

# Discipline Case Digest

**Case:** 2009-04

**Subject Member:** Registered Professional Forester (name withheld)

**Referred to:** Complaints Resolution Committee

**Date of Decision:** May 8, 2009

## Allegations:

The case resulted from a complaint from a member of the public who felt that an ABCFP member had not met their professional obligations with regards to timber harvesting and the required riparian reserve zone adjacent to a lake. The complainant felt that the subject member:

1. Did not consider concerns presented by tourism stakeholders with regards to a local Land and Resource Management Plan (LRMP) that specified requirements for riparian management around a lake.
2. Took actions that were a clear violation of the practices endorsed by a publicly approved LRMP that had been in use for a number of years.
3. Willfully and deliberately ignored the LRMP with regards to the lakeshore classification. The complainant states that the lake has a classification by the LRMP of L1-B, which is designated by the LRMP as having a Lakeshore Reserve of 50m plus a Lakeshore Management Zone of an additional 50m. The harvesting plans brought harvesting to within 40m of the lakeshore, in a clear violation of the LRMP.

The allegations were that the subject member may have contravened the following bylaws:

- 11.3.1 - 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.
- 11.3.3 - To have 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.
- 11.3.5 - To work to improve practices and policies affecting the stewardship of forest land.
- 11.4.1 - To inspire confidence in the profession by maintaining high standards in conduct and daily work.

## Decision:

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

## Reasons for Decision:

There is a LRMP for the lake area. However, the lakeshore management requirements of this LRMP were never given legal status by government. The LRMP was not followed in regards to the logging adjacent to the lake. In consideration of this plan, we reviewed the legal requirements and the direction provided by the Ministry of Forests and Range regarding the application and status of the LRMP. We expect that our members will always meet their legal obligations. The member's only legal obligations with regards to the reserve zone adjacent to the lake were to maintain a 10m reserve zone as specified in the Forest Stewardship Plan (and the Forest Planning and Practices Regulation).

In addition to their legal obligations, our members have an ethical obligation to consider other non-legal elements when making resource use decisions. In this case, we believe that the subject member did give due consideration to the LRMP; however, he also had to give weight to other factors such as forest health (specifically, the mountain pine beetle) and timber salvage opportunities. The LRMP specified a 50 m reserve zone. The evidence presented indicates that the subject member chose to maintain the 50 m reserve except for two areas where timber was harvested as close as 40 metres from the lake. In our opinion this was a compromise between the legal objectives and ethical obligations to consider the LRMP.

The complainant made reference to the Forest Practices Board (FPB) special report entitled *"Provincial Land Use Planning: Which Way from here?"* The FPB report speaks at length about Strategic Land Use Plans (SLUPs). The complainant quoted the following from this report: "Professionals responsible for forest and range practices could be held accountable by their professional organizations as governed by professional accountability acts. For example, professional foresters are legally required to abide by the code of ethics of the Association of BC Forest Professionals and could conceivably lose their rights to practise if they don't. Canon 1 of that code of ethics states that a forester's responsibility is to "practice good stewardship...to provide those values that have been assigned by society." This FPB report goes on to say that "Additionally, according to their code of ethics, foresters must, "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." That is, objectives in a SLUP must be weighed against numerous other factors when planning and executing forest operations. The subject member was challenged with practising good forest stewardship, and maintaining the balance that

was described in the FPB report, and had to weigh a number of social, environmental and economic factors in order to make his decision. This is not an easy task.

Regarding the issue of good stewardship, we were not presented with any information that indicated that the decision to log within 40m of the lake has caused any environmental damage or impacted the environment in a negative way. As a result we found no evidence that the subject member failed to meet the requirements of the code of ethics to practice good stewardship.

We believe that the case is the result of different interpretations of the requirements of forest professionals with regards to providing for those values that have been assigned by society. The complainant felt very passionately about protecting the area around the lake and following the LRMP. The complaint was based upon the belief that the subject member was bound to follow the direction provided by the LRMP and that anything less than strict adherence to the LRMP is poor stewardship. While we recognize that this LRMP is an important guideline document for our members to consider, it is not a requirement to strictly follow the LRMP until it is given legal status. In our opinion, the values assigned by society in this case go beyond the LRMP and include province-wide considerations such as economic, social and environmental values. The subject member had to consider this host of other values beyond the LRMP in order to make his decision regarding the logging adjacent to the lake. We believe the subject member's actions demonstrate an understanding of the LRMP and a consideration of the relevant factors that meets the requirements of our act and bylaws.

We also examined the recent guidance to members entitled "*Guidance for Managing Non-Statutory Expectations in Forest Practices*" that guides our members in the application of their non-statutory obligations. "Non-statutory" refers to a condition, or requirement, that is not part of legislation or regulation and therefore has no legal effect (such as the LRMP in this case). Non-statutory expectations reflect both social values (public expectations) and professional values (personal and peer expectations) that are beyond, or additional to, the Foresters Act and bylaws. In this context, consideration of non-statutory expectations can be viewed as a professional obligation. We believe the actions taken by the subject member in this case are consistent with the guidance document.