

SURVEYING

VOLUME 4, ISSUE 6, JUNE 1995

FROM THE EDITOR

In one of the more obscure recesses of memory of childhood readings, I recall a remarkable book (written, indeed, by a truly remarkable man) entitled "Cheaper by the Dozen" by Frank Bunker Gilbreth. It is not often (perhaps it should be more so) that I commend American writing, but that book should be compulsory reading. Especially, it should be on the BS Division reading list. When FB Gilbreth said "Not of General Interest" to his family (of twelve, hence the title) it meant "no more discussion." When the Hong Kong press say "Not of General Interest," it would be prudent to assume that they mean much the same.

As I was pondering a text for this month's sermon (on the very day) my eye was caught by an "announcement" in the SCMP by the Chairman of BSD, HKIS. You will, I am sure, be aware that an "announcement" in the press is a simple euphemism for paid advertising space; material that the editorial staff thought "Not of General Interest," so far as printing it free of charge goes.

What happened, it seems, was that the Buildings Department Structural Engineers' with respect to demolition, claimed "special" expertise to the exclusion of Building Surveyors, in site monitoring of demolition. Hence, Structural Engineers consider it important that a new D1 post in the proposed Site Monitoring section in the Buildings Department should only be filled by a qualified Engineer. To quote one Ms Rice-Davies, they would, wouldn't they.

This facile claim had not escaped the attention of the Executive, and a sensible, reasoned, response was despatched to Director of Buildings. That is what committees, executives, and especially Directors of Professional Practice are there for. The vast majority of Government officers of Direc-

torate level are far more likely to be impressed by quiet, stable, professionalism than by somewhat prejudiced public remarks from someone who, by professional training, should know better.

The press picked up the Engineers' submission but, apparently, were not keen on printing the Building Surveyors' response. Reading it, one might not be too surprised. The Chairman (of BSD) is very much discontented with the Engineer's comments. The role of the Building Surveyor (according to the "announcement") is confirmed by the government itself with its AP designation who has a statutory duty of care.

I do not know what the announcement means, apart from the fact that some Building Surveyors are discontented because some Engineers do not respect their expertise. The English is bad enough for me to refuse to publish it in this modest journal. But I do know that, as a member of the public, I am left cold by silly squabbings of professionals. It can, at least, be said for the Engineers that they were manifestly and publicly a pressure group; the Chairman of the Buildings Department Structural Engineers Association made the comments, not the HKIE. Not so the Surveyors; the paid announcement - paid for with, I presume, Divisional slush funds - was from the Chairman, BSD, Hong Kong Institute of Surveyors. If not from Divisional funds, I would be most interested to know what committee approved this announcement.

FB Gilbreth was an engineer, albeit a work study, not structural, engineer. He knew three things the BS Division should realise: He knew the value of amicable cooperation between different disciplines; he knew that the fact the other guy is wrong does not make you right; and above all, he knew what was Not of General Interest.

Hong Kong Institute of Surveyors
President : Michael Mann, FRICS,
FHKIS

Royal Institution of Chartered Surveyors
Hong Kong Branch
Chairman : Michael Mann, FRICS,
FHKIS

SURVEYING is the monthly newsletter of the Hong Kong Institute of Surveyors and the Royal Institution of Chartered Surveyors, Hong Kong Branch. It is distributed to members, students and friends of the surveying profession. Should you know of anyone not on the mailing list who would be interested in receiving a copy, please contact Surveyors Services Limited.

Members are invited to contribute to "Surveying". Articles, letters or notices should be received by the Editor by the 18th of each month for publication the following month.

The views expressed in this newsletter do not necessarily reflect the views of the HKIS or the RICS HKB. The Editor, Bruce Humphrey, reserves the right to edit any article received.

The Editor can be contacted through Surveyors Services Limited.

All advertisements and small ads are welcome. The income provided by advertisements contributes towards the printing cost of SURVEYING.

Further details and information on rates for other advertising may be obtained from the Administration Officer, Surveyors Services Ltd, 1934 Swire House, Chater Road, Hong Kong (Tel : 2526 3679 Fax : 2868 4612)



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DIVISIONS

FROM THE BUILDING SURVEYORS BY S K KWAN

A BS lunch was recently held at the Metropal Restaurant and enjoyed by 48 members. During the lunch BS Chairman, Raymond Cheng present a Certificate of Merit and \$1,000 cash prize to the three winners of the BS logo design competition.



BSD held a very successful CPD visit to a Housing Society Sandwich Class Housing Estate in Tsing Yi. The photos show Victor So, Executive Director of the Housing Society receiving a souvenir.



NEWS FROM THE QUANTITY SURVEYING DIVISION BY T T CHEUNG

The 1995 APC will be held in September. Over the last two years there were a total of three candidates found guilty of collusion - or cheating - by the Committee and received severe punishment. The Committee would like to remind candidates that collusion is strictly prohibited. The Committee also appeal to practitioners to ensure that no assistance is given to any candidate under their supervision. Every effort must be made to ensure fairness in the assessment, both to employers and to potential chartered quantity surveyors.

Besides organising some quality CPD events, the Committee is now actively working on the updating of the Standard Method of Measurement and the Conditions of Contract. A PRC Working Group has been established, under

the Chairmanship of Tommy Yim and is working hard at establishing contacts and liaison with their PRC counterparts. At the Pacific Association of Quantity Surveyors meeting in Australia, Adrian Smith represented HKIS to discuss possible formal association with respective QS organisations in Australia, New Zealand, Singapore and Japan.

Finally, the RICS UK incoming President will be visiting Hong Kong in October, and is keen to meet QSD members here. Further details of arrangements for his visit will be available in due course.

In all its activities, QSD Committee welcomes suggestions from members.

JUNIOR ORGANISATION

Although it may be too late by the time this issue arrives on your desk - good luck to the JO Dragon Boat Team who will be competing in the Professionals'

event at the Dragon Boat Races, International Races 1995 on Saturday 10th June, at the East Tsim Sha Tsui Waterfront. Happy Paddling!!

FROM THE LAND SURVEYORS BY KWAN LAM FAT

Volunteer TPC Services

Some time ago, LSD set up a group of professional land surveyors who could help look after the professional training of candidates working towards their APC in firms where there were no corporate members of the RICS or HKIS available to supervise them. LSD urgently need more volunteers to join this group, there are many potential candidates in need of professional support and guidance. If you can help, please contact Mr Kwan Lam Fat at Highways Department, tel. 2762 4050, fax. 2714 5216.

AROUND THE COMMITTEES

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The *Executive Committee* held its regular monthly meeting on Tuesday 23rd May.

High on the Agenda is the Buildings Department proposals to amend the Buildings Ordinance with measures to strengthen control of building works, following the well publicised construction site tragedies at Nathan Road and North Point. The HKIS, represented by the President, has joined HKIE, HKIA, REDA and the HK Construction Association to comprehensively review Government's proposals. The HKIS supports Government's proposals in principle, although there are a number of concerns regarding their implementation to be further discussed with Buildings Department.

Also on the Agenda for further examination was the Draft Practising Guidelines published by the Society of Hong Kong Real Estate Agents. This will be further considered in detail at GP Divisional Council, so we hope to report more on that subject next month.

Executive approval was given to the Land Surveyors to join with the HK Polytechnic University and the Institute of Civil Engineering Surveying in the publication of a biannual Land Surveying Journal.

The Executive Committee has joined the Surveyors Registration Board for a periodic review of the registration process. This is likely to take some time, but both bodies hope to have their Report finalised with recommendations for the future of the registration process complete by the end of this year.

The *Education and Membership Committee* met on Monday 1st May. The Committee noted the progress being made by both the APC and Membership Sub-Committees in their respective reviews of policy and procedures. The *APC Sub-Committee* has completed its

review of the Rules and Guides to the APC, Hong Kong edition for GP, BS and QS Divisions and these are now being published. It is hoped that this will end the confusion presently being felt by graduates and probationers.

The *Membership Sub-Committee* is finalising the implementation of a number of new procedures for application to Associate and Fellow membership of the HKIS. The principal changes are that not more than 2 of the applicant's proposers shall be from the same firm or organisation; all proposers for Associate membership must belong to the same Division as the applicant (3 in the case of Fellows); and there shall be one proposer who should be identified as the "Principal Proposer".

The Chairman of the Education and Membership Committee, Adrian Smith, attended the Pacific Association of Quantity Surveyors meeting and workshop in Australia at the end of May.

The RICS Hong Kong Branch *International Committee* met on 25th April. The Chairman, Michael Mann and Senior Vice Chairman C Y Leung will visit Singapore and Kuala Lumpur in June for discussions with their counterparts in the surveying associations there.

APPOINTMENTS

Eddie Lee, of LC Surveyors Ltd and Mike Wong, Sun Hung Kai Properties have been reappointed HKIS representatives on the Authorised Persons and Registered Structural Engineers Committee.

PR UPDATE

This is the first of a regular series of updates aimed at letting members know what the institutions are doing on the public relations front.

Formal contacts are now being established with journalists in the English- and Chinese-speaking Press so that, it is hoped, the institutions will be approached for comment as a matter of course when news breaks. This is more effective than commenting after the event by way of letters to the editor.

If there are any particular matters on which members believe the institutions should be commenting, they are invited to submit their ideas to the Secretariat for consideration.

Comments by the institutions have been published in the Press since 15 March 1995 in relation to the following issues:

1. description of expelled RICS members as 'chartered surveyors' (letter to the editor, SCMP, 28.3.1995);
2. Hong Kong/China international arbitration (Window magazine, 28.4.1995);
3. Law Reform Commission report on sales of flats (letters to the editor, SCMP and Hongkong Standard, 9.5.1995);
4. Government proposals on amendment of the Buildings Ordinance (Hongkong Standard and Eastern Express, 18.5.1995).



SURVEYING

PROFESSIONALISM AND PUBLIC RELATIONS - TWO SIDES OF THE SAME COIN BY ROBERT MORGAN, DIRECTOR OF PROFESSIONAL PRACTICE

Members of the institutions who attended the Extraordinary General Meeting on 12 April 1995 and the Open Discussion Forum on 15 May 1995 will have heard much said about the need to raise the profile of the surveying profession and of the institutions (in particular the HKIS) and to allocate resources for this. This is all very laudable; after all, if a well-oiled PR machine raises the profile of the institutions, and thus public confidence in the profession, members can reasonably expect the benefits to rub off on them.

To seek to increase the fortunes of the profession simply through the vehicle of PR is, however, only to look at one side of the story. Good PR, like respect, is earned. The trouble is, this intangible must be earned by another one: professionalism. If the profession wants good PR, it must demonstrate professionalism. This raises a multitude of questions. What does 'professionalism' mean? What is professional behaviour? What is ethical behaviour?

To begin with, the professional institution must act as the keeper of the professional's conscience. Its role must be to offer guidance, to its members and the public alike, on what is and what is not acceptable behaviour.

For guidance, we may look to tried and tested principles characterising professions. A set of nine principles, summarised below, was formulated by the Institute of Chartered Accountants in England & Wales (ICAEW) in 1984. They were referred to by Lord Benson, a former President of the ICAEW, in an article entitled 'The character of a profession' (London 'Financial Times', 31 May 1989), where he stated that they were applicable equally to all other professions. I should add that the principles must also apply worldwide.

The profession must be controlled by a governing body, which in professional matters directs the behaviour of its members. The members, for their part, have a responsibility to subordinate their selfish private interest in favour of support for the governing body.

A professional body does not simply make rules and wield a big stick. Subordinating private interests to the greater professional and public good involves a *quid pro quo*. The HKIS exists to promote and protect the image of the surveyor, to promote public confidence in the profession and to provide information and guidance to members and the public. These themes are not contradictory and permeate the remaining eight principles and the attitude of the HKIS to their application.

The governing body must set adequate standards of education as a condition of entry, and thereafter ensure that students obtain an acceptable standard of professional competence. Training and education do not stop on qualification, but must continue throughout the member's professional life.

The HKIS is comprehensively reviewing educational policy to prepare the profession for the challenges which lie ahead. The mooted demise of the Hong Kong Branch of the Royal Institution of Chartered Surveyors gives rise to an urgent need to avoid an educational vacuum. The HKIS must look at, among other things, the criteria for recognising educational qualifications obtained in Hong Kong, the Mainland and overseas; the 'localisation' of education and training to make them more responsive to the needs of qualified and aspiring surveyors in Hong Kong and the need for a CPD programme addressed to members at *all* levels of experience and based on subject-matter that *they* would like to see covered.

The governing body must set the ethical rules and professional standards which are to be observed by the members. These should be higher than those which can be established by the general law.

The HKIS published Rules of Conduct in 1990 and has recently amended them. They must be fairly applied and kept under constant review so that unprofessional and unethical conduct may be properly dealt with. A review of the Rules of Conduct will be undertaken shortly in consultation with, among others, the ICAC. The HKIS must be seen to be exercising due diligence in all that it does and encouraging its members to follow suit, otherwise credibility will suffer. Awareness of the Rules of Conduct should be actively promoted; this, in my opinion, should begin at undergraduate level. Finally, effective standards and ethics are essential to the continuation of the profession's *privilege* of self-regulation.

The HKIS and its members also have a responsibility to set an example to those who are not within the fold. The designation 'surveyor' is not a protected title and the image of the surveyor - and therefore public confidence in him/her - may be damaged by unethical activities of non-members, who must somehow be monitored. Whilst the HKIS has no direct control over the activities of such people, it must be prepared to consider what legal channels are available to enforce a minimum standard of ethical conduct by them.

The rules and standards enforced by the governing body must be designed for the benefit of the public and not for the private advantage of the members.

The HKIS has been constituted by statute and, in part, exercises public functions. As such, therefore, it must have regard, first and foremost, to the public interest. This is not as one-sided as may at first appear. Public confidence in the profession will be to the private advantage of those members who are prepared to abide by the rules.

The advantage will be a tangible one - a healthy client base. Surveyors from one Division will occasionally need to use the services of those from another. The respect of one's peers is also important to a continued workflow.

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The governing body must take disciplinary action, including, if necessary, expulsion from membership, if the rules and standards it lays down are not observed or a member is guilty of bad professional work.

If the institution does not apply its own rules and standards, without fear or favour, what is it there for?

Some types of work should be preserved to the profession by statute, not because it is for the advantage of the members, but because, for the protection of the public, it should be carried out only by persons with the requisite training, standards and disciplines.

Agreed, so long as there is continuous monitoring of training, standards and discipline. For example, the profession must be certain that the Authorised Persons requirements of the Buildings Ordinance work both fairly and effectively. The Nathan Road demolition site disaster last year showed that the system has its shortcomings. On such matters as site safety, monitoring and legislative change should follow reasoned and timely professional consideration, not the findings of a coroner's court.

It is also incumbent upon Government to come forward with proposals for legislation in good time. If it does not, it is up to the professional institution to lobby the Government, as to principle, as to detailed content and as to timing. The registration system for certain professions - surveyors, engineers, architects and planners - was introduced on the basis that legislation would be passed, reserving the exercise of certain functions to those carrying the 'registered professional ...' designation. Until this is done, the professional institutions and the registration boards they service - those governing surveyors not least among them - will continue to have an uphill task convincing people to apply for registered professional status. This is not in the interests of the profession or the public. There should not, however, be a resigned acceptance of the difficulties facing the registration process. Read on ...

The governing body must satisfy itself that there is fair and open competition in the practice of the profession, so that the public is not at risk of being exploited. It follows that members in practice must give information to the public about their experience, competence, capacity to do the work and the fees payable.

In an ideal world, the HKIS would happily state that there is fair and open competition in surveying services. In reality, this would be going too far. There are individuals and firms outside the HKIS fold who call themselves 'surveyors' and use misleading advertisements or statements, puffs and dubious practices to dupe the public and other professionals alike. The Java Road hoist disaster is a spectacular example of what can happen when this sort of thing goes unchecked. Competition may therefore be free and open, but it is not fair. Membership of the HKIS should ideally be a guarantee of quality and something which gives members a competitive edge.

Registration under the Surveyors Registration Ordinance is a development of this idea of quality assurance. Although registration is entirely voluntary, the HKIS encourages more members to take it up and will be promoting registered status to the public. It is effectively an additional professional qualification and a 'statutory declaration' of competence and experience. Can there really be any greater advertisement for a member's services?

So far as information to clients is concerned, why not? Clients should retain surveyors on the basis of informed decisions, not guesswork. Conditions of engagement and information about experience should be freely available. A job well done may be remembered for a long time. A job badly done will never be forgotten. And then there is the majesty of the law, which is visited upon those who get it monumentally wrong, but that's another story...

The members of the profession, whether in practice or employment, must be independent in thought and outlook. They must be willing to

speak their minds without fear or favour. They must not allow themselves to be put under the control or dominance of any person or organisation which could impair this independence.

The HKIS is a broad church and is open to all comers. There is, however, no room for 'hired guns' or people who pursue private agendas at everybody else's expense, regardless of whether they come from the public sector or the private. By definition, they lack independence and, indeed, credibility and can only damage the interests and the well-being of the profession, particularly a diversified one like surveying.

In its particular field of learning, the profession must give leadership to the public it serves.

Again, if this function is not fulfilled by an organisation which calls itself 'professional', it has no business being here. Note also that the profession is here to serve the public. The public provides the living and the law lays down standards of service provision. Due regard to the public interest is therefore not too much to expect.

Remember, though, that the reputation of the profession stands or falls by the behaviour of its individual practitioners. The best PR in the world can be minimised or cancelled out, and self-regulation jeopardised, by individual acts of unprofessional and/or unethical behaviour.



SURVEYING

PUBLICATIONS RECEIVED

Copies of the following publications are available on request from the Secretariat (call Conita Mak), except those marked "for reference only" which indicates that these publications are available for reference in the Secretariat.

Buildings Department - Practice Notes for Registered Contractors -

#26 Use of Plastic Sheet to cover scaffolding outside buildings;

Buildings Department - Practice Notes for Authorised Persons and Registered Structural Engineers -

#104 Geotechnical Information Unit;

#121 Structural Design Information;

#132 Site Investigation;

#165 Sewage Tunnel Works;

#176 Use of Plastic Sheet to cover scaffolding outside buildings

#177 Underground Cavern Development;

#179 Service Lanes;

#180 Alkali-Aggregate Reaction in Reinforced Concrete Structure;

- **Precautions** against flooding and safety of site formation works during the wet season;

- **Information** - Inspection and maintenance of buried drainage and water services affecting slopes;

- **Request** - Identification of locations of private fill slopes.

Land Registry - Circular Memorandum No. 6/95 - Premises Number and Street Name stated in the Memorial.

Lands Tribunal - Judgements and Decisions - list of recent cases. Further information can be obtained from the Lands Tribunal on HKIS request.

Labour Department - Draft Code of Practice for construction safety over water (for reference only).

Land Registry Statistics - (i) Consolidated Monthly Statistics in respect of deeds received for registration in the Urban and NT Land Registries for April

1995; (ii) Comparison of the statistics of April 1995 with the statistics for March 1995 and April 1994; (iii) Number of Sale and Purchase Agreements received from April 1994 to April 1995; and (iv) Year-on-year rate of change in the number of Sale and Purchase Agreements.

Architectural Services Department - Tender Price Index, dated 1st May 1995.

Shenzhen Property and Building Price Yearbook 1994 and Shenzhen Construction Engineering Price Information (for reference only).

Buildings Department - Monthly Statistics (January 1995) (for reference only).

Works Branch Technical Circular No. 8/95 - Computer Aided Document Management System for Works Contracts.

RICS Research Paper Series - Building Cost Management in France (for reference only).

THE LATHAM REPORT - "CONSTRUCTING THE TEAM"

BY SIR MICHAEL LATHAM

Final Report of the Government/Industry Review of Procurement and Contractual Arrangements in the UK Construction Industry

The Secretariat has received a copy of Sir Michael Latham's excellent report on the future of the construction industry. The Report is very comprehensive and lengthy - it runs to some 130 pages. We intend to keep a copy in the Library for members' reference, however if there is sufficient demand we will get some copies printed. Please call Conita Mak if you are interested in this Report.

SECRETARIAT LIBRARY NEWS

BY ROBERT MORGAN

I have established a Facts and Figures file in the Library at Swire House for the use of members. It contains information about property values, construction costs, indices etc. in Hong Kong, the PRC and Taiwan. If members wish, it can be expanded to cover the whole South East Asia region.

The file is new, so it is sparse at present. I know that many readers of 'Surveying' are members of firms which regularly produce figures, indices, surveys and other research on the topics. Please add the Secretariat to your mailing list, addressing your contributions for my attention. Thank you!

STUDENT SUMMER PLACEMENT OPPORTUNITIES

The Secretariat has received requests for student summer placement opportunities from Hong Kong Technical College, Chai Wan and Tsing Yi and Hong Kong Baptist University.

If any member's company or organisation can help these students, who come from a wide range of academic programmes, please contact the following directly, or further information is available from Morna Humphrey at the Secretariat:-

Hong Kong Technical College -
Mr K Y Tang, telephone 2595 8152
Hong Kong Baptist University -
Mrs Beth Lee, telephone 2339 7443



SURVEYING

The President, Mr Michael Mann, wrote the following letter to the Director of Buildings, Mrs Helen Yu, in response to press statements issued by the Buildings Department Structural Engineers' Association which made some disturbing allegations of the competence of Buildings Surveyors in site monitoring.



THE HONG KONG INSTITUTE OF SURVEYORS

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MRM/rt/10534/95

24th May 1995

Mrs Helen Yu, JP
Director of Buildings
Buildings Department
11/F Murray Building
Garden Road
Hong Kong

Dear Mrs Yu

Re: Buildings Department's Site Monitoring Teams

I have read a rather alarming press statement issued by one of the Senior Structural Engineers at the Buildings Department, Mr Hui Kwok Hung who I believe is the Chairman of the Buildings Department Structural Engineers' Association. The statement in the Oriental Daily News on 6th May basically says that Structural Engineers are the only people who should be employed on any site monitoring team of the department and that Building Surveyors, who are at present on these teams in equal standing with the Structural Engineers, should be relegated to the role of inspecting plans and sorting out means of escape requirements etc.

I am somewhat surprised at Mr Hui's attitude although I understand it is not the first time that he has mentioned his preference to use Structural Engineers rather than Building Surveyors. Obviously the HKIS fully supports your desire for safety on building sites and I am sure the Building Surveyors are most suitable for the job. However, I can see the merit of having Structural Engineers in the team to provide structural input when circumstances require it.

Building Surveyors are highly qualified building professionals whose training covers surveying as well as elements of engineering, architecture, building economics and building law. Thus they have broad expertise and knowledge of building construction. In their professional life, whether Building Surveyors work for Government or in private practice, their tasks include, but are not limited to the advice on site safety and monitoring as well as the analysis for structural problems and recommendations for repair or re-design. If the Building Authority are keen to expand their site monitoring roles then I see no reason why they should not use the most suitable experts which I believe are Building Surveyors.

I really do believe that Mr Hui Kwok Hung is speaking out of turn when he tries to downgrade the role of the Building Surveyor in this particular task and probably in many other fields of professional expertise that he has apparently referred to before. Building Surveyors do not deserve these comments from someone who should know better. I, myself, am a Building Surveyor and I can assure you we do not say such things about our fellow professional who we respect.

I hope I can rely on you and your team to ensure that our members in the Building Authority continue to have the respect they deserve for their professionalism.

With kind regards

Yours sincerely

Michael R Mann FRICS FHKIS
President
The Hong Kong Institute of Surveyors

SURVEYING

LETTER TO THE EDITOR

Dear Sir

Re : EGM held on 11 April 1995

I am writing on behalf of our members to express concern on the voting arrangement and yearly budget presented at the EGM.

It was understood from the notice of the EGM that voting by proxy would be acceptable for those unable to attend the meeting. But that arrangement was overridden by the Chairman's decision at the EGM to vote by a show of hands. HKIS members had not been given prior notices of this arrangement, and it is illogical and misleading since proxy forms had been issued before the EGM to all members. We would be interested to know the rationale behind this change and to hear whether it conforms with the relevant provisions of the Constitution.

The budget presented to the EGM has raised some concerns and our members would like clarification of the following :-

1. The income part of the budget shows figures headed "Contributions from Shareholders". Please explain and elaborate on the details.
2. It is noted that there is an increase of \$1,187,220.00 or 61% for 1996 expenditure on salaries compared with 1995. What causes this big increase and why is it considered necessary? Members would like detail explanation and cost/benefit justification.
3. Please give further details of the item of \$1,021,749.00 under the heading "other administration expenses".
4. Please advise what is the meaning of "Capital Expenditure" in the expenditure forecast.

5. Please advise on the account status of the HKIS and RICS(HK) and their respective surplus or deficit.
6. At the EGM, members voted against the increased subscription. We would like to see the revised budget figures with unchanged subscriptions.

We look forward to your reply as soon as possible.

Yours faithfully,
C. L. Fok
Chairman,
Housing Department
Quantity Surveyors' Association

FROM THE EDITOR

The Secretariat responded to Mr Fok's letter, giving the following details:-

1. The use of proxies is governed by the Companies Ordinance and the Constitution. The arrangement (complying with both) is that a resolution put to a vote shall be decided on a show of hands. The Chairman by himself or member(s) with voting rights (including proxies) for ten per cent of the membership may before or immediately after the show of hands call a ballot, and that ballot (which may be immediate or at a later date) must allow proxies. Proxy forms have to be issued before a meeting to enable the "ten per cent" to call a ballot if they wish. So, when the resolution was rejected on 11 April, "ten per cent" of the members could have required a ballot if they thought that might get the resolution passed. And, similarly, if the resolution had passed on a show of hands, ten per cent of the membership could have called a ballot to try and vote it down. But neither the Companies Ordinance nor the Constitution provide for a ballot, with proxies, without a show of hands first.

2. The "Contributions from Shareholders" are the amounts paid by RICS (HK) AND HKIS to the Joint Office from members' subscriptions and similar. RICS(HK) and HKIS are the shareholders in "Surveyors Services Ltd."
3. The increase in salaries is the full year cost of engaging a Director of Professional Practice and additional clerical staff, plus inflation increases to existing staff salaries.
4. These are the general expenses (electricity, stationery, postage, audit fees, etc.) which are given in more detail in the annual account but have simply been lumped together for budget proposes.
5. Capital expenditure is any expenditure (office equipment, renovation, etc.) which is depreciated over more than one financial year, not simply charged to general expenditure account when incurred.
6. For outlines of the RICS and HKIS accounts, see January's "Surveying". The RICS Branch had a net deficit for the year ending 31 July 1994 of \$193,529, which the HKIS had a net surplus of \$214,513. So the total for the "profession" was a surplus of not much more than \$20,000.00. That will have been replaced by a significant deficit for the year ending 31 July 1995.
7. If the annual subscription remains completely unchanged, there will have to be significant reductions in expenditure. How these will be made is not decided and, hence, a "budget" as such cannot yet be presented.

Yours faithfully



BY C. J. WILSON
BAKER & MCKENZIE

In this month's article I cover two unrelated developments in the law which may be of interest to readers.

Deeming not Effective

In the first, an English Court has held that a "deeming" provision does not mean what it says. The case, Re Thundercrest, concerned a provision in a company's Articles which *deemed* notices to have been served correctly when properly addressed and posted by first class mail. In this case, although the letter had been correctly addressed, it had not been received and there was clear evidence to this effect. The Court held that the provision was simply to allow the parties to proceed on the prima facie assumption that a document had been received. Where that was clearly not the case, the effect of the deeming provision "fell away".

Although it may be possible to say that the principle should be confined to cases involving the administration of companies, that would be illogical and there was no reason why a deeming provision in one contract should have any different meaning to that in another, except where expressly stated.

Contracts frequently contain deeming provisions in relation to service of notices and other important matters. These provisions may have to be re-examined in light of the Thundercrest decision and specific statements included that the deeming is to have effect notwithstanding any evidence to the contrary.

When is there a dispute or difference?

The second case on which I report, Cruden Construction Ltd. v. Commission for the New Towns, is a December 1994 decision of the Official Referee in England.

This case concerned the question of whether arbitration proceedings concerning certain alleged disputes had been commenced correctly.

Frequently parties to contracts serve arbitration notices in relatively informal circumstances and procedural matters in the arbitration clause are overlooked.

In this case the arbitration clause was relatively straightforward. It required the reference of "disputes or differences" to arbitration by written notice.

The intending claimant had been the recipient of a writ claiming in respect of defects in a housing estate. They had then written to the Contractor's solicitors stating that they had received a substantial claim, asking whether the solicitors had instructions to accept service of a notice of arbitration. The letter said that schedules of defects complained of in the proceedings ran to over 5,000 pages and were available for inspection at their offices.

The Contractor's solicitors simply indicated that they had instructions to accept service and a notice of arbitration was later served on them. An arbitrator was later appointed by the RIBA.

In due course the Contractor issued Court proceedings seeking a declaration that the notice of arbitration was invalid on the ground that there was no dispute or difference between the parties prior to its service.

The Contractor submitted that in order for a dispute or difference to exist between two parties there must be some taking up by the parties of opposing positions and that until one party had shown that he was not agreeing with the assertion or demand of the other, no dispute or difference could arise. They submitted that the letter which had been written prior to the arbitration notice made no definable claim against them. Even if it did, the Contractor had done nothing by way of reply which could be said to constitute the taking of a contra position or to give rise to an adversarial state of affairs.

Perhaps rather surprisingly, the Court took a technical approach to interpretation of the words "dispute or difference" in the arbitration clause.

The Court referred to cases relating to the stay of proceedings brought in contravention of an arbitration clause where the Claimant's claim had either been ignored or had been met by prevarication. In those cases the Courts had held that there was a sufficient dispute to ground a stay. In Cruden the Court held that neither of these cases was intended to lay down any general principle applicable to all arbitration clauses. This view has a great deal to be said for it. Cases about stay concern situations in which the Plaintiff attempts to evade the arbitration clause altogether. If the Defendant says "I dispute your claim" he should be entitled to go to arbitration. This case concerned the very different issue of whether an arbitration had been correctly started in the first place. Since the clause requires a dispute or difference, the claimant should not be able to drag the other party into proceedings until some form of claim has been put forward and denied (or not admitted in circumstances which indicate that it is disputed).

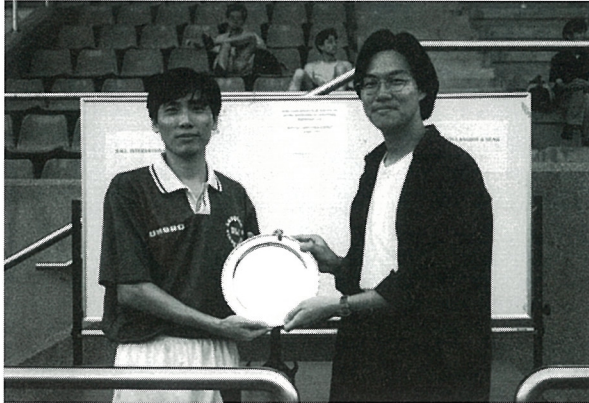
The Court held that when the Contractor received both the letter before action and the notice of arbitration, it was not in a position either to agree or deny that there were defects in the houses and no direct assertion had been made along these lines. Although details had been requested, no information had been supplied until after service of the arbitration notice. The Judge held that it could not be said as a matter of ordinary English that the Plaintiff and Defendant were in dispute or that a dispute had arisen between them when the notice of arbitration was served. There had been no specific assertions and no denial of liability.

Normally the point will not be taken however, in this case, the finding meant that the Defendant was out of time to commence a fresh arbitration. The case sounds a warning to those who commence arbitrations when the limitation period has almost expired to ensure that a dispute is properly crystallised in advance.

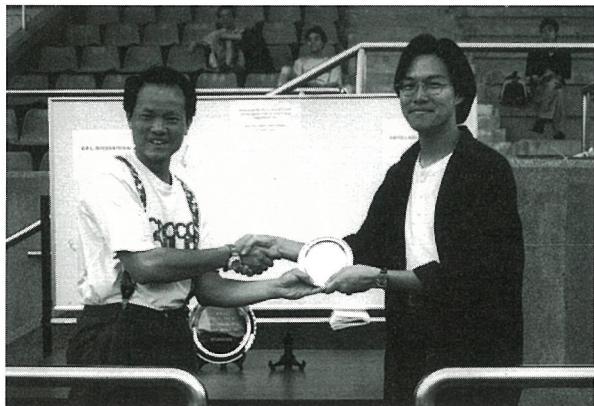


SURVEYING

The HKIS/RICS (HK Branch) Junior Organisation has organised a Social Event (11-A-SIDE Soccer competition) on 9 April 1995 and 23 April 1995 at HKU Sport Stadium, Sha Wan Road. Davis Langdon & Seah was the Champion in the competition while Vigers (HK) Limited won a souvenir. The Organiser, Mr. Andy WONG, presented souvenirs to the companies.



Davis Langdon & Seah



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ASSESSING FOR CHARITY.....

Thanks must be acknowledged to the following members of the Quantity Surveying and Building Surveying Divisions who donated their Assessors' honorarium to charity. The RICS offers an honorarium of \$1,000 to all assessors taking part in the APC.

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Paul Attard

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Au Chak Man

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RICS Benevolent Fund

Graeme Baldwin

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