

els of treatment for such situations.

The pamphlet does not mention copper-chrome-arsenate treatment (CCA), but as this formulation was also used to treat to H1 standard it is encompassed in the broad claim that *anyone who suggests framing timber that has been H1 treated can prevent rot is full of it*. Was not the function of copper in CCA to be a fungicide?

So could the abandonment by our timber industry of artificial preservation of our non durable timbers for

housing framing and self supporting balconies in high rise houses pose a major threat to the future of New Zealand's radiata pine industry?

I believe that the 'rotting houses' issue is one in which the Institute could and should play a full and public role.

G V Buckley

## Forestry valuation - discount rates - the courts

Sir,

I was recently flicking through the May edition of the Journal with its excellent series of articles on forest valuation and reading some of the discussion around determining the appropriate discount rate in a forest valuation exercise. Upon reflection I thought it might be interesting to review briefly how the New Zealand Courts have handled this issue in relation to disputes involving valuation of a forest or woodlot. I am aware of four relatively recent New Zealand High Court cases that deal with this issue.

The facts of the various cases range from matters such as:

1. a claim for damages following a fire spreading from one person's land to another's forest;
2. a claim arising from cancellation of a contract as a result of wind throw damage to the forest the subject of the contract;
3. a claim for damages based on the value of forest on land that was incorrectly transferred; and
4. a claim for damages following an allegation of poor planting techniques.

At this point it is timely to note the truism that "*the only certainty about litigation is uncertainty*". In layman terms this means that in addition to "the law" a number of other factors may, on the day, impact on the decision in an unanticipated manner. For example the factual circumstances, quality of legal representation, quality of the parties' experts both in terms of professional expertise and in the witness stand, and the overall views, impressions and experience or otherwise of the Judge concerned. It is also worth noting that the first NZ case was heard in the early '80s and the next three in the mid to late '90s.

It is perhaps not surprising to find that the case decided in the early 80s adopted a discount rate of **3%** (despite the defendant arguing for 6%). In reaching this view the Judge noted some (then) recent decisions in the High Court of Australia which concerned the setting of discount rates in relation to loss of earning capacity following work-related accidents. Here discount rates of 2% and 3% were thought appropriate.

However, perhaps what **is** surprising is the range of discount values set by the NZ courts in the later cases. In the next two cases the Judges concerned seemed fairly

comfortable with adopting discount rates of around **9%** or in other words what seems to be the increasingly accepted norm within the industry.

However, in the last (and most recent case) the Judge adopted a discount rate of **6%**. In reaching this conclusion the Judge seemed to find greater comfort in the guidance offered by the first New Zealand case and its discussion of and links to the two Australian High Court cases. Reading between the lines of the judgment (and bearing in mind an aside from the Judge in the judgement to the effect that perhaps mathematics was not the Judge's strong suit) perhaps the respective plaintiff and defendant experts' evidence/discussion in relation to discount rates, how they worked and their link to internal rate of returns may have meant that the Judge followed more clearly the discussion in the first New Zealand case and found accordingly.

Clearly, trying to discern judicial trends from such a small sample is fraught with difficulty. However, prospective litigants in matters involving forest valuations and choice of discount rates would be well advised, I suggest, to ensure that their expert witnesses have both the technical qualifications and excellent communication skills or the gap between industry views on rates and Court imposed ones may continue to exist.

Andrew Caddie

### Five-yearly Reviews

The follow have applied to have their five-yearly consultant review:

Ross Bawden  
Noel Grey Burn-Murdoch  
Murray Inglis  
Michael Keith Krausse  
Jeff Alan Schnell  
Garry Alexander Townley  
Anthony Watt  
Rene Weterings

**The Registrar, NZIF Registration Board,  
PO Box 1860, WHANGAREI**