

“MISCLOSURES” NEWSLETTER



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Land Surveyor's Association of Jamaica Newsletter

April, 2021

Why Geospatial Will Always Be a People-centric Profession



By: James Kavanagh

I was intrigued to read recently about another step forward in the accelerating integration of different geospatial technologies. In this case, the seamless integration of North Sea oil/gas-rig data captured using unmanned aerial vehicle (UAV or 'drone') platforms, Lidar sensors and mobile/static digital photogrammetry is allowing the creation of a highly accurate geospatial model of an extremely complex structure in a very hostile natural environment. This 3D model will enable specialist engineers and other professionals to access this enormous and expensive structure 'virtually' for condition reporting and decommissioning from their land-based offices. In the UK, we tend to think of land-based

and offshore/hydrographic geospatial survey as two sides of the same coin. In fact, our academic education combines both sectors. The combination of bathymetry with land-based data capture is evolving rapidly, so applying the technique in a deep-water offshore environment – as Texo DSI is doing – is a logical step forward.

The increasingly 'remote' and 'hands-off' nature of much of what we do within geospatial can cause particular issues, especially during the current COVID-19 pandemic. We are at our core a public-facing profession, dealing with people, clients and other professionals on a very regular basis. New geospatial technology will change some aspects of these relationships and we do have an important task to increase our professional understanding of how ethics and ethical data use will impact on the services that we provide. More of these issues are worthy of future discussion, but for now I'd like to consider the ethical impact of 'unconscious bias' in geospatial information and its use. Unconscious bias is unintended and subtle; it is based on unconscious thought and can lead to all kinds of unintended consequences including misuse of information, discrimination, unsupported judgments and prejudice. Algorithms drive artificial

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Editor's Notes



Timothy A. Thwaites BA, MSc., CLS

Dear readers, we now find ourselves more than a full calendar year in the grips of the COVID-19 pandemic, and being here to share in this quarter's edition of our Misclosures newsletter is in-and-of itself cause for immense gratitude.

Surveyors are undoubtedly fortunate, as our profession has not suffered as high a level of disruption as many other industries, and we have benefitted as much as any

from the technological and social advances that have allowed us to maintain our businesses and relationship during these fluid and changing times.

However, no one can claim to be fully insulated from 'covid-related' stressors; apart from the general dislocation and ever-present health risks, many have faced losses during these times. Some directly by the virus, and even if not directly related to COVID-19, it has affected the way we are able to grieve, celebrate lives, and share with loved ones in these needy moments.

These times will be hard on us in ways that we may not even immediately recognize and are only just beginning to understand. This has great potential to adversely affect our decisions and actions, with consequences that may be very delayed in their manifestations.

We should always remember our responsibilities as professionals, and the resulting burdens that are incumbent on us. We have to take seriously the immediate, and potentially delayed effects of what we do, because long after the pandemic fades into the distance, things will eventually catch up to us!

Let us head into this quarter considering the value of, and effects that what we do have on each of us, our loved ones, our clients, our profession, and indeed the nation and wider world.

Embrace your importance; safely cherish today; and prepare for your personal and professional post-COVID future!

Timothy A. Thwaites, Newsletter Editor

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The LSAJ continues to be more environmentally responsible! Our Misclosures newsletter will now only be circulated in electronic format. This will increase our reach through e-transmission to a wider readership, and also drastically reduce our collective carbon footprint!

The President's Notepad



Christopher Grant, CLS - LSAJ President

Welcome to the second quarter of 2021.

A year ago, we were forced to abandon our regularly scheduled Quarterly General Meeting due to the imposition of the Covid-19 pandemic. This year, notwithstanding the continuing limitations of restricted gatherings

and social distancing, we have found a way to continue, thanks to innovation and resourcefulness. This reinforces and reminds us of the power of the human mind to circumvent limitations and overcome all odds.

We entered this quarter in a state of remorse as we have had to bid farewell to some very near and dear loved ones.

- On the 5th January 2021, our senior colleague Mr. Derrick Dixon passed away at the University Hospital of the West Indies. He was ailing for some time, so it wasn't unexpected.
- On the 22nd of March 2021 our senior colleague and The Land Surveyor's Board Chief Examiner, Mr. Richard Haddad departed from us. This proved to be quite a shock to everyone as it was sudden and unexpected. In fact, it occurred while he was at work so he transitioned in the line of duty. His memories will keep him in our hearts forever.
- On the 28th of March 2021, we learned of the passing of our Honorary Counsel, Mr. William McCalla. We understand that he had a short illness from which he did not recover.
- On the 1st of April 2021, our colleague Mr. David Gordon's wife Joanna passed away quite suddenly. This has left us all in shock. Mrs. Gordon was a young woman with young children, ages 11 and 3. We can only imagine our colleague's challenges at this time.

- On the 3rd of April our senior colleague, Mr. Ainsworth Dick lost his eldest sister. She was ailing for a while so this was somewhat expected, but of course, we are never really prepared to lose a loved one.

We celebrate the cherished memories of these loved ones with our friends and colleagues. We pray for strength and the healing of wounds that have been inflicted by the tragedy of death. May eternal rest be granted unto them and perpetual light shine upon them. May their souls rest in peace.

We commenced the new administrative year with several objectives, including a focus on the impact of our profession on Jamaica's development program. Our seminar hosted on 18th March 2021, entitled "The Surveyor and his profession: Multi-storey Developments, was one of the efforts aimed at exploring some of the challenges being encountered with a view to provide some guidance for the future. While we're focused on the future, we have to be mindful of arguably, the most critical resource for future development, our human resource. In recent years it has been observed that entering the Land Surveying profession is not among the top options for graduates leaving UTech, which is traditionally our main source for replenishing the profession. There appears to be a clear sense of disconnection between the University and the Land Surveying industry. We will be pursuing this issue in an effort to understanding this disconnection in order to protect the future of our profession and our country's continuing growth program.

Covid-19 continues to play a significant role in our lives. We're now navigating between increased infection rates, lockdowns and vaccination. Our responsibility as always is to protect ourselves through the various methods of protection available.

Let us continue to remain focused and professional in service to our clients. Stay safe always.

Christopher Grant, President

"The art of life lies in a constant readjustment to our surroundings."- Kakuzō Okakura

Practice Advisory—Buildings on Survey Plans

The following is quoted text from correspondence: Senior Director of Surveys—Dr. Glendon G. Newsome to The President Land Surveyors Association of Jamaica (LSAJ) - Mr. Christopher Grant

Attention: All LSAJ Members,

Re: Practice Advisory—Buildings on Survey Plans

This is to advise that there is no requirement under the Land Surveyors Regulations for buildings to be shown on Cadastral Plans, save and except for the provision of section 35 (14): “Any permanent building on the land surveyed, situated within ten feet of the boundary, and of such a nature as to be of assistance in identifying the boundary, shall be shown on the plan”. In such instances a bearing and distance tie to the boundary should be shown on the plan.

Where a building straddles a boundary line, there is no requirement to state that the building or any part thereof, will be demolished.

In the case of Strata Plans, please take note of Section 4 (3) of the Registration (Strata Titles) Regulations, 1969, which requires that “The diagram prescribed by paragraph © of subsection (1) of section 7 of the Act shall be drawn with the north point directed upwards and shall be to scale which will admit of all details and notations being clearly shown and such diagram shall show offsets in any case where part of the building is within six feet of a boundary of the parcel but no other dimensions shall be necessary. The external surface boundaries of the parcel shown in any such diagram shall, if the Registrar of Titles so requires, be defined by a plan of survey prepared in accordance with the Land Surveyors Act”.

Please be guided accordingly.

Yours truly,
Dr. Glendon G. Newsome
Senior Director of Surveys



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Vulnerability to legal misconduct: a profile of problem lawyers in Victoria, Australia

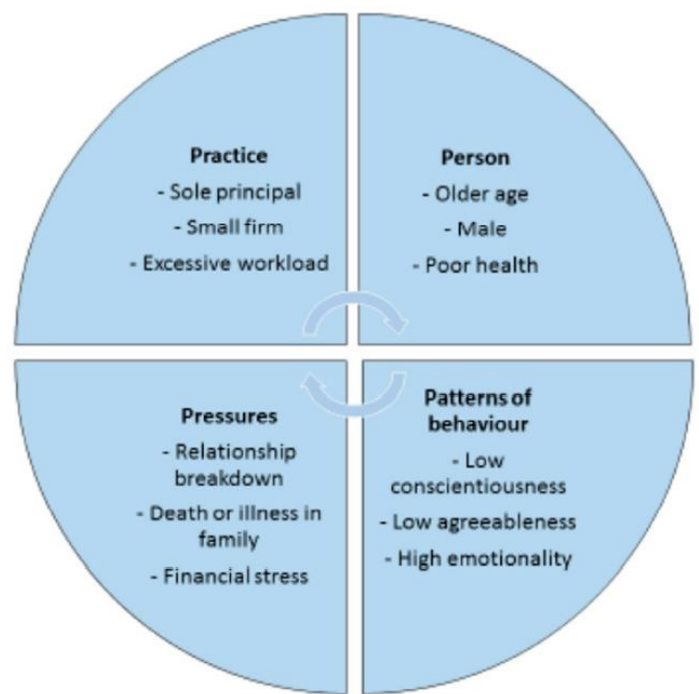
The following are excerpts from the referenced article, which was initially mentioned during a recent LSAJ CPD seminar by presenter, Attorney-at-Law, Delrose Campbell

Abstract

Public trust in the legal profession rests on regulators taking timely and effective action in response to misconduct. Usually, case-by-case analysis occurs after a claim or complaint is lodged with little attention on factors that may predispose a lawyer to misconduct. Vulnerability is a useful concept for understanding individuals' susceptibility to harm and for identifying safeguards to protect against that harm. This empirical study adds to the largely normative research on vulnerability with an analysis of 67 "problem lawyers" who were the subject of multiple complaints and at least one disciplinary hearing, a paid financial misconduct claim, or striking from the roll in Victoria, Australia between 2005 and 2015. We analysed determinations about these lawyers and identified a concatenation of factors associated with legal misconduct. Personal vulnerabilities included older age, male sex, poor health, and patterns of behaviour such as low conscientiousness. Situational vulnerabilities included working as a sole principal or in a small practice, excessive workload, and pressures from relationship breakdowns, death or illness in the family, or financial difficulties. These findings shed light on vulnerabilities to legal misconduct, and have implications for lawyer education and well-being, protection of clients, and efforts to reduce lapses in professionalism.

Conclusions & Recommendations

Our findings underscore the importance of understanding the context in which misconduct occurs. As expressed by the Tribunal: "the fact that there have been complaints which, after investigation, resulted in regulatory action, may indicate that something was amiss in the practitioner's life or practice." Given the stressful realities of legal practice, we propose three avenues for reducing, or mitigating, personal and situational vulnerability among lawyers. First, we recommend greater attention to the link between professionalism and well-being in the profession (Albert and Krill 2015). A three-tiered approach is recommended: first, promote improved health and well-being amongst lawyers; second, encourage greater support for those who face difficulties; and third, reconsider the nature of legal working cultures and conditions deemed deleterious to lawyer health. Jurisdictions in different parts of the world have established health and counselling programs tailored to lawyers, such as LawCare in the United Kingdom and the American Bar Association Commission on Lawyer Assistance Programs (ABA 2017). A "health pathway" – similar to that in place for health professionals in Australia – could be considered (Moore et al. 2015). A health pathway would identify lawyers with physical or mental health issues, or substance use dependence, which may have contributed to their misconduct. Rather than subject these lawyers to an adversarial disciplinary process, they would receive support for recovery and rehabilitation. Similar to health practitioners, disciplining impaired lawyers may not further the goal of protecting the public and the integrity of the profession, if the public is better served by allowing a lawyer to recover (Beeler 2017).



Profile of problem lawyers.

Vulnerability to legal misconduct: a profile of problem lawyers in Victoria, Australia (*cont'd from pg. 5*)

Second, our findings on unprofessional patterns of behaviours have important implications for lawyers. Disagreeable behaviour, such as rudeness, disrespect, bullying, and belligerence, should not be tolerated and could be addressed through an initiative similar to the Royal Australasian College of Surgeons "Operate with Respect" course (Royal Australasian College of Surgeons 2019). Also, high levels of conscientiousness are crucial in legal practice. Educators, regulators, and employers all have a role to play in emphasising the importance of keeping accurate file notes, responding to correspondence in a timely way, having robust systems for storing files and monitoring trust accounts. Finally, lawyers need to regulate their emotions in the face of stress, and to respond proactively to complaints, rather than hoping the problem will go away. As expressed by the Tribunal, there are certain steps that lawyers should follow in a disciplinary matter (Legal Services Commissioner v Macgregor 2013):

They must think about it, give their attention to it, and take steps to address it and respond appropriately. They should seek help and advice at an early stage, despite any embarrassment. They would be wise to appoint someone to act for them in relation to any disciplinary proceedings. They should notify any claim to their professional indemnity insurer...It is all too common in cases before the Tribunal for charges of professional misconduct to arise from a failure to deal effectively with the disciplinary complaint and the investigation process, rather than the subject matter of the complaint itself.

Third, it is important to keep in mind that the problem lawyers in our sample represent a small fraction of the lawyers with multiple vulnerabilities. Many older, male lawyers working in sole practices experience depression and stressful life events without engaging in misconduct or financial fraud. Indeed, personal disruptions affect most professionals and do not constitute exceptional circumstances to excuse misconduct. Nonetheless, both regulators and the profession would benefit from a better understanding of protective factors that bolster the capacity of lawyers with vulnerabilities to keep practicing with the highest standards of ethics and legal practice.

Finally, consideration of vulnerabilities would be incomplete without acknowledging the privilege and power held by some problem lawyers, as a result of sex, ethnicity, knowledge asymmetry, and social status. While not the focus of our study, client vulnerabilities such as poor health, cognitive impairment, unfamiliarity with the legal system, and non-English speaking backgrounds were commonly noted in the determinations. Previous research suggests that such vulnerabilities may be exploited by unscrupulous lawyers (Moore et al. 2019). The relationship between client vulnerability and lawyer misconduct matters, because disadvantaged or socially excluded groups are more likely to experience substantial or multiple legal problems (Coumarelos et al. 2012). The intersection between lawyer misconduct and client vulnerability is an important area for further research. Particularly, in exploring ways to safeguard vulnerable clients during their interactions with the legal system and support them to engage with regulatory process when things go wrong. Lawyers work in a profession that is dedicated to client service; and therefore, dependent on public trust and confidence. Professional misconduct challenges these notions. A complaint about a lawyer may reflect an isolated instance of dissatisfaction with services provided, or herald more serious problems that present an ongoing risk to the public. Our empirical analysis offers insights into personal and situational vulnerabilities which may contribute to a trajectory of becoming a problem lawyer. In turn, our findings may lead to opportunities for legal educators, regulators, and employers to help guard against forms of misconduct and thereby protect consumers of legal services.

Source: Sklar, T., Moore, J. S., Bismark, M., & Taouk, Y. (2020). Vulnerability to legal misconduct: a profile of problem lawyers in Victoria, Australia. *International Journal of the Legal Profession*, 1-21.

Avoiding Professional Negligence: Tip the scales of justice in your favor by following these simple guidelines



By: Charles "Tony" Nettleman III, Esq, PhD, PSM

Being "served" a lawsuit alleging wrongdoing by a past client is probably a worst-nightmare scenario for practicing surveyors. The good news is that – statistically – the vast majority of professionals will never be sued. The bad news is that – whether you committed the alleged offenses – defending yourself and your business in civil court is a long, frustrating, and unsatisfying experience.

There is no insurance policy, contract clause, or holy prayer that can prevent a civil suit against you or your business. But there are many things that you as a manager, partner, or owner can do

to protect your practice from litigious individuals. As an added bonus, these items can improve your business in many ways, including increasing profits, raising employee happiness, and ensuring that you deliver the best work to your clients.

So, what are the downsides? Well, the tasks are going to require the company leadership to actually lead, for you to work 'in' the business and not just 'on' the business, and for the company to cull those employees who do not have the desire to grow as professionals.

The first barrier against civil liability is simply exceeding your client's expectations. A study showed that the biggest indicator of whether a patient would bring suit against their doctor was whether they "liked" the doctor. My company created a brand promise for each of the three divisions. We constantly compare the work done (e.g., a land survey or expert report) with that promise. If we fall below it, we contact the client, discuss where we think we could have done better, do not charge for the work, or something similar. If an employee fails to meet that brand promise, remedial action as simple as a chat or as harsh as firing. One of our mottos is "on time, every time, exactly as promised." Does your firm share that ethos?

Another fantastic step to meet that ethos is creating a "University." This university is not for customers, students, or anyone else. It has been created for the sole use of training your own employees. At the University, you will teach your field surveyors how to run a traverse, teach your CAD technician which line categories to use and teach your finance person how often to call or email about collections.

Many companies rely on senior personnel to teach their juniors. A good example would be a party chief teaching a rod man how to cut line. But do your party chiefs know exactly how you would do it? I don't think so.

There are many methods for building your University but there should be a mix of videos, white papers, and step-by-step checklists. All of this combines within your operations manual. Your employees are on the frontlines every day, which makes them either your biggest asset or your biggest liability.

Client expectations may be set in many ways: in-person meetings, previous survey work done for them, emails, or phone calls. But the best way to set clear expectations is with a written contract. The contract is not meant to be used against each other. Instead, it's meant to define the scope of work, time until completion, and compensation schedule.

I personally started my business with a one-page contract. Today, I use contracts up to 10 pages because I have learned many lessons. Contracts should be reviewed by an experienced attorney for legality and missing items. If you learn a lesson from a less-than-ideal client, use that experience to improve your contract. Many surveyors have told me that having a contract is not worth the time and expense. I disagree. Contracts protect both you and the client and will lead to more work, happier clients, and fewer disputes.

Avoiding Professional Negligence: Tip the scales of justice in your favor by following these simple guidelines (cont'd from pg. 7)

Every court of law or equity, no matter in what state, will judge a particular Professional Land Surveyor against the "reasonable person" standard. Here, the court creates a fictional PLS that acts as "reasonably." Then, if your conduct falls below that line, you as a PLS are considered negligent.

What exactly does this fictional person do? Well, that is where expert testimony comes into play. Testifying in dozens of depositions and trials over the years, I am shocked that so few surveyors maintain their equipment. I do not worship at the alter of the three-band GNSS unit or the robotic total station. I will only buy the equipment necessary to do the job efficiently and accurately.

On the other hand, if my Leica TS06 manual states that the total station should be serviced every 12 months, I will religiously follow that recommendation. Have you ever read your maintenance manual? How many years has it been since your firm has serviced the differential levels or total stations? Not following standard practices is the easiest way for an attorney to prove that you are negligent.

Building a business that works is a process that is never complete. It will require hard work, bring you to tears some days, but it will be worth it in the end. All of these recommendations may seem disconnected, but there is one thing that ties my recommendations together. Company values.

Company values are the soul of the company and explain why your firm makes all its choices. When NLC, my company, has a sticky problem, we review the issue through a prism of our company values. It is amazing how clear the answer becomes.

Recently, a client complained that his invoice was too high and he wanted a discount. One of our values is "Consistency, Dependability and Quality." We explained that value and how we could not provide that to him without doing the work required before being deposed. He's never complained again. If you do nothing else after reading this article, put those values in writing and talk with your team members about them. It's worth it.

Source: <https://www.xyht.com/surveying/avoiding-professional-negligence/> (accessed 08-05-2021)

Why Geospatial Will Always Be a People-centric Profession (cont'd from pg. 1)

intelligence and machine learning, but the 'unconscious bias' of the code programmers and developers can seep into the system (witness the unease over the use of face recognition software in many Western capitals, or educational algorithms used to award exam grades to students during the pandemic). This bias has caused alarm within governments and even led to an independent report in the UK called 'Review into bias in algorithmic decision-making'.

In the arena of geospatial data, we pride ourselves on being objective and data-led, on being critical about data and on relying on 'control/ground truthing/markers' that we can verify and trust. But we, like all humans, are not immune. Confirmation and selection bias (forcing data to fit your own predetermined opinion) can be evident in GIS data modelling. Personal data can add potential for stigma and discrimination resulting from being associated with particular locations (this can affect everything from employment prospects to credit ratings to healthcare access) and tenant data can allow unconscious bias to inform investment, lease and rental-related decisions. Major firms are now offering unconscious bias training, and perhaps the first step in dealing with it is recognizing that it exists in the first place. The Benchmark Initiative is a good place to start for any further reading on this important subject.

When looking after the public, clients and other professionals, we can often forget to pay sufficient attention to ourselves and those that work in or are studying towards a geospatial career. Mental health issues have never been more evident than in the past year – when COVID-19 lockdowns have blurred the boundaries of work, family and home life – and the alarm bells are ringing. Recent surveys show that construction workers are three times more likely to take their own lives than the rest of the population – and that's compared with a general population where one person in six feels under intense stress. Tragically, several RICS surveyors have taken their own lives over the years and the RICS charity Lionheart has launched a campaign on this issue.

When we look to the future, geospatial students are undergoing a torrid time at present with nearly three quarters (73%) of students saying that their mental health had declined during the lockdown. [Student mental health during coronavirus | Mind, the mental health charity - help for mental health problems] Mental health still has a significant social stigma attached but it is critical for the future of the geospatial profession that we openly discuss and debate these issues. Yes, we love the technology... but let's also love and look after ourselves just a little bit more.

Source: <https://www.gim-international.com/content/article/why-geospatial-will-always-be-a-people-centric-profession> (accessed 08-05-2021)