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# Foresters Act Enforcement Policy

November 2012

**Policy**

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## 1.0 Introduction

One of the Association of BC Forest Professional's (ABCFP) duties listed in Section 4 of the *Foresters Act*<sup>1</sup> is to enforce the *Foresters Act*. There are two avenues for enforcement. The first is through the complaints resolution process to resolve complaints made against members for issues of practice and conduct (discipline complaints). The processes and procedures for discipline complaints are described in Section 22 through Section 30, inclusive, of the *Foresters Act* and in ABCFP Bylaw 14. Discipline complaints are not dealt with in this policy.

The second avenue for *Foresters Act* enforcement is through actions that may be taken to enforce the rights of title and practice granted under the *Foresters Act* against non-members who engage in unauthorized practice or who use a title or designation reserved under the *Foresters Act*. This avenue of enforcement is the subject matter of this policy. This *Foresters Act Enforcement Policy* will first set out the statutory authority on which such enforcement actions are based. It will then describe the role of individual ABCFP members in enforcing the *Foresters Act*. Finally the policy will describe the role of the ABCFP in enforcement actions.

## 2.0 Statutory Authority

Appendix 1 contains a list and description of all of the sections of the *Foresters Act* relevant to this policy. In brief, the *Foresters Act* defines the practice of professional forestry in Section 1 and reserves the right to practice to Registered Professional Foresters (RPFs) and Registered Forest Technologists (RFTs) as well as certificate holders who can engage in certain aspects of the practice of professional forestry under terms and conditions set out in the *Foresters Act*, bylaws and council resolutions.

The *Foresters Act* describes the titles (such as "Registered Professional Forester" and "Registered Forest Technologist") and designations (such as "RPF" and "RFT") that can only be used by members of the ABCFP. Appendix 1 contains a more complete list of titles and designations reserved under the *Foresters Act*.

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<sup>1</sup> Bill 5 of the 4<sup>th</sup> Session of the 37<sup>th</sup> Parliament, to which Royal Assent was given on June 20, 2003.

A variety of remedies are available under the *Foresters Act* to deal with issues of unauthorized practice or use of title or designation. Section 21 of the *Foresters Act* gives the association the authority to apply to the Supreme Court for an injunction against persons who contravene the *Foresters Act*, bylaws or council resolutions. Section 32 of the *Foresters Act* provides offence remedies including monetary penalties of not less than \$1,000 per occurrence for persons who commit offences as defined under the *Foresters Act*. Although the provision for prosecution does exist and can be utilized, the more readily available method for enforcement action would be to apply to the courts for an injunction to restrain a person from contravening the *Foresters Act*, bylaws or council resolutions.

Prosecutions under the offence provisions of the *Foresters Act* or applications to the courts for injunctions are the most severe enforcement measures available under the *Foresters Act*. Consequently resorting to these measures is reserved for the most serious of cases or if other efforts to gain compliance with the *Foresters Act* have failed.

### **3.0 Role of the ABCFP Member and the Public in Act Enforcement**

Any member of the association or the public, who believes that a person is practicing professional forestry or using a professional title without authority, may ask the association to investigate and if necessary seek enforcement under the *Foresters Act*. Individual members may be aware of potential contraventions of the *Foresters Act* before such a case is known by the ABCFP. If and when a member becomes aware of a potential contravention of the *Foresters Act*, it is expected that they will refer the matter directly to the association. The association will then contact the subject party to address the matter and take the necessary steps to prevent non-members from practicing and from using its titles.

### **4.0 The Role of the ABCFP in Act Enforcement**

The association may become aware of potential contraventions of the *Foresters Act* from a number of other sources. Receiving notice of a concern from one or more of its own members or from the public was covered in section 3.0 earlier. The association may also receive notice of potential contraventions from other professional regulatory bodies, employers or government boards and agencies. Lastly, notice of possible contraventions may come from association council or staff in the course of their duties.

Notification(s) of possible contraventions of the *Foresters Act* will be forwarded to the registrar who will maintain a case ledger to record the issue and track subsequent actions aimed at resolving it. If a member has forwarded a concern about a potential

contravention to the association or if the registrar is made aware that a member has made previous attempts to resolve the potential contravention, the registrar will contact the member to discuss the situation and determine what, if any, further actions are advisable and may be taken by the association.

Where the facts of a case suggest that a potential contravention has arisen out of ignorance of the *Foresters Act* and is of minor consequence to the public interest, the registrar will forward a standard advice letter pointing out the apparent contraventions of the *Foresters Act* and request future compliance. The registrar will follow up on this letter to ensure compliance with the *Foresters Act* is achieved.

Where the concern results from employment advertising in which the duties listed are those of a forest professional but the professional designation is not required by the posting, the registrar will first contact the employer to obtain a full description of the activities required of the person filling the position advertised.

In almost all cases, an incremental approach to seeking compliance with the *Foresters Act* will be the selected. As a first step, voluntary compliance from the person suspected of contravening the *Foresters Act* will be sought through information sharing and discussion. If these steps are ineffective, or are inappropriate for the circumstances, more formal steps will be initiated. Where the facts of a case strongly suggest that an application for injunction or a prosecution is warranted and will succeed, the registrar will prepare a case brief outlining the issues, relevant case law (if available) and an assessment of likelihood of success.

The registrar will consult with the association's CEO and such other persons, if any, designated from time to time to assist staff with enforcement related matters. The CEO will then decide whether to proceed with an injunction application.

Where the case is serious, but the registrar believes that injunction or prosecution will not be an efficient or effective remedy, the matter will be brought to the CEO for deliberation.

The registrar may retain and instruct legal counsel to assist with some or all aspects of enforcement considerations and enforcement proceedings contemplated under this policy.

## **5.0 Applying for Injunction**

Without limiting the registrar from performing his or her duties to manage enforcement proceedings the ABCFP may seek an injunction where:

- The alleged contravention places the public interest at risk;
- The alleged contraventions impinge upon the statutorily granted rights

of members of the association, and less drastic enforcement actions are impractical in the circumstances or have been attempted and have failed;

- The alleged contraventions appear to be the result of ignorance of the law, blatant disregard for the law, or a belief that the actions are otherwise authorized;
- An injunction serves the interests of the association better than other forms of resolution.

## 6.0 Reporting

All actions taken to enforce the *Foresters Act*, other than those relating to minor matters, together with the disposition of these, will be regularly reported by the registrar to the CEO. A summary and synopsis report will also be prepared for the association's annual report. In the event no formal actions were taken in the year, the registrar will prepare a report that records this fact.

## 7.0 Evolution of *Foresters Act* Enforcement Policy

Council, will periodically review the *Foresters Act Enforcement Policy*. Consideration can be given to developing compliance and enforcement bylaws if experience suggests that this would better serve the association.

## Appendix 1: Description of Relevant Sections of the *Foresters Act*

### Section 1

Definition section in which the practice of professional forestry is defined.

### Section 4(1)(c)

Establishes the duty of the association to enforce the *Foresters Act*.

### Section 4(2)(a)(ii)

Makes it an object of the association to uphold the public interest in the practice of professional forestry by ensuring that each person engaged in the practice of professional forestry is accountable to the association.

### Section 19

Restricts the titles "Professional Forester," "Registered Professional Forester," "Transferring Professional Forester," "Visiting Professional Forester," "Registered Forest Technologist," "Forester in Training," "Forestry Pupil," "Trainee Forest

Technologist”, “Accredited Timber Cruiser”, “Accredited Timber Evaluator”; and the designations “RPF,” “RFT,” “FIT,” “FP,” “TFT,” “ATC”, and “ATC” to members of the association.

### **Section 20**

Restricts the right to practice professional forestry to Registered Professional Foresters and Registered Forest Technologists and permits certificate holders to engage in aspects of professional forestry practice (under terms and conditions set out in the *Foresters Act* and bylaws) without offending the *Foresters Act*.

Section 20 also recognizes that: (a) special permit holders acting within the limits of their permits; and (b) enrolled members practising under supervision do not contravene the *Foresters Act* when they perform activities that fall within the definition of professional forestry practice.

### **Section 21**

Gives the association the ability to apply to the courts for an injunction to restrain a person from contravening the *Foresters Act* or bylaws or resolutions of council.

### **Section 32(1)**

Makes it an offence for a person who is not a member of the ABCFP to assume the titles or designations listed in Section 19 of the *Foresters Act* or to use those titles or designations to advertise or promote their businesses.

### **Section 32(6)**

Sets out the monetary penalties for committing an offence under the *Foresters Act*.



*Ensuring BC's Forests Are In Good Hands.*