

Discipline Case: 2011-04

Subject Members: Mark Boucher, RFT, and Darren Forbes, RFT

Referred to: Arbitration Panel

Date of Decision: January 2012

Type: Decision by an Arbitration Panel of the Discipline Committee

The Complaint

This complaint was made regarding the conduct of Mark Boucher, RFT, and Darren Forbes, RFT, (Subject Members), owners of Oak Tree Forestry Services, by a client of these members. In an Agreed Statement of Facts developed by the Association of British Columbia Forest Professionals Registrar, the Subject Members admitted to purposely moving cruise plots. The Subject Members stated that they did this to, “meet the required standard error with fewer plots to complete work faster and meet deadlines.”

Their actions caused the timber cruise results to be unreliable. As a consequence the client’s business goals and schedules were compromised, consequently increasing unnecessary risk for timber harvesters. Additionally, the derivation of timber values and the related stumpage calculations, based on submission of potentially biased cruise information, undermines assurance that publicly harvested timber is correctly priced.

Since the Subject Members admitted that they committed the breaches outlined in the complaint, and the parties agreed, an Arbitration Hearing was arranged to consider an appropriate sanction.

Discussion and Considerations

In determining an appropriate sanction, the arbitration panel (a panel of the Discipline Committee) applied a test that has been developed over the course of previous discipline hearings, namely that the sanction should:

- a) adequately reflect the harm caused to the profession, the public, and the Subject Members’ client;
- b) remove any economic benefit gained by the Subject Members as a result of the breach;
- c) provide a specific deterrent to the Subject Members and a general deterrent to other members; and,
- d) rehabilitate the Subject Members.

In considering these objectives the panel determined that this case was straight forward in many respects. The Subject Members admitted to wrong doing by moving cruise plots. Such actions bias sampling procedures, contravene the Cruising Manual, and were unacceptable to the client. An Agreed Statement of Facts was developed to document the agreement between the ABCFP and the Subject Members on the facts associated with the case, and also to reflect the client's position on the matter. The Agreed Statement of Facts indicates that the Subject Members moved cruise plots to meet their own company objectives and that these objectives were completely inconsistent with those of the client.

In the written submission by the Registrar, the ABCFP contended that the Subject Members engaged in conduct unbecoming of a member as defined in the *Foresters Act*, where improper conduct is defined as that which:

- a) Brings or may bring the association or its members into disrepute;
- b) Undermines the scientific methods and principles that are the foundation of the practice of professional forestry; or
- c) Undermines the principles of stewardship that are the foundation of the practice of professional forestry.

The panel concurs with the ABCFP position, that both (a) and (b) above are relevant to this case. The panel determined that paragraph (c) was not applicable in this case.

Further, in its submission, the ABCFP stated that it believes the Subject Members breached the following bylaws:

11.4.1 To inspire confidence in the profession by maintaining high standards in conduct and daily work; and,

11.4.4 Not to misrepresent facts, and,

12.2.2 Competent members ensure that their work is complete, correct and clear.

The Agreed Statement of Facts indicated that, *"it is a classic error in statistics to get wrapped up with the sampling error and to forget that you are trying to estimate a correct average. The result here is that buyers will not find the volume that they anticipate from the cruise."* The Subject Members, in writing to the client, affirm that they were involved in this practice stating, *"there was never any collusion involved; we were simply trying to meet the required standard error with fewer plots to complete work faster and meet deadlines."*

Discipline Case Digest

In the panel's opinion, when the Subject Members decided to move cruise plots, they were focused exclusively on their own company's desire to complete the work expeditiously. They did not turn their mind to the needs of the others who subsequently would have relied on precise timber cruise information.

Additionally, forest professionals who may have bid for the same work, and who intended to adhere to the requisites of the Cruise Manual, could have been cheated out of a contract opportunity as a consequence of the Subject Members' actions.

If all forest professionals involved in timber cruising approached their work with similar self-centred expediency, ignoring the existence of well-understood, published standards, the timber cruising process would generally be seen as an unreliable way to estimate timber volumes and values. The panel and the Association of BC Forest Professionals (ABC FP) intend for this decision to clarify the necessary baseline for conduct of RPFs, RFTs, and Associate Members, should they undertake timber cruising work.

Importantly, the panel noted that the Subject Members were contrite once they were alerted to client's concerns. Correspondence provided to the ABCFP by the client and information provided by the Subject Members during the hearing process suggests that the Subject Members did what they could to correct the work after the fact. Rather than denying the misconduct, the Subject Members attempted to mend fences with the client. They also treated the hearing process with respect and did their best to aid the process by providing constructive comments.

Further, the Subject Members' written submission reflects genuine concern the client whom they recognize they had failed, as well as for themselves, and the future of their company. The fact that the Subject Members did additional work for the client and participated in meetings with the client on the matter to help resolve the issue indicates to us that they have a future in this work and have learned from this serious matter.

The Decision

The following remedies (*in italics*) were imposed by the panel for the reasons following:

- a) *A letter of apology must be written and submitted to the ABCFP within a month of the decision of the arbitration panel.*

A full letter of apology was provided by the Subject Members at the time of the hearing. We conclude that this letter is sufficient and forms the record with respect to a) above.

- b) *The ABCFP will place a letter of reprimand on their files.*

The panel concurs that this letter of reprimand should form part of the formal record associated with this case.

- c) *The ABCFP will publish their names in a discipline case digest that will be posted on the ABCFP website and notification in the BC Forest Professional magazine.*

The panel concurs. It is most important that forest professionals who are engaged in timber cruising work have opportunity to review and fully consider this case. It is apparent, from expert input provided to the client and covered in the Agreed Statement of Facts, that the practice of moving cruise plots to meet objectives is clearly incompatible with the Cruise Manual but may not be unusual. If this is the case, the ABCFP needs to effectively make all forest professionals involved in timber cruising work aware of their responsibilities.

The panel also agrees that, as part of this remedy, the Subject Members' names should be published. In this case, the Subject Members have taken positive steps to rebuild their relationship with future clients. Should the Subject Members stay on this course, naming them should not unduly limit future business opportunity for them. However, the panel feels that others, who are conducting timber cruises improperly or may be contemplating breaching timber cruising protocols, should they then find themselves in a situation similar to the Subject Members, not presume that they can move forward in their professional careers under the veil of anonymity. During the hearing the Subject Members indicated a number of times that the type of work they did was undertaken by a relatively "small community" of professionals. If this is the situation, then it is clearly our intent to make this group aware of the significant ramifications associated with improper work.

- d) *They must apply for certification as accredited timber cruisers within a month of release of the decision of the arbitration panel. The ABCFP will monitor their application with the expectation that they must become Accredited Timber Cruisers (ATCs) forthwith and maintain that certification.*

The panel agreed with this proposed remedy. During the hearing, the Subject Members indicated numerous times how important their ongoing relationship with their clients and the forestry business more broadly was to them. They saw this relationship as a very important step to revitalizing their business. The panel believe that a higher level of training, as provided by the timber cruising accreditation process, will not only clarify related standards of practice for the Subject Members but, as a remedy, will also help to satisfy potential clients that the Subject Members are appropriately trained.

- e) *They must attend an ABCFP seminar on Professional Ethics and Obligations in the spring of 2012.*

In the view of the panel, the Subject Members must familiarize themselves with their fundamental duty as forest professionals. This seminar will clarify the Subject Members' obligations to their association. In light of the offense, we support this recommendation.

- f) *They will be subject to a Practice Review of their practices. The date for this review will be at the pleasure of the ABCFP.*

A degree of ongoing monitoring of the Subject Members performance is appropriate given the nature of the offense. This recommendation will provide both the Subject Members and the ABCFP with comfort that all other remedies have worked and that, in the future, the Subject Members are implementing appropriate timber cruising practices as a matter of routine.

- g) *They will be required to pay to the ABCFP a fine of \$5,000 each.*

Considering these circumstances, we have determined that a fine is more appropriate than a suspension. The panel feels that the fine must be considered to be significant by both the Subject Members and the Association. If these Subject Members are to reform as valuable contributors to the forest profession, a fine reflecting the otherwise monetary loss associated with a three month suspension would be too punitive. In any event, panels are restricted in the amount they are able to fine members. Accordingly, the panel has levied a fine for each Subject Member of \$5,000, which is intended to impose both monetary penalty and recovery of hearing costs.

- h) *The ABCFP may suspend or cancel the member's registration if there is any failure to achieve the requirements above, or if the ABCFP's practice review finds significant concerns regarding their practice.*

The panel agrees that this remedy is essential to the successful resolution of this case. The decision does not fetter the council of the ABCFP in any way from future suspension or cancellation of the Subject Members' standing in the association should they fail to meet the sanctions outlined.

SUMMARY

In summary, the panel has concluded the following with respect to the appropriateness of the sanctions:

- a) Do they adequately reflect the harm caused to the profession, the public and the member's client?

The Subject Members moved cruise plots to meet their own company objectives. When they did this they had little regard for the impacts of their actions on others. Such actions tend to embarrass the profession and misinform others including their client regarding the quality of their information. This decision provides for reprimand, monetary penalty, further training requirements, and practice review of their practices. The panel believes that this combination of remedies is commensurate with the offense.

- b) Do they remove any economic benefit to the Subject Members gained as a result of the breach?

As the Subject Members attempted to redeem their relationship with the client, they expended further funds by undertaking additional field work. The Subject Members also received a local bidding suspension on timber cruise contracts, causing further hardship. Each of the Subject Members is required to pay a \$5,000 fine as a part of this decision. The panel is comfortable that any economic benefit derived from moving cruise plots was fully offset by the range of resultant expenses associated with the subsequent resolution of the issue with their client together with the fine, training and certification requirements required by this decision.

- c) Do they provide a specific deterrent to the Subject Members and a general deterrent to other members?

During the hearing the panel heard from the Subject Members regarding the consequences of their actions. The panel believes that the Subject Members are contrite given the risk they caused to their careers and to their company. This, together with the remedies provided in this decision, gives us confidence that a higher work standard will be applied by the Subject Members in the future. The panel also believes that other members reading this decision will become more informed regarding professional expectations and will benefit accordingly.

- d) Do they rehabilitate the members?

The Subject Members need to apply for certification as certified timber cruisers, participate in an ABCFP Professional Ethics and Obligations seminar, and be subjects of a future practice review by the Association. The panel intends each of these remedies to assist the Subject Members in their rehabilitation.