



**UNIVERSITY OF NAIROBI**  
**SCHOOL OF BUILT ENVIROMENT**  
**DEPARTMENT OF REAL ESTATE AND CONSTRUCTION MANAGEMENT**

**A STUDY INTO THE ADEQUACY AND EFFECTIVENESS OF REGULATIONS  
GOVERNING THE PROFESSIONAL PRACTICE AND WORK ETHICS IN THE  
QUANTITY SURVEYING PROFESSION //**

**BY**

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**DECLARATION**

I, **LUNG'E MWENDA MORRIS**, do hereby declare that this project is my original work and has not been presented for a degree in any other university.

Signed  .....

**LUNG'E MWENDA MORRIS**

Date 14/06/06 .....

**SUPERVISOR'S DECLARATION**

This project has been submitted for examination with my approval as a university supervisor

Signed  .....

**DR. ING. CHRISTOPHER MBATHA.**

Date 14-06-2006 .....

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Special thanks to God for giving me the strength and the will to live through all the obstacles in my life. May your name be glorified always.

## **DEDICATION**

This project is dedicated to my parents, for instilling in me the values and virtues that have continued to guide me in life and enabled me think positively always. You have sacrificed a lot to put me through education and bringing me up to be where I am today.

May God bless you and may you live a rich life.

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## **LIST OF ABBREVIATIONS**

BORAQS -Board of Registration of Architects and Quantity Surveyors

AAK –Architectural Association of Kenya

IQSK –Institute of Quantity Surveyors of Kenya

CPD –Continuous Professional Development

JBC –Joint Building Council

NGO – Non Governmental Organisation

GOVT – Government

## **DEFINITION OF TERMS**

The Board –Board of Registration of Architects and Quantity Surveyors

The Act –The Architects and Quantity Surveyors Act

Profession –Quantity Surveying profession

Professional –The Quantity Surveyor and/or the Architect

The Council –The body of individuals charged with management of affairs of

Professional Associations

Misconduct –Professional Misconduct or Unprofessional Conduct

Government – the Government of Kenya

## Abstract

Quantity Surveyors in Kenya undergo two stages of training. There is the university training which qualifies one for practical training on the job. Practical training is meant to instill a professional character into the individual. This makes him an informed person on his duties and obligations bearing in mind the economic and regulatory grounds on which he operates.

The main purpose of this study was to determine the sufficiency of the regulatory environment under which the Quantity Surveyor operates, to identify shortcomings and to propose amendments where necessary.

Quantity surveyors and the registrar of BORAQS were the respondents. The questions to the registrar centered on operations of the Board, registration of Quantity Surveyors and handling of cases of professional misconducts. Questions to the Quantity Surveyors mainly revolved around their attitudes and opinions on regulations and mechanisms of enforcement.

The study shows that the regulatory instruments of the profession i.e. the Act and the Board, have not achieved their role of regulating the profession. This is because of the inadequacy of the legal provisions in the Architects and Quantity Surveyors Act Cap 525 and constraints under which the Board operates.

The Act does not cover all trades of the profession; it discourages practices which professionals are competent and skilled to carry out and does not offer strict disciplinary measures to those who undermine its provisions.

The study has therefore recommended amendments and ways of empowering the Board to administer the Act effectively.

# CHAPTER ONE

## 1.0 Introduction

The Board of Registration of Architects and Quantity Surveyors and other professional bodies, which it is attached to, regulate the Quantity Surveying profession in Kenya. The Board is guided by an Act of parliament (CAP 525) on how to carry its mandate. -

The Act commenced operations on 1<sup>st</sup> April 1934 and has since been amended in the period 1972-1978. Currently the Act is under revision, which started in 1998 and is not complete yet.

The professional bodies involving Quantity Surveyors include Institute of Quantity Surveyors of Kenya (IQSK) and Architectural Association of Kenya (AAK).

These professional bodies have constitutions, which guide their operations on day-to-day basis. Their constitutions are drawn alongside the requirements of the Act and therefore clauses should not contradict those in the Act.

The Act and professional body constitution state clearly the norms to which their members should subscribe. They define and give examples of professional misconduct, which their members are likely or may get entangled in. These regulations are varied and cover almost all aspects, which may befall a member.

However, like any other profession or trade, Quantity Surveying has diversified and members are involved in many more activities than they were, initially. Therefore, taking into consideration the current state of the profession and the regulations that are available to govern it, the research is going to find if those regulations are adequate and if they really are effective in governing this vital profession: Quantity Surveying.

## 1.1 Background to the Problem ✓

Quantity Surveying profession is one of the oldest professions and widely practiced especially in the developed world. It dates back to 17<sup>th</sup> Century during the restoration of the London after the great fire in 1666.

Regulations governing the profession were formulated as early as 1868 when surveyors met and appointed a committee to draw up resolutions, by-laws and regulations with a view of setting up a professional association to represent Surveyors. These surveyors under the auspice of Royal Institute of Chartered Surveyors include Institute of Quantity Surveyors, Land Surveyors, Mining Surveyors and many more.

Since the profession was largely introduced in Africa by colonial masters, then it follows that Quantity Surveying reached Africa in the 20<sup>th</sup> Century and was mainly practiced by those who ruled at the time: The Colonialists. They even brought their own regulations, which governed them in their homelands.

It was not until African countries gained independence that they started formulating their own rules and by-laws, which are customized to their specific needs. For example, it is as late as 2005 that Nigeria Institute of Quantity Surveyors started agitating for deregulations of fees. In East Africa, Kenya has the most developed Quantity Surveying profession with its neighbouring Uganda and Tanzania importing most of the regulations governing the Kenyan profession and applying it in their own practices.

Though British colonialists introduced the profession in Kenya early 20th century, it was not until the colonial masters had left long ago in 1963, that the practitioners started noticing shortcoming in the regulations. However, there were hurdles all the way. For instance, the Architects and Quantity Surveyors Act, which governs the practice, is rarely revised and if it does, then the process takes a very long period often running into years.

So far there is a draft which is undergoing amendments. It started in 1998 and it's not completed to date. Until it's complete and passed by parliament then it is not applicable.

Nevertheless, the Registration Board through its various committees has simplified the issue of regulations by issuing practice notes hence expanding the scope of its members so long as it does not injure the profession. Practice Notes, serve to make light amendments and clarify the ambiguity of some clauses found in the Act.

The Board and the Professional Associations have the task of advising and formulating rules, which will enhance integrity, professionalism and accountability in the profession. This will only be achieved if the rules, regulations and by-laws are revised from time to time and amendments on the Act effected whenever need arises. For example if there is a conflict between the Act and other Acts like the procurement Act or if the board encounters a case which is not specifically covered in the existing Act.

## **1.2 Problem Statements**

As the adage goes "Laws are made to be broken so is the punishment meant for lawbreakers." In the Quantity Surveying profession, there are regulations which govern the professionals. These are spelt out clearly in the Act and they should be adhered to strictly. However there are cases of professional misconducts being witnessed in the profession. One wonders whether it is the regulations which are not enough or it's the enforcement mechanisms which are not effective in ensuring a profession with integrity.

In the construction industry professionals have a big role to play. They need to ensure impartial treatment to all irrespective of their affiliations. This is an industry that deals with lives of people, huge capital investments and commitments. The major factor here is that once a project, activity or procedure has been done, it cannot be redone. This calls for applications of strongest principles and procedures for doing things right the first time, else parties to the project will suffer losses.

There are many participants in the industry and each of them has a distinct role to play. Some of the roles are interrelated and supplementary. Each single player has regulations and by-laws that govern him/her in performing his specific role, though they are all bound by the contracts signed between them and their employers. Of interest to the researcher is the quantity surveyor and regulations under which he practices. These regulations mostly come from: -

- a) Board of Registration of Architect and Quantity Surveyors (BORAQS).
- b) The Architectural Association of Kenya (AAK).
- c) The Institute of Quantity Surveyors of Kenya (IQSK).
- d) Ministry of public works Conditions of Engagements.
- e) The Joint Building Council (JBC).

So far the Board has been handling disciplinary cases, which have been increasing for the last few years for example:

In 1996 the board handled 5 such cases

in 1997 the board handled 8 such cases

In 1998 the board handled 9 such cases

In 1999 the board handled 15 such cases

From 2000 to 2005, the Board has been handling an average of 18 such cases annually.

The Board has legal powers to deal with cases of professional malpractice and unethical behaviour. According to the Act, it can impose a monetary fine of up to Ksh 5000 only.

This amount may be quite small in some cases. The culprit may not feel any pinch compared to the benefit obtained from the offence committed. Professional association, though a source of some of the regulations that encompass the profession's integrity, are not empowered legally to enforce them. In any case they don't exist to gag their members but to enhance them. As such they could be compared with social clubs. Among other objectives, their constitutions states that their objective is to liaise with the Government and other regulatory agencies to matters affecting registration and licensing of the professionals engaged in the built and natural environment.



The constitution of IQSK states that one of their objectives among others is to cooperate with BORAQS and other relevant bodies/societies concerning Quantity Surveying education, training, examination and practice.

To further its aims and objectives, the IQSK has standing committees to advise the council on academic and professional standards, membership training and other such matters.

As it was found out (Chege B.W, 2000), members of the profession are unanimous that Professional Associations have been ineffective in their roles of maintaining professional integrity due to the following: -

- a) They do not deal with errant members strictly and appropriately.
- b) They do not encourage clients to report cases of misconduct.
- c) They do not have sufficient financial and human resources to investigate and determine cases.
- d) Legislation restriction whereby it's only the Board of Registration (BORAQS), which has legal capacity to punish.

Other reasons, which have made the regulations ineffective, are: -

- i) Clients and the public are not educated as to what may comprise misconduct and are not encouraged to report even the obvious ones.
- ii) Low or no rewards for those who uphold integrity. The country's standards of social justice and good governance are generally low. Many of the deals are confidential and only come to light when parties disagree.
- iii) Members of the Registration Board may not necessarily be members of Professional Associations as this is voluntary. The little that that these Associations can enforce therefore does not affect these individuals.

What the researcher above failed to note was that professional associations are not established to regulate professionals in any way. Their objectives revolve around enhancement of the professional through taking care of their interests. They are not established by any Act of parliament therefore have no legal mandates.

The Board has powers to punish but then the regulations under which it operates are wanting. Cumbersome and outdated laws, procedures and regulations govern the industry (Elijah Ageri, 2005)

The Act specifies some of the punishments meted against members found guilty of professional misconduct as: -

- a) Caution or censure such person
- b) Suspend his / her registration
- c) Impose a fine not exceeding Kshs5000.
- d) Direct that his name be removed from the registrar.

These punishments are not matched against specific crimes in the professional. As such an element of biasness arises in their application.

Professional fees have been regulated for a long time though this has failed to deter members from negotiations or charging less fees. Therefore there is need to review them to allow professionals to negotiate. Scales should serve as a basis only.

David Mutiso, (2002) while addressing a CPD seminar on Architects and Quantity Surveyors remuneration remarked, "I will be the last person to state that the conditions of engagement are perfect for all cases. There is in my view, scope for flexibility and negotiations when dealing with the said conditions. The principle of the code ensures that the conditions under which you will operate will enable you to provide professional service of a proper standard allowing for the aberrations and uncertainties found in the industry and among clients."

Draft Cap525 removes this restriction and scales are a guide only. Mathew k, (2002) Liberalisation at last. The comments by the two professionals show the discomfort with fees regulations clauses in the Act.

The Act presents ambiguous situations that are left to members of the Board to decide. A case in point is formation of partnerships. The Board deals with registered members only but at the same time it can approve a partnership between a registered person and

unregistered person subject to consent of the registered person to accepting responsibility for the acts of the unregistered person.

The Board may impose more requirements for partnership between registered and unregistered members and withdrawal approval if it feels that it's not in the interest of the profession. All this is subjective and ambiguous.

The Act in section 3(v) does not allow a registered person to pay another registered person less than fees set forth Schedule of the Act. This could be hard to implement, as it would mean passing all your fees to the other person who is registered and working for you.

The discussions above show that the regulations are not adequate; some clauses need revision and more provisions created and included in the Act. Cases of unprofessional conduct have been occurring hence the researcher will study the role of the Board with the aim of establishing why it has failed to prevent them.

Professional bodies should redefine their objectives and aims, restructuring them to the changes in the industry and are expected to play a leading role as instruments of change in the industry for training, good practice and professional ethics (Talukhaba, 1999).

The research will therefore endeavour to study the regulations of the practice of quantity surveying to establish their adequacy and effectiveness in controlling and regulating the profession

### **1.3 Purpose of the Study**

The purpose of this research is to establish the shortcomings of the regulations governing Quantity Surveyors and a process which can be undertaken to make them effective, adequate and efficient in executing its core objectives of serving its members, industry and the society at large.

## **1.4 Objectives of the Study**

1. Study the regulations governing the quantity surveying profession and determine if they are sufficient to effectively control the profession.
2. Identify the shortcoming of the regulatory environment and propose ways of overcoming them.
3. Establish changes and amendments to the law, which will enhance professional practices and ethical behaviour of Quantity Surveyors.

## **1.5 Research Hypothesis**

- 1) Inadequate regulations have lead to ineffective control and failure to enforce professional practices and ethical behaviour in the quantity surveying profession.
- 2) Lack of capacity and ability has hindered the enforcement of professional code of practice.

## **1.6 Significant of the Study**

The study is quite important in that it addresses the questions in every professional's mouth. Whenever there is a public gathering accessioned by the professional practice, legal matters must always arise. Either the laws are inadequate, unenforced or biased in application through unethical practices of corruption and favouritism.

The most recent being the collapsed building under construction on Ronald Ngala Street of down town Nairobi in mid-January. Politicians, Professionals and the Clergy all condemned the greed and laxity in enforcing City Council by-laws, Building Code and Professional Practices. Thus the weekly edition of KARA newsletter reported "Kenyans must wakeup and demand that the Planners, Architects, Quantity Surveyors, Engineers, and other professionals in the construction industry must be individually held responsible

for their work current and past.” Those who go against their profession provisions must be publicly cited and be prosecuted for equivalents of murder that results.

The profession will benefit from the detailed analysis of opinions of members, which will be collected together. The study will still offer the much needed basis for devising effective legislation to govern the operations of the Governing Bodies and enhance the development of a competent profession that is up to date with changing requirements of their clients.

### **1.7 Scope and Justification**

The study will cover only the Quantity Surveying profession as time and financial constraints do not allow for expanded coverage. It will concentrate its effort in Nairobi because it's the heart of major operation of the profession. The Board of Registration of Architect and Quantity Surveyors, Architectural Association Of Kenya and the and Institute of Quantity Surveyors of Kenya, Ministry of Public Works, City Council and all the agencies concerning the profession have their headquarters in Nairobi. Most of the Quantity Surveyors who form part of the population have their firms located in Nairobi.

The study attempts to quell the hue and cry and blanket condemnation of the construction industry as one that is unorganized, scattered and with no sense of direction.

Especially so the Quantity surveying profession which is little known by the common citizen so that all can understand and appreciate the legal technicalities that govern it. They can also participate in moulding it by reporting behaviour unbecoming of Quantity Surveyors and thus instill integrity in the profession.

### **1.8 Limitations of the Study**

Most of the information concerning professional misconduct or unethical practices is treated as confidential. The research has to do with statistics provided on annual basis and

extrapolates them to cover any period deemed necessary. The research appreciates that quantity surveyors do not work alone they are just part of the team whose decisions greatly affects the operations of the Quantity Surveyor. Due to time constraints it may not be possible to discern and correlate all those activities of other professionals with those of the Quantity Surveyors to determine the influence they have on the profession.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.0 Introduction

Quantity surveying professions has been studied by many researchers in relation to the curriculum, diversification, challenges, management and many more. The researcher here, is going to study the works of other researchers which are directly or indirectly related his research and highlight the differences between his work and other works by other researchers.

He will also study their methods of research and identify weaknesses to avoid repeating the same.

This research will also study various elements that constitute professionalism, ethics and a detailed analysis of unprofessional conducts to be able to understand the literature on the topic under study and form a basis for interpreting the data. It will also help the researcher work within the focus of the objectives formulated.

#### 2.1 Review of other studies

Research has been done by Karechu Z. (2002) into the preparation process of today's Kenyan quantity surveyor; problems and challenges faced by a student of BA Building Economics. His findings showed that there existed a lack of well informed informational sources as well as practical exposure opportunities available to both the prospective as well as enrolled student of Quantity Surveying. This lead to problems of career choice where students based their choice on academic qualification rather than on talent and interest. He also found that universities did not prepare students adequately to relate theory to field practice.

Kimanthi P.M. (2001) carried out research on establishing a regulatory system for construction project management as an independent profession.

He found out that the role of the project manager has not been defined locally and as a result, the project manager faces various problems such as lack of acceptance and

recognition of his potential benefits in the construction industry. There is a lot of interference and misunderstanding between the project manager and other consultants. He also found that some project managers are not qualified for the job, and this is as a result of lack of controls and set requirements to determine who should practice as a project manager.

Mwangi B.M (2003) carried research on the Quantity Surveyor in a competitive environment; strategies for attaining market leadership which brought out the following;

The market for Quantity Surveying services is very competitive with all but a few Quantity Surveyors indicating that they were in competition with others.

Of the various skills and knowledge resources that the Quantity Surveying firms in Kenya offered for sale, the skill of measurement and quantification was in greatest demand.

The environment in which Quantity Surveying practice is being practiced is changing at a rapid rate for a majority of the quantity surveying firms. This is due to economic and legal factors.

Chege B.W. (2001) carried out a study into the effectiveness of the performance of professional bodies with emphasis on the Architectural Association of Kenya (Quantity Surveying Chapter) and the Institute of Quantity Surveyors of Kenya in Nairobi whereby he found out that the associations have not fully achieved their objectives of providing Continuous Professional Development as a means of maintaining competence and upholding integrity. This was due to inappropriate CPD programs, lack of evaluation and follow-up of programs offered and improper identification of resource persons.

The closest research was carried out by Chege R. W. (1996) on the Quantity Surveyor and other businesses in the construction industry – Cap 525 in the changing economic trends in Kenya with reference to quantity surveyor. She found that the Architects and Quantity Surveyors act has been lacking in certain aspects which place restrictions on the practicing Quantity Surveyor, prohibiting him from engaging in other trades related to the construction industry. She found out the need to have the act reviewed, so as to allow the



professional Quantity Surveyor to move in line with the changing times and hence ensure a continued growth and development of the profession. She noted that there has been many changes affecting the quantity surveyor e.g. economic environment, nature of projects, availability of opportunities, nature of clients etc. these changes have caused the Act to be overtaken by events, both in the profession and in the economy.

The provisions of the Act prohibiting the Quantity Surveyor from engaging in other trades in the construction industry so restrictive outdated and are inconsistent with the spirit of economic liberalization.

This researcher recommended that Quantity Surveyors should venture into new areas hitherto unexploited. Reviewing of the Act and that ethical training should be part of the professionals' undergraduate education among others.

Her research is different from this research in that its objectives and hypothesis are not the same. She attempted to study Cap 525 in relation to other trades which the regulation does not allow a professional to engage in though perceived to be competent to do them. On the other hand this research deals specifically with ethical issues and how the Act is able or unable to influence them.

Ndehi K.S. (1996) conducted a research on the deregulation of the Quantity Surveyor's fees. His research found out that, fees scales is not necessary to maintain professional quality services and that their absence would not reduce the professional's responsibility. Fees scales serve to confer monopoly privileges to the practitioners thus denying the client the benefits of competition such as lower fees.

Like all other procurement processes, competitive bidding can be abused though it would improve on transparency and accountability.

More weight should be put on technical proposals rather than the price proposals.

Kihara J.K. (2001) researched on promotion of Quantity Surveying profession in Kenya ✓ whereby he came out with the following findings;

The public awareness of the Quantity Surveying profession was below average.

Marketing is a very important means of enhancing public awareness.

The marketing practices by Kenyan Quantity Surveyor are generally poor. There are legal restrictions to marketing but still even the legal ones have not been exploited.

Choka G.D (2001) in his research on challenges of an economic recession: strategies for professional firms in Kenya (case study of Quantity Surveying firms), recommended that professionals should engage themselves in marketing, diversification, venture into other markets, practice principles of management and invest more in research and development.

Basil J.M (2000) conducted research on diversification of Quantity Surveying services in Kenya and found out the following, that;

Quantity Surveyors are afraid of taking risks involved in diversification.

Other factor hindering the diversification of Quantity Surveyors are reluctance by the professionals to venture into other areas, the current laws and rules governing the profession and that the local training and the name of the profession do not qualify for other areas.

From the above studies done by other researchers, it's evident that no one has researched on the professionalism, ethics and regulations governing the quantity surveying profession in general. The researcher appreciates the works that touch on some aspects of the regulations of the profession for instance deregulation of fees, involvement of the professionals in other businesses in the construction industry and regulations of project management profession.

Therefore, nothing prevents the researcher from engaging in a study that will find out whether the regulations governing the professional practice and work ethics in the Quantity Surveying profession are adequacy and effective.

## 2.2 Profession ✓

It is an occupation requiring special training in liberal arts or sciences. It includes the performance of any type of personal service to the public that requires as a condition precedent to the performance of the service the obtaining of a license or admission to practice or other legal authorization

Profession may also be defined as an occupation, the practice of which directly influences human well being and requires mastery of a complex body of knowledge and specialized skills, requiring both formal education and practical experience

## 2.3 Critical determinants of successful profession ✓

In today's dynamic and highly competitive global business environment, meeting and exceeding client expectations through delivering best value, and complying with professional codes of conduct and statutory regulations are imperative, as they constitute critical determinants of successful professional practice, from the point of view of an external stakeholder.

To corporate stakeholders, a successful and sustainable professional practice is one which meets and exceeds threshold expectations. While external and internal stakeholders may be concerned with fulfilling their own interests, professional service providers aim to meet all stakeholders' interests, and ipso facto, should have holistic insights into critical determinants of successful and sustainable professional practice. .

In a survey study conducted by G. K. Le Roux, R. N. Nkado and J. I. Mbachu, (2004) on critical determinants of successful professional practice found out the following:

From the collective responses of all the professional groups, who responded to questionnaires and interviews, four themes emerged as critical success criteria in professional practice. In order of importance, these are;

- 1) Leadership, organisational and strategic management competencies,
- 2) Reputation and service quality,

- 3) Client relationship management and client/user satisfaction.
- 4) Service attitude and professionalism.

Continuing professional development (CPD) was recommended as a means through which practices could develop the critical competencies identified in the study. Modalities for effective implementation of CPD should be developed.

## 2.4 Professionalism

*x (to consider) ✓*

Professionalism is a broad change in occupation structure whereby professional jobs increase in number to other occupations as a result of expansion of professional groups for example quantity surveying, engineering etc.

It's also a process that occurs as a determinate sequence of events that an occupation passes through in stages of organizational change with the end-state being professionalism

This sequence of events is predictable, hence professionalism is a process with an end-state towards which occupations are moving and others have arrived. The concept of the profession can then be applied as an abstract model of professional organization and that the concept of professionalisation can be referred as a dynamic process whereby many occupations can be observed to change certain crucial characteristics while developing in the direction of becoming professions.

These characteristics as explained by trait theory are;

- a) a skill based on theoretical knowledge
- b) must have a provision for training and education
- c) must have a provision for testing the competence of its members
- d) must have a representative organization
- e) must have a code of conduct
- f) must be founded on altruistic service

Thus a trait model forms a checklist for measuring the degree to which an occupation is professionalised.

Functional theory on the other hand identifies traits that have functional relevance to the society as a whole. Most of these functional traits are based on professional client relationship desirable. Traits are identified on the basis of service orientation.

This approach has the belief that the individual is the true unit of service because service depends on individual responsibility, which cannot be shifted on the shoulders of others. This is the essence of professionalism and it's not concerned with self-interest but welfare of the client.

These traits are:

- a) a high degree of generalised and systematic knowledge
- b) primary orientation to the community interest rather than individual self interests
- c) a high degree of self control of behaviour through code of ethics internalized in the process of work specialization and through voluntary associations organized by work specialists themselves
- d) a system of reward which may be monetary or honorary

## **2.5 Professional ethics and standards**

All members of a profession have a moral duty of care when dealing with clients and their affairs and to exercise the utmost honesty and integrity in all their dealings.

Clients can rightfully expect that professional men and women possess a reasonable measure of competence and skill in their particular calling and will use these qualities to the benefit of the client.

This is reinforced by the by-laws and regulations which state that no member shall be connected with any occupation or business in any way which would in the opinion of the Board prejudice his professional status or the reputation of the profession.

Times have changed and the professionals have to operate in a fierce commercial and competitive climate, but still professional ethics must be upheld.

The upholding of professional ethics can be read in the rules of the board as follows;

- 1) The members of the Board must discharge their professional duty to their client and to the wider public in accordance with their charter.
- 2) To this members shall:
  - a) Ensure that where there is a conflict between the interest of the member and that of the client or the greater public good, the interest of the client shall prevail unless it's at odds with the wider public interest.
  - b) Ensure that they perform their duties with integrity and honesty, competently and diligently and by adopting personal and professional standards which enhance the reputation of the profession and of the Board.

It is important that members when practicing should confirm to their clients in respect of an instruction that they are competent and have experience in the type of business and the geographical area concerned. The member should not hide any relevant facts from the client of which he should be aware of, and which could prevent him from securing the commission, as this would be patently dishonest and unethical. In like manner, a surveyor must not claim to achieve the highest standards when he knows that it is not possible, as he would be misleading the client.

All Quantity Surveyors view themselves as professionals, as they consider themselves to be highly qualified and skilled. They would certainly wish the outside world to view them as professionals, there is however the danger for any profession that its members may seek to claim that compliance with specific rules excuses them from having to have regard to their more fundamental professional and ethical obligations.

Ethics must therefore be taught as part of university surveying degree courses and this must be of benefit to the students, their future clients and the profession at large. It could lead to higher professional standards and enhanced altitudes to the need for greater honesty, dedication, care and trust in all professional relationships with clients, other

professionals and the general public, and the avoidance of making decisions which are morally wrong.

The reverend David Jenkins, former bishop of Durham, recognized the wider remit of a professional man which often goes far beyond the client's brief, when he wrote 'a professional man is one who, in the judgement of his peers has proved himself competent in the exercise of the work he has undertaken. He is one who is not limited in the performance of his duties by a timetable or when he understands his work right, by the ability of those he serves to pay him. He does not practice his skill as a mere technician, but as human being, conscious of the fact that he is dealing with human beings in the complexity of human situations.'

Seeley in Clark (1987) pointed out the following 'the fundamental qualities which have always been expected of a professional are integrity and detachment. The truth is that professional men and women, with very few exceptions, represent and practice these unthinkingly. Professionalism is unquantifiable, hard to define, but instinctive.'

Clark believed that the protection of the client's interests remained paramount but Seeley (1997) believed that that there can be occasions when it is necessary to consider the wider aspects, as with environmental impact analysis.

Clark further considered that it is the duty of a profession to continually review the standards of competence to be expected, to help members to achieve those standards with the provision of further education and information, and then to monitor the level of success. He saw the profession as a powerful stabilizing influence. They hold the middle ground and with their instinct for fairness and balance, they are counterpoised to the forces of extremism.

Seeley (1997) observed thus, "Finally to round off this section I think I can do no better than quote two sections from a foreword by Sir Winston Churchill to an old but undated hardback publication entitled *The Chartered Surveyor: His training and his work* published by the former chartered Surveyors Institution. 'The importance of high standards of technical efficiency is obvious: but even more important is the sense of professional honor and fidelity which springs from prolonged vocational training and a lively sense of corporate responsibility. To be a Chartered Surveyor is not to be merely an

individual who has acquired certain knowledge and aptitudes: it is to be a member of a body sustained by comradeship of equals and with collective dignity and authority'... 'A love of justice and equity and a firm resolve to deal with every issue on its true merits without fear, favor or affection, are inseparable from the rightful discharge of surveyors' duty". The situation in which a professional is employed by a contracting organization entails a rather different approach, as here the professional is dealing with fellow professionals as distinct from laymen, and can have a reasonable expectation that these professionals are entirely familiar with the techniques being used and their implications, which accordingly do not have to be explained in detail. He must, however perform his duties with integrity, honesty, diligence and competence, and never knowingly attempt to deceive other parties.

## **2.6 Ethics**

These are philosophical studies of the moral values of human conduct and the rules and principles that ought to govern it.

It is also a social, religious or civil code of behaviour considered correct especially that of a particular group, profession, or individual.

## **2.7 Professional Ethics**

This is the code of principle conduct, which members of a profession should subscribe.

These principles reflect the characteristic spirit or 'genius' of the profession, establishing fundamental tenets which determine the standards the profession should observe.

The code of principles is an amalgam of many virtues including competence, humanity, discretion, responsibility, integrity and impartiality.

Generally, professional ethics are institutionalized as a professional code of conduct.

These will be in many ways be codified as what constitutes professional misconduct.

Many professional organizations have these codes for control, monitoring and regulation of their members' professional activities.



Thus professional ethics is avoiding professional misconducts as defined by these codes.

## 2.8 The code

The code of the consultant professions embodies numerous individual rules or traditions. It clearly stands apart from the ordinary law, both criminal and civil, though there is a certain overlapping. A conviction of a serious criminal offence will lead to expulsion from the profession society, even though not arising out of the practice of the profession. A finding of negligence or misrepresentation by a civil court may lead to proceedings for professional misconduct.

Even though the courts will in all cases ensure that the rules of natural justice are observed, the professional code has up to now been distinct and separate.

It is in essence the judgement of the professions on how members should conduct themselves. Many of its precepts are unknown to the general law. Breach of them does not constitute a crime or tort. It binds the professional man because in voluntarily joining the profession, he is taken to have agreed to be governed by its code as currently in force.

Professional rules can be subdivided as follows (Bennion 1969 pp. 29-30)

Rules arising from the fact that an expert is involved:

- a) Rules regulating admission.
- b) Rules securing continuing competence after admission e.g. CPD.
- c) Rules governing method of obtaining advice.
- d) Demarcation rules, laying down the boundaries between different professions.

Rules arising from frequent concern with intimate personal matters:

- a) Rules requiring a personal relationship between practitioners and client.
- b) Rules imposing strict confidence and discretion as to client affairs.
- c) Rules requiring courtesy and dignity to be displayed at all times.
- d) Rules preserving a client's freedom to choose a practitioner.

Rules arising from frequent concern with property of great value:

- a) Unimpeachable integrity and honesty.
- b) Independence and impartiality.
- c) Responsibility.

Rules arising from the fact that the profession is a brotherhood of long standing:

- a) The standing and repute of the profession must not be prejudiced.
- b) Fellow practitioners must be treated with courtesy.
- c) Advertising of ones abilities at the expense of ones colleagues is prohibited.
- d) Competition on the level of fees restricted.

The primary aim of these Rules of Conduct is to establish a set of ethical principles which promote the duty of members to discharge their professional obligations to their clients and employers, and at the same time, having due regard to the wider public interest.

The code ensures that the conduct of a profession on the basis of skill, integrity, social responsibility and mutual respect.

Professional ethics can be institutionalised in an ethical code for all those who practice that particular profession.

Principles on which professional conduct is based are:

Proper discharge of duties;

Honesty and integrity;

Free from corruption;

Impartiality and fairness;

Conflict of interest;

Honourable conduct towards professional colleagues;

Proper advertising and marketing and not commercialising or touting.

## **2.9 Aims of code of professional conduct**

The primary aim of rules of conduct is to establish a set ethical principles which promote the duty of members to discharge their professional obligation to their clients and employers while, at the same time having due regard to the wider public interest. To achieve these aims, certain standards of behavior are required of professionals in their business activities. It has also been suggested that these standards should also be exercised in their private lives although this is more questionable, as possibly being very desirable but not mandatory.

These standards require members to:

- 1) Discharge their duties to their clients, employers, employees, colleagues, and others with due care in accordance with the provision of the Act.
- 2) Perform their duties with competence, diligence, honesty and integrity.
- 3) Fearlessly and impartially exercise their independence of professional judgement to the best of their skill and understanding.
- 4) Not discriminate on the grounds of race, sex, creed, religion, disability or age or on other basis and promote equality of opportunity within the profession.
- 5) Adopt personal and professional standards which enhance the reputation of the profession and the board.

## **2.10 Provisions of Architects and Quantity Surveyors Act Cap 525**

CAP 525 and all the by-laws enacted by the Board as well as the constitution and by-laws of the AAK and IQSK govern an Architect or a Quantity Surveyor.

By-laws 45 and 45(a) of Cap 525 indicate the general standard of conduct of Architect and Quantity Surveyors whether remunerated by salary or by a fee, failing which the Board will judge them guilty of unprofessional conduct or professional misconduct and either reprimand, suspend or terminate their registration

The Board having regard to the particular circumstances of the case deals with cases of unprofessional conduct not specifically covered by the paragraphs making up the two by-laws.

Architects and Quantity Surveyors are made aware of such cases through practice notes, which the Board issues from time to time.

When considering professional misconduct one should bear in mind that the definition of professional misconduct against an Architect or Quantity Surveyor is very wide and includes any conduct which the Board deems as such after due inquiry and not limited to the contents of bye-law 45 and 45(a).

### Provisions

A professional may be deemed by the board to be guilty of professional misconduct if he;

#### **2.10.1 Prohibited employment**

Engages directly or indirectly in any of the building trades either as principal (except as owner of the building to be erected) or in a salaried capacity or practice as an auctioneer, estate agent, manufacturers' agent or any other commercial undertaking inconsistent with the profession of a registered person without the Board's approval which approval shall not be withheld vexatiously.

#### **2.10.2 Discounts**

Accepts any work which involves the giving or receiving of commissions.

Accept any discount, gift or commission from contractors or tradesmen whether employed upon his work or not:

#### **2.10.3 Building materials**

Owns or have a commercial interest, either as a director of a company or as a consultant or adviser in any material, device or invention used in a building without first informing his client thereof and obtaining his sanction before specifying the use of it in works under his direction;

#### **2.10.4 Advertisement** ✓

Advertises or publicly offer his services by means of circulars or otherwise or make paid announcements in the media in an ostentatious way or with lack of decorum;

Gives monetary consideration for the insertion of illustrations and descriptions of his work in the press or allow illustrations and descriptions of his work to be used by the publishers for extorting advertisements from unwilling contributors;

#### **2.10.5 Signing of documents**

Issues any drawings, specifications, bills of quantities, certificate or final account unless the same bear his name, signature and Registration number;

#### **2.10.6 Partnerships** ✓

Except as provided by by-law 45A hereof enter into partnership in regard to architectural or quantity surveying work with any person not registered provided that nothing herein shall be deemed to prevent an Architect from entering into partnership with a quantity surveyor,

#### **2.10.7 Competitions and conflict of interests** ✓

Takes part in any architectural competition limited or otherwise, or bidding process unless the conditions thereof comply with the Board of Registration of Architects and Quantity Surveyors Regulations Governing Promotion and Conduct of Architectural competitions and/or Bidding in so far as they apply;

Attempts in any way to secure work for which a competition or project bidding process has been instituted, except as a competitor and/or bidder and in accordance with the conditions of that competition or project bidding process until the conditions of competition and/or bidding have ceased to be operative.

Attempts to influence unfairly or dishonorably whether directly or indirectly the award in a competition and/or bid;

Acts as Architect or Quantity Surveyor or joint Architect or joint Quantity Surveyor for a work which is or has been the subject of a competition and/or bid in which he is or has been engaged as assessor;

As an assessor acts as a consultant unless he has been appointed as such prior to the inception of the competition and/or bidding process, provided always that he may act as arbitrator in any dispute between the promoters and the selected consultants.

#### **2.10.8 Destruction of documents**

Willfully destroys his original drawings, details, dimensions, abstracts, draft bill and any other documenting evidence necessary to verify his bill documents until twelve months after the final completion of the contract and the settlement of all accounts.

#### **2.10.9 Name plates**

For public buildings fails to incorporate a suitably located plaque indicating the names of the registered persons involved in the design, supervision and construction of the project. The size of such plaques will be determined by the Board from time to time.

#### **2.10.10 Supplanting**

Attempts to supplant another registered person;

Knowingly proceed with the work which was previously entrusted to another registered person before communication with the registered person previously employed and enquiring and ensuring the fact that his engagement has been terminated;

#### **2.10.11 Inducements**

Obtains or attempts to obtain architectural or quantity surveying work by means of offering or paying monetary or other valuable consideration or inducement to any person or persons or by any other improper means;

### **2.10.12 Reduced fees**

Pay another registered person less than the fees set forth in the fourth schedule (in case of Architects) or the fifth schedule (in the case of quantity surveyors)

### **2.10.13 Impartiality**

Act other than in an impartial manner between the employer and the contractor or interpret the conditions of a contract other than with entire fairness as between all parties to the contract;

### **2.10.14 Contravention of by-laws**

Knowingly contravenes the provisions of the Act or of these By-laws or make a false declaration in his application for registration;

### **2.10.15 Incompetence**

Conducts himself in a manner which the Board may deem incompetent, dishonorable or grossly negligent in connection with the work performed by him as a registered person;

### **2.10.16 Boards' money**

Defaults in respect of payments of any monies due by him to the Board.

### **2.10.17 Clients' money**

Misconduct's himself with client's funds.

### **2.10.18 Professional practice notes**

Contravenes the provisions of practice notes issued by the Board from time to time;

A registered person will be held responsible for the acts of members of his staff so far as they relate to matters coming within the scope of subparagraphs (a) to (w) inclusive of

paragraph (3) of this by-law.

The professional code of conduct will thus require that: -

- a) The professional shall accept assignments only within the area of his/her Competence beyond this he shall seek collaboration of appropriate experts.
- b) He/she must maintain a clear definition of the service required of him, and shall be responsible organizing and executing his/her assignments.
- c) During execution of any assignment he/she shall take all necessary steps to overcome any difficulties encountered, while the safety of persons, equipment as required by law.
- d) He/she shall accept remuneration corresponding to the service rendered and the responsibilities assumed, and shall at all times Endeavour to ensure that are relevant to the project also receive remuneration in consonance with level of their services and responsibilities.
- e) He/ she shall strive for a higher level of technical achievement that will also contribute to and promote a healthy and sustainable environment for his/her fellowmen

## **2.11 Personal Ethics**

Personal ethics can be summarized as what constitutes moral values i.e. character. If the character is good you will find that personal or individual ethics are good and vice versa. Needless to say, personal ethics heavily influence the conduct of institutionalized professional ethical codes.



It can be safely stated that according to the universal code of conduct, the professional will undertake to comply with the following code of ethics in the exercise and execution of his or her professional duties: -

- a) The professional shall maintain his/her competence at the highest level and strive to provide excellence of service in accordance with good practice and laws of the country he/she works in.
- b) He/she shall be of high professional integrity and intellectual honesty as guarantee of impartiality of analysis, judgment consequent decision.
- c) He/she shall bind himself/herself in conscience in any business confidentiality agreement into which he /she has freely entered.
- d) He/she shall display his/her to and support for the profession by participating in the activities of the association especially those which promote the profession and contribute to the continuing training of its members.
- e) He/she shall be truthful in describing himself/herself and use only titles to which he/she has s right.

## **2.12 Social Responsibility** ✓

- a) The professional shall respect the personal rights of his or her superiors, peers, and subordinates by taking due account of their requirements and aspirations, provided they are in conformity with the laws and ethics of their of profession.
- b) He/she shall be conscious of nature, the environment, safety and health, and shall to work to the benefit of mankind.

- c) He/she shall provide the public with clear information, in his/her field of competence, to enable a proper understanding of technical matters of public interest.
- d) He/she shall treat with utmost respect the traditional and cultural values of the countries which he/she exercises his/her profession.

### 2.13 Practice notes

These are clarifications, interpretations and expansions on existing professional code of conduct

They omit, add or expound on professional misconducts already included in the act.

When agreed upon, the notes are circulated to members and are deemed to be part of the regulation that governs the profession.

Practice notes therefore just emphasize on the act and expound where necessary.

They make the work of the board more efficient because they do not have to amend the act whenever a change is desired

For example in 457<sup>th</sup> meeting the board declared the use of the names cost consultants, building economics, planners, loss adjustors, surveyors etc as professional misconduct.

The argument being that the names are pretentious and misleading. In any case the Board registers people as either Architects or Quantity Surveyors.

In 569<sup>th</sup> meeting of 1995, the Board lifted restriction in the matters of letter heads and professional descriptions as follows; -

#### a) Interior designs

The architect is sufficiently trained to appreciate the works of “interior design”. Its therefore in order for architects to describe themselves as “interior designers”, if they so wish.

- b) Architect planner, architects and planners, planning consultants etc

Restrictions on the use of the above description were lifted. This was in response to the changed environment here and elsewhere.

- c) Project managers, construction managers, cost construction consultants etc

Restrictions on the use of the above description were lifted. This was in response to the changed environment here and elsewhere.

The board has also issued notes on many other matters of concern to it, the members and the public at large. Some of them include: - ✓

- a) Signatures on drawings
- b) Site notice boards
- c) Professional charges
- d) Advertisement in the press
- e) Competitions
- f) Letterheads and trading names
- g) Urban environment designs
- h) Professional indemnity insurance
- i) Continuous professional developments
- j) Electronic mail.

### **2.13.1 In the matter of competitions** ✓

The board recognizes the now prevalent method of procuring work through the submission of written proposals. Hence: -

- a) There shall be clear and comprehensive bid documents prepared by the client
- b) Bid documents shall in every case contain clear 'terms of reference' regarding the work.

- c) Submission in every case shall be in two separate envelopes, of which, one shall contain the “Technical Proposal” while the other will contain the “Price Proposal”
- d) All technical proposals shall be received and opened in public.
- e) The price proposal shall only be opened after adjudication of the technical proposal.
- f) Bid documents shall in every case include information regarding the adjudication and selection criteria.
- g) The price proposal shall then be opened in public.
- h) It shall be professional misconduct for bidders to submit or prepare technical drawings, as it will be expected that adequate information to enable bidding will be supplied to all bidders.

### **2.13.2 In the matter of continuous professional development ✓**

The board is sufficiently convinced that it's in the interest of good practice to put in place a mandatory continuous professional development (CPD) education programme.

In this regard all registered persons effective from January 1999 must prove that they have participated in events of professional nature to the satisfaction of the board.

The events will be organized by the board or by bodies accredited by the board.

Registered persons will be required to log a minimum of 20 units per calendar year. The board at its sole discretion will determine the number of units attached to each event.

Henceforth the board will keep information on all registered persons regarding their CPD. Consequently and in accordance with section 5(!) of the Act and bye-law 45(!) failure to participate and supply information on CPD is declared a professional misconduct.

### **2.13.3 In the matter of advertising ✓**

This is contained in the bye-laws 45(3) and (g) and has been previously considered in Practice Notes 5, 7, 12, 13, 15, 21 and 26.

The board evaluated these prohibitions with reference to their impact, purpose and import in this fast changing consumer centered society. Consequently as provided under section 5(1) of the Act the board issued new orders on advertising as follows:

- a) All information given to the media by registered persons about themselves or their firms must always be factual and must not in any way diminish the standing and the dignity of the profession of the Architecture and Quantity Surveying.
- b) Entries and publications in directories must be standard giving telephone, telefax, e-mail, postal and physical addresses and expertise offered.
- c) Entries to the data banks must be giving information as (b) above.
- d) Paid for advertisements placed for purpose of sourcing of either staff or contractors or suppliers must only give addresses.
- e) Information given to the print or electronic media for supplement purposes or as commentaries on a professional topic must only give information on the registered persons and/or firms areas of expertise in the case of supplementary, while in the case of commentaries, information supplied must not extol the capabilities of the registered person or firm.
- f) Registered firms or persons may offer their services by means of circulars, brochures and newsletters and for these purposes the Board requires registered firms or persons to ensure that information contained in these documents is factual and does not extol their capabilities.
- g) In exhibiting a registered persons name outside their office or on a building in course of construction, alteration or extension the same should satisfy the purpose of communication, should not be in ostentatious manner and hitherto limiting height of 50mm is increased to 100mm.
- h) Registered persons or firms wishing to host websites are free to do so provided information so hosted is factual and not self-praising.

#### **2.13.4 In the matter of electronic mail** ✓

The Board recognizes that its possible to e-mail drawings, details, specifications, bills of quantities and other documents to other parties.

It is also possible for registered persons to e-mail either some or all of the above documents to registered persons for subsequent appropriation and use.

Still, registered persons and firms should note that the provisions of the architects and quantity surveyors Act still apply.

Registered persons and firms should ensure that documents e-mailed out by them have distinguishing marks.

## **2.14 Professional Associations**

### **2.14.1 Definitions**

A professional body is an organization of individuals with a common background in a subject – medicine, law, engineering etc whose chief purpose is to apply their knowledge for professional or monetary gain. It is a non profit, co-operative, voluntary organization. Academic credentials, an accrediting examination or a state license may be a pre-requisite for membership, but not always.

An excellent definition of a professional body was expounded by Wickedan, while president of the institute of Electrical Engineers, and subsequently restated by the late Lord Butler in his gold medal address to the Centenary Conference of the Royal Institute of Chartered Surveyors in 1968. The various elements were analysed in the following way:

‘We must first place a Body of Knowledge (science) or of Art (skill) held as a common possession and to be extended by unified effort.

Next an Education Process based on this body of knowledge and art, in ordering which the professional group has a recognized responsibility.

The third is a Standard of Professional Qualification for admission to the professional group, based on character, training and proved competence.

Next, follows a Standard of Conduct based on courtesy, honour and ethics, towards colleagues and the public.

Fifth, we may place more or less formal Recognition of Status by one's colleagues or by the State as a basis of good standing.

Finally, there is usually the organization of Professional Group, devoted to its common advancement and its social duty rather than the maintenance of an economic monopoly'.

#### 2.14.2 Nature and functions ✓

The fundamental function of a professional society is to take an assortment of individuals who form an amorphous, inchoate and half-perceived profession, and mould them by their own self-discipline into a self-respecting profession, which commands the confidence of the public.

Professional men live by selling their services and the consumer or client must commit himself in advance to buying these services without knowing definitely that they will meet his wishes. Chege B.W (2001) with goods the consumer can inspect the articles before purchase and satisfy himself that it is indeed what he wants. With services, the client can only inspect the credentials of a professional man, and decide whether they provide sufficient guarantee that the doctor can cure, the lawyer can plead, the Architect can design or the surveyor can value.

Hence the function of professional associations is to guarantee two things;

- a) Competence of its members to the society as a whole
- b) Integrity of its members to the society

However the associations cannot guarantee the state that the members are able to solve any given problem but they can state that the members have got the tools to do so.

These tools are passed to members through the following;

- a) Prescribed background education
- b) Test and examinations
- c) Code of conduct

#### d) Prescribed years of internship

The guarantee of competence and integrity create trust to the users of the services of that profession. This ensures adequate rewards for the services.

Test, examinations and other conditions are normally meant to eliminate the unfit.

Codes of conduct are enforced by censure, fines and expulsion.

### **2.15 Aspects of integrity**

#### **2.15.1 Humanity**

The ideal consultant is a man with a liking for people and a desire to understand them. Imagination, tact and sympathy are important characteristics and the ability to create confidence is very necessary.

Professional institutions today show the same concern for this aspect of their members' attributes. All professions involve a vocation, a sense of dedication and a willingness to accept a measure of self-discipline as well as the ability to reflect deeply and sympathetically on the problems referred to them by clients.

These qualities of mind and spirit are not called for in the same degree in commerce and industry, where forcefulness, ambitions and enterprise and even ruthlessness may be valuable assets from the point of view of the national economy as well as the individual. Further, it follows that it is the function, and indeed the duty of a professional to seek to establish in the profession it represents conditions which will attract to the ranks of that profession the right type of recruit.

Professional rules of conduct are designed to raise and maintain a number of qualities including personal service and good manners.

#### **2.15.2 Impartiality**

Personal interest should not override the professional advice he is to give the client.



Professional advice should not be given by a person who is beholden to no one, free from personal concern or involvement and subject to no pressure or influences restricting his independence.

Professional and other governing bodies have regarded the security of the state of independence, both for their members and for themselves, as one of the principal objects of their existence.

It is of great concern that anyone who consults a professional practitioner should feel completely confident that the advice he receives will be impartial, and it is a paramount duty of the practitioner to act if he has any commitments or connections which might prevent, this being so.

### **2.15.3 Responsibility**

A professional consultant should be ready to bear the consequences of the advice he gives. The responsibility is primarily owed to the client, but it is also owed to the profession and in some instances, to the members of other professions and to the society at large.

### **2.15.4 Integrity**

This is multi-faceted in that it entails preservation of confidences, display of impartiality, the taking of full responsibility and also competence.

It demands that advice be given only where competence exists and that competence is maintained within the chosen field of practice.

Integrity is a vital quality whose absence vitiates all others.

### **2.15.5 Fairness**

A professional man must treat his client fairly. He should be of value to the client's money he should always make full disclosure to the client, except where it's not important. It is indefensible to conceal vital information, even when on the well meaning ground that the client may be worried by it.

The professional man must not take advantage of the youth, inexperience, and want of education, lack of knowledge or un-business-like habits of a client.

However, interests of a client must not be pursued beyond a legitimate stage. Nothing must be done which would harm the reputation of the profession or transgress the moral code.

An instance of a fairness duty owed to the parties to a transaction other than the client applies to the case of architects and quantity surveyors. Although retained and paid by the site owner, they are enjoined to preserve impartiality and fairness toward the building contractor.

### **2.15.6 Fearlessness**

A professional man may know what to do, and wish to do it. But all this is futile if he lacks the courage in the face of opposition and allows himself to be browbeaten into yielding his client's position.

### **2.16 The Board of Registration** ✓

This is the body that has the legal mandate to manage the affairs of Architects and Quantity surveyors. It is established by the Architects and Quantity Surveyors Act.

It is a body corporate with perpetual succession and a common seal. It's capable in law of suing and being sued, holding and alienating property movable and immovable in its corporate name. The board is composed of architects and quantity surveyors whereby the minister appoints one of them whom he has nominated to be the registrar.

The board's major function is to facilitate the smooth running of the two professions.

From time to time, but subject to confirmation by the minister, the board makes by-laws for all or any of the following purposes;

- For the management and duties of the Board, the holding of meetings of the Board, the issue of notices calling such meetings and the procedure to be followed at such meetings;
- For the appointment and duties of the officers of the Board;

- for the appointment of committees, and the powers and duties and the proceedings of such committees;
- For the administration, investment and expenditure of the property and funds of the Board from whatsoever source and for whatsoever purposes received;
- For a definition of unprofessional conduct and for determining the mode of inquiry into and the method of dealing with such conduct and the penalties which may be imposed upon any member found guilty of such conduct;
- For the scale of fees to be charged by Architects and Quantity Surveyors for professional advice, services rendered, and work done;
- For the fees to be paid for registration under this Act;
- For issuance of an annual license;
- For the holding of examinations authorized or permitted under the provisions of this Act and for the carrying into effect of any scheme or curriculum for education in Architecture or Quantity Surveying formulated under the provisions of section 10 of the Act;
- For the establishment, maintenance and support of and for subscribing to charitable and public objects and institutions;
- For prescribing the procedure to be followed by persons applying for registration;
- For prescribing the conditions under which persons registered under this Act may practice as limited liability companies, or unlimited liability companies or firms and for requiring professional indemnity insurance in the case of unlimited companies and private firms;
- For instructions and orders conducive to the maintenance and improvement of the status of Architects and Quantity Surveyors Landscape Architects, and Licentiates in Kenya;
- For prescribing the conditions under which Licentiates may practice;
- For prescribing the conditions under which non citizen Architects, and Quantity Surveyors may practice of Kenya;
- For prescribing procedures for the resolution of disputes arising from the operation of this Act;

- For prescribing the manner and the conditions which persons registered under this Act may exercise the role of an agent in technical and financial management of projects they are involved in;
- For the adoption of a common seal and the manner in which such seal may be affixed to any instrument;
- For registration and issuance of annual practicing certificates in case of consulting firms;
- For instructions/orders and regulations governing the promotion of competitions, submissions and project bids.

## **CHAPTER THREE**

### **METHODOLOGY**

#### **3.0 Introduction**

This part describes the procedures that were used in conducting the study. It will highlight on techniques used in obtaining the data. It also discusses the population, sample, sampling method, data presentation and analysis.

#### **3.1 Research design**

This is a survey research it attempts to collect data from the members of a population in order to determine the current status of that population subject to one or more variables or attributes, which are being studied.

#### **3.2 Area of study**

The study was based in Nairobi. This is the centre of all activities of Quantity Surveyors. There are 105 registered Quantity Surveying firms registered in Kenya. Out of these 98% are found in Nairobi where most of them are located in the areas of Westland, Hurlingham, Ngong and the Central Business District.

#### **3.3 Data collection Techniques**

These were mostly primary and secondary data collection methods.

Primary data was obtained through;

- a) Interviews conducted on registered and practicing professionals.
- b) Questionnaires administered to practicing Quantity Surveyors through their firms.

c) Questionnaire administered to the Registrar of the Board of Registration of Architects and Quantity Surveyors.

The respondents were asked to complete the questionnaires themselves. The questionnaires were hand delivered to the respondents and collected after they were filled.

The interview part of data collection technique was after the researcher had gone through the filled questionnaire. The researcher asked the respondents questions mainly prompted by the responses given. The respondents were asked to explain verbally on some of their answers. They were also asked questions related to the new issues they raised in their answers.

Secondary data was obtained from published and unpublished materials.

Published materials included books, journals, magazines and local newspapers which are published daily.

Unpublished material included scholarly journals, theses and dissertations.

### **3.4 Questionnaire Design**

The questionnaire used in the data collection was structured. The questions were specific and followed by a list of possible alternatives where the respondents were to choose one or more of the alternatives.

There was also an open-ended part where the respondents were required to include any other option they felt was left out in the alternatives provided.

### **3.5 Research Variables**

#### **3.5.1 Independent variable**

**Regulatory environment** – this is the legal surrounding under which a professional operates. It provides the activities in which a professional can involve themselves in and

the legal provisions guiding them. The legal provisions are entrenched in the Act of parliament enacted for the purpose of legal recognition of the profession.

This variable was measured by studying the Act and practice notes issued by the Board to amplify the provisions of the Act.

### **3.5.2 Dependent variable**

**Administration of the Act** – this is the process of effecting the provisions of the Act in the profession. The Act establishes a Board of registration which manages the affairs of the profession.

It registers new members and firms, enforces the code of ethics, manages the examination process and offers education and development services to the professionals through seminars.

This variable was measured by studying the roles of the Board and the limitations it encounters in its work.

### **3.6 Data presentation and analysis**

Data collected will be in descriptive form and mainly from questionnaires administered to registrar of BORAQS and professionals through their firms.

It will be presented in tabular forms, and analysed using simple statistical methods like frequency tables, percentages and averages.

### **3.7 Population**

Population is the complete set of individuals, cases or objects with some observable characteristics.

The population for this study is the number of registered quantity surveying firms in Kenya. The list of the firms was obtained from the Board of Registration of Architects and Quantity Surveyors, which stated the number at one hundred and five (105).

This number forms the universe or target population.

Out of the 105 firms, two are situated in Mombasa and they are not accessible due to resources constraints. Therefore the remaining 103 form the accessible population from which a representative sample will be drawn.

Since Quantity Surveying firms are similar in nature and operations, the researcher has concluded that exclusion of the two will not affect the population validity.

### 3.8 Sample size

A representative was extracted from the accessible population. To determine the size of the sample from an accessible population of 103 firms the following statistical formula was used;

$$N = pq(z/e)^2$$

Whereby;

P= the estimated population or incidence of cases in the population

$$Q = 1 - p$$

Z= the standard score corresponding to a given confidence level obtained from the normal distribution tables

E= error of estimation

N= the size of the sample

The researcher wishes to have at least 90% confidence level in the data obtained.

The sample is then obtained as

$$N = pq (z/e)^2$$

$$Z \text{ value } (0.90/2) = 1.645$$

From the normal distribution tables, the corresponding z value is 1.645.



The sum of the variables  $x$  and  $y = 1$ . The ratios chosen must be such that the sample is obtainable from the population studied

In this case  $x = 0.7$  and  $y = 0.3$

Applying the formula above the sample size becomes 59 firms.

One questionnaire will be administered to the registrar of the Board of Registration of Architects and Quantity Surveyors. Hence the total number of questionnaires administered will be 60.

### **3.9 Sampling procedures**

To determine the firms to be included in the sample, simple random sampling will be used.

The 103 registered firms form the sampling frame whereby each is assigned a number in the order in which they follow.

The numbers will be placed in a container and numbers picked randomly until the sample size determined is attained.

## CHAPTER FOUR

### DATA PRESENTATION AND ANALYSIS

#### 4.0 Introduction

This study was an endeavour to examine why professional misconducts have persisted. The aim was to study the legal frameworks established for the purpose of regulating the Quantity Surveying profession and determine their success. The findings form the basis of the presentation and analysis and serve as a basis on which conclusion and recommendations were made. Data was presented in form of frequency tables, percentages and descriptions.

#### 4.1 Response to questionnaires

Response to questionnaires was as follows:

**Table 5.1: Response to questionnaires**

	<b>Filled and returned</b>	<b>Not returned</b>	<b>Returned but not filed</b>	<b>Total</b>
<b>Quantity surveying firms</b>	45	12	2	59
<b>Percentage (%)</b>	76	20	4	100

Source: own field survey 2006

As stated earlier in the methodology section of the study, a sample size of 59 firms was obtained from the sampling frame. All these firms were administered with questionnaires. Further one questionnaire was administered to the registrar of the BORAQS.

Out of the 59 questionnaires administered to the Quantity Surveying firms, 45 were filled and returned. These were used for data analysis. This response rate amounted to 76%. 12 questionnaires which amounted 20% were not returned at all while 2 questionnaires amounting to 4% were returned but not filled.

*“A response rate of 50% is adequate for analyzing and reporting, a response rate of 60% is good and a response rate of 70% is very good”* Mugenda (1999). The response rate achieved in this research is therefore adequate for data analysis.

The questionnaire administered to the registrar of the Board was also filled and returned and will be used to highlight mostly on the operations of the Board.

## **4.2 Reporting of cases**

In response to the question on the frequency by which players in the construction industry report cases of professional misconduct, the response given was as follows;

Reporting of cases by the clients was high while that of contractors and architects was low.

No single case of professional misconduct was reported by Quantity Surveyors, Engineers and others e.g. the Public.

The question sought to establish the rate at which parties report cases of unprofessional conduct with a rating of low, high or very high.

From the response it can be seen that none of the parties has a very high reporting rate and that some parties do not actually report anything at all.

## **4.3 Procedure of action**

This question sought to establish the procedure of dealing with cases of unprofessional conduct. It was established that once a case is reported by a party the following procedure is followed in dealing with it;

- The ethics committee takes over the handling of the case
- A file is opened and the ethics committee studies the complains or the allegation(s) made against a professional
- The complainant is asked to supply the committee with the better particulars
- The person against whom the complain was made is summoned to appear before the Board and defend himself/herself against the accusation(s)

- The Board then considers the case with the merit it deserves and makes a decision.

The decisions of the board are arrived at by consensus.

The ethics committee has the following functions;

- Dealing the cases of unprofessional conduct reported to the Board.
- Vetting applications for registration of individuals and firms.

The ethics committee is composed of members of the board and some respected practitioners

As to what makes the process of amending the Act long and time consuming, the reasons are given below in their order of importance;

- Bureaucracy
- Non commitment on the part of stakeholders
- Parliamentary process of amending an Act

As to membership to professional associations, the Board said that it was not mandatory for its members to be members of professional associations like AAK and IQSK.

#### **4.4 Relationship with other crimes**

The Board was required to highlight on the effects of other crimes unrelated to the quantity surveying profession to its relationship with its registered members. It came out that the board in its current formation has never dealt with such a case. However if one happened then it will be considered first on the effect it has on the member. Then the board will determine what to do to the affected person. For example if a person is jailed for over three years then the board will consider deregistration or suspension of registration of the affected member.

Else, minor offences do not affect the relationship between the board and its registered persons.

## 4.5 Punishments

In response to the question on specific punishments given to members found guilty of professional misconducts, the following table summarises the response.

**Table 5.2: Specific punishments**

Prohibited employment	a			
Giving or receiving of discounts		b		
Involvement in building materials		b		
Name plates	a			
Notice boards	a			
Signing of documents			c	
partnerships		b		
Competitions	a			
Destruction of documents			c	
Supplanting			c	
Giving monetary inducements	a			
Impartiality	a			
Reduction of fees			c	
Contravention of BORAQS by-laws			c	
Failure to attain minimum CPD points				d
Incompetence	a			
Any other				

Source: own field survey 2006.

### Key

- a) Caution or censure such a person,
- b) Suspension of registration
- c) Impose a fine,
- d) Deregistration.

From the table above it can be seen that most misconducts attract a punishment of caution or censure or a fine. Few others attract a fine and only one i.e. failure to attain maximum CPD points is punishable by deregistration.

The misconducts listed in the table were obtained from the Act, Cap 525 as explained in section 45(3) (a) to (y).

On the question of whether under what circumstances is the board able to impose a fine of a hundred thousand Kenya shillings (Ksh 100,000), it was replied that it was not applicable. The Act provided for only a maximum fine of five thousand Kenya shillings (Ksh 5000). Any thing above Ksh 5000 will be in contravention of the Act.

The response to the question as to what determines the type of punishment an offender is given, two critical factors were identified.

**i. Type of misconduct**

In the Act, there are many type of misconducts which have been mentioned and each one of them attracts a specific punishment.

The Board may declare any general course of conduct a professional misconduct after due inquiry which determines the conduct to be a professional misconduct. Then an appropriate punishment is given.

**ii. Implication of the misconduct**

Various types of misconducts have different implications to the profession, professionals and the industry in general. Incompetence, partiality, monetary inducements (corruption) and supplanting portray the profession and professionals in bad light and therefore attract a punishment.

The question on the limitations faced by the Board in executing its mandate got the response below:

- Financial – the Board does not have enough financial resources to effect its operations.

- Personnel – the Board has very few support staff which is not enough to handle its workload.
- Legal constraints – the Board faces court injunctions which delay the process of hearing and determining cases of unprofessional conducts. The legislation under which the Board operates is not enough to include all situations that it faces.

#### 4.6 Registration of foreign professionals

The Board was required to highlight on the process of registering foreign practitioners to the board. It was obtained that foreigners require only a work permit from the ministry of home affairs. This qualifies them for registration as long as they were practicing in their homelands. However the board was considering introducing restrictions so that foreigners can undergo the same process as undergone by locals and for them to pay more for registration and subscriptions.

It was revealed that the Board is not able to deal with some foreign practitioners due to the fact that they operate under the disguise of non governmental organization. As such they subscribe to NGO regulations while practicing Quantity Survey.

#### 4.7 Adequacy of the Act Cap 525

The respondents were asked were asked if they thought the Act in its present entirety was adequate to govern Quantity Surveyors. The response was as in the chart below:

**Table 5.3: Adequacy of the Act**

Response	Number of firms	Percentage (%)
Yes	43	96
No	2	4
Total	45	100

Source: own field survey 2006.

The response indicates that 96% of the respondents were of the opinion that the Act is not adequate enough. Only 4% of the respondents agree that the Act is adequate in its present form.

This means that there are deficiencies in the Act which should be addressed to make it better.

The respondents were asked on what they thought should be done to make it better. The response was as per the table below:

**Table 5.4: Proposed actions on the Act**

<b>Response</b>	<b>firms</b>	<b>Percentage (%)</b>
Overhaul	6	13
Amend	23	51
Expand	15	33
Amend and Expand	8	18
Other	25	56

Source: Own field survey 2006

13% of the respondents said that the Act should be overhauled. This means that it should be discarded and another one redrafted afresh. This is to indicate that the provisions in the Act are no longer relevant. New ones are required.

51% of the respondents were of the idea that the Act should just be amended to address the deficiencies. This showed that the Act in its present form is good. It therefore should be revised to address the deficiencies.

33% of the respondents were of the opinion that the Act should be expanded to address the deficiencies. This implied that the Act in its present form covers adequately some operations of the Quantity Surveyor while it wholly or partly leaves out others. Therefore new provisions should be drafted and included in the Act to cover the operations that are left out.



18% responded that the Act needs amendments and expansion at the same time. This means that provisions in the Act need to be revised to cater for the current status of the profession while new ones should be introduced to provide for activities of the profession that are completely left out of the Act.

The respondents were also given an opportunity to bring out any other measure that they felt should be instituted to improve the adequacy of the Act. 56% responded to this and gave the measures enumerated below;

- i. A research should be carried out to find out the shortcomings of the present law as it is and how to improve it. Quantity Surveyors should be the respondents.
- ii. The Act should be drawn in such a way that it draws a clear balance of responsibility for both the Architects and Quantity Surveyors.
- iii. There is need to enact the Built Environment Professionals Bill to encapsulate all the professionals in the industry including recognition of new professions e.g. project management, re-establish other professions and a new body set up to monitor and manage the performance of each profession.

#### 4.8 Effectiveness of the Act

The respondents were required to state their opinion on whether the Act in its present form is effective in governing the operations of the Quantity Surveyor.

The response was as illustrated in the table below:

**Table 5.5: Effectiveness of the Act**

Response	Firms	Percentage (%)
Yes	3	7
No	42	93
Total	45	100

Source: Own field survey 2006

Effectiveness of the Act is its ability to produce noticeable or desired effect in the profession it governs.

93% of the respondents said that the Act was not effective in governing the Quantity Surveyors operations while 7% indicated that the Act was effective. The response shows that the Act has not produced the results it was meant produce.

However when asked for the reasons contributing to the ineffectiveness the responses given were the following:

**Table 5.6: Reasons for ineffectiveness the Act**

Response	Firms	Percentage (%)
Matching with time	38	84
Outdated	0	0
Inadequately enforced	23	51
Not all inclusive	18	40
Other	15	33

Source: Own field survey 2006

84% of the respondents said that the Act does not match in time here in Kenya and elsewhere.

The trend in economic practices today is towards liberalization. Price controls and trade restrictions have been abandoned and economies have embraced market based systems to influence prices.

Demand and supply of goods and services are no longer dictated by monopolies but competitive markets this has lead to great improvements in quality of products being offered for sale.

Trade barriers are being lifted and economies are adopting integration to facilitate exchange of technology, promote investments and create markets for the products.

However in spite of all the economic milestones, the Architects and Quantity Surveyors Act continues to restrict prices charged by professionals.

The fee is pegged on a percentage of value of the contract instead of letting people to negotiate and agree on a price in line with market forces of demand and supply.

It also restricts the Activities a professional is supposed to engage in therefore limiting the scope.

All respondents are unanimous that the Act is not outdated. It still remains a vital tool for regulating the profession. Most of its provisions are applicable and relevant to the profession.

51% said that the Act was inadequately enforced. The board of registration is responsible for administering the Act to the profession. It regulates the activities of the Quantity Surveyor including hearing and determining cases of unprofessional conduct, registration of new firms and persons, administering of profession exams and acting as the link between the government and the profession.

The response given indicates that these roles are not adequately carried out by the board.

40% indicated that the Act does not include all the activities that a Quantity Surveyor does. This is to mean that some activities that professionals engage in are not regulated. Since Quantity Surveying was introduced to Kenya by colonialists in the early 20<sup>th</sup> century, so much has changed. Quantity Surveyors are involved in project management, valuation for insurance of building under construction and completed ones, cost planning and many more including their traditional role of preparation of Bills of Quantities.

Effectively the profession has diversified into other areas. The Act as it is does not cover all these areas.

33% of the respondents gave other reasons contributing to the ineffectiveness as enumerated below:

- i. The Act is lacking in flexibility.
- ii. It is heavily Architect oriented.
- iii. It does not clearly separate out the roles of the Quantity Surveyor.
- iv. It does not allow for negotiations.

## 4.9 Review of the Act

The respondents were the reasons which they thought caused the delay in reviewing of the Act. The response was as indicated in the table below:

**Table 5.7: Causes of delay in reviewing the Act**

Response	Firms	Percentage (%)
Non commitment	32	71
Beneficiaries	9	20
Parliamentary process	28	62
Lack of awareness	14	31
Other	18	40

Source: Own field survey 2006

Of the total respondents 77% stated that the stakeholders lack the commitment to oversee the review. Stakeholders are the people with an interest in an activity. In this case they would include the Architects, Quantity Surveyors, Board of Registration and the government.

Though here, the government tends to rely on the professionals themselves to say what they want. These beneficiaries do not offer themselves to see that the Act is reviewed.

Some practitioners (20%) thought that Quantity Surveyors are beneficiaries of the state of events. This is a small figure considering that the same people are not committed to the review of the Act.

The response shows that professionals do not really benefit from the fact that the Act is lacking in content and hence needs revision.

A subjective opinion of the researcher is that professionals are shy to admit that they benefit from the status quo hence the reluctance to agitate for review.

62% of the respondents blamed the parliamentary process of amending an Act.

The process of reviewing an Act of parliament in Kenya takes the following steps:

- The concerned parties (in the case of quantity surveyors, the BORAQS, AAK and/or IQSK) identify the amendments they would like effected in the Act.
- They then pass them on to the Attorney General for action.
- The Attorney General after studying the proposed amendments passes a motion in parliament on the same.
- The parliament debates the propositions and if acceptable, is passed as amendments to the relevant Act.
- Passing such a motion is by a vote of a simple majority of the members present in the house at the time.

This process is obviously long and tedious. It becomes even more tedious if an Act is amended bit by bit like the way it is done to the Architects and Quantity Surveyors Act. Here, whenever an item or clause requiring an amendment is identified, it is worked on and the work stops until the time when another one is identified. As such the process takes a very long time to complete.

31% said that Quantity Surveyors are not aware of the deficiencies in the Act.

40% of the respondents gave other reasons which cause delays as:

- i. Parliament is ignorant and reluctant to amend the Act.
- ii. Lack of professional agitation on the issue of amendments.
- iii. Lack of full understanding of what is really desired.

#### **4.10 Independence of the Board**

Independence is the state of being able to make decisions without external interference or without the intention of pleasing any of the parties.

On whether the Board is independent in execution of its mandate the response was as indicated in the table shown below:

**Table 5.8: Independence of the Board**

Response	Firms	Percentage (%)
Yes	16	36
No	29	64
Total	45	100

Source: Own field survey 2006

64% of the respondents thought that the Board was not independent in its operations while 36% said it was independent.

On condition that they thought the Board was not independent, the respondents were asked on what were some of the likely forces that influence the Board's decisions. The results are as tabulated below:

**Table 5.9: Forces influencing the Board**

Response	Firms	Percentage (%)
Political forces	12	27
Personal interest	22	49
Corruption	0	0
Political and personal	10	22
Other	5	11

Source: Own field survey 2006

27% identified political forces as the major force that determines the board makes its decisions. 49% identified personal interests of Board's members as the only factor influencing the Board's decisions. Asked on the type of interests that members have, the respondents cited business deals that are likely to go sour if the culprits are severely affected, others are partners and associates of the affected professionals.

Quantity Surveyors are unanimous that corruption does not influence the affairs of the Board.

11% cited political and personal interests of the Board's members as the core influences.

22% highlighted other reasons as follows

- The Boards is heavily dependent on the government.

- People who sit in the Board are practitioners who will be definitely biased if an action is likely to affect them.

Those who responded to the effect that the Board is independent claimed the Board's members are appointees of different organs i.e. the Ministry and the AAK which helps create a balance.

The question on the strictness of the Board in enforcing the code of ethics attracted the responses shown below:

**Table 5.10 Strictness of the Board**

Response	Firms	Percentage (%)
Yes	4	9
No	41	91
Total	45	100

Source: Own field survey 2006

9% of the respondents said that the Board is strict in enforcing the code, while 91% responded otherwise. The high number of professionals who think that the Board is not strict indirectly shows that practitioners are aware of the code of ethics and that its not applied as it should.

Asked for the reasons for laxity in its enforcement, the responses were as indicated in the table shown.

**Table 5.11: Reasons for laxity in enforcing the code**

Response	Firms	Percentage (%)
Biasness	23	51
Favoritism	25	56
Pity	8	18
Biasness and favoritism	18	40
Biasness, favoritism and pity	8	18
Other	43	96

Source: Own field survey 2006

## **Biasness**

This is the tendency to be in favor or against someone without enough information to be able to judge fairly.

51% stated that biasness is the cause of laxity.

This indicates that the board decisions are sometimes unsupported by concrete evidence and consequently biased against a party. This is further evidenced by the assertion by the board that it faces legal hurdles in the execution of its mandate.

## **Favoritism**

This is the practice of giving too much sympathy to one person as compared to others.

56% claimed favoritism hinders the Board from being strict.

## **Pity**

Pity is feeling of sensitiveness to and sorry for the suffering or unhappiness of others.

18% responded that pity is one of the factors that contribute to the lack of strictness of the Board.

40% cited both biasness and pity while 18% cited all the three factors as the causes being less strict.

96% of all the respondents gave other reasons which they thought prevented the board from acting strictly:

- i. There is no full time organ established with defined functions.
- ii. The Board depends on reported cases rather than investigation which they should have done, decisions are consequently biased.
- iii. Members of the board allow personal interest to override that of the parties concerned in a dispute.
- iv. The Board lacks a strong legal backing to make incontestable decisions.
- v. The Board suffers from lack of capacity in form of finances and human resources.
- vi. The Board has no adequate and efficient policing or monitoring mechanism to guard against misconducts.



#### 4.11 Confidential operations

The ethics committee is appointed on the powers of the Board which also gives it power to determine the composition of such committees. This committee practices a policy of secrecy whereby all its deliberations are strictly confidential.

Respondents were asked to give their opinion on what they thought of the policy of secrecy practiced by the board. The response was as shown below:

#### Key

- (a) reputation
- (b) public scrutiny
- (c) loss of clients
- (d) integrity
- (e) inadequacies
- (f) other

**Table 5.12: Opinions on policy of secrecy**

Response	Firms	Percentage (%)
(a)	39	87
(b)	9	20
(c)	8	18
(d)	26	58
(e)	5	11
(f)	15	33

Source: Own field survey 2006

Many respondents (87%) said that by keeping the affairs of the committee secret, the reputation of the profession is guarded. This was on the premise that all professions have internal organs/mechanisms which are meant to resolve disputes without engaging the public or outsiders.

20% thought that secrecy shields the profession from public scrutiny. The small percentage indicates that the profession does not need to avoid public scrutiny.

18% thought that involved professionals would lose their clients if their affairs were exposed by the ethics committee. Generally, there is no client who would like to be associated with a consultant whose conduct is questionable. But then from the response obtained, it seems few Quantity Surveyors support the idea that professionals will lose clients if their activities are exposed by the committee.

58% said that the policy protects the integrity of the involved individuals. Even if a person engages in unprofessional conduct, his/her integrity remains until those practice are exposed, hence the integrity is protected.

Some claimed that the policy covers the inadequacies of the Board. This was represented by 11%. This response reveals why the ethics committees are formed. Their functions are not to audit the Board but to execute the mandate of the Board. Whether or not the committee practices secrecy, it's for the benefit of the professionals and not the Board. 33% of the respondents gave other opinions which the policy helps to propagate. They are enumerated below:

- i. The policy is a professional way of solving disputes amicably.
- ii. It helps shield the inadequacies of the professionals.
- iii. It reduces public awareness of the profession.

On whether the affairs of the ethics committee should be kept secret, 22% agreed that they should while 78% disagreed as indicated in the table shown.

**Table 5.13: Response on whether the Ethics Committee should remain secret**

Response	Firms	Percentage (%)
Yes	10	22
No	35	78
Total	45	100

Source: Own field survey 2006

The major role of ethics committee is to hear and determine cases of unprofessional conduct involving registered members of the Board. The response indicates that many professionals would want disclosure. This could imply that professionals do not encourage unprofessional practices. It also indicates that severe punishment should be imposed to those who misconduct themselves.

However the respondents were asked to give some of the circumstances under which the activities of the ethics committee should be made public. The following were highlighted:

- i. Where a corruption case is involved. Institutions are practicing zero tolerance on corruption. The Board and its committees should not be left behind; they should make public all cases of corruption.
- ii. Where there is abuse of office/power and non-accountability especially where a professional has misappropriated the clients' resources.
- iii. Where a member has been deregistered just like other professions like the Law Society of Kenya debar corrupt and indiscipline members.
- iv. Where a matter in question is of gravity and is punishable by other laws of the land. This is especially where a member has committed a serious crime that is punishable by other laws and not specifically by provisions of Cap 525.
- v. Where a professional has been compromised to act contrary to the public interest.
- vi. Where the case involves non compliance with professional ethics and requirements.
- vii. Where the activities of the client may injure more clients and bring the profession into disrepute
- viii. When good clients are affected.
- ix. When it can lead to losses in the industry.

#### 4.12 Restricted practices

**Table 5.14: Opinions of respondents on prohibited practices**

Practice	Positive response		Negative response		Not sure	
	Firms	%	Firms	%	Firms	%
Building trades	22	49	23	51		
Auctioneering	5	11	30	67	10	22
Housing agents	28	62	17	38		
Manufacturer's agents	22	49	15	33	8	18
Building materials	22	49	23	51		

Source: Own field survey 2006

The Architects and Quantity Surveyors Act bars professionals from engaging in some practices. Some of these were identified and the professionals were asked if they should be allowed to participate in them. The responses are shown in the table above.

**Building trade** – this is the practice of building for commercial purposes. From the table it can be seen that 49% support Quantity Surveyors participation in the building trade while 51% do not.

**Auctioneering** – this is the practice of passing title in property from one party to another in open bidding. There may or may not be a reserve price below which the auctioneer is not bound to accept the bid. The auctioneer may also turn down the highest bidder without giving any reasons.

Of the total respondents 11% were of the opinion that Quantity Surveyors should practice auctioneering while 71% thought otherwise. 8% were not sure of whether professionals should practice auctioneering or not.

**Housing and estate agents** – these are people employed by others (principals) to source and buy houses for them. They are paid by commission on the property they sell or by a salary from their employers.

62% of the respondents favor the involvement of Quantity Surveyors in this practice while 38% do not.

**Manufacturer's agents** – these are people hired or employed by producers of building materials to sell their products.

They are remunerated by commissions or salaries. 49% of the respondents support the idea of Quantity Surveyors practicing as manufacturer's agents while 33% are out of favor with it. 8% are not sure of Quantity Surveyors involvement.

**Building materials** – these are components used in building construction.

49% of the respondents indicated that they would not mind Quantity Surveyors involvement in the business of building materials while 51% opposed.

In the trades of building, housing and estate agents, manufacturer's agents and the business of building materials, professionals are near equally split on whether the professionals should be involved in them with very few being unable to give opinion. Auctioneering was largely unapproved.

The above practices are some of the areas the Quantity Surveyors may diversify into to widen their scope of operations.

Reasons were given by the respondents for their responses as follows:

Positive response

- i. Involvement in building materials will promote and facilitate usage of economic and quality materials.
- ii. The quantity surveyor has the relevant skills required to engage in those activities.
- iii. The practices above will enable the Quantity Surveyor to contribute to the whole building industry not just in one aspect only.

- iv. The practices will enable the professional diversify his income and ideas.
- v. They are areas of specialization
- vi. Quantity Surveyors will be able to provide correct goods in the market.

Negative response

- i. Auctioneering is not an area of specialization for the Quantity Surveyor.
- ii. Quantity Surveyors can not handle valuation.
- iii. They will lead to conflict of interest for the professional and consequently erode professionalism
- iv. Some practices especially Auctioneering are not very dignified.
- v. The Quantity Surveyor has no training on such areas.

Respondents were asked if they were aware of any regulations governing the following regulations practiced by Quantity Surveyors. The response was as shown in the table below:

**Table 5.15: Awareness of regulations governing the practices**

Activity	Response of firms					
	Yes	Percentage (%)	No	Percentage (%)	Not sure	Percentage (%)
Project management	13	29	24	53	8	18
Contracting and contractual management	18	40	16	36	11	24
Cost accounting	18	40	20	44	7	16
Valuation for insurance	5	11	25	56	15	33
Advice on finance	25	56	15	33	5	11
Writing of briefs	12	27	23	51	10	22
Bills for specialist works	31	69	14	31	0	0

Source: Own field survey 2006

**Project management** – this is the overall planning, control and co-ordination of project from inception to completion to meet client’s requirements and ensure and

ensure completion on time, within cost and to required quality and within a given scope.

29% agreed that there are regulations governing project management while 53% said that there was none. Still 18% are not sure of any regulations governing the practice.

**Contract and construction management** – this is concerned with procurement of work and offering construction services.

40% of practitioners are aware of any regulations on this practice, 36% are not aware while 11% are not sure if there are any.

**Cost accounting** –

40% of the respondents agree that there are rules on Quantity Surveyors practice as cost accountants, 44% do not agree that there are while 16% are not sure of themselves.

**Valuation for insurance** – this is the process of determining the cost of a completed building or one under construction for insurance company to estimate the premiums to be payable by the insured.

11% of respondents thought that there were regulations Quantity Surveyors engagement in insurance valuations of constructed works, 56% disputed while 33% were not sure of themselves.

**Advice on finances** – this is the giving of professional advice to clients on various funding methods of a project, tax management, investments, capital allowances offered by the government, grants available and cash flow management.

56% agree that there are regulations governing the professionals on this type of advices, 34% disagree while 10% are not sure of the same.

**Writing of briefs** – this is the process of putting down elaborate details of the client's requirements to enable for the design of a building that satisfies his intention.

27% of respondents thought that there are regulations on writing of briefs by Quantity Surveyors, 51% said there none while 22% are not sure if there are any.

**Bills for specialist work** – these are bills of quantities made for highly specialized nature.

69% of the respondents to questionnaires and interviews confirm that there indeed regulations concerning the issue while 31% denied knowledge of any such regulations.

These responses portray a lack of information in the profession. Of all the activities listed above, there is none on which professionals have a consensus on availability of regulations.

#### **4.13 Problems encountered during data collection**

- 1) Some Quantity Surveyors said that they were too busy to answer the questionnaires.
- 2) Some offices were too busy that all Quantity Surveyors were out in the field. others were out of the country, hence nobody was available to attend to the questionnaire and if one is available then he takes too long to respond to it.
- 3) Some Quantity Surveyors flatly turned down the questionnaire without giving any reasons.
- 4) Some of the firms in researcher's sample coincidentally happened to be in the sample of other researchers such that the Quantity Surveyors once they had answered one questionnaire were not willing to answer another one from a different researcher.
- 5) Some firms have changed their offices without changing the physical addresses as listed in the directories. Hence tracing them was not easy.
- 6) Some firms accepted the questionnaires but never responded to them.

#### **4.14 Steps taken to deal with the problems**

Those firms that had changed offices were given phone calls so that they could confirm to the researcher their new office locations.



Where questionnaires coincided into the same offices with other researchers, the quantity surveyors involved were given more time to respond to them.

Where questionnaires were turned down or quantity surveyors were too busy to respond, the sample size was extended to cater for the failed elements.

Where the questionnaires were not responded to, the researcher assumed that the sample taken was big enough to suffer any significant validity damage. Generally the sample should have been at least thirty (30) units of the population.

## **CHAPTER FIVE**

### **SUMMARY CONCLUSION AND RECOMMENDATION**

#### **5.0 Summary**

The researcher set out to find the short comings of the regulations governing the Quantity Surveying profession and to establish ways of dealing with them. The objectives were set and hypothesis formulated to guide the researcher in the study.

The researcher studied the Act governing the profession, works of other researchers closely related to the study and various aspects of professionalism.

He used the techniques of interviews and administration of questionnaires to obtain data relevant to the study undertaken. The researcher concentrated in Nairobi which is the heart of all Quantity Surveying activities.

Data obtained was analysed by use of frequency tables, percentages and averages.

From the data analysed, serious deficiencies were discovered especially in the Board's operations, awareness of the profession and ignorance by the professionals.

#### **5.1 Conclusion**

From the findings in the data analysed it's evident that the regulatory environment of the quantity surveying profession is in need of serious scrutiny with the aim of making it more professional friendly.

The Board and the Act that establishes it have not achieved their mission of regulating the profession, preventing malpractices and offering general guidance.

The law is not enough to govern all the activities the Qs is involved in. it therefore needs amendments and expansions to incorporate fully the professionals' practices. Amendments should aim to replace the provisions that are no longer applicable or are too lenient to be of any effect.

The Board puts a lot of emphasis on professional growth through Continuous Professional Development and that is why anybody who does not attain the minimum CPD points set by the Board faces deregistration.

However the punishment of fines imposed on a range of misconducts is too little. The Board is legally empowered to impose a fine of Ksh 5000 only. This should be reviewed and made higher. The amount of Ksh 5000 as currently charged was high in 1934 when the act commenced operations but it does not really have the same effect it had over 30 years ago.

From the study it was established that some of the misconducts though gravious in their nature attract a light punishment. For example incompetence, impartiality and corruption are punishable by a censure or caution only. These punishments need revision to make them have effect on the culprits.

Currently the punishment cannot deter a professional if the benefit to be gained is greater than what they would lose to punishment.

It was found out that though the Act restricts professionals from engaging in some practices, these professionals do not share the same 'thinking' with the law.

Professionals support engagement in building materials, acting has manufacturers' agents and building for commercial purposes. However they dislike their involvement in auctioneering which they claim is not dignified profession. Auctioneering is also governed by an Act of parliament of its own. Its therefore would not be possible to practice in the same profession while answering to two Acts.

However in the professions they support, the argument is that they have relevant skills and competency to undertake them, they would also improve quality in them while diversifying their income and specialization.

Their involvement in these practices was not entirely agreeable to everybody, though the high number of those who support indicates that the issue is debatable and therefore more discussions should be held to come up with a common front.

The study also showed that professionals are not very up to date with the regulatory environment surrounding some of the practices they do.

Professionals are sure that the law allows them to make bills for specialist work, to offer advice on finances while they disagree on whether there are regulations governing other practices they carry out especially project management, contracting and construction management, cost accounting and writing of briefs. Few are completely lost on whether there are regulations or not. The Board should have more seminars on regulations in the profession to create awareness and if they are lacking, some should be formulated and incorporated in the Act.

The above mentioned activities i.e. cost accounting, project management and construction management are not barred or recommended by the Act therefore they should be incorporated and professionals sensitized on their practice.

It was established also that the Act does not establish modalities of dealing with cases outside the practice of quantity surveying. Criminal activities are not the concern of the Board but it should have a way of dealing with them when they affect its members.

The Act should therefore have a clause to that effect.

The Act also lacks in the provisions for registration and membership of non local Quantity Surveyors. It was established that foreigners require only a work permit from the Government to set up practices in the country while others register under NGOs and offer Quantity Surveying services.

There are also no examination process like the ones undertaken by locals to determine their qualifications and competence.

The study also found out that the Act has not been able to achieve the desired influence in the profession. Reasons given for this were that:

- It does not match in time with the changes that have taken place in the profession. Since the Act was enacted, it has undergone successful revision

once in 1978. The Quantity Surveying profession is developing steadily and the Act needs to match with the changes.

- The Act has not been adequately enforced.
- It is not all inclusive. It does not contain provisions on all activities carried out by Quantity Surveyors.

The required amendments and expansions to the Act are not likely to go through smoothly as there are hindrances all the way. For example the Act has not been amended since 1978. The second phase of amendments started in 1998 and is not yet concluded.

There were reasons identified which makes the process of amending delay. They are:

- Non commitment on the part of the stakeholders. These include professionals themselves, Professional Associations, the Board and the Government.
- Parliamentary process which was said to be long and tedious. The amendments proposed by the Board and Professional Associations have to go through the Attorney General who introduces them to parliament for debate. The proposals become parts of the government business in the house hence have to queue for more urgent Govt bills to pass.
- Lack of awareness of deficiencies on the part of professionals. It's surprising that some practitioners are not aware of the deficiencies in the Act while they don't know the regulations that govern some of the activities that they engage in e.g. project management.
- Parliamentary ignorance of inadequacies in the law and reluctance to act when they are informed.
- Professionals sometimes do not understand what is actually desired if amendments were to be executed.
- Bureaucracy – amendments have to take a certain procedure i.e. they come from members, and then passed on to the Board or professional body, then to the AG, then to parliament where another long parliamentary process takes over.

The Board of registration relies heavily on reported cases for it to institute any action whereas it should have established mechanism of discovering when professionals are not abiding by the Act.

Even on the cases that are reported, the research found out that they come from very few sources. The construction industry is composed of many professionals and business undertakings. For example: Contractors, Developers, Engineers, Architects and Quantity Surveyors. Of all these only Contactors, Developers and Architects report cases of misconduct. It's like other professionals are blind of what happens in the industry. The public could be excused for not reporting cases for lack of knowledge.

The Board should devise ways of encouraging more reporting of cases to enable it dispense its mandate. This could be through public awareness forums.

The research also established that the Board of Registration is not independent in its work. Instead it's influenced by personal interest of its members and politics. Reasons given for this were the dependency on the Govt and the fact that its members are private practitioners.

The Board consists of eight members of whom four are nominated by the Minister and the other four by the AAK but subject to approval of the Minister. The registrar is one of the Minister's nominees. As such the Govt seems to have a lot of influence on the affairs of the Board.

The personal interests and political influences have extended to reduce the strictness with which the Board enforces the code of conduct. It was established that the Board lacks enough information in the cases they handle hence makes decisions which are easily contested in courts. It also out rightly favors some individuals over others. The lack of strictness is sometimes due to reliance on reported cases only, inadequate capacity to deal with cases expeditiously, lack of strong legal backing and unavailability of any monitoring mechanism.

The Board has an Ethics Committee which deals with cases of professional misconduct. The research found that the policy of secrecy practiced by the committee protects the reputation of the profession and the integrity of the professionals involved in those cases. It's also a way of solving cases amicably without the necessity of publicity generated by the courts.

However the policy has some effects not beneficial to the profession. For example the public is denied the chance of learning about the profession. It also shields the inadequacies of the professionals and as such incompetent people are allowed to practice. This injures the profession in the long run.

Though the ethics committee keeps its affairs secret, professionals would prefer disclosure. This is especially when the following cases are involved:

- Corruption;
- Abuse of office, power and trust;
- Deregistration;
- Criminal activities.

The Board should strive to make the wishes of the members a reality by disclosing the people involved and crimes/misconducts committed if at all they involve those highlighted above.

The study brought out the fact that the Board faces some constraints which derail its functions. It has no enough financial resources and shortage of personnel.

The courts also derail the Boards work through injunctions and overruling of its decisions.

The hypothesis in this study stated as follows;

- 1) Inadequate regulations have lead to ineffective control and failure to enforce professional practices and ethical behaviour in the quantity surveying profession.
- 2) Lack of capacity and ability has hindered the enforcement of professional code of practice.

The above two hypothesis have been proved to be true. This can be seen in the analysis where the Act has been found not to include all practices that a Quantity Surveyor does these days. There are also inadequate punishments and not enough regulations governing the widened scope. The Act was also found to lack provisions on criminal activities and foreign practitioners though they fall under their jurisdiction.

In essence the Act cannot regulate, control or execute what is not included in its jurisdiction.

The Board has been found to face financial constraints, personnel shortage and legal hurdles which incapacitate it.

The objectives of the study were;

1. Study the regulations governing the quantity surveying profession and determine if they are sufficient to effectively control the profession.
2. Identify the shortcomings of the regulatory environment and propose ways of overcoming them.
3. Establish changes and amendments to the law, which will enhance professional practices and ethical behaviour of Quantity Surveyors.

The above objectives have all been achieved in the study. The regulatory environment has been portrayed as insufficient to fully cover all the practices of Quantity Surveyors.

It is not strictly enforced and some of the policies practiced are not entirely beneficial to the profession.

If the regulations are insufficient then they cannot influence the professionals much.



Various shortcomings have been identified and advice given accordingly. Especially on restrictions to some trades, awareness of regulations, integration of foreigners practice in the Act and criminal activities.

Some of the amendments proposed are on fine imposed which should be revised upwards, revision of some punishment to make them dearer, incorporation of those practices that the Act does not expressly prohibit and allowing of those practices that have been prohibited.

## **5.2 Recommendations**

Quantity Surveying profession should be adequately regulated to deter the professionals from engaging in misconducts. This can only be done by incorporating all practices and formulating rules to govern them.

There should be a certain set minimum period say five (5) years after which the Act should undergo a revision. Every revision should incorporate all provisions and correct mistakes and deficiencies identified within that period.

Quantity Surveyors meet at least once in a year. They should therefore be encouraged to bring memorandums on what they wish to be incorporated or removed from the Act every time they meet. After five years there should be enough proposals to warrant an amendment to the Act.

The Board should institute a monitoring mechanism to ensure that professionals are discouraged from engaging in unprofessional conduct. As it is today, one can engage in unprofessional conduct and walk scot-free if it's not reported by anybody. The mechanism would ensure that cases are discovered without the need to be reported. For example one would be required to file details of how he/she obtained work and the criteria of selection that was applied.

The Board should be more empowered to deal with the workload. It should be allocated more money by the Govt to enable it recruit more professionally qualified and permanent staff. The staff should have knowledge of the industry to enable them investigate cases expeditiously. The Ethics Committee should then be replaced by these highly qualified professionals. The scope of work for these professionals should include investigation of cases of professional misconduct and make recommendations to the Board for action. The Board shall then act as per the recommendations.

This will eliminate instances of biasness, favoritism and personal interests of the Board members.

The Government influence on the Board's activities should be reduced. This can be done by widening the base for the source of members. Currently the Board consists of the AAK and the Minister's nominees. More parties should be allowed to nominate members to the Board effectively increasing the membership and diluting the influence of any one single party in it.

New nominees should come from the IQSK, Association of Contractors, Local Authorities and National Environment Management Authority.

Other forms of punishment should be devised including amplifying the existing ones. Any professional accused of any misconduct should not hold a position of authority or trust in the Board, AAK, IQSK, Joint Building Council or any other body concerned with construction activities.

The Board should isolate members involved in unprofessional conducts in all its activities until they are cleared of wrong doing.

### **5.3 Areas of further studies**

A study need to be done on the influence of other professionals to the Quantity Surveying profession. This is in recognition of the fact that Quantity Surveying is just one among many professions in the construction industry. A Quantity Surveyor's

decision is influenced by those of architects, engineers, physical planners, developers and contractors.

A study need to be done on the viability of formation of an umbrella body incorporating all professionals in the construction industry. The body should be established by an Act of parliament and be mandated to establish rules and regulations governing the industry.

The body should also incorporate all common processes and procedures of the industry as specified in the specific Acts and other documents of various professions. The Act should integrate the Architects and Quantity Surveyors Act, Arbitration Act, Engineers Act, Physical Planners Act, Environment Management and Co-ordination Act and Local Governments Act.

Documents which should be integrated are Agreement and Conditions of Contract for Building Works produced by the Joint Building Council, Condition of Contract for Construction for Building and Engineering Works produced by International Federation of Consulting Engineers and Public Procurement Rules produced by the Ministry of Finance.

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## APPENDIX I

### QUESTIONNAIRE TO THE REGISTRAR OF THE BOARD

#### INTRODUCTION

This questionnaire is to be administered to the registrar, Board of Registration of Architects and Quantity Surveyors. Any responses to it will be treated with utmost confidence and used for the purposes of research only.

#### QUESTIONS

1. What is the frequency of reporting cases of professional misconduct by the following?

	low	high	Very high
Client			
Contractor			
Architect			
Quantity surveyor			
Engineer			
Others			

2. What is the procedure of handling a case involving a professional misconduct once it has been reported to the Board?
- i) -----  
ii) -----  
iii) -----  
iv) -----  
v) -----
3. What is the composition of the Ethics Committee as to members and their specific roles if any?
- i) -----  
ii) -----  
iii) -----  
iv) -----
4. What are the other functions of Ethics Committee apart from dealing with cases of professional misconduct?
- i) -----  
ii) -----  
iii) -----
5. How is the decision of the Ethics Committee arrived at, concerning a particular case? (tick as appropriate)
- By a majority vote;
  - Consensus;
  - Any other; (please state)

6. What makes the process of amending the Act long and time consuming? (tick as applicable)

- Non commitment on the part of the stakeholders.
- Quantity surveyors are beneficiaries of the status quo.
- Parliamentary process of amending an Act.
- Other reasons.(please specify)

i) -----  
 ii) -----  
 iii) -----

7. Is it mandatory for the members registered by the Board to be members of Professional Associations like AAK and IQSK?

- Yes
- No

8. How do other crimes unrelated to the Quantity Surveying practice affect the relationship between the Board and its registered persons? (tick as applicable)

- It leads to their deregistration;
- They are fined;
- They are censured;
- They do not affect the relationship;
- Other effects (please specify)

i) -----  
 ii) -----

9. What punishments are imposed on professionals found guilty of the following professional misconducts?

Key

- a) Caution or censure such person,
- b) Suspension of registration,
- c) Impose a fine,
- d) Deregistration,
- e) Any other, (please specify)

	a	b	c	d	e
Prohibited employment					
Giving or receiving of discounts					
Involvement in building materials					
Name plates					
Notice boards					
Signing of documents					
Partnerships					
Competitions					



<i>Table contd'</i>	a	b	c	d	e
Destruction of documents					
Supplanting					
Giving monetary inducements					
Impartiality					
Reduction of fees					
Contravention of BORAQS by-laws					
Failure to attain minimum CPD Points					
Incompetence					
Any other.(please specify)					

10. The board may impose a fine of up to Ksh 100,000. Under what circumstances is this possible?

- -----
- -----
- -----

11. What factors determine the type of punishment one is given? (tick as applicable)

- Type of misconduct;
- Implications of the misconduct;
- Number of times the misconduct has been committed by the charged person;
- Frequency with which the misconduct is committed in the profession;
- Others: specify
  - i) -----
  - ii) -----

12. What limitations does the Board face in executing its mandate? (tick as applicable)

- Financial;
- Personnel;
- Legal e.g. court injunctions. inadequate legislation etc;
- Any other;
  - i) -----
  - ii) -----
  - iii) -----

13. What is the process of registration of foreign practitioners operating in Kenya?

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## APPENDIX II

### QUESTIONNAIRE TO THE REGISTRAR OF THE BOARD TO COLLECT DATA FOR DEFENDING THE PROBLEM STATEMENT

#### INTRODUCTION

This questionnaire is to be administered to the Registrar Board of Registration of Architects and Quantity Surveyors.

#### QUESTIONS.

1. How many Architects and Quantity are registered by the board?

Architects \_\_\_\_\_  
Quantity Surveyors \_\_\_\_\_

2. How many Architectural and Quantity Surveying firms are registered by the board?

Architectural firms \_\_\_\_\_  
Quantity surveying firms \_\_\_\_\_

3. Do you receive disputes between the following practices? And on what5 average per annum? (Tick as applicable)

a). Architects and Quantity Surveyors.

Yes  No  Average

b).Architects and Clients.

Yes  No  Average

c).Quantity Surveyors and Clients.

Yes  No  Average

d). Architect and Contractors.

Yes  No  Average

e).Quantity Surveyors and Contractors.

Yes  No  Average

f).Clients and Contractors.

Yes  No  Average

4. About how many cases per annum are handled concerning the following professional misconduct?

a) Prohibited employment e.g. involvement in the building trade directly or indirectly as principal, salaried capacity or practice as an auctioneer, house agent , manufacturers agent e.t.c. \_\_\_\_\_

- b) Discount \_\_\_\_\_
- c) Involvement in building materials. \_\_\_\_\_
- d) Name plates. \_\_\_\_\_
- e) Notice boards. \_\_\_\_\_
- f) Signing of documents. \_\_\_\_\_
- g) Partnerships. \_\_\_\_\_
- h) Competitions. \_\_\_\_\_
- i) Destruction of documents. \_\_\_\_\_
- j) Supplanting. \_\_\_\_\_
- k) Monetary inducement. \_\_\_\_\_
- l) Impartiality. \_\_\_\_\_
- m) Reduction of fees. \_\_\_\_\_
- n) Contravention of by-laws e.g. AAK's by-laws. \_\_\_\_\_
- o) Professional practice notes e.g. failing to attain Minimum CPD points. \_\_\_\_\_
- p) Incompetence. \_\_\_\_\_
- q) Chapter's code of conduct. \_\_\_\_\_

5. Are there other conducts which are considered as professional misconduct but are not covered by CAP 525?

- a) \_\_\_\_\_
- b) \_\_\_\_\_
- c) \_\_\_\_\_
- d) \_\_\_\_\_
- e) \_\_\_\_\_

6. What punishment are imposed on those found guilty of the alleged

Key

- a) Caution or Censure such person.
- b) Suspension of registration.
- c) Impose a fine.
- d) Deregistration.
- e) Any other;...Specify.

Just answer with **a, b, c, d** or **e**.

- a) Prohibited employment. \_\_\_\_\_
- b) Discount \_\_\_\_\_
- c) Involvement in building materials \_\_\_\_\_
- d) Name plates. \_\_\_\_\_
- e) Notice boards. \_\_\_\_\_
- f) Signing of documents. \_\_\_\_\_

- g) Partnerships. \_\_\_\_\_
- h) Competitions. \_\_\_\_\_
- i) Destruction of documents \_\_\_\_\_
- j) Supplanting. \_\_\_\_\_
- k) Monetary inducement. \_\_\_\_\_
- l) Impartiality. \_\_\_\_\_
- m) Reduction of fees. \_\_\_\_\_
- n) Contravention of by-laws e.g. AAK's by-laws. \_\_\_\_\_
- o) Professional practice notes e.g. failing to attain Minimum CPD points. \_\_\_\_\_
- p) Incompetence. \_\_\_\_\_
- q) Chapter's code of conduct. \_\_\_\_\_
- r) Others (as mentioned in question 5, if any)
  - i) \_\_\_\_\_
  - ii) \_\_\_\_\_
  - iii) \_\_\_\_\_
  - iv) \_\_\_\_\_
  - v) \_\_\_\_\_

7. What factors determine the type of punishment?

- a)
- b)
- c)

8. What the maximum monetary fine can the board impose?

Kshs. \_\_\_\_\_

9. Sometimes in the year 2003, the ministry of roads and public works required all the professionals doing private business while at the ministry to quit private practice or resign from the ministry.

a) Are there Quantity Surveyors and Architects who were involved?

Quantity Surveyors \_\_\_\_\_  
 Architects \_\_\_\_\_

b) How did the board handle their cases as it amounted to professional misconduct?

- i) Reprimanded
- ii) Suspended
- iii) Fined
- iv) Deregistered
- v) Any other;  
Specify \_\_\_\_\_

## APPENDIX III

### QUESTIONNAIRE TO THE QUANTITY SURVEYOR

#### INTRODUCTION

This questionnaire is to be administered to the quantity surveying firms only. Responses to it will be treated with absolute confidence and will be used for the purpose of research only.

The questions are intended to find out, how inclusive, effective and applicable, the current Architects and Quantity Surveyors Act is, in so far as the Quantity Surveyor is concerned.

#### QUESTIONS

1. Do you think the Architects and Quantity Surveyors Act Cap 525 is adequate in its present form to govern the operations of Quantity Surveyors? (Tick as appropriate)
  - Yes
  - No
2. If the answer to the above is no, what do you think should be done to make it more adequate? (Tick as appropriate)
  - Overhaul of the whole Act;
  - Amend the Act;
  - Expand the Act to include extra clauses;
  - Any other measure, (please specify);
    - i) -----
    - ii) -----
3. Do you think the Architects and Quantity Surveyors Act in its present form is effective in governing the activities of Quantity Surveyors? (tick as applicable)
  - Yes
  - No
4. If the answer to the above is no, what are some of the reasons contributing to this? (tick as applicable)
  - It does not match in time with changing economic trends here in Kenya and elsewhere;
  - It is outdated;
  - It is inadequately enforced;
  - It does not include all activities of Quantity Surveyors;
  - Other reasons;
    - i) -----
    - ii) -----
    - iii) -----
    - iv) -----

5. What are some of the reasons that cause delay in reviewing of the Act? (tick as applicable)

- Non commitment on the part of stakeholders;
- Quantity Surveyors are beneficiaries of the status quo;
- Parliamentary process of amending an Act;
- Lack of awareness of the deficiencies in the Act;
- Other reasons;

i) \_\_\_\_\_  
ii) \_\_\_\_\_  
iii) \_\_\_\_\_

6. In your opinion, do you think the board of registration is independent in its operations? (tick as appropriate)

- Yes
- No

7. If the answer to the above is no, what are some of the forces that influence its decisions? (tick as applicable)

- Political forces;
- Personal interests of its members;
- Corruption
- Others, (please specify);

i) \_\_\_\_\_  
ii) \_\_\_\_\_

8. Do you think the Board of Registration is strict enough in enforcing the code of ethics? (tick as appropriate)

- Yes
- No

9. If the answer to the above is no, what are some of the reasons that contribute? (tick as appropriate)

- Biasness
- Favoritism
- Pity
- Other reasons, (please specify);

i) \_\_\_\_\_  
ii) \_\_\_\_\_

10. What do you think of the policy of secrecy practiced by the ethics committee? (tick as applicable)

- It preserves the reputation of the profession;
- It shields the profession from public scrutiny;
- It prevents professionals from losing clients;
- Protects the integrity of the professionals;
- Covers on the inadequacies of the Board;

- Other, (please specify);
  - i) -----
  - ii) -----

11. Do you agree that the affairs of the Board and of Ethics Committee concerning professional malpractice should be kept secret? (tick as appropriate)

- Yes
- No

12. If the answer to the above is no, what are some of the circumstances under which its activities should be made public?

- -----
- -----
- -----
- -----
- -----

13. Do you think that Quantity Surveyors should engage in the following practices? (Tick as appropriate)

- Involve themselves in building trades;      Yes---. No---
- Practice as auctioneers;                      Yes---. No---
- Act as housing agents;                         Yes---. No---
- Act as manufacturer's agent;                Yes---. No---
- Involve themselves in building materials; Yes---. No---

14. What are the reasons for your answer above? (tick as applicable)

Positive response	Negative response

15. Is there regulation governing the following activities undertaken by quantity surveyors? (Tick as appropriate)

- Project management;
- Contracting and construction management;
- Cost accounting;
- Valuation for Insurance;
- Advice given on project funding, grants, capital allowances and taxes;
- Writing of briefs;
- Bills for specialist work.

**APPENDIX IV**  
**LETTER OF AUTHORISATION**

**UNIVERSITY OF NAIROBI**

DEPARTMENT OF REAL ESTATE AND CONSTRUCTION MANAGEMENT

P.O. Box 30197, 00100 Nairobi, KENYA, Tel: No. +254-2-2724525/9 Fax: +254-2-2718548

E-mail: [building\\_econ@uonbi.ac.ke](mailto:building_econ@uonbi.ac.ke)

19 January 2006

**To Whom it May Concern**

**RE: LUNG'E MWENDA MORRIS – B03/0245/2002**

The above named is a student of this Department pursuing a Bachelor of Arts Degree in Building Economics. He is currently in his final year of the course and is writing a project paper titled "*A study of adequacy and effectiveness of regulations governing the professional practice and work ethics in the Quantity surveying profession.*"

The purpose of this letter therefore is to request you kindly to allow him access into any kind of material he may require from your organization to enable him complete the project paper successfully. The information given will be used for research purposes only.

Yours faithfully,

  
**CHAIRMAN**  
**DEPARTMENT OF REAL ESTATE**  
**AND CONSTRUCTION MANAGEMENT**  
**UNIVERSITY OF NAIROBI**

Dr. Hezekiah Gichunge

Chairman

**Department of Real Estate and Construction Management**