

Allegations of Professional Misconduct: What is Sufficient?

PROFESSIONAL ACCOUNTABILITY IS THE LIFEBLOOD THAT SUSTAINS THE public's trust in any self-governing profession. Forest professionals do not have any divine right to exclusively practice and govern the practice of professional forestry (just as other professionals have no such rights in their fields). The public, through the Legislature, has given these rights to forest professionals. And what the public gives, the public can take away. What keeps the 'Ministry of Professional Conduct' from becoming anything other than some Orwellian nightmare is professional accountability—the notion that a self-governing profession will hold its members accountable for professional misconduct.

There are numerous components to the ABCFP's professional accountability regimen: education, regulation of admittance, standards of practice, communications, and so on. But, inevitably, the true test of professional accountability is found in the scrutiny of alleged misconduct and the imposition of discipline for proven digressions. This is the price that self-governing professions must pay for the exclusive right to practice and govern in their fields.

Accordingly, integrity is vital to a self-governing profession's system of complaint investigation and discipline. While integrity depends upon the rigorousness of the system, it also depends upon clear and well defined procedures. Procedural certainty is important both from the perspective of public confidence in the system, and from the perspective of the professional members subject to the system. If the members of a self-governing profession lose faith in the integrity of complaint investigation and discipline procedures, a loss of public faith will surely follow.

There is some room for improvement in the discipline and investigation procedures that currently govern the ABCFP. For example, uncertainty exists as to when, exactly, the Registrar must proceed with an investigation of alleged misconduct. Assuming a complainant and the member subject are unable to settle the matter among themselves, section 22(6) of the *Foresters Act* requires the Registrar to accept the complaint if:

1. it includes sufficient information for an investigation to proceed; and
2. the allegations, if proven, would involve a breach of the Act, bylaws or resolutions.

The only real control on a potential flood of misconduct investigations is the requirement for "sufficient information."

Unfortunately, neither the *Foresters Act* nor the bylaws define this critical concept or provide much guidance to its application. The difficulty is that this terminology lends itself to a couple of different interpretations, one more literal and one more purposive. A literal interpretation would require just enough information to, literally, allow an investigation to get started—basically, the contact information of the parties together with some allegation that, if true, would constitute professional misconduct. It would not require evidence, or alleged evidence, but merely the information necessary for an investigation to begin a search for evidence.

Under a literal interpretation, the requirement for "sufficient information" would not provide a meaningful threshold, and would not provide the Registrar with much authority to reject a complaint. This approach would expose members to a complaint investigation even if the complainant provided no substance to support the complaint.

A more purposive approach would interpret the phrase "sufficient information" in the context of the Act's requirement for a complaint to include "particulars" (section 22(3)), and require that a complaint provide some evidence, or at least assert the existence of evidence, that would support any allegation that, if true, would constitute misconduct. Unsubstantiated allegations are not good enough under this approach and the Registrar would have some ability to stop any run-away trains before they got too far out of the station.

The latter approach is certainly more consistent with principles of fairness, but arguments exist in favour of both approaches. And the more an interpretation moves away from the literal approach, the more discretion is placed in the hands of the Registrar; the more discretion, the more procedural uncertainty. Accordingly, amendments are needed, ideally, to the *Foresters Act* or, potentially, to the bylaws to clarify the meaning of "sufficient information ... to allow an investigation." Otherwise, the terminology is just not sufficiently precise. 🍷

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