

**COMMITTEE REPORT**

**(JULY 2006)**

**Professional Reliance in Forest & Range Management in British Columbia**

# **From Concept to Practice**

**Professional Reliance Task Force<sup>1</sup>**

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<sup>1</sup>The Professional Reliance Task Force is made up of representatives of the Association of BC Forest Professionals, Association of Professional Engineers and Geoscientists of BC, BC Institute of Agrology and the College of Applied Biology, supported by staff professionals from the Government of British Columbia, Ministry of Environment, Ministry of Forests and Oil and Gas Commission.

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## Introduction

In British Columbia's transition from a prescriptive to a more "results based" regulatory regime for natural resource management, the principle of professional reliance has become a key quality assurance strategy. While reliance on professionals in the resource sector is not new, it takes on greater significance under this new regime. The recent regulatory changes, particularly the *Forest and Range Practices Act* are leading to an increased level of reliance on professionals, not only to competently plan, advise, carry out and take accountability for complex tasks, but also to achieve an appropriate balance between the interests of their employers and the public – all while operating within the law.

The introduction in 2002 of new legislation governing forest and range management in British Columbia has resulted in a significant shift away from a highly detailed and prescriptive statutory planning framework to one in which government establishes broad objectives and industry is held accountable for results. The public and the government have been clear that this change, intended to provide for innovation and efficiency in the industry, must not be made at the expense of high standards for forest practices and environmental protection. This reduction in direct government oversight brings about a need for quality assurance and protection of the public's interests through a combination of legal requirements in the resource laws (e.g. the *Forest and Range Practices Act*) and those of the professions (e.g. the *Foresters Act*).

Changing the legislation does not automatically result in the desired efficiencies. Many processes, administrative procedures and even attitudes will need to change in order to fully realize the benefits expected. A concerted effort is required to develop a common understanding of professional reliance and a commitment to making it work.

This paper has been prepared to help facilitate the transition process by encouraging a common understanding of professional reliance by the public, the legislature, employers, government officials and professionals alike. It describes the term "professional reliance" as it relates to natural resource and environmental management in British Columbia, with particular emphasis on forest and range related activities carried out under the *Forest and Range Practices Act*. Several of the terms used have a specific meaning for purposes of describing professional reliance, and are defined in Appendix 1. The paper has been prepared by the Professional Reliance Task Force (PRTF) - a cooperative venture between the organizations responsible for regulating the majority of professionals practicing forest and range management in British Columbia and government staff professionals knowledgeable in resource management. A number of other

organizations were invited to provide input, including forest industry representatives, the Applied Science Technologists and Technicians of BC (ASTTBC), Planning Institute of BC (PIBC) and the BC Association of Professional Archaeologists (BCAPA). The terms of reference for the PRTF can be found in Appendix 7.

The paper provides a brief definition and overview of the legal construct for professional reliance, outlines the key elements and roles integral to its application, identifies a number of gaps or issues requiring further work, and makes recommendations for moving forward. Although the primary focus is on professional reliance within the realm of forest and range management, it is recognized that many of the concepts are transferable to other fields of practice.

## Definition

Beginning from the perspective that professional reliance is a strategy for quality assurance, in its simplest meaning it is “*to rely upon the actions, judgment or advice of a professional*”.

Professional reliance in the legal<sup>2</sup> construct described below, is a measured approach to receiving advice or delegating work by an employer or government official to a professional with the intent to ensure quality. It is definitely not an avenue to divest responsibility or elude accountability, nor an excuse for blind deference by either. Another more specific definition in use is “*the practice of accepting and relying upon the decisions and advice of professionals who accept responsibility and can be held accountable for the decisions they make and the advice they give*”.

***Professional reliance goes beyond simply expecting an individual to competently apply a standard, practice or rule.***

In the context described, professional reliance goes beyond simply expecting an individual to competently apply a standard, practice or rule, and includes the expectation that the professional will take into account a wide range of circumstances and interests, and will balance them within the legal construct described in the following section.

## Legal Construct Relative to Forest and Range Management

In British Columbia over 94% of the land is held in trust for the public, in the name of the Crown. As a result, the Provincial Government is responsible for ensuring sound and sustainable stewardship over the environment and the majority of the forest and range resources. In areas available for forest and range development, the Province exercises its responsibility primarily through licensing (tenure) arrangements with private-sector companies<sup>3</sup>.

Examples of the legislation defining this relationship between the Crown and licensees include the *Forest Act*, *Forest and Range Practices Act*, and the *Range Act*. This legislation sets out a legal relationship between the Crown and tenure holders (e.g. Forest License holders, Range

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<sup>2</sup> Note: The definition of “professional reliance” provided in this paper is a working definition and should not be interpreted to be a legal definition.

<sup>3</sup> For the purposes of this paper, BC Timber Sales, an organization within the Ministry of Forests and Range, would play a role similar to a tenure holder.

users, etc.). The legislation and supporting regulations governing forest and range practices focus on government setting objectives and tenure holders preparing results or strategies that are approved by government as being consistent with the objectives (and meeting the definitions of “results” and “strategies”). Much of the choice regarding *how* to achieve approved results and strategies, and *how* to conduct actual on-ground practices and processes is up to the tenure holder<sup>4</sup>. Another important change that has occurred with the introduction of the *Forest and Range Practices Act* is the recognition of a “due diligence” defense for licensees who are alleged to have contravened the Act. One consideration in the assessment of due diligence can be whether the licensee relied upon the work or advice of a qualified professional.

Professional reliance is an important aspect of the legal framework for forest and range management. The shift from a focus and dependence on government approval of several types of detailed plans to a more results-based, tenure holder driven approach is predicated on the assumption that society can and should rely on the resource management professions. In making this shift, the Legislature’s expectations are centered on rigorous standards of conduct, competence and accountability, as demonstrated by compliance with a strict ethical code, dedication to professional principles, and the requisite expertise to carry out the work. To enable this construct, laws such as the *College of Applied Biology Act* and the new *Foresters Act* have been enacted. Further information on organizations with members involved in resource management is included in Appendix 3.

***One consideration in the assessment of due diligence can be whether the licensee relied upon the work or advice of a qualified professional***

Through this legal framework the relationship between the Government and the licensee is distinct and separate from the relationship between the professional and the licensee or government. When the government, tenure holders, and resource professionals effectively fulfill their respective roles, professional reliance will meet the needs of industry, the interests of the public and the expectations of the Legislature.

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<sup>4</sup> Note: Although this is the case under the *Forest and Range Practices Act* there may be other more specific requirements that must be addressed by tenure holders, such as cultural heritage objectives under the *Heritage Conservation Act* that are much more prescriptive in their nature.

## The Public Interest

In British Columbia, public lands are held in trust by the government, on behalf of the public. Resource professionals are employed or retained by the government, or by tenure holders with delegated stewardship responsibilities, to provide assistance, opinions and/or advice. The public, through the statutes that establish self-regulating professions, has a reasonable expectation that professionals will act competently and with integrity. An essential feature of professional reliance is an overarching acknowledgement that professionals have a unique combination of knowledge, training and experience, and will consistently demonstrate adherence to and accountability for the principles underlying their profession.

Professionals have a duty of care to their employer or client, however, when a professional is providing opinions, advice or assistance regarding the management of public lands, there is also a duty of care to the public, and perhaps even to third parties who may be affected by the tenure holder's activities if they are influenced by the professional. Whatever the circumstances or demands, a professional will always proceed in accordance with the principles underlying their profession.

*Finding a balance between competing interests while adhering to sound science and legal requirements is the essence of professionalism.*

The public should expect that, regardless of responsibilities to or the actions of other parties, the professional will always uphold the law, apply sound science and act with the utmost regard for public interest. This need to find a balance between sometimes competing interests while adhering to sound science and legal requirements is the essence of professionalism.

## The Function of Self-Regulating Professions

The statutory regimes that enable establishment of the professions provide for them to be self-regulating. Unlike other statutory regimes that are controlled by the government, these regimes, once put in place by the Legislature, are controlled by the professions themselves.

The professions must control matters of competency, behavior and accountability of their members. Through their Acts, qualification standards, bylaws and codes of ethics, continuing competency programs, peer support, discipline programs and other activities, the professions exercise considerable influence over the degree to which an individual professional can be held accountable, and therefore the extent to which they can be relied upon.

The criteria for a self-regulating profession to be effective are:

1. A well established professional culture, including a commitment to place duty above self-interest or personal gain;
2. Clear, consistent and high standards for admission;
3. The knowledge and ability to set clear professional standards/codes of conduct and ethics to be followed by members;
4. Continuing competency and quality assurance programs;
5. The ability and willingness to hold members accountable through established, functional and transparent investigation and discipline procedures; and
6. Sufficient capacity and infrastructure to discharge its duties and achieve the intent of the legislation.

## The Obligations of Individual Professionals

A resource professional is bound by the legislation under which he or she operates, and by the conditions of membership in the self-regulating professional body. This includes adherence to bylaws that may include codes of ethics, standards of conduct, and other such direction provided by the profession. Each of the self-regulating professional bodies has a code of ethics that sets out the obligations that are binding on members. Although the codes may vary in format and specifics (and therefore should be referred to directly when questions arise), they all include requirements that reflect a professional's responsibility to the public, the resources, employers and the profession.

Typical requirements are:

***An Obligation to the Public** - A professional will hold paramount the safety, health and welfare of the public, the protection of the environment and promote health and safety within the workplace.*

***Practice Within Areas of Qualification** - A professional will undertake and accept responsibility for professional assignments only when qualified by training or experience.*

***Professional Opinion** - A professional will provide an opinion on a professional subject only when it is founded upon adequate knowledge and honest conviction.*

**Confidentiality and Disclosure** - A professional will act as a faithful agent of their client or employer, maintain confidentiality and avoid conflict of interest but, where such conflict arises, fully disclose the circumstances without delay to the employer or client.

**Duty to Profession** - A professional will uphold their professional obligations over those of their client or employer.

**Appropriate Compensation** - A professional will uphold the principle of appropriate and adequate compensation for the performance of professional work.

**Maintain Competence** - A professional will keep themselves informed in order to maintain their competence, strive to advance the body of knowledge within which they practice and provide opportunities for the professional development of their associates.

**Conduct Toward Clients and Colleagues** - A professional will conduct themselves with fairness, courtesy and good faith towards clients, colleagues and others, give credit where it is due and accept, as well as give, honest and fair professional comment.

**Presentation of Consequences** - A professional will present clearly to employers and clients the possible consequences if professional decisions or judgments are overruled or disregarded.

**Respond and Report on Contraventions** - A professional will bring attention to, and if necessary to rectify, will report to their association or other appropriate agencies any hazardous, illegal or unethical professional decisions or practices by other professionals.

**Extend Public Knowledge** - A professional will extend public knowledge and appreciation of their profession, and protect their profession from misrepresentation and misunderstanding.

In any particular circumstance, a resource professional must consciously assess the degree of reliance he or she can accept based on legislation, the bylaws and ethical requirements of the profession, and the individual's knowledge, experience and expertise. If a resource professional is asked to carry out work beyond his or her experience or competence, it is necessary to either decline the assignment or acquire the assistance of another professional with the necessary qualifications. Having accepted work, a resource professional must carry out the associated tasks with diligence and integrity, and must accept accountability for the work products. This includes

demonstrating a willingness to be answerable and address reasonable, respectful challenges with sound rationale. When several professionals are included in a task, each is accountable for the quality and professionalism of their own work, even if one individual is responsible for overall coordination.

Professionals are required by their respective regulatory bodies to maintain competence by continuously updating their skills and staying current with new research, practices and policies, and are expected to carry out objective assessments of their skills and competency through self assessment, peer review, client/employer feedback and other appropriate means.

***When several professionals are included in a task, each is accountable for the quality and professionalism of their own work, even if one individual is responsible for overall coordination.***

Some resource professionals are also members of the Public Service, which is also a well established profession carrying legal and ethical obligations. In most cases the requirements of the professions are complimentary. However it is possible that an individual could perceive there to be a conflict between obligations in a particular circumstance. For example, a public servant who is a statutory decision-maker may be required by law to consider only certain criteria in the decision to approve a plan, yet may feel that this is in conflict with a professional obligation to sound stewardship. If this occurs, the professional cannot abrogate one in favor of the other. They must find a balance, within the legal parameters. Normally, upon consulting with legal counsel, professional advisors or peers, the matter can be reconciled.

Resource professionals employed or retained by tenure holders are generally asked to take on either the role of advisor, or doer (or often both). While one of the responsibilities is to ensure the tenure holder is able to meet their statutory obligations, there is also an expectation that the resource professional will advance the “best” or “most appropriate” practice or decision. Although clearly having a duty to the tenure holder as employer, the resource professional must also consider the public interest, as well as whether there is a duty to any third party who may be impacted by actions taken by the tenure holder as a result of the advice given. If the professional finds a conflict between the interests of the employer or client, and professional standards, the difference must be resolved. The professional will provide advice and recommendations based on a balance, recognizing that the employer has the discretion (and accountability) to make the final management decision.

## The Role of Employers or Clients

The employer for purposes of this section may be a licensee, consulting firm, government ministry, individual or any other entity that employs a professional either directly or on a contractual basis. In the case of government agencies, the role of the government as an employer is distinct and separate from that of statutory decision-maker, even if such roles are embodied in the same position or individual.

*Neither the extreme of “blind deference” nor ignoring the opinion of a professional is appropriate.*

Employers and clients must be aware of, and comply with the *Acts* that govern the use of professionals, including the fact that certain functions are reserved to those who are members of some professions. Employers and clients must exercise judgment in determining the extent to which they will defer to the opinion of a professional. Neither the extreme of “blind deference” nor ignoring the opinion of a professional is appropriate. Between these extremes, however are acceptable solutions that will vary by degrees according to individual circumstances. This decision may take into account a number of considerations including the professional Acts, workload, expertise, costs and risks. Remembering that in nearly all cases the final decision is made by the employer or client, they cannot diminish their own responsibility through professional reliance, but may lessen risk and liability by demonstrating due diligence through reliance on a resource professional.

Employers and clients play an important role in ensuring the success of professional reliance as a quality assurance mechanism by:

- Ensuring professionals are provided with clear information on employer/client objectives, expectations and issues;
- Giving weight and credibility (respectful regard) to the work products, opinions and judgments of resource professionals, and providing constructive feedback;
- Ensuring there are adequate resources to carry out work to professional standards;
- Respecting professional obligations and in the case of employers, supporting professional development activities;
- Respecting the need for professionals to provide appropriate and balanced plans and advice within the legal framework; and

- Being open to discussing and helping professionals reconcile possible conflicts that might arise between obligations to the public, the resource, the profession and the employer or client.

## The Role of Government Officials

In many cases, the advice or work product of a professional must not only be acceptable to the employer or client, but is then also subject to approval of a government official (e.g. a statutory decision-maker). In such cases, the statutory decision-maker is typically reviewing and adjudicating the submission of the employer or client (i.e. the tenure holder), and has no direct relationship with the professional who prepared the work. In fact, in many circumstances the statutory decision-maker is limited to considering only specific factors or legal “tests” and not the details of the submission or whether a professional was involved. In these circumstances the professional reliance is undertaken directly by the licensee, and only through them, by the decision-maker. For example, when a professional prepares a Forest Stewardship Plan, the licensee relies on the professional and determines the degree of deference that will be afforded, whereas the statutory decision-maker’s approval is based upon whether or not the licensee’s submission satisfies the legal tests.

In cases where the statutory decision-maker is receiving advice or work product directly from a professional, (not through a licensee) or where broader discretion<sup>5</sup> is allowed in what the decision-maker may consider, then the statutory decision-maker has a more direct part in the professional reliance relationship.

The conditions for use of professional reliance on the part of a statutory decision-maker are similar to those of an employer and should include:

- A clear understanding of the differences between the roles of the professional, employer and statutory decision-maker (even though these may all be embodied in the same person in some cases);
- Clarity on where discretion is limited to specific tests, and where broader considerations may apply, including the role of a professional; and
- An expectation of giving weight and credibility (respectful regard) to the work product, opinions and judgments of resource professionals.

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<sup>5</sup> E.g. the consideration of archaeological assessment reports relative to permits under the *Heritage Conservation Act*.

## The Concept of Deference

The importance of giving weight and credibility, or “respectful regard” to the opinion or work products of a professional has been mentioned in the preceding sections. Often referred to as “deference”, this concept is fundamental to professional reliance.

While every professional must be competent in the work they undertake, it does not follow that the opinions of every professional will be accorded the same weight by tenure holders, government officials, the Courts or other reviewing bodies such as the Forest Practices Board, the Forest Appeals Commission, or for that matter, by the public. In well developed professional relationships it is likely that the degree of deference on all sides will be well understood, and able to be adjusted as risks or other circumstances change.

*Just as there is a reasonable expectation of deference on the part of the resource professional, there is an equal expectation of transparency on the part of those who rely on the professional.*

Although there is no set “formula” to arrive at the correct level of deference in any particular situation, there are considerations that, when weighted according to the individual circumstances, will provide guidance to someone who is a resource professional, or is acting in the role of a regulator, reviewer or employer:

- The demonstrated expertise and credibility of the individual resource professional based on education, training, experience and research in the particular field, the level of recognition for their work in the field from peers and others; and
- The quality and persuasiveness of their opinion, including facts that underlie the opinion, the steps taken to collect and analyze the facts, other contradictory opinions or alternative conclusions, and the apparent objectivity of the work.

Just as there is a reasonable expectation of deference on the part of the resource professional, there is an equal expectation of transparency on the part of those who rely on the professional. In other words, deference must not be “blind”. An employer not only has the right, but often a duty to scrutinize the rationale and supporting information underlying the work of a resource professional. Likewise, government officials need to consider the rationale and supporting information underlying professional opinions offered for their consideration, whether from a government resource professional or one employed or retained by a tenure holder. The use of a

written rationale to explain a professional's recommendations or decisions allows others, including sometimes the courts, to assess whether the result is "reasonable" in the circumstances. However this does not mean that an employer or government official should lightly disregard the opinion of a resource professional, nor that they should replace the opinion with their own.

## Recourse and Liability

When possible, disputes or concerns should be resolved directly between the involved parties. In most cases direct, informed, and respectful communication leads to acceptable informal resolution and is strongly recommended. Since this will not always be possible, and may not resolve all disputes when it does occur, it is important to understand the avenues available for recourse.

In general, there are three avenues for recourse when a problem arises within the context of professional practice. First and foremost, an agreement holder (usually, but not always, a licensee) will have obligations under legislation that may have consequences in the legislation if the obligations are not met. An agreement holder or a professional may also be sued in the civil courts (and in rare cases in the criminal courts). Finally, a complaint could be launched against a professional with their professional regulatory body. Each of these avenues of recourse is discussed briefly below.

- Liability for failure to comply with the Act or regulations -Where legislation sets out specific requirements for parties carrying out forest and range practices or other resource activities and an omission or contravention occurs, the party may be liable for the remedy under the legislation. For example, Section 72 of the *FRPA* provides a positive defence to administrative actions taken under the act if the person can prove they exercised due diligence to prevent the contravention from occurring. The issue of due diligence will often include questions as to whether the person retained the appropriate professionals for advice and direction and whether that advice was followed.
- Civil liability through the courts - Disputes arising out of contractual or licence conditions, or from a conflict between two parties are dealt with through the provisions of the contract, or in cases where no contract exists or resolution is unsuccessful, then through the courts. Aside from contract law, the civil courts deal with issues of negligence. A professional on whom a person has relied to their detriment can sue that professional in the civil courts. A central question in any case of professional negligence will be what, if any, steps the

professional took to prevent the event(s) that led to the complaint from happening. Simply put, what, if any, due diligence was exercised by the professional?

- Professional accountability - Applies to the conduct of the individual professional in relation to the expectations set out by the professional Act, codes of ethics or conduct, standards of practice and other requirements established by that person's regulatory body. Accountability is exercised by and through the complaint and discipline process of the professional regulatory body.

A minimum requirement for all self-regulating professions is a process that allows for complaints to be made to the professional regulatory body about the conduct or competence of a member of the profession. Each of the resource professions discussed in this paper has a formal mechanism for receiving and resolving complaints.

## General Implementation Issues and Challenges

The previous sections describe professional reliance and how it works, including the roles of various parties. It has been noted that the increased emphasis on professional reliance in forest and range management is aimed at supporting a more “results based” regulatory regime. While it is noteworthy that a number of initiatives are underway in government, industry and the professions to achieve this transition, several issues and challenges still exist.

It is not a “given” that the public has, or will continue to have, sufficient confidence to support the professional reliance paradigm in the long term. Although the Legislature has passed Acts designed to enable (in fact require) professional reliance, ultimately the public must be satisfied that the regime is meeting their interests.

This shift to professional reliance is sometimes referred to as a “culture shift” for many resource professionals who are employed or retained by tenure holders, as well as many of those employed or retained by the government. Both must adjust to a new relationship between their employers, and to the absence of directive<sup>6</sup> technical guidelines and a rigorous technical review process by government. It also requires that self-regulating professions, employers and government decision makers adjust.

For example, the increased reliance by employers and the government on resource professionals generates a similar increased reliance by resource professionals on their own regulatory bodies. These organizations will have to assess their requirements and ability to carry out internal and external communications, provide professional development opportunities, strengthen internal quality assurance programs, provide mentoring services, provide information regarding access to liability insurance, and any number of other possible demands.

In order for the professional reliance model to succeed, employers may have to invest in more professional development and training for professionals in their employ. Employers and clients will also need to recognize that while the resource professional has a duty to them, the optimum outcome of a professional’s work must appropriately balance that with a duty to the public. This means that while the professional reliance model allows greater freedom and flexibility for resource management solutions, it is not without some cost on the part of employers and clients.

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<sup>6</sup> Many technical guides, training manuals and procedural documents continue to be available for reference by resource professionals however they are no longer bound by them. A professional is expected to consider the available relevant information and guidance, and then to make an independent professional judgment.

Government officials and particularly those who make statutory decisions will need to ensure that they are positioned to meet the expectations of the Legislature with respect to professional reliance so as to make the new regulatory regime succeed. In particular, there is an ongoing need to ensure that statutory decision-makers provide clarity to resource professionals who are advising them on what is expected – how advice and information should be presented so it can be used in a statutory decision.

In general, all parties share in the challenge of communication, and especially in the need to maintain a dialogue that provides for clarification, feedback and continuous improvement. It is especially important that all parties understand the concepts and processes for dealing with conflicting opinions, and that they are followed professionally and transparently.

## **Recommendations**

The following recommendations begin to address the general implementation issues and challenges described above, and the more specific gaps and opportunities described in Appendix 2.

1. It is recommended that communications and education about professional reliance, including information about the distribution of accountability and liability, be given a high priority. The target audiences for this communication are government officials and staff supporting them, tenure holders and consultants who employ resource professionals, and the resource professionals themselves. The key messages should be consistent for all groups, supported by sound legal information, and may be delivered jointly by the professions, government and industry where opportunities exist. The goal should be to reach the entire audience before the end of 2007, and periodically refresh the information thereafter.
2. It is recommended that the Government assess its current business practices and procedures for decision-making and plan approval in forest and range management in light of the definition and description of professional reliance in this paper, and address any inconsistencies if they are identified.
3. It is recommended that all the resource professions take formal, proactive as well as reactive compliance measures to ensure all active members maintain high standards of

competence and professional practice, and that these measures be reported publicly on an annual basis beginning in 2007.

4. It is recommended that the resource professions undertake a coordinated communications initiative to put professional reliance into lay-terms and actively deliver the information to a broad range of stakeholders, with the intent to increase general understanding and acceptance by the end of 2007. This initiative should consider whether there is merit to establishing a stronger public identity for professionals and whether there is sufficient transparency and access to engender public confidence.
5. It is recommended that within the next year the resource professions examine professional standards and practice guidelines to ensure they are adequate in light of the description of and increased emphasis on professional reliance.
6. It is recommended that before the end of 2006 the resource professions establish a formalized joint process to support coordination of professional standards, coordinated response to professional reliance related questions or conflicts and the exchange of information on an on-going basis.
7. It is recommended that the resource industries take a strong, visible role in communicating, encouraging, and recognizing the value of professional reliance and accountability from a business perspective.
8. It is recommended that at the earliest opportunity, the government provide clear advice to officials who are also members of a professional regulatory organization, on how to balance the legal obligations of a statutory decision-maker and those of a resource professional.
9. It is recommended that the resource professions, government, and employers establish a forum that meets at least once annually beginning in 2007 to maintain a dialogue on professional reliance, including the successes or challenges with communications and application, evolving concepts, and on-going coordination of activities.
10. It is recommended that the Government review other regimes that purport to incorporate professional reliance and determine whether they are consistent with the model described for forest and range management, and whether any changes or clarifications are required.

## Appendix 1 - Terms and Definitions

A number of words and phrases commonly appear in discussions about professional reliance, and are important to understanding and applying the concept. While there will always be nuances and interpretation, the Professional Reliance Task Force has adopted the following terminology for use in this paper:

**accountable:** *liable to be called to account, answerable*

**accountability:** *the state of being answerable; responsibility; obligated to answer*

**answerable:** *expected to provide an answer; reply to a challenge; bearing the onus to reply*

**defer:** *yield in judgment or opinion; submit courteously*

**deference:** *a yielding to the judgment or opinion of another; courteous submission, respect for the opinion of*

**delegate:** *a person given power or authority to act for others; representative, (v) appoint or send a person as a delegate, confer authority on another as agent or deputy*

**delegation:** *delegating, the fact of being delegated; the handing over of authority; “to delegate” – the handing over of authority while maintaining the ultimate accountability*

**duty of care:** *an expectation to take all reasonable care; exercising diligence in a manner consistent with the interests of another*

**liable:** *responsible; bound by law to pay, exposed to financial obligation*

**reliable:** *worthy of trust; that can be depended upon; trustworthy*

**reliance:** *trust; dependence, confidence*

**resource profession / resource professional:** *of one of the following organizations: Association of BC Forest Professionals; Association of Professional Engineers and Geoscientists of BC; BC Institute of Agrologists; and College of Applied Biology / a member of one of these organizations*

**responsible:** *obliged or expected to account (for), in a position to receive credit or blame, trustworthy, reliable, involving obligation or duties, able to tell right from wrong; able to think and act reasonably, answerable*

**responsibility:** *being responsible; obligation, something for which one is responsible; duty*

**self-regulating profession:** *a profession established through legislation and required to meet the criteria described on page 7 of this paper*

**standard of care:** *the standard that meets or exceeds that expected of a professional who practices routinely in the field; the quality of work expected from someone who is competent in the area of practice.*

## Appendix 2 – Summary of Gaps and Opportunities Identified

Through its own deliberations and research, as well as input from others, the PRTF has identified a number of gaps or opportunities that, if left unaddressed, will prevent the province from achieving the full potential of professional reliance within the forest and range practices management framework. Some of these gaps have been touched on in general in the section General Implementation Issues and Challenges.

### 1. Change management

Based on input received from both industry and government professionals, it is apparent that there is room to improve the level of understanding and acceptance of professional reliance as a legitimate approach to quality control in forest and range management.

For example, licensees say that the application of professional reliance could be better realized if decision-makers would rely on (defer to) the work done by professionals preparing their plans, and reduce the practice of having government-employed professionals scrutinize and comment on the plans in detail. Conversely, the PRTF heard concerns from some government staff that professionals employed by industry will be pressured to plan for the “minimum” legally allowed, rather than the “best” stewardship option, and that there must be oversight, especially during a transition period. Compounding this tension is a perspective expressed by some individuals that the professional organizations do not have the capacity to provide a truly dependable safety net for the public’s interest.

There is a need to demonstrate that professional reliance is an effective approach to quality control in forest and range management. This has been referred to as a “cultural change” involving a shift in attitudes, behaviors and business processes. This needs to be reinforced by providing clarity on the concept and application, demonstrated commitment to applying the approach effectively, and demonstrated accountability.

### 2. Legal construct of the self-regulating bodies

There is a need to better understand and appreciate the differences in the legal construct of the various self-regulating organizations. Not all organizations that register resource management practitioners have had the same rights and obligations conveyed upon them by the Legislature. These differences have led to a great deal of debate and some confusion about who should be considered a “professional”.

For example, some organizations are established directly by the Legislature through a specific Act that names them and establishes their rights and obligations, whereas others are constituted as a society under the *Societies Act*. Further, those established directly by the Legislature have not all been given the same rights and obligations. This leads to a spectrum, or range of rights and obligations that needs to be more broadly understood when using the term “professional”.

There is an opportunity to provide better information to employers, the public and to practitioners to improve the appreciation of the similarities and differences, so that informed choices can be made. This may be particularly important in situations where due diligence becomes a factor in a decision.

### 3. Dealing with conflict

Gaps in understanding or direction have been identified in regard to how professionals are expected to deal with conflicts within the professional reliance framework. One aspect of conflict identified is related to the mechanisms for reporting and addressing allegations of unprofessional conduct. The other is related to how professionals are expected to balance competing interests.

Insofar as dealing with allegations of unprofessional conduct is concerned, the self-regulating organizations have well established processes that are designed to deal with this. However, some skepticism has been expressed as to whether these are effective, and there is an apparent hesitancy to use them. There is a need to communicate how these processes work for each of the organizations, to whom they apply, the potential consequences and safeguards. The processes need to be used in order to visibly demonstrate that they work.

The matter of competing interests may arise between the demands of a client and the public, (for example the financial objectives of the client and the stewardship objectives of the public), or in some cases between the obligations imposed, or inherent perspectives of two professions to which an individual belongs. Sometimes the conflict may be more perceived than real however it still needs to be reconciled. Clearly, compliance with the law is paramount, but the law does not speak to every circumstance, and is often open to interpretation. There is an opportunity to provide more information and guidance to professionals on this, and through that, perhaps improve the overall confidence that professional reliance will result in “the right thing”. There may also be a need for the

government to provide guidance or information to employees, and particularly statutory decision-makers who are also members of a resource profession, on dealing with possible conflicts between the obligations of a public servant and those of a resource professional.

4. Different approaches to professional reliance in legislation

In its review of legislation the PRTF found differences between the approach taken to professional reliance under the *Forest and Range Practices Act* and that taken under other legislation. For example, on one level there may be an expectation that a professional will assess a number of complex conditions, balance a number of interests, and prescribe a solution. On another level the expectation may be that a professional will inspect a particular work to certify that it meets a predefined rule or specification. While these differences may be appropriate, it is important that they be understood as different degrees of professional reliance, and not all may be consistent with the definition provided by the PRTF for forest and range management.

5. Maintaining public confidence

It is not a “given” that the public has, or will continue to have sufficient confidence in resource professionals to support the professional reliance paradigm in the long term. Although the Legislature has passed *Acts* designed to enable (in fact require) professional reliance, ultimately the public must be satisfied that the regime is meeting their interests. The professions, employers and government are expecting to achieve clear business efficiencies by using professional reliance as part of the forest and range management regime. The input received by the PRTF suggests that there is a need for professionals and their organizations, employers and government to work together and individually to ensure the approach provides credible quality assurance.

Transparency, communication and demonstrated accountability will need to be pursued by all parties.

## Appendix 3 – Self-Regulating Organizations Implementing FRPA

As mentioned in the introduction, a variety of organizations play an important role in various aspects of forest, range and environmental management. While there are differences in the registration requirements, and in the regulatory frameworks under which they operate, it is nonetheless noteworthy that those individuals, who, through membership in a registering body, have demonstrated prerequisite qualifications, a commitment to professional behavior, and a willingness to be held accountable, fit within the overall framework of the professional reliance regime.

The Legislature strengthened the legal construct for professional reliance in forest and range management by enacting the new *College of Applied Biology Act*, and repealing and replacing the *Foresters Act* and *Agrologists Act*. These Acts, as well as the *Engineers and Geoscientists Act* place considerable emphasis on setting and enforcing professional standards<sup>7</sup>. In addition:

1. The *Agrologists Act* defines agrology, establishes the British Columbia Institute of Agrologists, and reserves the title “Agrologist” to members of the Institute, and provides the authority for members of the Institute to practice in areas where the definition of agrology overlaps with other professions.
2. The *College of Applied Biology Act* defines the terms “applied biological sciences” and “applied biology”, establishes the College of Applied Biology, and reserves the titles “Professional Biologist” and “Registered Professional Biologist” as well as “Applied Biology Technician” and “Registered Biology Technologist”<sup>8</sup> to members of the College, and provides the authority for members of the College to practice in areas where the definition of applied biological science or applied biology overlaps with other professions.
3. The *Engineers and Geoscientists Act* defines the terms “practice of professional engineering” and “practice of professional geoscience”, establishes the Association of Professional Engineers and Geoscientists of BC, reserves the titles “Professional Engineer” and “Professional Geoscientist” to members of the Association, and reserves the right to practice professional engineering and geoscience (as defined and limited in the *Act*) to members of the Association.

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<sup>7</sup> Note: Although the government - tenure holder relationship discussed in this paper is focused on Crown (public) land, the professional Acts apply to work carried out on all land, regardless of ownership or tenure.

<sup>8</sup> The sections of the Act specific to Applied Biology Technician and Registered Biology Technologist were not yet in force at the time of this writing.

4. The *Foresters Act* defines the term “practice of professional forestry”, establishes the Association of BC Forest Professionals, reserves the titles “Registered Professional Forester” and “Registered Forest Technologist” to members of the Association, and reserves the right to practice professional forestry (as defined and limited in the *Act*) to members of the Association.

Three other organizations identified as having some members working directly or indirectly in the forest and range management sectors are:

1. Applied Science Technologists and Technicians of BC (ASTTBC) – In addition to technologists and technicians regulated by the ABCFP and CAB as described earlier, technologists and technicians who are members of the ASTTBC play an important role in resource and environmental management activities.

The *Applied Science Technologists and Technicians Act* establishes the ASTTBC, reserves the titles Applied Science Technologist and Certified Technician to members of the Association, and requires the Association to regulate standards of training and practice of and for its members and to protect the interests of the public.

2. Planning Institute of BC (PIBC) – As an affiliate of the Canadian Institute of Planners, members are required to have a degree from a recognized planning school or related field, and to meet the experience and entrance requirements for membership in the Institute. The titles “MCIP” and “Registered Planner” are reserved for members, and indicate that the individual has met the entrance requirements, and subscribes to the Institute’s Code of Professional Conduct.

PIBC members work in the public service and the private sector, in a wide variety of fields including land use planning, environmental resource management, land development, heritage conservation, social planning, transportation planning and economic development.

3. BC Association of Professional Archaeologists (BCAPA) – The BCAPA is incorporated under the *Societies Act*. The titles “Registered Professional Consulting Archaeologist” and initials “RPCA” are reserved for the exclusive use of members. Members must meet the

criteria for training and experience established by the BCAPA, and must adhere to the guidelines set out in the Association's Code of Ethics and Code of Conduct.

BCAPA members are engaged in archeological research and the archeological resource management process in BC, and often work closely with resource professionals, First Nations and others on matters of forest, range and environmental management.

Archaeologists accept a special responsibility to First Nations, over and over and above their general obligation to the public.

The BCAPA has developed a number of standards of practice, and has established a disciplinary process. The BCAPA is currently holding discussions with the Province on the development of a professional Act.

## Appendix 4 – Operational Questions for Consideration

The tables below provide a list of questions to help parties consider the factors that might go into determining how professional reliance will be exercised in any particular situation.

<b>1. Questions for the professional</b>
What are the Acts and regulations that apply? (Professional Acts and other legislation).
What guidelines or advice exist and how should I consider them?
Is the work consistent with my professional registration, education and training?
Am I experienced with this work and have I demonstrated a suitable level of skill?
Is undertaking this work consistent with all aspects of my code of ethics?
Will I have access to and be willing to use the expertise of other resource professionals when necessary?
What are the publics' interests in the situation?
Am I clear on the objectives and parameters for the work?
Do I have the time and resources and information to do the work fully and professionally?
Do I have the necessary tools for quality assurance?
Is there a guideline that identifies practice standards for the professional activity being carried out?
Am I prepared to answer for the work (including providing my rationale and responding to reasonable inquiries and challenges)?

<b>2. Questions for the employer or client</b>
What is required by the applicable Acts and regulations (including the professional Acts)?
What are my contractual and social-license obligations?
What are the risks, accountabilities and liabilities borne by me?
Have I undertaken the necessary due diligence to mitigate the risks and liabilities, including but not limited to reliance on a professional?
What are the qualifications and abilities of the resource professionals I have retained?
Have I provided adequate resources to the professional relied upon?
Have I clearly outlined my objectives and expectations to the professional relied upon?
Is there adequate quality assurance?

**3. Questions for the statutory decision-maker**

*Note: In many cases the statutory decision-maker is limited in his or her considerations by the tests set out in statutes, and some of the factors below cannot be considered.*

What direction is provided by the Acts and regulations?

What direction is provided by government policy or guidelines and how should I consider it?

What is the risk to human life and safety?

What is the risk to the environment?

What is the risk to government revenues and other matters of public interest?

What do I know about the quality and history of work by resource professional(s) involved?

How well is the work defined by established parameters and methods?

Is there a quality assurance safety net in place?

Has the professional provided a rationale or indicated a willingness to explain the work and respond to reasonable inquiries or challenges?

## Appendix 5 – Examples of Degrees of Deference

- In an example of a high degree of deference, the resource professional is expected to be guided by his or her own judgment and professionalism. Where the desired outcome has been defined the resource professional may exercise a high degree of discretion in the manner used to achieve the outcome. This may occur when the professional is highly expert in the particular field, and/or where the risks are minimal.
- A moderately high degree of deference exists where the resource professional is operating within established parameters and is able to exercise considerable discretion without seeking direction, except when needed according to his or her own judgment. There is some room for innovation and the use of unconventional solutions. Tasks are not supervised and work is not routinely subject to detailed review. This may occur when the methods are well established and the risk is known and has been addressed.
- A moderately low degree of deference exists when the resource professional is required to act within clearly defined and relatively narrow parameters, and/or is subject to direction on a frequent basis. This may occur where the resource professional is qualified but relatively inexperienced in a particular function and requires guidance or training from a senior professional, or where the practice is new and innovative and the risks are not yet fully understood. It may also be the case where the practices are very closely prescribed in law.
- A low level of deference exists if the resource professional is directly supervised, even on technical functions and/or the work is subjected to a detailed review before acceptance. This may occur in a training situation for new or highly complex tasks, (e.g. the application of new research) or in circumstances where the risks and consequences demand a high level of redundancy (e.g. imminent danger to life and safety).

## Appendix 6 – Key Features of Professional Reliance

The PRTF has provided the following definition of professional reliance:

*“to rely upon the actions, judgment or advice of a Professional” and “the practice of accepting and relying upon the decisions and advice of professionals who accept responsibility and can be held accountable for the decisions they make and the advice they give”.*

There are several features of professional reliance that help to reinforce the definition:

- It describes a particular approach to delegation involving resource professionals.
- It applies only to resource professionals who can be held accountable as members of a self-governing professional regulatory body established under statute.
- There is a distinction between the legal construct, or approach described as “professional reliance” and the degree of deference afforded a professional in any particular circumstance.
- Membership in a self-governing professional regulatory body attaches a higher standard of care and a greater degree of expertise, trustworthiness and reasonableness expected, and therefore greater responsibility than for others.
- Membership in a self-governing professional regulatory body, and the rules and standards to become and remain a member, require resource professionals to be accountable whether they have done the work themselves or supervised it.
- Because a resource professional can be held to account, the employer is able to transfer some of the risk or liability. This does not mean that employer is held safe from all liability, however retaining an appropriate resource professional can be seen as the exercise of due-diligence on the part of an employer or client.
- Members of the professional regulatory bodies are accountable to their employer and to their profession.
- Members of professional regulatory bodies can be held legally and financially liable for their actions or omissions.

## APPENDIX 7 – PRTF TERMS OF REFERENCE

**July 15, 2005**

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### **PREAMBLE:**

The province of British Columbia has initiated a new results-based approach to forest and range practices and environmental regulation. An important underpinning of this new approach is increased reliance on the judgment and accountability of resource professionals<sup>9</sup>. Although the new policy regime is in the early stages of implementation, the organizations represented on the Professional Reliance Task Force (PRTF) recognize that its long term success will require a common understanding of what professional reliance means and how it is best applied. The participating organizations are committed to ensuring such a common understanding is developed and to otherwise undertake good faith efforts to adopt the recommendations arising from the PRTF. It is understood by all PRTF parties that the establishment of the task force is not a justification for delaying decision/actions which should otherwise move forward during the life of the PRTF. All PRTF parties further recognize that the development of a common understanding of professional reliance implies a need to communicate that understanding to all relevant personnel and accordingly commit to jointly undertake such efforts in a timely manner following the conclusion of the PRTF process.

### **PURPOSE:**

The purpose of the PRTF is to develop and communicate an agreed-upon description and model for application of the professional reliance principle to forest, range and environmental management in British Columbia.

### **DESIRED OUTCOME:**

The work of the PRTF is intended to lead to an effective application of the professional reliance principle, understood and accepted by the public, regulators, professionals and employers.

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<sup>9</sup> For PRTF purposes, “resource professionals“ means the members of the following professional regulatory bodies:

- Association of BC Forest Professionals (ABCFP) - Registered Professional Foresters & Registered Forest Technologists;
- Association of Engineers & Geoscientists of BC (APEGBC) - Professional Engineers & Professional Geoscientists;
- BC Institute of Agrologists (BCIA) - Professional Agrologists and;
- College of Applied Biologists of BC (CABBC) - Registered Professional Biologists.

## **OBJECTIVES:**

By March 31, 2006 the PRTF will:

1. Develop a common definition of professional reliance;
2. Define the conditions and prerequisites integral to the application of professional reliance;
3. Identify any inconsistencies with the agreed definition and conditions with the need to uphold the public interest, or among:
  - a. the relevant professional reliance schemes;
  - b. the relevant professional bodies;
  - c. relevant employers (including government)
4. Make recommendations as to how any inconsistencies identified might be eliminated or reduced;
5. Document and report on the work and recommendations of the task force, including the identification of areas of non-consensus; and
6. Seek endorsement and adoption of the findings and recommendations in the report by the participating organizations.

## **MEMBERSHIP & FACILITATION:**

All participants are expected to respect the commitment of other participants to the addressing of these important issues by regularly attending and being well prepared for PRTF meetings.

The PRTF shall be comprised of:

- Representatives appointed by the ministries of Forests and Range, Agriculture and Lands, Environment; and Energy Mines and Petroleum Resources;
- Representatives appointed by each of the ABCFP, APEGBC, BCIA and CABBC;

and will consult as required with representatives of the resource industries.

An independent Chair, retained by the PRTF will be responsible for providing direction to the process, including preparation and tracking of a work plan, managing and convening meetings, and drafting documentation.

## **SUB COMMITTEES:**

The PRTF may establish subcommittees and may assign tasks to them.

#### **REPORTING & REPORT TIMING:**

The PRTF will document its results in a “consultation draft” by December 31, 2005.

The PRTF shall table its final results with the Executives or Councils of the participating organizations no later than the end of March, 2006.

#### **DECISION-MAKING:**

To the extent possible, decisions shall be made by consensus. A reasonable effort will be made to achieve consensus, however if unsuccessful, the divergent points of view shall be reflected in the PRTF’s final documentation.

#### **MEETINGS & SUPPORT:**

Meetings shall be at the call of the chair but are expected to occur on a scheduled basis, (approximately monthly). To the extent feasible, meetings may be conducted by conference call.

Meetings will be documented by summary notes which will be available to all participants.

#### **COMMUNICATION:**

Members of the PRTF may communicate and consult with their constituencies but are expected do so in a constructive, transparent, good faith manner that does not undermine its deliberations. Where appropriate, the PRTF may authorize the independent chair to represent it and report progress or receive input from key groups. The PRTF itself may not undertake any public communications.

**BUDGET & EXPENSES:**

It is anticipated that most meetings will be held via conference call. Some meetings may be held on a face-to-face basis. It is assumed that the PRTF's final documentation will be developed and published by electronic means.

With respect to conference call meetings, the organization hosting the call shall bear the hosting charges.

With respect to face-to-face meetings, the organizations appointing representatives shall be responsible for the travel and meeting costs incurred by their representatives. The organization hosting such meetings shall bear any minor expenses arising (food, beverages, etc.).