

Due diligence and copyright

Discipline Case: 2002-06

Subject Member: Forester-in-Training (FIT); Name Withheld

Referred to: Discipline Committee "A" Panel

Date of Decision: February 10, 2004

Type: Alternate Dispute Resolution Settlement: Admission

Facts

This investigation concerns the reuse, without permission, of a registered professional forester's non-replaceable forest licence application by a former client.

On July 31, 2002, a registered professional forester (the complainant) complained to the Association of BC Forest Professionals that a forester-in-training (the subject member) had copied a non-replaceable forest licence application prepared by the complainant and used the copied portions for the purpose of preparing and submitting further forest licence applications.

Neither the subject member nor the company for which he worked acknowledged the original author's copyright in the material. The subject member's subsequent forest licence application was similar in style, content and appearance to the complainant's application.

The subject member had provided an electronic copy of his draft for a subsequent forest licence application to other consultant RPFs who he had retained to assist him with the work. The subject member instructed the other consultant RPFs that the electronic copy of the draft forest licence application was to be used as background for the final application. The subject member did not tell, advise or make the other consultant RPFs aware that the electronic copy of the application he transmitted to them embodied portions of the complainant's forest licence application.

The subject member believed that, since the complainant had been paid for the original forest licence application, he and his employer company could make whatever use of the application they deemed fit.

The following excerpts contain the findings of the investigation committee accepted by the subject member and the discipline committee "A" panel (edited to fit the context of a discipline case digest).

Members must maintain high standards in conduct and daily work (Bylaw 14.4.1).

This bylaw states that it is the responsibility of a member to inspire confidence in the profession by maintaining high standards in conduct and daily work.

The subject member stated that he provided the draft forest licence application proposal to other consultant RPFs: (1) without communicating that the work was derived from a previous proposal which the complainant had been contracted to provide to the company for which the subject member worked; and (2) without requesting permission from the original author or reaching an agreement on usage with the original author.

The investigation committee found information indicating that the subject member failed to maintain high standards in daily work.

Members must not misrepresent facts (Bylaw 14.4.4).

The subject member stated that he had conversations with the other consultant RPFs he retained which led him to believe that they were aware that the complainant's work was represented in the draft proposal of the forest licence application that the subject member provided. On the contrary, both consultant RPFs denied any prior knowledge that the complainant's work was in any way represented in the draft proposal provided by the subject member. The evidence gathered by the investigation committee corroborated the other consultant RPFs' recollection of events.

Furthermore, the subject member was aware that the complainant claimed ownership of all forest licence applications and work completed under contract, including the original forest licence application. The subject member created a

draft application for a subsequent forest licence application using substantial parts of the original application prepared by the complainant. In creating this subsequent draft, the subject member stated that either he or his assistant deleted the complainant's company name from the footer. The subject member did not advise the complainant of his use of the document, and either he, himself, or his assistant removed reference to the complainant's company from the document. The subject member then provided this subsequent draft application to the other consultant RPFs minus any reference in the document to the complainant's company. Such an action could be considered a misrepresentation of facts.

The investigation committee found information indicating that the subject member misrepresented facts by distorting or omitting material facts of a professional document and associating himself with such document.

Members must not attempt to injure the business of another member (Bylaw 14.6.2).

The subject member stated that he provided the subsequent draft application (substantially based on the forest licence application proposal prepared by the complainant) without acknowledgement of the work of, or payment to the complainant's company, under the understanding that the ownership of that work rested, at that time, with either the provincial government or the company he worked for. The complainant contends that the degree of similarity in text and document style between the two proposals leads to a conclusion that his company's work was used without permission or compensation for the purpose of financial gain to another party.

The investigation committee found sufficient information indicating that the

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subject member attempted to injure the business of another member.

Members must give credit for professional work to whom credit is due (Bylaw 14.6.4).

The subject member stated that he first edited the original proposal prepared by the complainant to change it to another forest licence proposal (the subsequent forest licence application) and then sent that copy to one consultant RPF for use in a final proposal, which another consultant RPF was tasked to complete. The subject member provided no information indicating that he acknowledged the work of the complainant in the text or document style in the work he provided to these other consultant RPFs. A review of the original proposal compared to the subsequent proposal indicates a large degree of similarity between the text portions as well as the document style. The final submission of the subsequent proposal was signed by the subject member without any credit or compensation given to the complainant.

The investigation committee found sufficient information indicating that the subject member did not give credit for professional work to whom credit is due.

Disposition

In a written response, the subject member formally admitted violations of:

Bylaw 14.4.1: Failure to maintain high standards in daily work;
Bylaw 14.4.4: Misrepresentation of facts;
Bylaw 14.6.2: Attempt to injure the business of another member; and
Bylaw 14.6.4: Failure to give credit for professional work to whom credit is due.

Penalty

In light of the subject member's admission and the fact that he is no longer a member of the association, the subject member and the association agreed to the following penalty: (1) that his letter of admission be placed on file; and (2) a notice to the profession be published in the form of this discipline case digest.



Discussion

Copyright and intellectual property laws in Canada protect professional work product. A professional who creates a work product owns that product unless there is an agreement transferring the intellectual property and copyright in that work product to the client.

Members must exercise due diligence at all times. In this case, the subject member failed to seek permission from the original author to use any and all parts of his forest licence application. The subject member compounded his wrongdoing by failing to disclose to the other consultant RPFs the origin and author of the incorporated forest licence application in the electronic copy he provided.

Members should be aware that negligent conduct includes carelessness or a lack of proper care or attention. The subject member could have prevented the unauthorized use of the complainant's forest licence application if the subject member had properly communicated or diligently sought and obtained permission to use the complainant's work product.

Members should bear in mind at all times that failure to maintain high standards in conduct and daily work unnecessarily exposes them to serious violations of the professional responsibilities to the public, the profession, the client or the employer and other members.