The Doctrine of Possession in New Zealand's Land Transfer System

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ABSTRACT

This paper examines the continued existence of the common law of possession in New Zealand's Land Transfer system.

In particular the relevance of this law to the redefinition of titles limited as to parcels, is reviewed. Comments are then made on other legislation which affects the indefeasibility of title.

1. INTRODUCTION

Any review of New Zealand's survey system will stress the importance of the Torrens title, its concept of indefeasibility, guarantee of title and T. B. F. Ruoff's interpretation of this as the insurance principle. (14)

The emphasis given to these principles tends to give the impression that the common law of possession has been totally extinguished by the Land Transfer Act 1870 and its successors. This however, is no longer the case and unless one can appreciate this fact, it is difficult to fully understand the role of a certificate of title, limited as to parcels and the evidence which must be gathered to successfully survey a title of this type.

Over the years an occasional letter to the New Zealand Surveyor (1) and reports from various gatherings of members of the New Zealand Institute of Surveyors (2) indicates that others have as much trouble as myself in establishing a consistent procedure when surveying titles of this kind. This is despite the fact that texts such as The Law Relating to Surveying by Kelly and The Surveyor and the Law (17) have been readily available as a guide.

It is my opinion that the problem lies in the fact that the surveyor tends to see the special components of a title limited as to parcels, as being those of inadequate survey, unreliable dimensions, unacceptable miscloses etc when in fact, the notable component is the reintroduction of possessory rights into the Land Transfer system.

An occupier can obtain the rights to land which is in the name of another by way of possession, established over a period of time, which is sufficient to satisfy the current law.

2. ORIGINS OF NZ LAND LAW

Hinde McMorland Sim Introduction to Land Law (1979) 1.004 provides a concise statement on the early New Zealand land law.

The main points are as follows:

1. New Zealand was considered to be a settled colony rather than a ceded colony and therefore the settlers brought the common law of England with them.
2. The English Laws Act of 1858 was official recognition of this fact.
3. From these early times there was a desire to sweep away the unwanted complexities of English land law.

3. POSSESSION

An important principle in English law current at the time was embodied in the maxim, possession is nine tenths of the law.

a) It was expressed in legal terms in Section 2 of the Real Property Limitations Act 1833:

"And be it further enacted, that after the 31st day of December 1833, no person shall make an Entry or Distress or bring an Action to recover any Land or Rent but within Twenty Years next after the Time at which the Right to make such Entry or Distress or to bring such Action shall have first accrued to some Person through whom he claims . . ."

Twenty years of continuous possession by another was therefore sufficient to prevent the documentary owner regaining physical possession of their land.

The manner in which the section is phrased is interesting. It seems to acknowledge the undoubted right of the possessor and put the onus on the documentary owner to re-establish this right. This concept can be difficult to grasp if one has been trained in the New Zealand land transfer system and the concept of indefeasibility of title.

This then was an important part of New Zealand land law in the early 1800s and the concept is still very much alive in our cadastral system in a number of ways.

4. TITLE RECORDS IN NZ 1840 - 1870

The governing body of a nation has three alternatives when considering the development of a system of land record:

1. It can avoid any responsibility for the provision of a system of land record and leave all transactions in the hands of the private individual.
2. It can provide a system of registration which is available to its citizens should they wish to use it.
3. It can legislate to make the registration of some or all transactions dealing with land compulsory.

a) England was accepting a system of private conveyancing in 1840 and therefore the first alternative was also in force in New Zealand for a short time.

b) With the passing of the Real Property Ordinance (Registration of Deeds) in 1841 New Zealand quickly moved to the second alternative. Register Offices were to be established in every county or district and Section 6 stated the following in part.

"Every grant by the Crown of land within the Colony and every deed or

contract . . . may be registered by causing a copy thereof to be recorded . . . in the Register Office of the county or district wherein such land shall be situated: . . ."

There was no compulsion to register a transfer of land which was a major drawback and of course, there was no surety of ownership of the parcel described in the document when the common law concept of possession and prescriptive rights was in force.

c) The Deeds Registration Act 1868 took another step towards alternative 3. Section 15 stated: "Every Crown grant of land shall before the same shall be delivered to the grantee . . . be registered in the registration district . . ."

All title to land registered under these Acts was subject to the Real Property Limitations Act 1833.

5. LAND TRANSFER ACT 1870

This Act was designed to remove many of the undesirable aspects of English land law and to provide the security of tenure which had previously been absent.

a) It is assumed that one intention of the Act was to remove the common law of possession from land recorded under its protection but in fact this was not clearly enunciated. However, rights of possession already established at the time of registration of title were protected by Section 139 which stated "Any Certificate of Title issued upon the first bringing of land under this Act, . . . shall be void as against the title of any person adversely in actual occupation of and rightfully entitled to that land, or any part thereof, . . ." Currently, this is Section 79, Land Transfer Act 1952.

b) The Land Transfer Act 1885 cleared up any doubts that might remain regarding rights of possession. Section 57 stated the following:

"After land has become subject to this Act, no title thereto or to any right, privilege or easement in, upon or over the same, shall be acquired by possession or user adversely to or in derogation of the title of the registered proprietor." This is now Section 64 Land Transfer Act 1952.

This would seem to close the door on possessory rights as far as the Land Transfer system was concerned with the exception of the provision in Section 79.

c) In terms of Section 79 if a title had run for more than 20 years under the Deeds system and during that time another person had continued to occupy all or part of that title for at least 20 years, this ownership established by possession would not be extinguished by the transference of the title to the Land Transfer system.

It is probable that a number of ordinary certificates of title have been issued for land which is subject to Section 79 of the Act and where the conditions of occupation are so well documented that a claim by possession can be proven.

In ideal circumstances a survey would have been conducted at the time of application for a Land Transfer title. This survey would have identified any adverse occupation and the title would reflect the results. In the majority of cases, in the Otago Land District at least, titles were issued from the original Crown plans. No field check was made to ensure that a parcel was occupied in terms of the surveyed boundaries.

Since commencing this project, the writer has encountered one such case where adverse occupation commenced in the 1860s. A 20 year period of adverse occupation prior to the issue of the first Land Transfer title (ordinary) could be established. Another case is documented in D A Butler & Sons Ltd v McCoskery 1987. See paragraph 9 (c) (ii) hereunder.

6. 1870 - 1924

For 54 years both the Deeds system and the Land Transfer system were in operation.

The Surveyor and the Law 3.12 states that by 1923, 20% of privately owned land was held in the Deeds system. Further information is provided relating to the introduction of the Compulsory Registration of Titles Act 1924. Section 3 of this Act required the Registrar to bring all land alienated from the Crown under the principal Act within 5 years.

The Registrar General of Land at that time, C E Nalder, stated that "To issue fully guaranteed titles without requiring surveys would be to invite numerous claims upon the Assurance Fund in cases which abound, especially in towns where the documentary title holder has lost his title to part of the land by encroachment and adverse possession of his neighbour and in cases where descriptions of land in deeds are erroneous".(4)

To offset the need for surveys, the title limited as to parcels was created and its status embodied in Section 16 of the Compulsory Registration of Titles Act 1924, now Section 199 of the Land Transfer Act 1952.

a) Section 199 (1):

". . . Provided that a limited certificate of title . . . shall be evidence or conclusive evidence, as the case may be of the matters referred to in Section 75 of this Act subject only to . . . (d), the title (if any) of any person adversely in actual occupation of and rightfully entitled to, any such land or any part thereof."

As a consequence, the rights of possession within the Land Transfer system expressed in Section 79 were extended in 1924.

b) Section 199 (3) took the matter further by stating that . . . "the issue of a limited certificate of title for any land shall not stop the running of time under the Limitation Act 1950 in favour of any person in adverse possession of that land at the time of the issue of the certificate or in favour of any person claiming through or under him.

Unlike Section 79 which recognises possession established over a period of 20 years or more but stops the running of possession of a lesser period, Section 199 (3) allows time to run beyond the date of the issue of the land transfer title limited as to parcels. Prior to 1950 twenty years was required to establish possession against a limited title. Since the passing of the Limitation Act 1950, 12 years has been sufficient.

7. IMPOSITION OF LIMITATIONS AS TO PARCELS

The following is an excerpt from The Surveyor and the Law (17) on page 3 - 44:

"The 1924 Act therefore made provision for all new titles to be issued in one of the four categories of:

An "ordinary" or "fully guaranteed" title

A title "limited" as to "parcels"

A title "limited" as to "title"

A title "limited" as to both "parcels and title".

When a title in any of the last three categories was issued, the title was clearly marked by words indicating that it was issued subject to the limitation shown.

In the first and comparatively rare situations in which an "ordinary" title would be issued, the criteria which were applied were those which would have been applied had a voluntary application been made to bring the land under the Act. These were:

1. That the Registrar was satisfied as to the ownership and would have issued an ordinary title had a voluntary application been made.
2. That the person in possession of the land was competent to make a voluntary application.
3. That the boundary information was sufficiently documented to enable an ordinary title to be issued. This provision would depend in the main on the standard and age of the surveys defining the land because many of the surveys made for Deeds purposes were as good as or in some cases, better than those required for Land Transfer purposes.

In the case of a title "limited as to parcels" the only deficiency would be one related to the definition of the boundaries of the land and the fact that the existing surveys were not sufficient to guarantee the position of those boundaries or the area of the land concerned."

There is an inference that the Examiners of Title were making an assessment of the quality of the survey for each title.

This was a concept which was well entrenched long before the publication of The Surveyor and the Law.

8. THE ROLE OF THE EXAMINER'S REPORT

Thirteen thousand and ninety limited titles were issued in the Otago Land District between 1925 and 1943. As far as I can tell not one was issued without limitations as to both title and parcels being imposed.

I have only perused a small number of Examiners' reports (less than 20) but in those viewed, there was no comment whatever about standards of survey. This of course, is totally in keeping with the Land Transfer Act. There is almost nothing in the Act which refers to survey standards, other than Section 167 (1) which refers to " . . . the regulations for the time being in force . . ." In one case the examiner did note an error in area. The deeds title referred to 22 perches when it was clear that the area was only 0.22 perch.

My interpretation is that the Examiner was noting the items which had to be addressed if the removal of limitations as to title, prior to the completion of the mandatory 12 year period, was to be allowed.

The fact that the parcel was brought under the Act compulsorily was enough to ensure that limitations as to parcels would be imposed and not removed until a survey was completed. Why? Because the issue was not that of survey quality and dimensions. The pertinent questions were:

Where are the fences?

How long have they been there?

Has a landowner established a title over the land of a neighbour by way of adverse occupation.

This could only be determined by an accurate survey.

9. CASE LAW

There are only three recorded cases which relate to Land Transfer titles, limited as to parcels.

a) Duncan v Aongatete Quarry Ltd 1959

Duncan v Aongatete Quarry Ltd (Auckland 222/57, not reported) 1959 spelt out the practical implications of Section 199 (1) (d) Land Transfer Act 1952 when Justice Turner stated:

"In the present action I find on the evidence that the occupation of the defendant . . . did not commence as far back as 29 August 1934 . . ." (10). This was the date that CT 575/295 was issued under the Compulsory Registration of Titles Act 1924.

As a result the defendant failed to prove a right to claim title to an area cut off from the plaintiff's property by avulsion.

In terms of Section 199 (1) (d) it is therefore necessary for any adverse occupation to commence before the issue of the first limited title but unlike Section 79, the period of time between the commencement of occupation and the issue of title is not important. Possession continues until the documentary owner reclaims the land occupied or the 12 year period is completed.

b) Tong v Car Reconditioners Ltd 1965

A claim by an adjoining owner for a prescriptive title to a small strip of land 4 feet wide x 50 feet long included in a certificate of title limited as to parcels, failed when the judge ruled that the type of possession which had taken place, was not of a quality as outlined in McDonnell v Giblin 1904. Possession must be "actual, open and manifest, exclusive and continuous and the onus of proof in such an action as this rests in the Plaintiff". (6)

c) D A Butler & Sons Ltd v McCoskery **1987** (15)

(i) In this case the court decided in favour of an adjoining owner who could establish some 83 years of possession against a limited title. The decision was based on 12 years of possession as required by the Limitation Act 1950.

(ii) In a critique published in the New Zealand Surveyor (15) D. M. McMorland pointed out that 20 years of possession against the former Deeds title could be established 18 years before the issue of the first limited title. Title to the land could therefore be established under Section 79 of the Land Transfer Act 1952 rather than Section 199 (1) (d).

10. POSSESSION vs INADEQUATE SURVEY

In my opinion this is where many surveyors have difficulties with titles limited as to parcels. The issue is seen to be one of inadequate survey when this is not the case. The issue is one of possession, established prior to the conversion of the deeds title to the land transfer system.

Many of the original surveys would be seen to be inadequate as regards dimensions and limits of closure even by the standards which applied at the time of survey. Despite this, many of the sections shown on these plans have been issued with ordinary certificates of title while others are limited as to parcels. Many surveyors, when faced

with the resurvey of one of these parcels, are puzzled by this fact.

A number of surveyors respond to this problem by treating all titles on such plans as being limited as to parcels and accepting long standing occupation as marking the boundaries. Long standing could mean 10 - 20 years and more depending upon the opinion of the surveyor, the Chief Surveyor, and in some cases, the District Land Registrar.

In terms of Section 199, it is clear that in the first instance, all titles should be treated as ordinary as far as survey definition is concerned. The best definition of the original cadastral network having been established, circumstances where adverse occupation can be identified must then be proven.

In making these statements, I am encouraged by the words of W E Lynch, Land Transfer Surveyor, Auckland, as presented to the Chief Surveyors Conference in 1967. Under the heading "Adverse occupation" is the following statement: "Once the documentary boundary has been established, the question of adverse occupation is simplified. It is usual and preferable for a surveyor to respect adverse occupation of the requisite age. Numerous and expensive Court actions are then avoided." This valuable paper has been made available to surveying students since 1975. It is included in A. G. Blaikie's "Stages of a Cadastral Survey" (Department of Surveying, Otago University lecture notes).

11. UPLIFTING LIMITATIONS AS TO PARCELS

The concept that possession is the predominant factor in determining the boundaries of a limited title is consistent with Section 207 (1) (a) of the Land Transfer Act 1952. In terms of this section, before an ordinary certificate of title can issue, a survey plan must be deposited supported by evidence that no part of the land is held in occupation adverse to the title of the documentary proprietor.

The need to establish occupation adverse to the title of the documentary proprietor is the reason that limited titles are unacceptable in terms of the following

a) Section 5 (1) (a) of the Unit Titles Act 1972
b) Regulation 42 of the Survey Regulations 1972
c) Compiled plans and adopted boundaries

12. METHOD OF SURVEY OF TITLES LIMITED AS TO PARCELS

If one accepts the case outlined to this point, it is clear that when redefining a limited title, the surveyor must identify:

a) the best definition of the original cadastral layout.
b) the date of issue of the first land transfer title which will of course be limited as to parcels.
c) all occupation, the age of that occupation, whether it replaces earlier occupation and a description of the type.

With this information to hand the surveyor can then determine whether adverse possession has been established against the limited title prior to the issue of that title and whether the amount of land involved is sufficient to warrant departing from the original layout.

a) Original Cadastral Layout

In many cases evidence of the original monumentation has disappeared and the re-establishment of the original cadastral layout must be determined by long standing occupation. It is important that the surveyor maintains a clear distinction between a definition of this type, which is the reproduction of the original section boundaries, as opposed to the definition of what is a new boundary established by adverse occupation.

To provide sufficient proof that existing occupation can be accepted as defining the original boundaries, it is essential that the occupation which is accepted as marking the boundaries of the adjoining parcels is recorded also.

Agreement between fences on a number of boundaries is required before it can be claimed that those fences represent the original boundary layout.

b) First Land Transfer Title

The date of issue of the first land transfer title is obtained by working back in time from the current certificate of title. The prior title reference is recorded at the top left corner of the document.

c) Age of Occupation

While I can accept that there is no one better able to locate and decide on the reliability of old monuments and to apply mathematical corrections to the survey data which fixed those monuments to ensure that surveys are interrelated, I am not convinced that the surveyor is the best and only judge of the age of occupation on a title boundary.

There are a number of papers which discuss the assessment of the age of occupation (2) (5) (12).

In 1994 it is now necessary to establish the age of a fence as being at least 40 years old and probably 60 - 70 years old, if one is to prove that adverse occupation has taken place. The adjoining owner or a predecessor may have vital information, which is not obvious to the surveyor, relating to the replacement of fences which might then qualify as adverse occupation.

Before the District Land Registrar can deposit a plan of survey which redefines a title, limited as to parcels, the Registrar must inform the adjoining owners, in terms of Section 207 of the Land Transfer Act 1952, that an ordinary certificate of title is about to issue for the neighbouring property.

It is common practice for surveyors to provide a list of names and addresses of adjoining owners to expedite this process and the subsequent deposit of the plan.

In many cases surveyors will obtain the signatures of the adjoining owners to a statement on the plan, or in a document, though some object to this practice on the basis that the plan, when signed by the adjoining owner, is unapproved as to survey.

What is not clear is what the adjoining owners think when they receive the District Land Registrar's notice or what the adjoining owner is told when a surveyor asks them to sign the plan. If the surveyor has elected to repeg the documentary boundaries and ignore occupation, is the adjoining owner informed that given certain circumstances relating to age, the occupation lines could be accepted as the boundary?

13. BALANCE TITLES

In the past, many surveyors have avoided the issue of adverse possession as it leads to the introduction of small balance titles which have to be maintained in the Land Transfer record and are costly to deal with.

The formal method of dealing with these areas is to treat them as balances of the

original title or separate lots on the plan. In the latter case fees are increased and it can be considered that a subdivision is taking place.

a) One possible way of overcoming this problem is to treat a loss by adverse occupation as one would treat a loss by erosion. After all both concepts are derived from common law.
In the case of accretion and erosion, titles are not seen to have been altered in the documentary sense. They are increased or decreased by the amount of accretion or erosion but the titles do not become, for example, CT 1A/1 plus a part riverbed, the title CT 1A/1 simply changes in shape and area.
In the case of adverse occupation, if the amount of land involved is clearly shown and if the parties involved agree that possession has been established, the area of land involved can be depicted on the plan as being an area subject to adverse possession. While it will retain its original section number, it will no longer be part of its parent title. That title will be wholly cancelled when the new plan is deposited. The area under adverse possession will be seen to be incorporated into the adjoining certificate of title which like an area subject to accretion, has increased in size. Ideally, a memorial would be noted on that adjoining title but the practicalities and the costs relating to this would have to be investigated. This is only a suggestion and would have no relevance without consideration and acceptance by senior staff in the Land Registry Office. Legislative support may also be required.

14. THE CONTINUED ISSUE OF TITLES LIMITED AS TO PARCELS

The earliest date of issue of a limited title is 1925 with the majority in the Otago Land District issued during the 1930's. However, although they are few in number there are occasions when a new title is issued limited as to parcels.

a) **Section 167(2) Land Transfer Act 1952**
Under this section the District Land Registrar has the power to issue a title which is limited as to parcels and there are a number of cases where this discretion has been exercised. Very often the instigators of this action are surveyors. In the interests of their client, they wish to avoid the resurvey of a parcel which contains an unacceptable misclose. On the basis that the land is of low value and cannot sustain the high cost of survey, the issue of a limited title is requested either by the surveyor or the Chief Surveyor. In some cases an awkward balance title does not meet the standard set in the Survey Regulations. When these former ordinary certificates of title are downgraded to limited, it can be argued that any fences which encroach on the property at the time the title is issued, effectively become occupation predating the issue of title and rights of possession are re-established some 120 years after the introduction of the Compulsory Registration of Titles Act 1924 which was designed to assist in their demise.
There is a need for some mechanism which notes the fact that a survey is inadequate. I don't believe that the limited title is the correct mechanism.

b) **Section 82 - 1A & 1B Land Act 1948**
These amendments which were introduced in 1952 give the District Land Registrar the authority to "accept the lease or licence for registration . . . limited as to parcels" under circumstances "Where the land comprised in the lease or licence is not properly defined by survey or for any other reason cannot be fully described." This amendment breaks new ground as it relates the limitation as to parcels to inadequate survey rather than to rights of possession.

c) It is my opinion that it would be more correct in legal terms for the plans to be approved in terms of Regulation 15 (4) of the Survey Regulations 1972 and for a searchable document to be lodged with the District Land Registrar. This document would describe the actual shortcomings relating to survey requirements.
These may be:
a) Boundaries failing to close within the accepted limits.
b) Insufficient information to obtain closes.
c) Obvious discrepancies in one or several boundary lines.

Rather than noting the title as being limited as to parcels, the existence of the document would be noted on the title.
Again this is only a suggestion which would require acceptance by District Land Registrars and possibly legislative support.
The acceptance of information of this type in support of the title would overcome one problem identified in the proceedings of the Wellington Branch, New Zealand Institute of Surveyors Seminar on Limited Titles, 1987. [2 (Item 2, page 9)].
At this seminar it was suggested that "definition of less than the whole boundary be permitted say, for the building of a garage or other fencing and that the limited title be noted that part of the boundary is no longer limited . . .
I have sighted one such title in the Otago Land District. It is noted as being limited as to parcels (part only). It is left to the experience of those searching the title to decide which boundaries are not subject to limitations.
When the Compulsory Registration of Titles Act 1924 was introduced it was intended that all actions would be completed within 5 years. No doubt there were some who considered that all limited parcels would be resurveyed within a similarly short period.
This was not the case and with the economic restraints that will always apply to land of low value, the numbers of parcels limited as to parcels are likely to increase rather than decrease.
If a resurvey of a title, limited as to parcels is to be completed with efficiency, it is important that surveyors have a clear understanding of the legal requirements which apply and the necessary information which must be gathered and supplied to obtain approval for the issue of an ordinary certificate of title.
In those few situations which end in court, it is essential that the surveyor can support the definition in terms of statute law and not rely solely on years of field experience and anecdotal evidence.

15. OTHER LEGISLATION AFFECTING INDEFEASIBILITY OF TITLE

a) **Land Transfer Amendment Act 1963**

A further encroachment into indefeasibility was made with the passing of this Act, but for a good reason. The intention was quite clear. Almost 100 years of the Land Transfer Act had naturally disclosed some weaknesses. The inability of a citizen to gain documentary title to abandoned land which they had occupied for many years was the problem. In terms of Section 64 it was impossible for a possessor to become the registered owner despite the fact that their predecessors may have paid for the land and subsequent owners had maintained that land and paid rates. Unlike the Compulsory Registration of Titles Act, the Land Transfer Amendment Act 1963 is detailed in the way it lays out the procedures which must be followed before documentary title is issued.

There is no shortage of valuable discussion documents on the 1963 Amendment, (5 - 9) and these have ensured that the profession is well informed regarding this legislation.

b) **The Property Law Act 1952**

While it does not involve possessory rights in the common law sense Section 129 of this Act does allow an adjoining owner to gain an estate, interest or title over their neighbours' property in clearly defined circumstances.

Like the Land Transfer Amendment Act of 1963, Section 129 was introduced to overcome the strictures which the concept of indefeasibility in the Land Transfer Act imposed in cases of genuine hardship.

Where a building encroaches on adjoining land and

a) the encroachment is not intentional
b) did not arise from gross negligence
d) was not erected by the encroaching owner the court may grant relief in a number of ways set out in that Section of the Act.

This legislation was used in 1961 to settle the court case Cable v Roche (16). This case is often cited as an example of occupation prevailing over documentation but in fact the Judge supported the conclusions of the surveyor who redefined the boundary in terms of documentary evidence and established the extent of the encroachment. At the same time the Judge was not prepared to ignore the fact that the Cable family had occupied the area of encroachment for 70 years. In view of this fact, he granted relief under the Property Law Act 1952.

c) **Moveable (Natural) Common Law Boundaries** (13)

The Common Law principles of English land law continue to survive in the land transfer system where it applies to natural boundaries formed by oceans, rivers and streams.

Where riparian rights apply, a title can be diminished or increased by the gradual and imperceptible shift of a water boundary.

In many cases the rivers and coastlines of New Zealand are bordered by legal roads or strips of Crown land which remove riparian rights from the adjacent land owner and provide a fixed but normally unpegged boundary.

Two recent pieces of legislation have turned the clock back in this regard.

d) **The Conservation Law Reform Act 1987 (1990 Amendment)**

Under Section 58 of the Land Act 1948 public access to water areas of specified dimension was protected by way of a one chain strip of land. This strip was reserved from sale when there was a disposal of Crown land. As noted above these boundaries were considered to be immovable and had the affect of removing riparian rights from the recipient of the disposal.

The 1990 amendment to the Conservation Law Reform Act introduced a new concept. Under Section 24 strips are set apart under circumstances which are similar to those in the Land Act but Section 24G decrees that where the course of a water boundary is altered and the alteration affects an existing marginal strip, a new marginal strip shall be deemed to have been reserved.

In practice, titles to Crown land under disposal are now issued up to the waters edge. Section 24F ensures that in these cases the Crown retains the ownership of the river bed. In this manner riparian rights are extinguished but a moveable right of access 20 metres wide is created over the property. This would appear to be a return to a form of prescriptive right in favour of the general public.

e) Resource Management Amendment Act 1993

Under this amendment the new concept applied to Crown land by way of the marginal strip has now been transferred to freehold titles when the land is subject to subdivision. Section 230 of the principal Act sets out the circumstances under which esplanade reserves or esplanade strips must be created.

Section 233 of this Act has the same affect as Section 24G of the Conservation Law Reform Act in that it provides for the creation of a new esplanade strip where the water boundary alters its course. Again the title holder is subject to a form of prescriptive right.

16. CONCLUSION

Despite the undoubted support for the concept of indefeasibility of title which exists in New Zealand, some historical forms of possession remain in the Land Transfer system and slowly but surely new forms are being introduced.

As we move further away from the times and their demands which led to the passing of the Land Transfer Act 1870 there will be continuing pressure to revert to cheaper, more flexible forms of title definition. The survey profession must be at the forefront of any debate on these issues. To make an informed contribution it is essential that members have a clear understanding of the differences between indefeasibility of title and the Common Law of possession.

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BIOGRAPHICAL NOTES

The author commenced work with the Lands & Survey Department in Dunedin in 1955 as a draughting cadet progressing to a survey cadetship in 1956 under articles to R A Innes. After gaining registration in 1961 he worked in Hokitika and Hamilton as a staff surveyor with a sojourn in Niue Island before returning to Dunedin in 1969 as a senior surveyor (deputy Chief Surveyor).

During 1993 he lectured in cadastral studies at the School of Surveying at Otago University.

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INTRODUCTION

At the 1993 Annual General Meeting, held during the Hamilton Conference of the New Zealand Institute of Surveyors, a policy was adopted with respect to Continuing Education (CE). Parts of that policy included requirements to *"encourage all members . . . to undertake an adequate level of continuing education"* and to *"formally recognise such activities"* and to *". . . monitor(s) professional education programmes . . ."*

In implementing this policy, the Council of the Institute adopted a schedule of recognised CE activities and requested all members to complete a return of the activities that they had undertaken. This was the first time such a survey had been done within the Institute. The return was sent out with the subscription renewal notice, with the explicit objective of gaining as many returns as possible.

THE SCHEDULE

The schedule of recognised activities was based on one which had been discussed at a teleconference on Continuing Education in 1993. It had been devised by the Continuing Education Committee of the Council, first as a discussion document, but was then developed in the light of discussions held.

The first choice appeared to be whether to use a system of hours spent on recognised activities or one on which credit points were gained for such activities. There appeared to be good argument for and against both approaches, but among the (newly named) Continuing Professional Development (CPD) Committee it was decided to adopt the system of points rather than hours. It appeared to offer the most flexibility for attempting to ensure equity between different levels of activities, as well as a system that would recognise such things as continuing to practise.

The next decision was to adopt a system which classified relevant activities into three types: Industry Education; Professional Development; and Personal Development. It was to do with issues such as those raised under the second and third headings that prompted the Committee to recommend to the NZIS Council that the Committee's name be changed from Continuing Education to Continuing Professional Development. It is worthy of note that the Personal Development classification drew comment from several members who furnished the return along the lines that such activities were of no business of the Institute, and that they were not prepared to divulge such details.

The three headings were considered by the CPD Committee to cover the various aspects of life as a professional person. The intention was to make it as effortless