed does have a reference point in some way. What we have looked for is the most cost-effective way for current and future generations around that. The Surveyor-General had to be quite mindful of how we phrase that final rule, and he decided to delay bringing that rule fully into effect for 12 months to allow for a more even transition. One of the other areas that the ICS commented on is section 49(3). That requires the Surveyor-General to "have regard to the following matters" before making rules on the conduct of cadastral surveying. They are listed (a) to e). I will not read them out, but they it is a fairly extensive list. The Surveyor-General did, in our view, take these matters into account when making rule 4.1, which is the specific rule that they are required on, and his main way of doing that was through the expert committee.

So, again, issues had been raised through the 49(2)(b) consultation process, and he needed to get an answer. Rather than our doing it just within our department, which is quite often what happens, we think that the expert panel was a very good way of taking it out and getting some further advice without having to go through another full round of consultation. There were a number of changes that were made as a consequence of that.

Having said that—and I would like to finish by inviting further questions—on the question of remedy, no process is perfect. We have been adopting this process of as little as possible and as much as necessary, and consultation and seeking people's views. The Surveyor-General in this instance reviewed his entire set of rules, and it is always quite a big process. We are quite mindful that if it is not quite right in some areas, then there are avenues to review certain parts earlier than other parts. The ICS suggestion of rulings by the Surveyor-General can be considered. They, in our view, would be the most appropriate remedies. To do anything else is a significant task, because to implement the rules and because these surveys are lodged electronically, there is a whole set of costs and implications. In fact, we probably couldn't undo these rules without creating a bigger issue than we have. So we had to be quite mindful about how we would do things, but we are open to the Surveyor-General issuing some rulings or reviewing some rules sooner rather than would be normal in this situation.

We're happy to receive any questions, and I'd have to defer the technical answers to the technical experts.

- Macindoe Thank you, Mr Crawford. Mr Mowat, do you want to add anything at this point, or just to respond?

- Mowat Just respond as appropriate.
- Macindoe Thank you very much for your submissions.
- Gilmore The submissions that were received—and you said you received a bunch of submissions and considered them—did you go back in any process and discuss those submissions with any of the participants at all, or did a summary of submissions go back to submitters? Were there opportunities for people to put forward oral submissions or have a conversation with you outside of the written submission process, or anything like that?
- Grant There was some correspondence that continued with ICS on some of the matters that they had raised. One of those was the question of the legal definition of the content of a cadastral survey data set, and there were also questions about the relationship between the requirements in the rules and how they are actually implemented in the software of *Landonline*. There was quite a bit of correspondence backwards and forwards on that point. The summary of the submissions was made available, and the submitters were advised of the decisions that were subsequently made in response to the overall public submission process.
- Gilmore How long did the whole process take from start to finish?
- Grant The public consultation was open for, I think, 4 months from 2007 through to early 2008, then there was about another year following that to go through the results of that and finalise the rules, to make them robust in a legal sense. Then there were also some changes that had to be made to the software that LINZ uses for the submission of survey data sets, so they did not finally come into effect until 24 May this year.
- Gilmore And the complainant pointed out that one of the potential issues of the consultation was that insufficient information or incorrect information was given out as part of that consultation process. Given what you've just said, obviously some of the submitters have pointed this out and there was a whole round of contained information. Is that what you're describing you went through, or—
- Grant Sorry, I didn't quite catch—
- Crawford I can answer that question. Normally in the process, when you are consulting on any rule change or any regulation change and you get some stuff back, there is invariably some exchange of information to clarify some points. In this case, there was quite a lot. In particular, with the institute of cadastral surveyors, we have many letters on record of issues and advice that we have been going back and forth on.
- Gilmore Prior to the formal consultation process, was your feedback on information in submissions in writing?
- Crawford No.

- Grant After the consultation process, on the matters that they had raised some concerns about. I also, in 2008, went down to the AGM of the institute of cadastral surveyors and made myself available to discuss some of the preliminary decisions that had been made as a result of that consultation with their membership at the AGM.
- Gilmore One final question—it's not about complications, but actually pertaining to the decision itself. We have heard from the complainant that it is about an \$80,000 cost to surveyors. In the documents I have seen, for 98 percent of surveys undertaken that is not a big deal, but for a small number it is and there is no benefit to the potential customers, like myself. Now, what's your view on those? We've had statements made on those three aspects, significant aspects, I guess, of the actual costs, the benefit to the customer—as that's the reason why you've made these changes—and whether that was an appropriate change to make.
- Grant I'm certainly happy to answer that. The statement that the connection to the geodetic network provides no benefits to landowners I have to completely disagree with. The surveyors, when they are undertaking a survey, almost always have to relocate marks that are missing or disturbed. In order to do that, they need an accurate distance and direction from the other survey marks they do find. The standard of length that is used for surveys in New Zealand is the metre. The standard of direction is the geodetic datum. In order to have accurate connection between the marks that they find and the boundary marks that are missing and they have to relocate, they need an accurate definition of both distance and direction in order to get back there.
- There is a cost, certainly, involved in that, although the \$80,000 is a top-of-the-line cost for the highest level of GPS equipment. Cheaper equipment can be used for that, and also it is not actually necessary to use that equipment. There is a whole range of techniques that surveyors have always used to connect their surveys to the geodetic network, and 97-98 percent of surveyors use a range of techniques. Those surveyors do not all have that very expensive equipment. The equipment can also be hired, by the way, at a cost of about \$500 a day, and you can get a lot of work done in a day.
- I guess the main point I would like to make is that there is a significant benefit to future landowners in their being able to have their boundaries confidently reinstated from the marks that surveyors find. In order to do that they need accurate data, which is in terms of the national standard of length and for survey data the national standard of direction, which is the geodetic datum.
- Macindoe Thank you, Mr Grant. I wonder if I could ask a couple of questions arising from the oral submissions, and then maybe return to some of the written submissions. I apologise if I go back and forth between various grounds for the complaint. Picking up on what Mr Gilmore has just been asking—but there's been some discussion on the issue—the suggestion has been made

that contrary to what you have been either imagining or supporting would occur for those in the industry, in fact the processes adopted did not resolve the monetary compliance costs. Do you have any further comment as to whether you believe that to be accurate or inaccurate?

Grant The compliance cost question—there are some areas where the previous rules were found to be inadequately protecting the boundaries for future landowners, but in the general sense there was a strong attempt, as I outlined earlier, to minimise those compliance costs significantly. The survey profession as a whole felt that in heading in that direction I have gone too far in minimising the compliance costs, and that in doing so I had effectively imposed a cost on future generations of landowners and future generations of surveyors, which was not justified. So the compliance cost argument was certainly central to a lot of the discussions and the submissions that came from submitters.

There are areas there where surveyors may continue to work at a higher level than the rules actually require. The accuracy standards and the rules are being reduced significantly. Surveyors may continue to advise their clients to provide a better service than the minimum that the rules require. That, in my view, is not a compliance cost; that is a service cost to their clients and providing a service that they believe their clients would be best advised to take. But the accuracy standards tolerance has been increased by approximately 50 percent, so a greater range of uncertainty can be accepted because in that case I believe the previous rules were imposing unnecessarily accurate standards.

Crawford If I just might add, the expert committee was used quite a lot to discuss those points. If I might just address one aspect of that, it was claimed by the institute that there were no practising surveyors or people who had lodged. That is incorrect. On the expert panel were two people from the New Zealand Institute of Surveyors, and also Ralph Winmill, who is in a private survey firm, and who has lodged many. So there was the right information to consider the pros and cons of those matters and those issues.

Macindoe Thank you.

Arden I have a supplementary on that. As I mentioned to officials before you came into the room, I chaired the Government Administration Committee in the last Parliament, and *Landonline* was _____ there. There was discussion at that time about setting up an expert panel for advice on matters such as the one under discussion. Is that the origin of this expert panel, or how did this come about? Are we talking about the same thing?

Crawford We're talking about the same concept, but different people. The issue for the expert panel in this case was that because the Surveyor-General was reviewing all of his rules at one time—which is the practice here; it is different where I come from in transport and in energy, where little pockets were reviewed at a time—there were a lot of complexities to work through,

- and there were overs and unders and swings and roundabouts. But on balance, you need to get it into a better place. Therefore, discussing those with people who are knowledgeable was the idea behind the expert panel.
- Ardern And they are knowledgeable, and they were being chosen on that basis?
- Crawford Yes, absolutely.
- Grant For the origin of having an expert committee, another comment I would make there is that the department looked at the standard-setting process used by Standards New Zealand. When it is developing a standard, it forms an expert committee and invites appropriate industry representatives on that expert committee who are used to provide that expertise in drafting. The aim we had here was not so much from the *Landonline* process but more to adopt best standard-setting process in developing these standards. They have the power of regulation but they essentially are survey standards.
- Macindoe Thank you. Mr Ardern has largely covered the question I was going to ask, but I would like to, if I could, just come back to some specifics in relation to the query about the experience of the online data inputting issue. I think Mr Speirs told us that none of the expert committee at issue had any knowledge of that process. I'm faithfully repeating what he told us. You're disputing that? You're quite sure that there was somebody with that detailed knowledge?
- Grant I could certainly confirm that Ralph Winmill runs a service for online entry of survey data into *Landonline*. He has a private survey firm where he does that.
- Crawford So, as a matter of fact, we're saying that is incorrect.
- Macindoe Would it be fair to say that that was in part why he was seen to be a suitable representative of the industry on the expert panel?
- Crawford Yes.
- Macindoe Thank you for that. Now, are there other members who want to ask any questions in _____ of time? I just return to some of the different grounds of complaint, and I apologise, as I say, for stumbling around a bit. In the initial grounds lodged for this complaint, in the granted rules appear some unusual or unexpected uses of powers conferred by the statute under which they are made. We read that it is therefore the Surveyor-General's function to provide cadastral surveyors with geodetic orientation rather than for the Surveyor-General to require cadastral surveyors to provide the geodetic orientation, the suggestion being that it was the wrong way round, and the wrong group being asked to advise. Could I have your response to that?
- Grant Sorry, I did not quite—

- Macindoe I am referring to page 2 of the evidence of the _____ on 6 May 2010. Have you got that document? I appreciate the fact that there has been a response in writing since then, but I would just like to return to that.
- Grant That's 6 May, so page 2?
- Macindoe Page 2, right down the bottom, after listing or traversing the Surveyor-General's functions and duties, the final paragraph says it is therefore the Surveyor-General's function to provide cadastral surveyors with geodetic orientation, rather than for the Surveyor-General to require cadastral surveyors to provide him with geodetic orientation. Can I just have your comment on the suggestion that this is the wrong way round?
- Grant Certainly, it is the Surveyor-General's function to provide a geodetic network that can be used for the orientation of cadastral surveys, and we do that. We regularly go out to the survey profession and seek their views on the extension and the maintenance of that geodetic network, and we get feedback from that and extend the geodetic network as required. So to provide the fundamentals of geodetic control, to provide the network, that is definitely a Surveyor-General function. What we have here, having provided that network, is a requirement for those conducting cadastral surveys to then connect themselves to it.
- This is certainly not a new idea. If I can just quickly refer back to a review done in 1875 by a Major Palmer of the Ordnance Survey on the state of the surveys in New Zealand, he concluded that the state of surveys in New Zealand was very poor—property boundary surveys—and that all surveys should be required to be connected to the geodetic network. It was then called the trigonometric network, but it was the same thing. So 135 years ago the need for cadastral surveys to be connected to such a network was recognised, because the quality of property surveys prior to that time was in a very poor state. This is not a new idea. The previous rules and regulations have also always required that cadastral surveys be connected to the geodetic network. They previously said “where practicable”—practicable being quite a strong term meaning when reasonably possible, in effect—and the advance in technology has meant that it is almost always practicable.
- Crawford And a very good working example as of today is that as a consequence of Christchurch and the aftershocks, the geodetic network has moved. Therefore, the control of that needs to be re-established. That is a Crown obligation, through the Surveyor-General, to do. As properties are resurveyed, they can be reconnected to that. That is how we establish the certainty of property rights, which underpins our economy.
- Macindoe Thank you. If I could just refer you now to page 4 of the same document, different grounds. This time the rules contain retrospective elements where this is not expressly authorised by the current statute. Under paragraph 9, the submission was that rule 6.4 of the Surveyor-General's rules for the cadastral survey 2010 allows for the standard historic practice of

documenting existing cadastral data into a new cadastral survey—the substance; we’ve just been touching that. However, the accuracy standards set out in clause 3 of the rules do not allow for the adoption of existing cadastral data in terms of the surveyor regulations in force at the time of the survey from which the adoption has taken place. It requires these adoptions to be the accuracy standards in clause 3 of the rules. This is at odds with all previous regulations for cadastral surveys, where adoption in terms of the accuracy standards of the original regulation is allowed, and it has the effect of retrospectively voiding the accuracy standards of all survey regulations. I paraphrased a little there, but I’d like you to respond to that particular question.

Grant It certainly does not void the accuracy standards of previous survey regulations. A property that is defined in terms of the previous survey regulations continues to have the boundaries and the title as defined in the system. What this requirement does is that where a surveyor is subdividing a property and creating two new parcels—and it only applies in that case, where they are creating new parcels of land for which new titles will issue—the new titles must, in most cases, meet the accuracy standards of these rules.

However, there are circumstances built into the rules where in fact surveyors can actually adopt the existing boundaries without having to prove that they have complied with the accuracy standards. In the case of large rural subdivisions or large parcels where the risk of bringing that data forward is less, then we have allowed that that data can be brought forward as is, with its inherent errors that exist there. It is where the land density is more intense and the land value is more intense, and new titles are being created by subdivision, the expectation is that those new titles will meet the current accuracy standards.

Macindoe Thank you, sir, for that. I wonder if I could just finally refer you to page 7 and paragraph 21, where an accusation is made that your office’s representatives went to some lengths to avoid further engagement with the institute. I just ask you again to respond to that allegation.

Crawford I would like to respond to that on behalf of the Surveyor-General, because that was the very first question I asked myself when we were aware that the complaint had been made and I wanted to satisfy myself that we had been fair in the process. I can assure the committee that from my perspective in looking at this and comparing it to the legislation, the legislative requirements, and good practice across town, we’ve gone out of our way to liaise and consult with the institute. In fact, we consulted with the institute, in our view, more than we’ve consulted with other parties. That they have not necessarily seen or accepted that as consultation is not an issue for me; we’ve made the attempt.

Macindoe OK; thank you. I’m conscious of the fact that you’ve now had more than the 20 minutes, and there’s a huge amount of data here. I hope that we’ve at

least enabled both parties to bring out the main points in the submissions that you'd like to make. As I indicated at the outset, I now invite Mr Speirs and Mr Jenkin to return to the table to respond to the points that you have made, and I'd like you to wait here. If we're traversing new material, it probably would be appropriate to invite you back to the table as well, but obviously there comes a cut-off point.

Mr Speirs and Mr Jenkin, if you'd like to rejoin us. As I say, this period is specifically for you to respond to what we just heard from the three representatives of the department.

Jenkin Thank you. I've only got two or three points; that will not take very long. In terms of consultation, David stated there was only one round required. I'm not aware of where that's come from or what the basis of that is, but there's nothing in the statute that says one round of consultation is all that should be undertaken; it's until the process is satisfied or until the parties are satisfied, surely. Don raised the issue of the direction and distance for reinstating marks on properties. When a property is surveyed, whether it was surveyed in 1860 or 1960, every boundary peg is put in from a control mark. If you want to reinstate that boundary corner, that boundary peg, the best and only way to do it is to refine that control mark or other control marks from that survey. You can bring in geodetic control bearing to those old control marks, but it is still the old control mark and the old data from the original survey which are used to reinstate that peg.

You may have a mathematical swing to it eventually on a direction, but what it means is that you do not actually have to bring that mathematical correction in to reinstate a mark. In fact, you don't have to bring it into a subdivision. As long as you are in terms of the original survey that surveyed the property, then as a surveyor and for our job to our client—our onus to the client—we can guarantee that we are putting a peg in the correct place on that property by linking to the original survey marks.

Gilmore Sorry, can I just ask a question. I bought some land 5 years ago, and I had it resurveyed because we were uncertain about where it bordered a council reserve. The council reserve boundaries were 100 percent correct, but the boundaries between my property and the adjoining property were out by about a metre between the survey marks that were already there and the new survey marks. I'm just trying to comprehend what was said earlier and what was just said on the accuracy issues and the errors that can arise.

Jenkin A gross error has occurred by a previous survey or the current survey in that sort of circumstance. The geodetic mathematical correction that we're referring to as to whether it should be there or not, we're talking of a few centimetres. A metre is a gross error. Our accuracy for putting a peg in is plus or minus probably 1 or 2 centimetres. We can probably go for 4 and get away with it, but that is not how we work. So if any surveyor in the country goes to it, they should get the same result.

- Speirs And if they didn't you should go to LINZ and ask them why not.
- Gilmore No, I was happy because it worked to my advantage.
- Jenkin That really covers the points I wanted to raise in relation to the verbal evidence from LINZ.
- Macindoe Could I ask you then, just returning to one of the last comments that we heard from Mr Crawford, and that was that in his view Land Information had gone out of their way to consult with your institute and therefore rejected the grounds of your complaint that there was inadequate consultation. I invite your response to that.
- Jenkin Either it's consultation or it's correspondence in response to questions. I'll ask the secretary to make a couple of comments in a moment, but the consultation process was the consultation process. There was one hit, one option, one opportunity to respond on a consultation basis. The rest of it from then on was correspondence in relation to querying things that we didn't believe were being resolved or had been resolved as a result of consultation. That's not consultation; it's just correspondence. I'll ask Bruce to comment on whether that was fluent from LINZ's behalf or not. That is something that is maybe just a side issue, which is perhaps not worth pursuing, but I'll wait for Bruce to comment.
- Speirs In that same line, if I may continue, we made the submission in terms of section 49(2) back in January or February of 2008. The Surveyor-General said he came to our AGM and explained some of the major differences. He also said as a passing comment: "That's the end of consultation". The correspondence that has been pursued since then has been trying to get consultation. We explained that one of the parties did not understand the document at all well. I believe the institute understands it quite well.
- So the other couple of comments I have on it. Again, I also picked up that Mr Crawford mentioned that there was only ever one round of consultation envisaged in terms of section 49(2). I don't know where one round is the magic number; I honestly don't. The case law that I have consulted has nothing like that in it whatsoever.
- Gilmore Can I just tease you out on that. What is your view of adequate consultation? I mean, we deal with it quite a lot, and everyone has very different views. There is obviously the difference of opinion on that.
- Speirs Consultation means the party being consulted must be able to understand the document and must be able to offer meaningful comment and advice on that. Obviously in terms of the document we had, we could not—and we specifically said so—offer you advice on that until you had redrafted it, because it was factually incorrect in terms of how it was developed. That to me says "Hello, guys, we need to talk about this to find out what's going on."

- Macindoe In your May submission you relied on the Wellington Airport and Air New Zealand 1993 decision for its definition of consultation, and I think His Honour in that is quoted as saying “The consultation must be a reality not a charade”. Are you suggesting that in this case the consultation was a charade?
- Speirs No. I am suggesting that the consultation only occurred on one event, and that both parties did not understand, or one of those parties did not understand, the content on which consultation was taking place.
- Macindoe So in your view it doesn’t meet the test, way down _____.
- Speirs No, it doesn’t meet any, and we did point out in our correspondence over various matters what case law has to say about consultation. We regularly have to send that advice to LINZ.
- Macindoe Thank you. You’ll recall that I invited the general manager, Mr Crawford, to comment in particular on the make-up of the expert committee, and they specifically refuted the suggestion that had been made in your earlier submission that there was nobody on the expert committee who had expert knowledge of the online data entry process. You’d have heard that rejection of your argument?
- Speirs I withdraw that they didn’t have the data entry, because of course Ralph Winmill does have that experience.
- Macindoe Do you still have concern, though? Or does that change your view on that?
- Speirs Ralph Winmill doesn’t, as far I understand it, conduct cadastral surveys. He lodges on behalf of other surveyors, so he does their data entry, basically. But he doesn’t actually do fieldwork or compile data sets.
- Macindoe So you still have concerns about the overall composition of this committee?
- Speirs Yes, significant. Could I make a couple of other comments? Mr Crawford mentioned that the rulings would be the way to rectify the problem that we have with some of the rules, and that otherwise they would have to undo a considerable portion of *Landonline*, the software land log. That itself indicates that *Landonline* is driving the rules rather than the rules driving *Landonline*. The Surveyor-General mentioned that it was essential for cadastral surveys to connect to the geodetic datum. As a cadastral surveyor that has been practising in that field on a daily basis for the last 20 years, I would totally disagree with him.
- In fact, in many cases, if we use the three common datums that are available, it’s something called Old Cadastral, there’s Geodetic 1949, and Geodetic 2000. It is quite common to undertake a survey in Old Cadastral, because that is what the old work is in, and then do the mathematical adjustment to convert it to 2000 datum when you enter it into *Landonline*.

That is quite common. So I would totally refute that it is essential to connect to the geodetic datum. And that's all I've got in my notes.

Macindoe Thank you, Mr Speirs, Mr Jenkin. We probably should invite the Surveyor-General and Mr Crawford and Mr Mowat back to the table very briefly, in case they want to respond to anything of that nature, and at that time we will probably conclude this part of the hearings. So thank you again for your evidence today. We invite you just to take a seat while the representatives of Land Information come back to the table. There is no requirement that you should respond, but if there's anything specifically in the response from Mr Speirs and Mr Jenkin that you wish to comment on, please do so.

Crawford Just two very short comments. In terms of the expert panel, it's more than data entry. It does also lodge surveys, and also we had two other representatives from the New Zealand Institute of Surveyors. So I think the make-up of the panel isn't as big a problem as they made out.

Macindoe Perhaps what I meant by the opportunity to your representatives was to briefly give us a little bit of their professional experience.

Crawford Just while they're finding that, the other point I wanted to address was the issue of the section 49(2)(b) consultation. I will read out a comment here, so you've got it for your record of consideration: "In our view—

Macindoe Excuse me, Mr Hipkins, if you leave the room you deprive us of a quorum. I'm sorry. I apologise for the interruption.

Crawford "In our view the Act does not require the Surveyor-General to consult industry bodies on the revised rules or to run a second round of consultation." The Act is silent on whether you do it once or whether you do it more. In our view it says it must consult, so the minimum is you have to do it once. But it doesn't imply or even state that you have to do it more. In our view it's not reasonable for the Institute of Cadastral Surveying to assume that there would be second round of consultation, when we had advised to the contrary more than once. Notwithstanding that, the correspondence they refer to, it's a technical point as to whether it's consultation or correspondence, but because they had raised some issues we wanted to find out some more.

In my view, I think we have been correct in terms of the minimum requirements of the statutes. The substantive point is: could we do more—we did a little bit more—in the future? Yes, we could.

Macindoe Thank you.

Grant If I could just mention the other survey members, the external survey members of the panel were Barry Sayer and Ross Topham, both from a private survey firm in Wellington; Ralph Winmill, as I've mentioned, who sometimes captures survey data on behalf of other surveyors but also lodges surveys on his own behalf, and in doing so certifies that the surveys have

been done by himself or under his direction; Don McKinnon from the school of surveying, who teaches surveying to surveying students. One of the other representatives from the Institute of Surveyors, Michael Brownie, works for the Wellington City Council and does not lodge surveys, but he is a licensed cadastral surveyor.

Macindoe And Don McKinnon teaches where?

Grant It's the surveying school in Dunedin.

Macindoe And were the first two gentlemen you mentioned in a private firm in Wellington experienced members of the profession? Would they be well known and widely regarded?

Grant Yes, they were recommended by the New Zealand Institute of Surveyors to represent them on this expert committee, and they are experienced private practitioners. I cannot confirm when they last lodged a cadastral survey data set in their own name. I know Ralph Winmill certainly does.

Macindoe Thank you, gentlemen, very much. That concludes the formal hearing of evidence on the complaints, and I do want to thank both parties for your attendance here today and for your full and very helpful answers. I hope you feel you have been able to do justice to the nature of your complaint. As Mr Gilmore mentioned at the outset, it is a very technical nature, and I just remind you in closing this session that of course our focus as a committee is on technical scrutiny. We're not looking for policy issues; we are simply looking into the process that was followed. That, of course, is the general nature of the complaint. Thank you all very much. I close the formal part of the hearing, and we invite you to leave the room so that we can return to the consideration. Thank you very much.

conclusion of evidence