

Expectations in the delivery of professional forestry services

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Abstract

Professional forestry service providers should aim to meet or exceed the expectations of their clients. The services provided should meet or exceed minimum professional standards. The service provided must also meet the purpose for which it is required.

Defining the client expectations at the outset prevents disputes and possible litigation.

Introduction

This paper has been written from the perspective of a forestry services provider operating in one of New Zealand's leading forest management and consulting companies. We manage our business so that our clients know what they can expect. The PF Olsen and Company management system is based on common sense and experience. It is also certified to ISO 9002 standards; both internal and external audits ensure that we implement our procedures consistently and aim for continuous improvement. Our environmental management system (ISO 14001 certified) and Forest Stewardship Council (FSC) Group Scheme are integrated in this management system.

Setting up a company management system allows you to question what is the best way to do things and provides a framework for continuous improvement. This process was very useful for our company and could benefit other forestry service providers.

What does the client expect?

Professional responsibility (and liability) starts with an understanding of the client's needs:

- What do they want you to do?
- For what purpose do they require the advice?
- When do they need the work completed?
- How much will they pay?



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As a service provider you will then need to assess if you can do the job:

- Do you have the right qualifications?
- Do you have a conflict of interest and can this be resolved?
- Can you deliver on time and within the client's budget?

If you have decided that you can do the job, then it is important to confirm in writing a description of the job, the agreed completion date and the budget. Without such confirmation it is possible to complete a job and find then that it does not meet a client's expectations. Prior to confirming the terms of reference in writing, while getting it right most of the time, nearly all of our company disputes with clients arose from a mismatch between the client's expectations and what we delivered.

Terms of Engagement

Terms of engagement are an important part of defining the relationship between the professional and their client. These terms must



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define clearly what each of the two parties can expect from the relationship.

For example, the forestry service provider can act as the forest owner's agent and arrange for forestry operations to be undertaken in accordance with a forest management plan, or alternatively the service provider can act as the prime contractor responsible for undertaking the work as agreed. In the latter case it will be useful to clearly specify the performance standards. In harvesting and marketing the forestry service provider can act as an agent for the forest owner or as a trader. The agent does not take ownership of the logs and, unlike the trader, usually has an incentive to maximise the return for the client.

In defining the relationship between the forestry service provider and the client, it is important that both parties are clear on what their respective roles and responsibilities are. An agreement that clearly spells this out and defines what process to follow if things go wrong is important for both parties. Agreements need to be specific to the relationship; a harvesting and marketing service requires a different agreement to an agreement covering a consulting assignment. Contracts need to be easy to read, concise and comprehensive. While large contracts can be daunting to some clients, they leave less room for misunderstanding and are essential for describing complex relationships.

Professional Standards

The New Zealand Institute of Forestry (NZIF) has developed professional standards for forest valuation and forestry investment information. Members of the NZIF have been involved in developing these standards and are obliged to apply them. While many forestry service provider clients may not be aware of these standards, they are an important consideration when it comes to disputes. Professional standards define what a client can reasonably expect.

A client may ask for a cheap, quick and dirty assessment. But be aware, such a request does not absolve the professional from responsibility and liability. Fitness for purpose and the application of minimum professional standards are what clients can reasonably expect despite their desire to keep the costs to a minimum. Poorly considered advice given for a small fee or no fee at all can still result in a successful claim for damages.

Disputes and Professional Conduct

Professional standards can be used in defence of a professional's conduct; the client expectation may have been higher, but meeting the (minimum)

standards of one's peers would be considered reasonable in most circumstances.

Most disputes arise from not meeting a client's expectation. Preventing this from happening by defining those expectations at the outset is the easiest way to prevent a dispute. Disputes can lead to litigation. Having mediation and/or arbitration clauses in a professional service agreement can help to avoid having to go to court. A claim for professional negligence, even if you are convinced that you were not negligent, is a painful experience.

Have client expectations changed in recent times? I think that clients in general have become less tolerant of unprofessional conduct. What used to be accepted as a mistake is now a potential claim.

Increasing Client Expectations

Are client expectations likely to change in the future? I think so. Forestry professionals involved in forest management and consulting will face increasing demands from clients in the future and many of those demands I expect will be retrospective. The mistakes that are made today may result in a claim a few years from now. The areas of professional conduct in forestry services in New Zealand that require more attention are:

- 1 Selecting appropriate planting stock with improved wood properties and minimum risk of establishment failure (e.g. field cuttings on windy sites and container stock on dry sites or out of season planting).
- 2 Net stocked area and yield estimates. Many forest managers make insufficient allowance for inevitable area losses. With modern technology (GPS, ortho-rectified aerial photos) there are few excuses for getting areas wrong, and tools for predicting yields by log grade are improving (individual tree growth models, better branch models).
- 3 Pest, disease and nutrition issues require regular surveys, diagnostics and possible adjustments to forest management plans (eg, Boron deficiency, risk of *Diplodia* and/or *Nectria* infection).
- 4 Wood quality characteristics, in particular resin pockets and intra-ring checking for pruned logs and stiffness for unpruned structural grade logs, impact on log values. (Procedures and tools are available now to assess these characteristics and new tools developed by Wood Quality Initiative (WQI) Limited will make such assessment easier).
- 5 Forest value assessments and forestry advice given for inclusion in public prospectuses will be scrutinised when expectations are not met.

(Investors may act on professional advice that was deficient and sustain losses as a result. A claim for compensation may result). A professional forestry adviser cannot be held liable for future events that are impossible to predict, but they can be (and in some cases will be) held liable for not applying minimum professional standards. The NZIF professional standards relate mostly to disclosure. Professional foresters should disclose what the limitations of their professional advice are, while not undermining the purpose for which the advice is required.

Conclusions

A professional relationship needs to be clearly defined from the outset so that the client knows what to expect and the professional knows what

to deliver. Most disputes arise from not meeting a client's expectations.

Professional forestry service providers need to:

- Use a business management system that incorporates appropriate contractual agreements;
- apply professional standards; and
- ensure the application of technological advances in the provision of their services.

The NZIF professional standards are mainly about disclosure. Failure to disclose the limitations of the professional advice and giving professional advice that is poorly considered or not suitable for its intended purpose can result in a successful claim for damages.

Most disputes can be avoided; they are unproductive and undesirable for both clients and their professional service providers.

Professional indemnity insurance

Tony Gouldson*

Foreword

This paper focuses on 'Professional Indemnity' insurance for Forestry Consultants. Professional Indemnity insurance is perhaps the most important of a range of liability insurance options that need to be considered by most consulting businesses. By way of explanation a table, summarizing other types of liability insurance, is included as an appendix to this article.

1. Introduction

The forestry sector has been the subject of much coverage and attention by the media in recent times. Commodity prices and the New Zealand dollar have contributed to a period of sustained pressure. Sawmills have closed, large parts of the forestry estate have been sold and investor groups are re-opening old claims.

Typically, an industry under pressure will experience an upturn in both the frequency and amount of Professional Indemnity claims:

- Liquidators and Receivers will check every possible opportunity to recover monies.
- Disenchanted shareholders/investors will try to find ways of recovering their losses.
- Professionals in the industry will also feel the effects of an economic downturn and may be tempted to take on work that might previously have been avoided, shortcuts will be considered and the business risk will inevitably increase.

All professionals have a duty of care to those who may reasonably rely on the advice or services provided. It follows that any failure to properly deliver those services or provide adequate advice creates a risk of loss to your clients or any other entity that may reasonably rely on that advice or service. Such a loss can result in demands for compensation from the professional – often those demands will be far greater than the fee revenue for the initial consulting project.

Examples of areas of potential claims include the following:

- Advice on planting methods may result in a loss of crop, loss of investment returns and additional costs of clearing and replanting. In such a case, the fees earned for the consulting job would be insignificant when compared to the total costs and loss incurred by the client.
- A prospectus may indicate good financial returns for investors. Major currency changes and failing commodity prices can make earlier predictions look seriously misleading, especially in the eyes of investors who are relying on their investment returns.
- Errors in the preparation of valuations, treatment of tax, and failure to arrange adequate fire and insurance are also areas of potential claim.

Professional Indemnity Insurance provides cover for the legal liability of the professional in these, and other circumstance, as well as covering the cost of any legal defence.

Even if you have full insurance and the insurer pays your claim, the process of working through the claim will have a major impact on your busi-

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