

Third Party Enforcement of Professional Ethics

“In contrast to prior BC legislation, the current Forest and Range Practices Act, S.B.C. 2002, c.69, relies less on government regulation and more on the judgment and accountability of forest professionals.”

British Columbia Supreme Court Reasons for Judgment, Sunshine Coast Conservation Association v. Association of British Columbia Forest Professionals, February 12, 2007.

The BC Supreme Court appears to suggest that professional accountability will play a larger role in the enforcement of forest practices. If so, this could increase the pressure on the ABCFP to become more active in the enforcement of professional ethics. Third parties interested in forest practices may begin to force the issue of professional ethics through judicial review.

This practice was used recently in the above-referenced decision (SCCA II) and an earlier decision from the same litigation (SCCA I). These decisions concerned the work of an RPF on a forest development plan. Initially, an interested third party filed a complaint under the *Foresters Act* with the registrar of the ABCFP. The complaint alleged that certain conduct and practices of the RPF amounted to noncompliance with the Code of Ethics and practice standards under the ABCFP's Bylaws.

The registrar determined that the former version of the *Foresters Act* applied to the complaint, and exercised his discretion under the former Act not to accept the complaint. The third party commenced judicial review of the registrar's decision and, in SCCA I, the court found that the current version of the *Foresters Act* applied to the complaint, not the former version. The court therefore set aside the registrar's decision, and directed the registrar to reconsider the complaint in accordance with the applicable provisions of the current Act.

Under section 22(6) of the current Act, the registrar is required to accept a complaint and proceed to the next stage of the process if the complaint satisfies each of four conditions:

1. it concerns a member or former member;
2. it includes sufficient information for an investigation to proceed;
3. the allegations, if proven, would involve a breach of the Act, bylaws or resolutions; and
4. the parties cannot resolve the matter.

The registrar determined that the third condition was not satisfied and, therefore, rejected the complaint once again. However, in SCCA II, the court found that registrar had misinterpreted his jurisdiction. Specifically, the court found that the registrar rejected the complaint based upon his conclusion that the petitioner could

not prove the allegations. The court held that the registrar was required to assume that the allegations were proven, and that the registrar did not have jurisdiction to assess evidence. That was the job of the complaint review committee at the next stage of the process. The registrar's only discretion was to determine whether the allegations, "if proven," would amount to a contravention. The court therefore set aside the registrar's decision once again and, once again, ordered the registrar to reconsider the complaint.

Ultimately, a court is unlikely to interfere with the substantive decision of whether a member contravened the ABCFP's Code of Ethics or practice standards. A court will bend over backwards to leave these substantive decisions with the experts who the legislature intended would make them.

Nevertheless, the courts are not so reluctant to interfere with issues of procedure or jurisdiction, and these decisions illustrate how easily interested third parties can use judicial review to take some control over the enforcement of professional ethics and practice. A third party need only file a complaint, and if the ABCFP makes a decision in respect of the complaint that is characterized by some procedural or jurisdictional error, the third party can force the matter into the courts for a remedy.

Of course, there is nothing new with process of judicial review; what is new is the extent that professional reliance now relied upon in our legislated forest practices. This could make third parties who are interested in the enforcement of forest practices more inclined to use professional ethics as a surrogate. ☹

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