

Discipline Case: 2009-01

Subject Member: Rodney Arnold, RPF

Referred to: Discipline Committee

Date of Decision: January 2011

Type: Conditional Admission and Negotiated Settlement approved by Discipline Panel

The Complaint

The complaint was that Mr. Arnold:

1. Moved a road without consultation with the geotechnical engineer who had made the original recommendations regarding the road construction and end hauling of materials for the road construction.
2. Changed the road construction methods from end haul to side casting without consultation and approval of the geotechnical engineer who made the original recommendations about the road design.
3. Signed Site Plans (SPs) after the approval and/or submission of the cutting permits in contradiction of signed letters to the District Manager stating that the SP's were signed and on file.
4. Failed to adequately supervise SP data collection through field verification of the data.
5. Failed to have field data to verify site assessments and field work for submitted and signed SPs.
6. Changed timber harvesting systems in contravention of the SP and appraisal submission for a cutblock.
7. Potentially caused excessive erosion and sedimentation due to poor road construction methods.

The complaint alleged that Mr. Arnold incompetently engaged in the practice of forestry, and breached of the ABCFP Bylaws in the following sections:

11.3.2 To uphold professional principles above the demands of employment.

11.3.3 To have regard for existing legislation, regulation, policy and common law; and to seek to balance the health and sustainability of forests, forest lands, forest resources, and forest ecosystems with the needs of those who derive benefits from, rely on, have ownership of, have rights to, and interact with them.

11.3.9 To express a professional opinion only when it is founded on adequate knowledge and experience.

11.4.1 To inspire confidence in the profession by maintaining high standards in conduct and daily work.

- 11.4.5 To sign and seal professional documents only in accordance with the provisions of Bylaw 10 and any other bylaws and resolutions pertaining to the signature and sealing of professional documents.
- 11.5.4 To accept only those assignments for which the member is qualified or seek assistance from knowledgeable peers or specialists whenever a field of practice is outside the member's competence.
- 12.2 Competence
- 12.2.1 Competent members maintain sufficient knowledge in their field(s) of practice.
- 12.2.2 Competent members ensure their work is complete, correct and clear.
- 12.2.3 Competent members exercise appropriate judgment and discretion with due care.
- 12.3 Independence
- 12.3.1 Members hold paramount, public interest and professional principles.
- 12.4 Integrity
- 12.4.1 Members, in private life, professional practice, or outside professional activities, always conduct themselves honourably and in ways which sustain and enhance their professional integrity and the integrity of the profession as a whole.
- 12.5 Due Diligence
- 12.5.1 Members exercise due diligence by being prudent and doing all work with constant and careful attention.

The Facts

Mr. Arnold agreed on the following statement of facts pertaining to this case:

- a. He acknowledges and admits that he has contravened his professional obligations by incompetently engaging in the practice of professional forestry and/or acting in a manner unbecoming of a member of the Association of BC Forest Professionals in relation to his movement of Spur 180-1, his authorization for timber harvesting in CP 265, and his representations to a forest official regarding the completion of CP 265 site plans;
- b. He acknowledges and admits that he has breached bylaw 11.3.3 by failing to have proper regard for, regulation, policy and common law;
- c. He acknowledges and admits that he has breached bylaw 11.4.1 by failing to inspire confidence in the profession by maintaining high standards in conduct and daily work;
- d. He acknowledges and admits that he has breached bylaw 12.5.1 by failing to meet the standards of practice required of members and to exercise due diligence by being prudent and doing all work with constant and careful attention; and

- e. He acknowledges and admits that his actions as outlined in items (a) to (d) above were inconsistent with the *Foresters Act*, the Code of Ethics, and the Standards of Practice.

In addition the registrar and Mr. Arnold agreed that:

1. There was no contravention of forest legislation found by either the Ministry of Forests and Range (MFR) or the Forest Practices Board, associated with the circumstances outlined in the complaint.
2. The spur road was built in the revised location proposed by Mr. Arnold. This location was never approved by a qualified geotechnical professional.
3. Harvesting and road construction took place under approved Permits from MFR under direction of the Mr. Arnold.
4. At the time of the Cutting Permit submission, Mr. Arnold indicated to MFR that he had completed a Site Plan and that the Site Plan was on file in his office, but the Site Plan was not actually signed until after the harvesting was commenced. The *Forest and Range Practices Act* (FRPA) does not specifically stipulate that a Site Plan is to be signed prior to Cutting Permit submission or issuance. FRPA Section 10 requires only that “the holder of a Forest Stewardship Plan must prepare a Site Plan in accordance with prescribed requirements for any cutblock before the start of timber harvesting on the cutblock.”
5. Mr. Arnold received no economic benefit as a result of his actions.

The Negotiated Settlement and Penalty

Under Bylaw 14.49, Mr. Arnold and the registrar initiated the development of a settlement proposal. The resulting negotiated settlement was reviewed and approved by a panel of the Discipline Committee. The settlement includes the following:

- i. Mr. Arnold will provide a written apology for his actions to the ABCFP.
- ii. Mr. Arnold will not engage in any independent work on unstable or potentially unstable terrain without direction from a qualified geotechnical expert for a period of 3 years starting on September 1, 2010;
- iii. Mr. Arnold will, by September 1, 2010, provide for approval by the ABCFP a documented process that he will use to ensure that he exercises due diligence by being prudent and doing all work with constant and careful attention regarding road design and construction on unstable and potentially unstable terrain;
- iv. Mr. Arnold will, by September 1, 2010, provide for approval by the ABCFP a documented process to ensure that he exercise due diligence by being prudent and doing all work with constant and careful attention regarding the requirement to have approved Site Plans prior to the start of timber harvesting;

- v. Items (iii) and (iv) above must be approved by the ABCFP before they will be fulfilled;
- vi. Mr. Arnold will submit to a voluntary practice review by the ABCFP in 2011 to verify that he has implemented and is following the due diligence procedures described in items (iii) and (iv) above;
- vii. A letter of reprimand will be placed on Mr. Arnold's file at the ABCFP;
- viii. A summary of the Negotiated Settlement will be made available to the complainant;
- ix. A summary of the Negotiated Settlement naming Mr. Arnold will be made available through a Discipline Case Digest written by the Association of BC Forest Professionals that may be published by the ABCFP and available on the Association website.
- x. The ABCFP undertakes not to take any further disciplinary measures in connection with the matters described in items above (unless required by law to do so) provided that Mr. Arnold does not breach the undertakings he has given in this Negotiated Settlement and provided that Mr. Arnold has made no misrepresentations in this Negotiated Settlement; and
- xi. The ABCFP has indicated to Mr. Arnold that any breach of his undertakings or any misrepresentation set out above will result in the matter being forwarded to the Complaints Resolution Committee ("CRC") for referral to the Standing Investigation Committee or the Discipline Committee, whichever is deemed appropriate.

Decision

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 considered whether or not the proposed Negotiated Settlement meets the Association's obligations to the public and profession based on the following questions:

1. Given the facts of the case, 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?

The range of remedies available to the ABCFP should a member be found to have contravened the *Foresters Act* or related bylaws are:

- a. reprimand the member;
 - b. impose a penalty on the member in an amount not exceeding \$10,000;
 - c. impose conditions on the member's enrolment, registration or special permit;
 - d. suspend the member's enrolment, registration or special permit:
 - i. for a specified period of time,
 - ii. until the member complies with a requirement under paragraph (f), or
 - iii. for a specified minimum period of time and until the member complies with a requirement under paragraph (f);
 - e. rescind the member's enrolment, registration or special permit;
 - f. require the member to:
 - i. complete a remedial program to the satisfaction of council, or
 - ii. appear before a board of examiners appointed by the council and satisfy the board that the member is competent to engage in the practice of professional forestry;
 - g. give written reasons for a determination about the conduct or competence of the member and an action taken against the member;
 - h. record in writing an order for costs against the member.
2. Is one or more of those sanctions, remedies or actions included in the negotiated settlement?
 3. In addition, does the negotiated settlement as a whole meet the following specific tests:
 - a. Does the proposal adequately reflect the harm caused to
 - iii. the profession
 - iv. the public, and
 - v. the member's client?
 - b. Does the proposal remove any economic benefit the member may have gained as a result of the admitted breach?
 - c. Is the proposal sufficient to provide a specific deterrent to the subject member and a general deterrent to other members?
 - d. Is the proposal sufficient to rehabilitate the member?
 4. Is the severity of the sanctions in the negotiated agreement commensurate with the relative degree of harm caused under 3(a)? On the basis of the information provided to the Panel, the Panel concluded that the sanctions in the negotiated agreement are not too low relative to the degree of harm caused.

Discipline Case Digest



The Panel considered the remedies included in the proposed Negotiated Settlement to be suitable and adequate, and within the range outlined in (1) above. Mr. Arnold agreed that he either incompetently engaged in the practice of professional forestry or acted in a manner unbecoming of a member of the ABCFP, failed to inspire confidence in the profession, failed to meet the standard of practice required of members, and his actions were inconsistent with sections of the Code of Ethics and Standards of Practice. On this basis, the Panel has concluded that his actions did indeed harm the profession and public.