

Discipline Case Digest

Case: 2006-01

Subject Member: Registered Forest Technologist (name withheld)

Referred to: Discipline Committee

Date of Decision: July 2, 2008

Type: Alternate Dispute Resolution Settlement: Admission and Negotiated Settlement

The Complaint:

The complainants made three allegations:

1. that the subject member knowingly submitted inaccurate Post Harvesting Reports on six Small Scale Salvage Licences without having completed the necessary field work,
2. that the subject member authorized a logging contractor to cut timber in trespass under a Small Scale Salvage Licence by allowing timber to be cut from inside an Old Growth Management Area that was outside of the approved harvest area for the permit, and
3. that on a Small Scale Salvage Licence the subject member failed to correctly identify and locate fish bearing streams, allowed harvesting in trespass from within a Riparian Reserve Zone, and allowed a machine to cross and negatively impact a stream.

The allegations made by the complainants were potential breaches of the following sections of the Code of Ethics:

- 12.2.2 Completeness and Correctness Standard
- 12.2.3 Professional Care Standard
- 12.4.1 Integrity Standard
- 12.5.1 Due Diligence Standard

The Facts:

The subject member an RFT, was hired by local logging contractors to manage the application process and operations of Small Scale Salvage licences to target the mountain pine beetle outbreak in the forest district. The subject member's role included identifying potential salvage areas, conducting layout, and permit application, contract supervision and post-harvest reporting.

The subject member admitted that he submitted inaccurate and incorrect data on the six licences listed in complaint # 1 without supporting field work. The subject member also directed the unauthorized harvest of timber on the two additional salvage licences in complaints #2 and #3. The local District Manager fined the subject member \$3,700 for these contraventions.

The subject member admitted to the most of the assertions raised in the complaint and stated that he has remedied his unethical practices. The complainants interviewed during the investigation confirmed that the subject member's work had improved significantly since the complaint was made.

The subject member sent a letter to the Registrar of the ABCFP, on September 25, 2007 in which he:

- (i) admitted the fact that alcohol abuse may have affected his work;
- (ii) outlined that he has since admitted himself into rehabilitation from alcohol abuse;
- (iii) reviewed the work he has done to improve his knowledge and understanding of his professional responsibilities; and
- (iv) made a commitment to abide by the ABCFP Code Of Ethics.

The subject member no longer works in British Columbia.

The Negotiated Settlement and Penalty:

Under Section 23 (1) of the *Foresters Act* (SBC 2003, c. 19) and Bylaw 14.11 the Registrar initiated an alternative complaint resolution process with the subject member. The resulting negotiated settlement was reviewed by a panel of the Discipline Committee and approved. The settlement includes:

- a. a conditional admittance on the subject member's part to breaches of his professional responsibilities.
- b. a specific statement by the ABCFP that, in the Association's opinion, the subject member did not practice professional forestry in an appropriate manner.
- c. a formal reprimand of the subject member for unprofessional conduct which will be placed on the member's file at the ABCFP.
- d. a requirement that the member demonstrate to the satisfaction of the Registrar that he is competent and understands clearly his professional duties and responsibilities prior to returning to practice in British Columbia.
- e. an agreement that the subject member undertakes to consistently abide by the Code of Ethics and Standards of Practice while a registered member of the association, as outlined in his letter of September 25, 2007 to the Registrar.
- f. A statement that any breach of the member's undertakings or any misrepresentation will result in the matter being forwarded to the Complaints Resolution Committee for referral to the Standing Investigation Committee or the Discipline Committee, whichever is deemed appropriate to review further disciplinary actions.

Discussion:

With the exception of Case 2005-4, there is little precedent in the Association of BC Forest Professionals' recent history with which to consider this case. As a result, to determine if the remedies agreed to in the settlement are reasonable, the panel interpreted the intent of the alternative complaint resolution process, and the available remedies within the context of the overall duty and legal obligations of the Association to serve and protect the public interest.

The discipline panel drew on published case information from the Law Society of BC and the Association of Professional Engineers and Geoscientists of BC where alternative resolution processes or conditional admissions are commonly used. The panel also reviewed Association of BC Professional Foresters cases completed prior to 2003 to provide background on sanctions applied by the Association on members found guilty of misconduct.

With the need for fairness to all parties and consistency between the two distinct complaint resolution processes in mind, the discipline panel evaluated whether the proposed negotiated settlement meets the Association's obligations to the public and profession by considering the following questions:

1. Given the facts of the case, how serious are the infractions and what is the appropriate range of sanctions or remedies the Association might reasonably and fairly apply in order to meet its duties under the Act?
2. Is one or more of those sanctions, remedies, or actions present in the settlement?
3. In addition, does the settlement as a whole meet the following specific tests:
 - a. Does the settlement adequately reflect the harm caused to:
 - i. the profession,
 - ii. the public, and
 - iii. the subject member's client?
 - b. Does the settlement remove any economic benefit the subject member may have gained as a result of the alleged activities?
 - c. Is the settlement sufficient to provide a specific deterrent to the subject member and a general deterrent to other members?

The facts of the case presented to the panel indicate there was a serious and repeated lack of professional judgment on the part of the subject member. A combination of three specific alleged breaches presented in the Standing Investigations Committee report, relatively severe personal penalties applied by the Ministry of Forests and Range, and an admission of guilt on the part of the subject member suggested to the panel that this case represents serious professional misconduct. Consequently, the panel believes the

sanctions agreed to in the settlement should be very similar to those required under Section 27 (4) of the Act, the formal complaints resolution process.

The panel believes the settlement legitimately considers the penalties imposed on the subject member by the Ministry of Forests and Range. It can be reasonably assumed that any harm to the public and the environment were considered in the District Manager's determination, and the penalty imposed adequately compensated for damages. There were no facts presented to indicate any harm was done to the employer or client of the subject member.

The panel believes harm has been caused to the Association by virtue of the subject member's actions. The member repeatedly violated forest law as well as breached his professional duty. While monetary damages to the Association may be minimal, other than investigation and handling costs, the panel feels there is potential public embarrassment and diminishment of the Association in the eyes of its members as a result of the subject member's actions. In the panel's opinion, a formal reprimand is a minimally acceptable sanction under the circumstances. Requiring the member to demonstrate his competency prior to re-entering practice in the province should assure the Association and its members that similar unprofessional actions by this member will not re-occur.

There were no facts presented to indicate the subject member profited in any way through his actions. From the facts presented it is clear that the member's character and work ethic have been called into question by his actions. However, he has suffered the consequences and is addressing them. The sanctions agreed to in the settlement reinforce the seriousness of the professional breaches and the need for the subject member to carry through with his remedy. As a result, the settlement adequately provides a deterrent to future breaches of professional duty by the subject member, in the panel's view.

Further, it appears that the subject member is contrite and has embarked upon a course of conduct and treatment to ensure that the impugned behaviours do not reoccur.

Finally, with regard to providing a general deterrent to members, the panel believes the settlement only meets this test if the personal fines levied against the member by the District Manager are considered. In the absence of these comparatively high financial penalties, the panel feels the Association would have been obliged to seek similar monetary penalties, or a monetary penalty and costs for the settlement, to be considered an adequate general deterrent.