

Discipline Case: 2009-08

Subject Member: Registered Forest Technologist (name withheld)

Referred to: Complaints Resolution Committee

Date of Decision: May 2010

Allegations

This case resulted from a complaint from a member of the public about the conduct an ABCFP member. The complaint alleges that:

1. The subject member had a construction crew not complete an end haul section as prescribed by the geotechnical professional.
2. The change to the end haul requirement was not approved by the prescribing geotechnical professional.
3. The subject member did not have the professional qualifications to change the construction methods without the approval of the geotechnical professional.
4. The subject member instructed a road/bridge maintenance crew to destroy a beaver dam, without any approvals from appropriate government agencies to do so.

The complainant felt that the subject members engaged in conduct unbecoming a member and may have contravened the following bylaws:

- 11.3.1. To advocate and practise good stewardship of forest land based on sound ecological principles to sustain its ability to provide those values that have been assigned by society.
- 11.3.7. To practise only in those fields where training and ability make the member professionally competent.
- 11.3.9. To express a professional opinion only when it is founded on adequate knowledge and experience.
- 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.
- 11.4.1. To inspire confidence in the profession by maintaining high standards in conduct and daily work.

- 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.

Decision

Upon reviewing the evidence and the recommendations of the Complaints Resolution Committee (CRC) the registrar declined to issue a citation.

Reasons for Decision

This complaint addresses very serious matters regarding professional obligations when moving beaver dams and moving of a road that is located on potentially unstable terrain. The case was referred to the Standing Investigation Committee (SIC) and an investigation committee (IC) was selected to investigate the matter and the conduct of the subject member.

The IC report found that there was no foundation for the concern about the moving of the beaver dam. In regards to the road construction, the contract obligated the contractor to use specialized road construction techniques (partial bench cut and end haul) on specified sections of the road. The contractor made a conscious decision to not fulfill these contractual obligations and failed to advise the subject member or to seek advice from the subject member during the construction phase. The subject member agreed with the contractor's actions but did not take any immediate steps to secure a qualified professional to confirm the adequacy of the road stability in the applicable sections where Terrain Stability Assessment (TSA) called for bench cut and end haul.

Additionally, there are a number of documents in place that emphasize the need for good communication between the contractor and the employer. In this instance, there was little if any communication following the pre-work between the contractor and the subject member up to the time the subject member contacted the contractor only to discover the contractor had completed the road construction and moved his equipment out of the area. Had the measures and processes been followed and understood by both parties, communication regarding the change in plan relative to the TSA recommendation would in all likelihood have taken place. Finally, the subject member did not admonish the contractor for failure to communicate a change to the plans.

From a diligence perspective, the subject member did review the site, in the presence of both his supervisor and the engineering specialist. Although the subject member is not a terrain stability specialist, he does possess a level of training and experience commensurate with the complexity of the management decisions under investigation.

The investigation report concludes that that the committee did not believe that grounds exist for a discipline hearing under section 27 of the *Foresters Act*. While we do not find that the actions of the subject member constitutes behaviour unbecoming a member, we are concerned that the member needs to improve his practices. We have sent the subject members a letter indicating that the following practice improvements are needed:

1. The investigation noted that the road construction contractor was allowed to change road construction techniques for a road that was located on potentially unstable terrain. We assert that it is not a good practice to allow contractors to change road construction techniques on unstable or potentially unstable terrain without the approval of a trained professional who can determine whether this will maintain slope stability. It is our expectation that contractors will not be permitted to change road construction techniques or other road design parameters for roads that are on unstable or potentially unstable terrain without suitable professional approval in the future.
2. The investigation also found issues regarding the timing of the approval of the revised road construction techniques by a qualified geotechnical expert. The geotechnical expert in this case was not brought in to verify the stability of the revised road construction techniques until a number of months after the road construction contract was completed. If there had been instability problems as a result of the new road construction techniques there could have been serious consequences in terms of landslides and worker safety. It is our expectation that all revisions to road construction techniques or changes to the road design for roads located on unstable or potentially unstable terrain will be approved by a geotechnical professional trained to assess terrain stability prior to completion of the construction contract.
3. Where a contractor is building a road on unstable or potentially unstable terrain they need to understand that any changes to the road location or construction techniques must be approved by the forest professional in charge. This approval must occur prior to construction of the road. The forest professional in charge has to put his/her mind to whether the change requested by the contractor can go ahead immediately or whether construction must be halted until a geotechnical professional trained to assess terrain stability must approve the change. In this case the contractor failed to contact the forest professional in charge regarding the change to construction techniques. It is our expectation that contractors building a road on unstable or potentially unstable terrain will contact the forest professional in charge for approval prior to making any revisions to road construction techniques or changes to the road design. The forest professional will then determine whether a geotechnical professional trained to assess terrain

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stability will be required to assess the changes prior to or after the change to the construction of the road. In any event, the changes to the road must be assessed by a geotechnical professional trained to assess terrain stability prior to completion of the construction contract.