

Discipline Case Digest

Discipline Case: 2009-10

Subject Member: Alan (name changed)

Referred to: Complaints Resolution Committee

Date of Decision: June 2010

Introduction

This case study is a result of the third and final step to the alternate dispute resolution of a formal complaint made against a forest professional. Once this case is published, the complaint against the forest professional in question will be withdrawn and the grievances will be considered resolved. This case study describes the events leading up to the formal complaint, discusses the issues surrounding the case, and explains the alternate dispute resolution to the formal complaint. It is hoped that by sharing this case study with other forest professionals, it will further the debate on professional reliance in the field of appraisals and the forest professionals involved in this case will be satisfied with the chosen resolution process.

Fictitious names have been used in this case study. The forest professionals making the complaint will be referred to as Jane, Bob and Sean while the complainant will be referred to as Alan.

Discussion of Issues

(1) Evolution of reappraisal requirements

The ministry has attempted to incorporate more professional reliance into appraisals starting in 2001 with the requirement to sign and seal appraisal data submissions. There has been an evolution of change in appraisal or reappraisal submission requirements since that time and it is fundamental for forest professionals who submit appraisals to know about, understand, and keep current with this evolution process. A chronological history of these changes is discussed at the end of this paper.

In December 2003 when Alan submitted an appraisal to the ministry for adjudication, he was not aware that requirements for annual reappraisals had been changed and that changed circumstance reappraisals were required instead. The person who prepared the appraisal on Alan's behalf may not have been aware of this change either. The district staff person with whom Alan was relying on for advice regarding appraisal requirements was also not aware of the change at the time.

The district staff person felt that an agreement with Alan to revisit the specific tenure provisions, in this case a year from the effective date, was sufficient to deal with any adjustments or changes that needed to be made. Neither Alan nor the district staff person attempted to follow up with a review of the status of the tenure and how it was working, annually or otherwise. No attempt was made to review the appraisal with respect to changes that had happened during the year since the cutting authority was issued nor was it made during any subsequent period of time. Had this review occurred, it is very likely that the changed circumstance reappraisal that was required on the first of the month following the changed circumstance, would have been adjudicated at that time.

The situation that caused the appraisal concerns was brought to Alan's attention sixteen months after the cutting authority was issued. It is six years later that the issues surrounding these circumstances are now being discussed and addressed.

(2) Professional reliance in appraisals

Much discussion and debate has taken place regarding professionals and the role they play in appraisal submissions. In 2006, ministry executive gave direction to staff that outlined significant differences between professional reliance as it applies in the administration of the Forest and Range Practices Act, and professional reliance as it relates to appraisals and Crown revenue under the Forest Act. At that time, it was felt that past experience with errors being found in appraisal data submissions was a significant enough risk to Crown revenue to justify the differences in the application of professional reliance under the Forest and Range Practices Act as opposed to the Forest Act. Consequently, appraisal submissions continue to be reviewed to a significant level by ministry staff.

In this case, Alan's failure to correct the error in the appraisal by submitting a changed circumstance appraisal further supports the government's view on professional reliance with appraisals.

(3) Standards of professional practice

Being able to rely on forest professionals' appraisal submissions is the foundation to the acceptance of more professional reliance being applied to the ministry's administration of appraisal submissions. Forest professionals must commit to adhering to the standards of professional practice set out in the ABCFP bylaws. This includes the standards of knowledge, professional care, completeness and correctness, and due diligence.

The forest professionals (Jane, Sean and Bob) who submitted the formal complaint in this case felt that the Alan's behaviour had not demonstrated any of these standards to an acceptable level and that he had acted in a manner that served to seriously erode the trust that should exist between forest professionals.

Alan's own knowledge regarding appraisals was insufficient to be completely relied upon. Alan therefore relied upon a colleague who had past appraisal experience, but who was not a forest professional, to complete appraisals which Alan then signed and sealed. Ministry district staff that Alan consulted with did not have adequate expertise to be able to appropriately advise him in this unusual appraisal situation. Alan did not seek out further advice from experts at any other level in the ministry or in industry and simply relied upon the direction provided by district staff.

A crucial aspect of due diligence includes keeping and maintaining appropriate files and filing systems as well as document retention policies and practices. Alan lost electronic records when a computer used to store information ceased to function and there was no back-up storage used. Alan also purged electronic correspondence that may have been important for his due diligence records.

Further discussion and information regarding the standards of professional practice with respect to appraisals can be found in the ABCFP's Professional Practice in Appraisals and Cruising (PPAC) committee's paper posted on the ABCFP website titled *Appraisal Practice Issue #4: How to Maintain Competence in Appraisals*.
http://www.abcfp.ca/about_us/our_people/documents/PPAC-Issue4_Nov13_08_000.pdf

(4) Responsibility to the profession

Forest professionals are in the best position to judge the actions of other forest professionals and are duty bound to immediately inform a member, or the association, if that member is in breach of professional standards. In this case, the member in question was unaware that a district investigation had been launched and that an ABCFP complaint was being contemplated. Increased communication among all the parties earlier on may have resulted in a resolution of the issue without the need to file a complaint.

Resolution of the Complaint

After the ABCFP sent a letter to Alan advising of the complaint against him, the following events occurred:

- Jane, Bob and Sean had a meeting with Alan and also conducted further investigation to gather more information and facts regarding events, and to further explore and understand the Ministry of Forests and Range district staff roles in the cutting permit issuance and appraisal review process.
- A second meeting was then held with Alan to discuss what was found from the investigation and what was needed to resolve the professional issues.
- The result was a joint letter to the ABCFP outlining three actions that had to be completed prior to the complaint being withdrawn and grievances resolved: A joint letter will be submitted to the ABCFP identifying the issues, the differing perspectives, and what was learned; Alan will undergo a voluntary practice review conducted by the ABCFP; and a case study will be written and shared with ABCFP members on the issues and resolutions of the case.

The course of action described could be considered an alternate dispute resolution process. In this case, the formal complaint was held in abeyance whilst the professionals involved explore ways to resolve their grievances outside of the formal dispute resolution process. The forest professionals involved believe that the resolution process is in their own best interests and in the best interests of the profession and the ABCFP.

Key messages

Inadequate knowledge of the appraisal system rules, lack of any kind of follow-up evaluation for the unique tenure and appraisal, complete reliance on district staff advice, and lack of communication led to a serious situation of potential inaccurate appraisal data with significant Crown revenue implications and to a formal complaint being laid against a forest professional for alleged professional misconduct.

Careful consideration and due diligence is required before making assumptions and arriving at conclusions in any work that a forest professional undertakes. Forest professionals need to ensure that they are competent in the areas of professional forestry they are practising in. Respectful dialogue and thorough communication between forest professionals is critical and integral to maintaining or promoting a system of professional reliance.

History of the Evolution of Reappraisal Requirements

- On November 1, 2001, signing and sealing appraisals became a requirement, and wording changed in the Coastal Appraisal Manual and the Interior Appraisal Manual (IAM) indicating that the district manager **may** review appraisal submissions and therefore it was no longer a requirement that appraisals be reviewed by ministry staff. Forest professionals were expected to submit complete and accurate appraisals.
- On April 1, 2003 annual reappraisals were no longer required and, instead, changed circumstance reappraisals were required if certain thresholds of change were met. This was an attempt to reduce the workload created by the annual reappraisals. The effective date for changed circumstance reappraisals was the first day of the month following either the request for a reappraisal or the district manager's notification of the changed circumstance occurring.
- On November 1, 2003, wording in the IAM was changed to require the licensee to request a reappraisal if certain thresholds of change were met. Previous wording required a reappraisal for a changed circumstance only if the licensee submitted a reappraisal. The Crown wanted to ensure that significant changes to appraisals were always identified and adjudicated.
- On November 4, 2003, Sections 105.1 and 105.2 of the *Forest Act* were enacted. Licensees must ensure that information submitted in appraisals is accurate, and if found not to be accurate, a reappraisal can take place to correct the inaccurate information. An offence under Section 105.1 is a contravention.
- On May 13, 2004, Section 105(5.2) of the *Forest Act* was enacted. If information is necessary or desirable for the determination, redetermination or variation of a stumpage rate, not supplying the information is a contravention.
- An offence can be pursued under Section 105 (5.2) of the *Forest Act* if the contravention occurred after May 31, 2007 and an administrative penalty can be applied if the contravention occurred after July 26, 2007.
- The administrative penalties for Sections 105.1 and 105(5.2) of the *Forest Act* are the same and can be found in the *Administrative Orders and Remedies Regulation*. For an offence, the maximum fine is \$500,000 and up to two years imprisonment.

- On August 1, 2005, the effective date of some reappraisals became retroactive to the first day after the original appraisal or last reappraisal.
- Prior to July 1, 2007, the application of the least cost principle for appraisals in the IAM was a requirement for ministry staff who determined stumpage rates, but its application was an inferred requirement as it applied to licensees' appraisal or reappraisal submissions. On July 1, 2007, Section 4.1(2) was added to the IAM whereby the licensee must submit an appraisal data submission using the least cost principle. If an appraisal or reappraisal submission is not based on least cost, the licensee could face a contravention under Section 105.1 of the *Forest Act*.
- On July 1, 2008, a 30-day time frame was added to the IAM for submitting an appraisal data submission if the cutting authority must be reappraised because of a changed circumstance.
- On March 1, 2009, Section 2.2.1(3) and (4) were added to the IAM to clarify situations where a changed circumstance has occurred and only a notification of the changed circumstance is required, not a changed circumstance reappraisal.
- Canadian Forest Products Ltd. recently challenged the policy of applying stumpage rates resulting from changed circumstance reappraisals retroactively to the original effective date. As a result, the *Forest Act* and the IAM have been recently amended.
- More change is certain and as a competent appraisal practitioner, you will need to stay current with your appraisal knowledge.