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THE INSTITUTION OF SURVEYORS, AUSTRALIA

22ND AUSTRALIAN SURVEY CONGRESS

UNIVERSITY CENTRE, UNIVERSITY OF TASMANIA, HOBART

25 FEBRUARY 1980, 3.00 P.M.

SURVEYING AND LAW REFORM

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission

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INTRODUCTION

A 'congress' has been defined as an event at which people gather to put up with each other who, individually, can do nothing and who collectively can agree that nothing can be done. I trust that this will not be the epitaph of this 22nd Australian Survey Congress. The Congress provides a unique opportunity for two highly talented professions; surveyors and lawyers, to get together to explore matters of mutual concern.

I agree with Mr. Robilliard's observation in his paper for the Congress that, though it is a curious fact, a great many lawyers who are continually dealing with land transfers are grossly ignorant of the simplest details of surveying.[1] Though the lawyer 'comes nearest to understanding the work' of a surveyor, he remains 'woefully ignorant' of just what is involved.

Outside the law, the public has precious little understanding of your ancient vocation. It knows nothing of the land surveys forced upon the ancient Egyptians in the 14th century before our Era, when the annual floods of the Nile

swept away the evidence of the boundaries which were so necessary for the tax gatherers seeking to fund the latest pyramid.[3] It is perfectly ignorant of the literal meaning of geometry as 'measuring the earth'. Nowadays, I fear, it does not even read Ezekial where the prophet's vision of the reconstruction of the Temple in Jerusalem begins with an account of the survey:

> And behold there was a man ... with a line of flax in his hand ... and in the man's hand a measuring reed of six cubits long by the cubit and an hand's breadth; so he measured the breadth of the building, one reed and the height, one reed. [4]

Yours is an honourable and ancient profession. Indeed, there are three only that I know that are older. The first is the Church. The second is the Law. The third, the oldest of all professions, I will not mention out of deference to the presence of His Excellency.

To the ordinary layman, the surveyor is a stange person who spends a lonely life wandering around in company with a colleague (whom he generally keeps at a distance), peering into a mysterious instrument, fussing about minute and seemingly unimportant fractions, consummating his professional passions by driving pegs into inconvenient places on the earth's surface.

The discipline of reading your Technical Papers and the opportunity which this Congress has presented, have convinced me that things are rather more complicated than this. Most important of all, I am convinced that surveyors, like lawyers, are beginning to face the tremendous challenge of living in an age of change. It is an uncomfortable time to be a surveyor or a lawyer or indeed a member of any of the recognised professions. Professionalism itself is under question. Opinion polls suggest a decline in community confidence in the professions. Our better educated and better informed fellow citizens ask whether professions represent, as claimed, a grouping of highly trained people dedicated to a higher principle than mere self-advancement or, as the critics would have it, a self-interested and highly effective group of monopolists seeking to shore up and protect themselves against technological change and rendering service to the community, as the community needs it.

One does not have to look far to find the reasons for this challenge to professionalism. National health, legal aid and growing prosperity have secured far greater access to the professions than existed in the past. So far as surveying is concerned, the growth of the national population, the development of new areas, recurring property booms and increasing mobility of our population have all led to demands which have increased the public's contact with the profession. It is fairly well known that Australia has one of the highest percentages of home ownership in the world. Approximately 68% of our population live in a home owned or being purchased by the head of household.[5] Whereas in the late 1940s the average land transfer rate was about once in every 22 years, it rose to approximately once every five years during the 1972 real estate boom and has now settled down to approximately once every seven and a half years.[6] Once every 7 1/2 years the average Australian changes his home!

To the charge that familiarity breeds contempt, Noel Coward once answered that without a certain amount of familiarity one could breed nothing. The fact remains that a better educated community in more regular contact with the professions, including surveying, is more likely to question received wisdom and to ask whether long established ways of doing things are justified and cannot be improved.

There are other reasons for the increased questioning of professionalism. It is not the purpose of this address to examine them.[7] Those who seek to defend and uphold professionalism must keep steadily in mind the professional ideal. It is as true for surveyors as for lawyers and doctors : it is to pursue excellence, service to the community, high standards of day-to-day performance and self-criticism. It is to look at proposals for change not from a purely selfish point of view, but from how change will improve the service offered by the professional to the community. I am glad to see how many of the papers, prepared for this Congress, approach the surveyor's future role from this thoroughly professional perspective.

THE LAW REFORM COMMISSION

As you have heard, I am the Chairman of the national Law Reform Commission. The Commission was established, with the support of all political parties, in 1975. It comprises full-time and and part-time Commissioners, appointed from the various States of the Commonwealth, to assist in the task of advising the Federal Attorney-General and Parliament on the review, modernisation and simplification of Federal laws in Australia.[8] Amongst the distinguished lawyers who have served as Federal Commissioners of Law Reform is the Governor-General of Australia, Sir Zelman Cowen. The Commission operates in Sydney with a research staff of 8 in addition to the Commissioners. It works upon references given to it by the Attorney-General, although it may suggest matters suitable for reference. When a new reference is received, one of the Commissioners is appointed to take charge of it. He assembles a team of cross-disciplinary expertise. Consultative papers are prepared and widely distributed. Public hearings and industry seminars are held in all States. The issues before the Commission are debated in the public media. Ultimately a report is produced to which draft legislation is attached and this must be tabled in Federal Parliament. The process is a careful one, for the purpose is to lay down fundamental changes in the law and its procedures, for the improvement of Australian society. The resources of the Commission are relatively small. At any time, the Commission may be working on eight or nine major projects. The process is not simply an academic or scholarly one. At the end of the day, the reports must go before Parliament for consideration. It is a healthy sign that several of the reports already delivered have been picked up not only by the Federal Government, to which they are addressed, but by State Governments and Parliaments. I am in the practical business of law improvement.

The procedures we adopt typify, if I can say so, a happy feature of our country. Proposals are formulated by experts: inter-disciplinary talent of the highest order which can be collected together from all parts of the country and from all relevant points of view and expertise. But is then put to the

test before the community as a whole. The method of law making we inherited from Britain was an intensely secretive, elitist method, under which the first time the community heard of a proposal for law change was when a Bill proposing change, was tabled in Parliament. Nowadays, life is often too complex for such a procedure. There are too many interest groups to be considered. There are great pressures of technological change to be taken into account. For these reasons, and also because it is right in principle to consult the community in the preparation of sensitive laws, we in the Law Reform Commission have gone out of our way to submit our proposals to the test of community opinion.

I believe that the novel feature of professionalism as we approach the 21st Century will be an increasing sensitivity to community opinion. No more can we rely on blind, unquestioning acceptance of our expert values and professional elitism. I commend to the serious study of this Congress the recommendation at the close of Mr Blume's paper, namely, that there should be an educational programme aimed at the profession and the public concerning professional liability and high professional standards within the surveying profession. Indeed I suggest that the focus might be broadened to a new emphasis upon a more general endeavour to explain for the community the social issues which are before your profession and the options that are open to you for the future directions which surveying will take. I will return to this theme.

PROJECTS OF THE LAW REFORM COMMISSION

Lands Acquisition and Compensation: First, I want to mention a number of the tasks of the Australian Law Reform Commission which are relevant to your profession. All of our References concern you as citizens. Some are of more specific concern to surveyors. I will concentrate on them.

Shortly in Federal Parliament, the Attorney-General will table the report of the Law Reform Commission on the reform of Commonwealth Lands Acquisition Law. Until the report is tabled, the precise recommendations of the Commission cannot be discussed by me. The report confronts a typical modern

problem. It seeks to resolve the conflict between rights of private property and the legitimate interests of the modern State to acquire, if necessary by compulsion, property needed for community services. It seeks to give substance to the constitutional guarantee, in Australia, that the Commonwealth may only acquire property on 'just terms'.[9] In the 19th century, when land ownership was far less common than today and compulsory acquisition for public purposes was a rare exception, evaluation of the appropriate compensation could be done by leisurely litigation. Nowadays, modern conditions require a speedier process because the role of the public sector has expanded, the numbers of acquisitions have increased and inflation requires prompt settlement. Modern conditions facilitate a speedier and less formal process by the development of the Torrens title system, computer-stored valuation records and the establishment of tribunals whose procedures are more informal than those of the courts.

Not all of the problems of lands acquisition reform are susceptible to legal fiat. In our public hearings, held throughout Australia, we heard complaints from citizens that the first knowledge they had of the acquisition of their property by the government was when they saw surveyors wandering, uninvited, over their land or saw surveyors' pegs driven into their property. Although this is atypical, apparently it does occur. The disruptive shock of compulsory government acquisition of property is not realised by those who have not been through the process. By and large the Australian's home is still his castle.

In the Commission's discussion paper[10] we suggested new pre-acquisition procedures, generally to require Government to justify its acquisition in a public way. We also proposed new procedures for negotiating compensation and fixing its value and a new rule to provide compensation to adjoining property owners, the value of whose property was diminished by Commonwealth public works. Even in advance of our report and of Federal legislation, the Northern Territory has enacted a new code based substantially on our proposals.[11]

Privacy and the Census: Our most recent report dealing with Privacy and the Census concerns surveyors in a special way. The Commission has been given a task to devise laws and procedures, within the Commonwealth's area of responsibility, that will protect individual privacy in Australia. Strange as it may seem, our legal system provides few current protections for this important human right. One of the principal concerns of the project is to devise a means that will protect 'information privacy', notably the privacy of personal data stored in computerized data banks. Our concern about this issue reflects similar concerns in most Western countries.

The one universal, compulsory and computerised personal data collection in Australia is the national census. The next census is to be conducted in 1981. Late last year, the Commission delivered a report suggesting various changes in the protections for privacy, that should be adopted by the Australian Bureau of Statistics, in the conduct of the census and in the subsequent release of the data collected.

Once collected, the personal data is swiftly translated to anonoymous, statistical form. Names and addresses are removed. The danger of disclosure of personal information in breach of the statutory guarantee of confidence, is slight. But the development of computerisation has led to increasing demands within and outside Government for access to the enormously valuable information resulting from the census. Collection districts vary in size, but average 150 to 200 households. The information supplied can be of very considerable use in planning small area community services and property development. However, the smaller the data base, the greater the risk of re-identification. The Law Reform Commission put forward procedures and requirements designed at the one time to uphold the guarantee of confidentiality and to make the best national use of the valuable data base in the possession of the Bureau of Statistics.[12] In the development of computerised data bases concerning private property, it will be important to ensure that individual privacy is respected. It is interesting to note that in the privacy legislation of Europe and North America a common principle has been adopted to

lay at rest fears of privacy invasion by the simple expedient of permitting the data subject a right of access to personal data about himself.

Class Actions: Quite a different project of the Commission relates to the subject of class actions. In Australia it is not generally possible for one person to commence proceedings on behalf of others similarly affected, seeking to recover damages arising out of a series of similar transactions. Although society has become mass produced, the law still delivers its product case by case. Aggregation of claims for damages is not generally allowed.[13] In the United States, legal procedures have been adapted to cope with multiple claims. One means adopted has been the controversial 'class actic Under class action procedures a person can organise a 'class' and bring litigation not only on his own behalf but on behalf of all persons similarly affected. Thus, if a package tour is cut short, one bold litigant may sue not only for his own loss, but for the loss of all those in the tour. The recovery is then distributed to his fellow passengers. If a defective refrigerator is put on the market, one disaffected purchaser can sue for damages on behalf of all. The aim of the procedure is to permit, in the one action, a court case to be brought which, individually might not have justified the costs of litigation but which, in aggregate, may present a very significant issue to be resolved according to law. It is also said to be a means of efficiently using court time to overcome the impediments of fear, apathy, cost and cynicism which sometimes impede citizens submitting their disputes to law.

What is the relevance of this procedure to surveyors? Your profession has moved into the consumer society. Property development on a large scale has produced surveys to match. An error in one lot can be replicated through very many. The classic case of a sub-division with rear blocks not lining up with the front blocks and with front blocks skewed to the street could produce many cases of negligent surveying advice with costly consequences.[14] Class action procedures, if adopted, would permit the consolidation of these cases in a single piece of litigation. The amounts at stake when a surveyor falls into error are generally sufficient to warrant

litigation individually. The building of homes and other developments across the true boundary line, on the faith of an erroneous survey, will usually have consequences so drastic that an individual case will be brought. But the possibility of the aggregation of such claims in a class action underlines, if this were needed, the critical importance of proper professional indemnity insurance. The expanding scope of liability for professional advice and the calls for improved procedures to permit the public to enforce its rights, make it increasingly risky for those in the business of getting professional advice to be without indemnity insurance.

Once it used to be thought that the scope of the professional's legal obligation was governed by his contract. If he did not have a contract, he owed no duty to persons relying on his advice and so could not be sued where the advice shown to be wrong.[15] This is obviously a most important issue for surveyors. Their contract may be with a property developer. Errors may not be discovered until much later when the property may have passed through one or more hands. In the old days, it could have been said that the surveyor might then be exempt, in practical terms, from liability. He had no contract with the later owner. No so today. The scope of liability for negligent advice expands with every Law Term. Decisions of the House of Lords and Privy Council, which would be followed in Australia[16], suggest that professional people today may owe duties of care not only to their immediate client but to others reasonably within their contemplation as expecting care to be shown.

One of the latest cases to reach us from England is in point. A solicitor prepared a will for a client and sent it to him by post for execution. He failed to warn him that the will should not be witnessed by the spouse of a beneficiary. When the testator signed the will, one of the witnesses was the husband of a beneficiary under it. By law, if a beneficiary or a spouse of a beneficiary witnesses a will, the gift to that beneficiary was void. The client died. The mistake was discovered. The beneficiary then claimed damages against the solicitor for negligence in respect of the loss of benefits given to her under the will. The solicitors admitted they had been negligent.

duty was owned to the testator (who was dead) and that they had not owed any duty at all to the beneficiary (who was not their client).

Sir Robert Megarry in the Chancery Division in England rejected this argument. He held that it was no longer the rule that a solicitor, negligent in his professional work, was liable only in contract. He held that he was also liable for the tort (or civil wrong) of negligence. This rendered him actionable, not only by the client with whom he had a contract but by all others to whom a duty of care should have been shown. This included any person within the solicitor's direct contemplation as one likely to be injured by failure to carry out the testator's instructions.[17] In this case the supposed beneficiary was such a person. So she recovered against the lawyer even though she was not his client.

You may think this to be a sensible conclusion. The old rule of confining liability to the immediate party was comfortable for professional people. But it ignored the realities of the wider group who rely upon professional judgment and advice. The lesson in this decision for surveyors is obvious. In a profession where a chain of events may follow an initial advice, a series of transactions may remove the surveyor from the person who ultimately loses by his error. Yet the trend of current authority in the law is plainly towards rendering professional men and women liable for those whom they may reasonably expect to rely on their advice. This principle expands the potential liability of the surveyor beyond their immediate clientele. Married to new remedies that will facilitate the aggregation of claims, it increases significantly the risk of potential liability, perhaps many years after the advice was given.[18]

I hope that these few words of mine will secure the interest of surveyors and their representative organisations in the proposals for class actions. I am sure that their reaction will not be one of self-interest alone. There are important community values at stake here. The lesson of expanding legal rights and improving legal procedures to give access to those rights is clear. It is that schemes for compulsory and universal professional indemnity for surveyors in the private

sector are an urgent necessity. This is not only to protect the surveyor from professional and financial ruin. Even more important, it is to protect the community dealing in good faith with professional advisers.

Evidence Reform: There is one last project before the Law Reform Commission that I should mention

Our most recent task is to propose reforms of the law of evidence in Federal courts in Australia. This project will require us to face up to the computerisation of information and the modifications of the rule against admitting secondhand or hearsay evidence that will be necessary if the courts of law are to receive computer printouts and other reliable (but secondary) data kept in modern form. My colleagues in the Law Reform Commission of Tasmania had to address this specific problem in a context that will be familiar to you. In criminal proceedings, every element in a charge must normally be proved by the prosecution beyond reasonable doubt. Difficulties arose in the proof of boundaries of towns, forests and other areas where proof of the place in which the offence occurred was necessary to establish the criminal offence:

> Many prosecutions failed because of the inability of the prosecutor to establish ... the precise point of commission of the alleged offence in relation to the available map or plan so as to show that it has been committed within a city or town or on Crown Land etc. 19

The judges were not prepared to extend the doctrine of 'judicial notice', that is matters that did not have to be proved beyond the most obvious and well-known places such as, say, Elizabeth Street, Hobart. Proclamations or declarations of the limits of towns in this State go back to 1866. But it is only since 1963 that plans have been registered with the Lands Department. Towns proclaimed before 1963 are described by mets and bounds and no survey plans exist. It would take years and considerable expense to provide such plans. To a charge of speeding in towns and cities, discharging of firearms within towns or cities, cutting and removing timber from Crown Land and so on, a meritless but successful defence may be raised that the prosecution has not proved the town, city or Crown Land. Obvious we must bring greater realism into the law of evidence. Other artificial defences of this kind will bring the law into contempt and

defeat the due administration of justice as Parliament intended. When we reach the point that we cannot prove the boundaries of a town and therefore cannot establish an offence of discharging a firearm within a town (even though it was discharged in the main street) realism and legal processes have parted company. The business of law reform is to bring the two back into harmony. Whilst not removing entirely the protections inherent in the hearsay rule against the admission of unreliable evidence, there is a need to simplify its operation and especially to bring it into accord with the modern technology now used to store data, including the data upon which your profession will increasingly rely.

THE COMMUNITY AND SURVEYORS

The New Technology and Common Standards: Just as the law must accommodate to the new information technology, so must surveying. The need to cope with the development of the microprocessor and to take advantage of the facilities computerization will offer are well discussed in the paper by Peter Zwart.[21] But the new technology is not simply a new gadget, provided to make the work of the surveyor (or the lawyer) easier to perform. It is vital that both of our professions should consider the impact of the new technology not only upon how we do things (for that is the easier question) but also upon what we do.

The development of computerisation makes the present shocking lack of consistent, compatible, standardised data about public services to land in Australia quite unacceptable.

The lack of common standards in recording and charting underground services provided by public utilities was perhaps understandable (or at least forgiveable) in the pre-computer age. The languid pace adopted in the move towards the development of common standards and the establishment of a land-use data bank adds to the burdens of surveyors. But more importantly, it adds to the cost of land development and to the cost of housing in our country.

In addition to the need for common standards, the need to rationalise and expedite the process of consulting various authorities is manifest. The consequence of not doing so is, from the point of view of the ordinary citizen, a significant increase in the cost of housing and other development in Australia. A Report of the Institution of Surveyors (N.S.W. Division) on the 'Information Needs of Surveyors in the 80s' recorded that the incremental cost to land development that could be attributed to development delays, as plans were put through the 'planning maze' of multiple individual authorities was something between $60 and $120 million a year in New South Wales alone. The report goes on:

> These costs are the developers' costs. As the cause has been attributed to the lack of co-ordination, unnecessary delays and "buck passing" in the public sector, there must also be a public sector overhead costs. Without any factual evidence we simply assume a one to one relationship. This therefore suggests the total overall overhead cost to land development in New South Wales could range between $120 and $240 million per annum. 22

Now, of course, some delay in securing necessary approvals and the consideration of various authorities is inherent in a society which establishes numerous independent bodies to look after particular public utilities. By the same token, in the age of computerised data banks, I have no doubt that much more expendition could be secured if only it could be agreed that a national computerised reference system should be established to enable the correlation of the information of different public authorities in a single place. A national land use data bank into which is fed the relevant data and requirements of authorities of Commonwealth, State and Local Government would not only make the work of surveyors easier. It would inevitably reduce the cost of surveying and the delay inherent in current checking procedures. Instead of following the lawyers' and surveyors' thread of Ariadne through the maze of public authorities of all levels of government (with the inevitable risks of mistake and delays involved in this), access could rapidly be had to a central land use data bank in which all the relevant information was stored.

Who doubts that we will come to this? Who doubts that in the age of computer, we will move to such an efficient, national compatible system? In Australia, with our relatively small population, scattered communities and widespread use of the Torrens system of land registration, we already start with certain advantages. Against the suggestion that a national integrated land data system should be established are the arguments of cost and the resistance of local authorities who wish to adhere to their way of doing things. To the arguments of cost, one has only to point to the true social cost to the community as a whole of the present idiosyncratic, localised collections. The community interest should override selfish regional and industry rivalries. When in Opposition, the present Federal Minister for Transport, Mr Ralph Hunt said this:

> There has been no worthwhile attempt to undertake a joint Federal/State land use survey or to develop a national land use data bank, inventory and land use strategy. ... Once a decision was made to establish a data bank, much of this information could be pooled for public use, for planning and decision-making. This is not only necessary to assist long-term land use plans ... but also for regional development and the preservation of a range of economic activities along with natural features and ecological systems. 23

The real danger we face is that individual authorities, with their different system, different codes, different standards of measurement, different specific and local interests will begin, without co-ordination, feeding into their own individual data bases, information for their own specific use. This will resist later co-ordination or prove extremely expensive to convert to a single national band use data base. The authorities which keep land inventories are extremely numerous. They include Departments of Agriculture, Fire Commissioners, specific industry marketing authorities, Electricity Commissions, gas suppliers, water and sewerage authorities, Maritime Boards, Pasture Protection Boards, Police Departments, Pollution Control bodies, Public Works and roadway authorities, County Councils and so on. What a tragedy it will be for our country if, on the brink of computerisation of the data of these various authorites they all go ahead and 'do it their way'.

I believe Mr Hunt's call for a Federal/State initiative towards a national land use data base should now be heeded. The Commonwealth has a legitimate role in this for it has its own authorities collecting land use data. I refer not only to Telcom and the Postal Commission but also to bodies such as the Australian Bureau of Statistics, the Commonwealth Electoral Commission broadcasters and so on. At a seminar held by the NSW Division of the Institution of Surveyors, one participant, a well known building corporation, referred specifically to the actions of Telecom in curling unused cable in trenches, in a way that invited disaster when subsequent access was needed to other services in the trench. In the past, public service grew like topsy. We can surely do better in the computer age. It should not depend upon the chance factor of the knowledge of the local authority employees to help surveyors and others to find their way through the 'maze of underground services'.[24]

Quite apart from the delays and costs involved in inaccurate and unreliable information about present underground services and the considerable liability for damages when those services are interrupted by accident or mistake, there is another factor. In the United States an increasing volume of materials is now being sent underground in cities and suburbs. We are entering a time when underground services in Australia can be expected to go beyond water and sewerage, gas, electricity and telecommunications links. In some parts of the United States, milk, parcels and mail, petroleum products and even corned beef are being sent by underground delivery systems.[25] The only way we can efficiently prepare for developments such as these in Australia is by the adoption of a national comprehensive grid showing all land use details. Doing this would reduce cost, the delay of consulting, individually, many relevant authorities, reduce the risk of accidental interference with ill-chartered proliferating underground services and above all prevent the development of the incompatible data bases which has already now begun.

Although the costs of such a universal and national system would be significant at the outset, the costs of not having it will be even greater in the long run. What is needed now is a catalyst that will lead to the adoption and, if necessary, the

enforcement of common standards in recording and charting public utility services for all levels of government and all utilities for subsequent inclusion in a national land use data base. This is not a selfish concern of surveyors and lawyers. It is a matter of common sense. Because Commonwealth authorities are equally involved throughout Australia, there is much to be said for Mr Hunt's Federal/State approach to the matter. It is easy to ignore a problem such as this. But if we do so, the costs to Australia will be significant. In the end somebody pays for unplanned inefficiency. I do hope that out of this Congress may emerge a plan of action to set in train the initiatives that are necessary to put an end to regional and instituional shortsightedness. After all, the Torrens system of registered land title itself was developed in Australia for much the same reason: to provide a centralised, Government-supported, accurate data base that would obviate the obscurities and uncertainties of individual Old System title by deeds. We are at an equivalent turning-point. I hope the spirit of Torrens still lives in Australia. I regret to say that I do not believe that good sense and reason will triumph in this manner by force of their own weight. I believe that the time for persuasion and professional endeavour may have passed. What is probably now needed is Commonwealth and State compatible legislati to ensure the adoption of the steps necessary towards a universal and national land use data bank. Otherwise, every authority, big and small, Federal, State and local,service and commercial, will persist with its own system. Each will continue to lay down its own services, individually recorded. Each will use its own scales and maps and record differing data completely independent of the others. A recent seminar was told how Telecom place metric information on imperial sheets with consequences for confusion that are not in the least surprising.[26]

The Role of Surveyors: All of this affects the surveyor because, of all the field-oriented professions, it is his report which details current land use, land improvements and other factors affecting the occupation of land. The present *ad hoc* methods of recording separately the data of individual public authorities is inefficient, unplanned and, I say, unprofessional. But in a sense, the development of a rationalised system of collecting data on land use is incidental to the very future role of the surveyor himself.

Much more fundamental questions are now being posed for your profession. Some of these are outlined in Mr Bullock's paper for this Congress on the Legal Implications of a Co-ordinate Register.[27]

Just as there are calls for accurate and universal registers of land use by public authorities and private owners, there are now calls for the universal registration of land surveys. The approach is different, varying from the proposal that strict mathematical determinates should define the boundaries between property to the proposal that co-ordinates will only be considered where available physical evidence fails to yield a satisfactory redefinition of a lost boundary.[28] The arguments for and against the two systems of reform are rehearsed in Mr Bullock's paper. But he then goes on to pose even more critical questions. These are, I suggest, the questions which many laymen would ask this Congress to answer. The most fundamental of them touches the whole methodology and purpose of your profession. It asks whether, from the point of view of the general community, your concern with enormous precision in the fixing of normal boundaries is shared by the community and is worth the cost it pays for it. Mr Bullock cites J.K. Barrie when he says:

> "... In any decision to purchase property, precise position and dimensions of parcel boundaries probably occupy a very low priority in the mind of the prospective purchaser," and even lower priority to those living in quiet enjoyment of their properties, particularly in urban areas. Perhaps it is only surveyors and registry officials who see any value in continuing the precise determination of boundary positions. 29

Mr Bullock suggests that the incorporation of mathematically precise co-ordinates into the framework of conventional boundary definition practice will be the most acceptable approach to future surveying. He points to the suggestion that a large scale map, continually up-dated and depicting existing fences, houses and other structures would provide adequate means of defining boundaries in the vast majority of cases. Under this system, the mathematically precise position of the boundary is not determined. A system very similar to it is as you would know used in the United

...ngdom. It is said to offer the advantages of economy and understandability to the layman. Mr. Bullock acknowledges that having functioned for so long, without the assistance of comprehensive, integrated, large-scale mapping systems, the surveying profession of Australia has become accustomed to thinkin of its role purely in terms of highly precise numerical survey methods. The development of aerial mapping, graphical plotting, digital data acquisition processes, photo interpretation, satellit positioning systems, laser beam technology and the advent of computerised, integrated data systems, the growing sensitivity of the consuming public and the cost/benefit analysis that must always be done upon every professional activity now pose for surveyors new questions.

If I can say so, Mr Bullock's paper poses the question for you that laymen would ask you if they sat down with you at this conference. Laymen would ask whether you can justify your 'obsession' with such precision. Disputes about precision, although they do occur, are most infrquent. Laymen would ask whether the cost of such precision, which must be borne when new areas are opened up, when a survey is obtained for the purchase of a home, is really necessary, given that most neighbours in Australia are friends and that even if they are not, they would rarely go to court over a disputed centimetre or two. Laymen would acknowledge that boundaries must be fixed with care but question, I suspect, whether the highly labour-intensive expertise of infinitesimal accuracy is as important to the community of land owners as its cost. I suspect that many laymen would feel sympathy with the suggestion of a graphical approach on large scale maps which can be available to resolve the occasional disputes that arise.

Obviously, these are fundamental questions. They touch the whole purpose of your profession and the direction which its future activites will take. It is the mark of professionalism that you should approach such questions in an unselfish spirit and with an open mind, guided ultimately by the principle of community service. It is reassuring as an outsider to come to this Congress and to see that such fundamental questions are being posed. I am sure they will generate much heat. I hope that there may also be light.

Franz Kafka, whose novels warn us against the oppressive state of excessive regimentation and the tyranny of petty bureaucrats is gloomy about the future of your profession. In his novel, The Castle, he has one character say:

> You have been taken on as a land surveyor, as you say, but, unfortunately, we have no need of a land surveyor. There wouldn't be the least use for one here. The frontiers of our little State are marked out and all officially recorded. 30

Fortunately, Kafka's oppressive little State is not in sight. In our continental country, the prospects of development, of changing private ownership of land, of high levels of home ownership and constant changes of use make Kafka's nightmare seem remote. What is not remote are the changes that will come upon your profession, as upon mine, by the dual impact of the forces of science and technology, on the one hand, and of changing social and community values, on the other. The papers for your Congress tackle these challenges bravely. If you can address them in the next few days, constantly remembering that we are but 19 years from a new Century, I am sure that not only will the surveying profession be enriched by your deliberations, but our country, too, will be the beneficiary. Times are changing for lawyers and surveyors. My hope for this Congress is that we both will both prove equal to the challenge of change.

FOOTNOTES

1. W.G. Robillard, 'The Legal Dimension of Surveying', paper prepared for the 22nd Australian Survey Congress, Surveying and the Law, mimeo 4.4.

2. ibid, 4.5.

3. The Council of the Institution of Surveyors (Australia), 'The Profession of Surveying in Australia', 1974, 3.

4. Ezekial XL, 3.

5. The Institution of Surveyors, Australia (N.S.W. Division) Ad Hoc Committee investigating Information Needs of Surveyors in the Eighties, Second Major Report, (May 1977) 18-19.

6. ibid.

7. M.D. Kirby, 'The Decline of Professionalism?', Address to the Royal Melbourne Institute of Technology, 31 October 1979, mimeo.

8. Law Reform Commission Act 1973 (Cwlth), s.6(1).

9. Australian Constitution, s.51(xxi).

10. The Law Reform Commission (Aust.), 'Lands Acquisition Law: Reform Proposals', Discussion Paper No.5 (1978). See forthcoming ibid, Lands Acquisition and Compensation. ALRC 14 (1980).

11. Lands Acquisition Act 1978 (N.T.).

12. The Law Reform Commission (Aust.), 'Privacy and the Census', ALRC 12 (1979), 35.

13. See the Law Reform Commission (Aust.), 'Access to the Courts - II Class Actions', Discusion Paper No.11 (1979), 18. See esp. Markt and Co. Ltd. v. Knight Steamship Co. Limited [1910] 2 KB 1021.

14. This classic case is given in M. Gill and K. Blume, 'Surveyors and Their Professional Liability: A Manual of Lost Prevention' (1978), 50-51.

15. Robertson v. Flemming (1861) 4 Macq. 167, H.L.(Sc); Groom v. Crocker [1939] 1 KB 194.

16. Hedley Byrne and Co. Ltd. v. Heller and Partners Ltd. [1964] AC 465; Evatt v. Mutual Life and Citizens' Assurance Co. Ltd. (1970) 42 ALJR 13.

17. Ross v. Cauters [1979] 3 WLR 605. For a similar decision in Canada see Whittingham v. Crease and Company [1978] 5 WWR 45 (Aikens J.).

18. As to the application of time limits for the bringing of actions, see Gill and Blume, 14 and Dutton v. Bognor Regis Urban District Council [1972] 1 QB 373.

19. Law Reform Commission (Tasmania), Report on Proof of Boundaries (1976), 4.

20. ibid, 5.

21. T. Zwart, 'On the Evolution of the Organisation of Surveying' in papers for the 22nd Annual Survey Congress, op cit n.1.

22. 'Information Needs of Surveyors in the Eighties', op cit n.5, 1-4.

23. R.J. Hunt, 'Rural Retreats' (July 1975), Vol.2, No.1 'Community'.

24. J.C. Wiggins (Botany Municipal Council) cited in the Institution of Surveyors, Australia (N.S.W. Division), Report on Seminar 'The Need for Common Standards in the Recording and Charting of Underground Services (1977), 7.

25. ibid, 8.

26. ibid, 9, remark attributed to Mr B. Freeman (Telecom).

27. K. Bullock, 'Legal Implications of a Co-ordinate Register' in papers for the 22nd Australian Survey Congress, op cit in 1, Paper No.3.

28. ibid, 4.

29. ibid, 7, citing J.K. Barrie, 'Land Registration and Boundary Surveys', The Australian Surveyor, Vol.28, No.5 (March 1977), 257.

30. F. Kafka. 'The Castle', Ch.5.