

**Discipline Case:** 2009-05

**Subject Members:** Mr. Greg Lay, RPF

**Referred to:** Discipline Committee

**Date of Decision:** January 2012

**Type:** Conditional Submission and Negotiated Settlement Approved by Discipline Panel

## The Complaint

On March 23, 2009, the ABCFP received a complaint from a member of the public. Following the release of an investigation report by the Standing Investigations Committee dated November 9, 2010 the ABCFP cited member Lay on May 2, 2011 as follows:

“That, in the development of a prescription for the Kaslo Interface Fuel Management Project and in his oversight role regarding the implementation of that prescription, during 2008 and 2009, Gregory Lay, RPF has:

1. incompetently engaged in the practice of professional forestry; and/or has engaged in conduct unbecoming a member of the ABCFP; and/or
2. breached the ABCFP bylaw 11.3.1 in that he failed to advocate and practice good stewardship of forest land based on sound ecological principles to sustain its ability to provide those values that have been assigned by society; and/or
3. breached the ABCFP bylaw 11.3.3 in that he failed to have proper 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; and/or
4. breached the ABCFP bylaw 11.3.5 in that he did not work to improve practices and policies affecting the stewardship of forest land; and/or
5. breached the ABCFP bylaw 11.4.1 in that he failed to inspire confidence in the profession by maintaining high standards in conduct and daily work.”

## Agreed Facts

In lieu of a formal Agreed Statement of Facts, the Registrar and member Lay agreed with each other to submit to the discipline panel a copy of the SIC Report and other supporting documentation. Based on the evidence submitted, the discipline panel accepted the following facts as being undisputed:

1. At all relevant times member Lay was a registered member of the ABCFP.
2. Member Lay prepared two fuel management prescriptions for lands in the vicinity of the Village of Kaslo. Both were signed by member Lay on September 8, 2008. One prescription dealt with lands owned and managed by the Village of Kaslo within the Village. The other dealt with Crown land outside the Village. The complaint and Settlement are with respect to the prescription for the lands owned by the Village (the Prescription). Subsequent to development of the Prescription, member Lay was elected Mayor of the Village of Kaslo on November 17, 2008.
3. Member Lay was not solely in charge of the field implementation of the Prescription, but as project manager he did play an active role in the day-to-day implementation and operations of the fuel management project. He had engaged the services of a local logging contractor, X, as the lead proponent for the fuel management proposals and for implementation of the proposed works.
4. The Prescription stated in part that “...20+ metre buffers will be applied to the majority of the Kaslo River. Where buffers are less than 20 metres, it is in locations where gradients are low and with the approval of the Forest Fuel Specialist.”
5. There was no stream classification included in the Prescription and no reference to the requirement to comply with the *Water Act*, specifically section 9 which requires a person to obtain written approval prior to making any “changes in or about a stream...”
6. In the course of the fuel management work on the north side of the Kaslo River adjacent to the Kaslo River Trail (the Trail), several trees were felled both within the stream channel of the Kaslo River and along the banks above the channel, and riparian vegetation was removed. There was also evidence of small burn piles within these areas.

7. The complainant visited the Trail during the project and was concerned with what he saw since the Kaslo River is an S1 stream. He met on site with member Lay on February 5, 2009 and expressed his concerns. According to the complainant, member Lay responded that “The lands in question are private and not subject to the *Forest Practices Code*, and as Mayor I know what people want.”
8. The complainant felt offended when member Lay handed him survey ribbon asking that he flag trees to be saved and also when member Lay asked the subject member to volunteer to hang bat and bird houses.
9. The complainant became frustrated by what he perceived as the lack of response from the Village of Kaslo Council and member Lay, and so he contacted the Ministry of Environment and the Ministry of Forests and Range, and then subsequently made a complaint to the ABCFP.
10. Ministry of Environment and Ministry of Forests and Range staff inspected the site on February 9, 2009 along with member Lay. The Ministry of Environment subsequently issued a warning letter to logging contractor X dated March 11, 2009 stating the opinion that the above-noted activities constituted an offence under section 93(2)(q) of the *Water Act*, namely making changes in or about a stream without lawful authority.
11. Ministry of Environment staff expressed the view to the Standing Investigations Committee investigators that the environmental consequences of the incursion within the riparian area were “low.”
12. At various times member Lay sought to justify the work within the riparian area to the complainant or to Ministry of Environment staff as follows:
  - Any trees felled into the river were mostly dead or dying birch that had to be felled for safety reasons;
  - The lower reaches of the Kaslo River lack recruitment of coarse woody debris which is important as fish habitat;
  - There were no material adverse effects on the riparian area;
  - The felling, pruning and disposal of trees along the river had improved the visuals along the Trail.
13. The Prescription called for habitat trees to be retained unless they were required to be felled for safety reasons. For trees to be retained, a five to ten metre unthinned buffer was to be retained. The Standing Investigation Committee investigators saw very few habitat trees retained and saw no cases of a habit tree

- with a five to ten metre buffer around it. The investigators were unable to ascertain whether habitat trees had been felled in contravention of the Prescription, or whether a Danger Tree Assessor had been used to evaluate the stand prior to treatment.
14. The Prescription called for the crew conducting the fuel management work to contact and work with the Kaslo Trailblazers Society (Trailblazers). In the fall of 2008 representatives of the Trailblazers were given a field tour of the fuel management work on the south side of the Kaslo River; however, the Trailblazers were not notified when the work started on the north side of the river, adjacent to the Trail, some two months later. A representative of the Trailblazers informed the Standing Investigations Committee investigators that he had been “relying on them as professionals and didn’t expect them to do what they did” along the Trail.
  15. The implementation of the fuel management project caused sufficient controversy that the Village of Kaslo hired a consultant, to “put out the fire” and “put things back on track.” The consultant advised the Standing Investigation Committee investigators that the public often did not know if they were dealing with member Lay in his role as Mayor, project manager, contractor, or forest professional.
  16. Member Lay wrote to the Registrar on March 28, 2011 that “There are considerable differences of opinion regarding this matter. However, given the circumstances and the regulatory procedures of the ABCFP, I now recognize that a degree of incompetence, as currently defined by the Association, has occurred... I now recognize that I allowed my concern for the safety of my community to take precedence over maintaining the current ‘natural’ condition of the riparian area (zoned as residential in Kaslo’s Official Community Plan).”

## The Settlement

The following are the key terms of the Settlement:

### Member Lay:

1. has fully disclosed his conduct in this case,
2. admits that he incompetently engaged in the practice of professional forestry and/or acted in a manner unbecoming a member of the ABCFP in developing the Prescription and in his oversight role regarding the implementation of the Prescription;

3. admits that he breached bylaws 11.3.1, 11.3.3, 11.3.5, and 11.4.1;
4. will provide a written apology for his actions to the ABCFP; and
5. will not engage in any independent work involving fuel management or fire interface prescriptions for a period of one year and will demonstrate to the satisfaction of the Registrar that he has taken appropriate additional training before resuming such work in the future.

## The ABCFP:

1. will publish a Discipline Case Digest naming member Lay;
2. will put a letter of reprimand on member Lay's file; and
3. will take no further disciplinary action provided member Lay made no misrepresentations and complies with this Settlement.

## Decision

The settlement was approved for the following reasons.

Member Lay has admitted conduct including incompetent practice and/or conduct unbecoming a member and multiple breaches of the Code of Ethics. If such conduct had been confirmed by the decision of a discipline hearing panel in accordance with s. 27 of the *Foresters Act*, s. 27(3) of the Act would require the panel to impose a sanction or sanctions identified in s. 27(4). That s. 27(3) requirement isn't mandatory in an alternative complaint resolution process such as a negotiated settlement but it is appropriate for the discipline panel to consider the range of sanctions in s. 27(4) in determining whether the Settlement is acceptable.

The primary harm resulting from member Lay's conduct was with respect to the reputation of the profession. Clients and the general public are entitled to rely on the trustworthiness and integrity of a forest professional. Member Lay's failure to comply with the terms of the Prescription, and his subsequent failure to acknowledge the discrepancies, damaged the reputation of the profession in the eyes of the complainant and the members of the Trailblazers. His misunderstanding of the applicability of s. 9 of the *Water Act* to the subject lands led to a breach of that *Act* which put his client and the third party logging contractor X at risk of sanction by the Ministry of Environment. The confusion caused by member Lay's failure to clarify and keep distinct his multiple roles would tend to undermine the public's confidence in him and the profession.

# Discipline Case Digest

No material adverse environmental consequences flowed from member Lay's actions.

There is no evidence that member Lay derived any economic benefit as a result of his misconduct.

The Settlement provision with respect to the ABCFP publishing a Discipline Case Digest naming member Lay provides a strong specific and general deterrent. The one year suspension from doing independent work related to fuel management or fire interface prescriptions is not a significant specific deterrent in this case since member Lay is now retired. However, it should provide a general deterrent for other members.

Since member Lay has retired, rehabilitation is less of a concern in this case. However, if he does decide to resume practice at some future time, the panel believes the Settlement provisions regarding appropriate training in fuel management/fire interface prescriptions and publication will be sufficient to provide rehabilitation.

If this matter had gone to a discipline hearing the panel would expect that a financial sanction, either a monetary penalty or an order for costs or both, would be warranted. In the circumstances of this case, where member Lay has admitted liability and accepted the consequences, the panel did not believe that a financial sanction is required.