



## Members' obligations when making a complaint

Discipline Case: **1998-03(A)**

Subject Member: Janna W. Kumi, RPF #1897

Referred to: Hearing Panel of the Discipline Committee "B" Panel

Date of Decision: February 7, 2003 (Liability)

May 14, 2003 (Penalty)

### Facts:

In May 2000, the discipline committee 'A' panel of the Association of British Columbia Professional Foresters determined that a Notice of Inquiry against Janna Kumi, RPF be issued. Ms. Kumi is, and was at all relevant times, an association member. The Notice of Inquiry was issued pursuant to Section 31 of the *Foresters Act* in force at the time—since repealed and replaced by the new *Foresters Act* which came into force June 20, 2003—and association Bylaw 16.20.<sup>1</sup>

The Notice of Inquiry arose from an investigation into an October 5, 1998 letter written by Ms. Kumi—in her capacity as assistant deputy minister of the Ministry of Forests—to Fred Marshall, RPF, then president of the Federation of BC Woodlot Associations.

The letter, written on Ministry of Forests' letterhead, raised issues with respect to the perceived misconduct of Mr. Marshall. In addition to addressing the letter to the member concerned, Ms. Kumi copied the letter to a number of individuals and to the association. She took no steps to limit its publication. The letter challenged the ethics of Mr. Marshall, accused him of being guilty of contravening the association's Code of Ethics, and advised him that the letter was being sent to the association for action. The allegations made against Mr. Marshall were investigated by an association investigation committee pursuant to Bylaw 16.11 through Bylaw 16.13. No grounds for disciplinary action were found against Mr. Marshall.

Publication of the letter accusing Mr. Marshall of professional misconduct concerned the association's standing investigations committee. The standing investigations committee referred the matter to an investigation committee for investigation. The investigation committee investigated the complaint against Ms. Kumi and issued a report recommending that grounds existed for further disciplinary action under the *Foresters Act* in force at the time. The discipline committee 'A' panel reviewed the investigation committee's report and the submissions made in response to the report on behalf of Ms. Kumi by her legal counsel. The discipline committee 'A' panel recommended that a Notice of Inquiry be issued against Ms. Kumi.

A hearing panel of the discipline committee 'B' panel was convened to hear and decide upon the allegations contained in the Notice of Inquiry. The Notice of Inquiry asked the hearing panel to decide on three allegations:

1. Whether, by publication of her letter of October 5, 1998, Ms. Kumi engaged in undignified public communication with another member contrary to Bylaw 14.6.1 of the association's bylaws.
2. Whether, by publication of her letter of October 5, 1998, Ms. Kumi attempted to injure the professional reputation of another member contrary to Section 3(a) of the *Foresters Act* and association Bylaw 14.6.2.
3. Whether, in the course of the investigation, Ms. Kumi misrepresented facts to the investigation committee contrary to Section 3(a) of the *Foresters Act* and Bylaw 14.4.4. of the association's bylaws.

On a preliminary motion, the hearing panel exercised its discretion under Bylaw 16.35, amended the Notice of Inquiry and deleted the third allegation. The hearing proceeded with respect to the first two allegations only.

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<sup>1</sup> All references to association bylaws refer to the bylaws in effect on the date of decision.

## Decision:

The portion of Ms. Kumi's letter of October 5, 1998 to which objection was taken was:

“When I consider that you have been accurately informed regarding the goals and budgets regarding woodlot license expansion, I can only conclude that you deliberately misrepresented the facts. I wish to remind you that any registered professional forester who misrepresents facts violates [Bylaw 14.4.4]. I have copied this letter to the Association of BC Professional Foresters, along with a copy of your article and will ask that they review the matter.”

The hearing panel concluded that Ms. Kumi's letter constituted a public communication. It also found that the communication was undignified by including a reference to the request to the association for a review of a possible violation of the Code of Ethics when Ms. Kumi knew and intended that the letter would be copied to all Ministry of Forests regional managers and others. The hearing panel rejected Ms. Kumi's evidence that she was not seeking to lodge a formal complaint against Mr. Marshall by delivering a copy of that letter to the association. The hearing panel found the proffered explanation to be inconsistent with the wording of the letter itself. It also observed that, as Ms. Kumi was instrumental in developing the association's existing Code of Ethics and associated bylaws, she would have known that no such review process existed within the bylaws.

The hearing panel dismissed the second charge as there was no evidence that Mr. Marshall's reputation was injured by the publication of the letter.

## Penalty:

Following the submission of written arguments on penalty by counsel for the association and for Ms. Kumi, the hearing panel imposed the following penalty:

1. A reprimand;
2. A fine of \$2,500; and
3. Costs assessed at \$2,000 against Ms. Kumi.

In the reasons for the decision on penalty, the hearing panel expressed disappointment in Ms. Kumi's actions, particularly given her high standing in the profession and the poor example that her written public communication provided for other professional foresters.

## Discussion:

The association wishes members to be aware that the making of an allegation against another member is a serious charge. Complaints against members are treated confidentially by the association. Unless there are compelling public policy reasons to do otherwise, the association will not comment publicly on a matter until it is fully investigated and unless and until a Notice of Inquiry is issued.

As a self-governing profession, it is the mandate of the association to investigate complaints and to determine whether the matter will be the subject of an investigation or discipline hearing. It is not appropriate for a member to intimidate or attempt to intimidate another member with the threat of an ethics complaint to the association. Similarly, it is inappropriate for a member to advise anyone, other than the member concerned, that a complaint has or will be made. In the circumstances of this case, the initial complaint lodged against Mr. Marshall was found to be groundless after full and proper investigation by an investigation committee.