

Assessing Professional Reliance in the Forest Sector: Improving Professional Reliance

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DISCUSSION DOCUMENT

This document was drafted to brief the Chief Forester and Ministry of Forests and Range Executive on Professional Reliance in FRPA. It is publicly presented on the recommendation of the ABCFP Professional Practice Committee.

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Executive Summary

The Association of BC Forest Professionals (ABCFP) considers that the success of the *Forest and Range Practices Act* (FRPA), and professional reliance, is vitally important to allow future management of BC's forest resources in a manner that best serves the public interest and achieves good stewardship of forest land.

Based on informal feedback from forest professionals and others who have interest in BC's forest sector, the ABCFP has identified several key messages about professional reliance. This report identifies and addresses the following:

- What Is Professional Reliance?
- How Forest Professionals are Held Accountable
- Creating a Balance between Accountability and Professional Judgement
- Adversarial Versus Advocacy Roles of Professionals
- The Myth of Connecting Professional Reliance Success with Forest Legislation and Levels of Compliance

In addition to these key messages, the ABCFP also identified several areas of concern in the professional reliance/FRPA relationship.

- Expectation that an On-the-Ground Action Is the Preferred Choice or Advice of Forest Professionals
- Lack of Conformance Requirements
- Results and Strategies Are Written in a Vague Manner Causing Implementation and Enforcement Difficulties
- Data Quality Problems and Continuous Learning

The ABCFP considers that professional reliance is working and is taking action to address concerns about the success of professional reliance and to further the success of professional reliance in general. Advancing professional reliance will require effort by all parties including, professionals, employers/clients (which include tenure holders and government), and the professions. It is hoped that this report will benefit all parties by improving understanding and stimulating greater effort by all to ensure that professional reliance success continues to improve and thus serve the people of our province.

Introduction

Professional reliance is not unique to forestry. It is a part of all professions that have significant impact on our society including engineering, architecture and medicine. The forestry profession, employers and government have come a long way with professional reliance since the initiation of FRPA just over five years ago; however, there is still much to be accomplished. The profession remains committed to a complete understanding of the application of professional reliance and to supporting the processes, knowledge and culture necessary to help the forest legislation achieve the desired results in the forest.

Over the last several years, the Association of BC Forest Professionals (ABC FP) and others have committed significant resources to supporting professional reliance and the new legislation governing forest and range management in BC. To rely on the judgement and practice of skilled and knowledgeable professionals, who are accountable for their work, is a quality assurance strategy that can improve results and reduce costs.

Improving Comprehension and Application of Professional Reliance

The concept of professional reliance incorporates a reliance on both the judgement and advice of resource professionals and on the accountability of resource professionals. The ABCFP has been working on professional reliance issues for over a decade and has written a number of guidance documents and reports on the important fundamental components of professional reliance and accountability.

Several key messages have emerged through the ABCFP's work on professional reliance. The ABCFP has also identified actions it plans to take to further improve the comprehension and application of professional reliance in BC.

Key Message 1: What Is Professional Reliance?

FRPA does not include a description of professional reliance. Professional reliance is not a result or an activity; it is not an objective or a strategy, instead, professional reliance is an approach or attitude and involves two or more parties and two or more behaviours – one party which accepts or relies upon the other, and another party which accepts responsibility and can be held accountable. To be successful in a situation, professional reliance must be working for all parties. To be successful across our province, professional reliance must be working for all parties in a majority of situations. Professional reliance is one of the guarantees of professional service. It is an approach applied within FRPA and, to a different degree, in other legislation related to forest land. Professional reliance is a way of doing the professional work to ensure least risk and maximum benefit; it is not the activity on forest land itself.

Action for Continued Improvement:

The ABCFP will continue to provide definition and description to the professional reliance approach in professional development workshops and communication with members and employers. The ABCFP will improve access to the professional reliance comprehension by establishing web-based course material.

Government and employers need to support forest professionals in professional development through workshops, online education or other practice duties that aligns with the goals and actions of personal performance plans.

Key Message 2: How Forest Professionals Are Held Accountable

Accountability is acknowledgement and assumption of obligations under professional legislation and accompanying bylaws, including the potential for investigations and discipline to be imposed by the profession¹. A common criticism of professional reliance has been that resource professionals are not being disciplined and therefore are not held accountable – this is simply not true. Professional accountability is expressed by answering questions or concerns about professional practice, by resolving concerns that might exist, and finally, by demonstrating good work and due diligence.

ABCFP members are regularly held accountable in several ways. They are listed here in the order of the most casual to most formal type of accountability.

1. General Enquiry: A question or concern about professionalism or professional practice during general conversation.
2. Verbal Diligence Enquiry: A diligence enquiry is made during a review process. (This form of accountability is often verbally completed and diarized by the resource professional. The situation can arise when the 'enquiring' resource professional is relying on the 'originating' forest professional's work, or, it can arise when the 'originating' forest professional diarizes a query from the public.
3. Written Diligence Enquiry: A diligence enquiry that is part of a professional review process and often requires written documentation or confirmation of the accountability exchange (This is normally transacted in writing and may form part of a professional rationale.).
4. Difference of Professional Opinion Leading to Third-Party Advice: A contrary professional opinion is provided regarding professionalism or practice. The enquiring party can be affected by the difference of opinion. The forest professional will attempt to resolve the contrary opinion (one form of resolution

¹ From the report Applying Professional Reliance under FRPA – April 2008

may include soliciting the professional opinion of an agreed upon third party or by gathering additional information in support of the opinion).

5. Difference of Professional Opinion Leading to Third-Party Resolution: A contrary professional opinion is provided regarding professionalism or practice. The enquiring party can be affected by the difference of opinion. The forest professional will attempt to resolve the contrary opinion (a resolution option may include a request a tribunal of authority which will provide a binding determination).

6. ABCFP Discipline Process or a Court of Law: Parties begin initiating steps in the discipline or court process.

Forest professionals appear to be most often held accountable via verbal or written diligence enquiries and the least used accountability method is the ABCFP discipline process.

It would be incorrect to conclude that because the discipline process is infrequently used, professional accountability does not exist or that professional reliance does not work. It is also incorrect to conclude that a large number of discipline cases would indicate a failure of professional reliance. The number of times accountability options are used cannot be directly correlated with the success or failure of professional reliance; however, documenting the various accountability and reliance relationships does provide very important, effective, and often-used tools for professional exchanges.

Action for Continued Improvement:

The ABCFP continues to advance the benefits of accountability in professional work by: promoting the use of the ABCFP Practice Advisory Service (PAS), defining and describing accountability, and establishing a discussion forum for member or public dialogue.

The ABCFP signed an agreement to share information regarding member practice and stewardship with the Ministry of Forests and Range (MFR) Compliance and Enforcement (C&E) branch and with the Forest Practices Board.

The government and employers promote the use of the ABCFP PAS service with their professional employees.

Government and employers promote accountability discussions including inquiries and responses with their professional employees.

Key Message 3: Creating an Equal Balance between Accountability and Professional Judgement

The ABCFP's work on professional reliance included hundreds of conversations with professionals and employer groups. These conversations have uncovered two dominant misconceptions of professional responsibilities in relation to FRPA that can leave both professionals and employers with the idea that professional reliance is not working.

While the party accepting responsibility is a professional, the party relying on the professional may or may not be another professional. Professional reliance requires the efforts of both parties in order to be successful. Neither professionals alone, nor forest employers alone, can ensure the success of professional reliance. It is a mutual affair, requiring the effort of professionals and their employers – whether they be government, forest industry or consultants. Through professional reliance, forest professionals can demonstrate their good stewardship of forest land and earn public trust. They can also assist their employers to do the same.

Professional reliance is not solely relying on professionals nor only relying on their accountability, **it is both**. To be effective, professional reliance incorporates a continuous balancing of reliance on the judgment of professionals, and reliance on their demonstrated accountability. An increase in one must be met with a corresponding increase in the other. The two actions are part of the same professional promise.

Action for Continued Improvement:

The ABCFP continues to communicate to members, employers, government and others that the professional reliance exchange includes both reliance on professional judgement and professional accountability. The ABCFP will explore additional communication tools.

Key Message 4: The Adversarial Versus Collaborative Role of Professionals

The ABCFP has reviewed cases and answered many questions regarding professional reliance and its implementation between professionals who have different employers. In many of the cases an intense adversarial approach exists between the forest professionals. This approach is based on a belief that an adversarial relationship is necessary to achieve the best result for the employer (government, industry or otherwise). A forest professional may feel compelled to fight for his or her employers' interests to the extent afforded under the law; however, the adversarial role can fail with respect to meeting the *Foresters Act* because of conflict with the public interest duty and forest stewardship obligation that exists for forest professionals. In many cases a forest professional can achieve the same or better benefit for the employer by utilizing a collaborative approach which

means to argue for and advance the cause of another. While it is often perceived to be the weaker alternative to an adversarial approach, the methods involving communication, compromise, conciliation, and co-operation often produce greater returns, with greater efficiency for the employer.

Action for Continued Improvement:

The ABCFP will continue to promote professional independence as a hallmark of the profession by:

- a) encouraging dialogue between professionals;
- b) requiring conformance reporting to be included in the development or implementation of prescriptions; and
- c) communicating the requirement for professional rationales as a professional practice standard.

Government and employers can advance professional independence by:

- a) providing opportunity for dialogue between professionals;
- b) requiring conformance reporting to be included in the development or implementation of prescriptions; and
- c) communicating the requirement for professional rationales as a professional practice standard.

Key Message 5: The Myth of Connecting Professional Reliance Success with Forest Legislation and Levels of Compliance

FRPA applies to the MFR and to the holders of agreements under the *Forest Act*. Professional legislation (e.g. the *Foresters Act*) is parallel to FRPA and is required to transact many of the actions and obligations under FRPA; however, it is applied to forest professionals and not to the MFR or tenure holders. There are two myths regarding this parallel legislative relationship that lead to incorrect conclusions:

1. The level of achievement of a forest legislation, such as the Forest Stewardship Plan (FSP) result or strategy under FRPA, is a direct outcome of the function of professional reliance, and
2. Professional reliance alone can ensure effective implementation of forest legislation, such as FSP results under FRPA.

In the first myth, a common tendency is to make observations regarding the progress of an FSP result or action on the ground at one point in time and conclude that professional reliance is not working because the result or progress towards that result is not satisfactory to the observer. Professional reliance is only one element

in the delivery and the measure of a result. Other elements at play in an FSP result or strategy include the decisions and actions of employers, actions of MFR, ecology, unforeseen biological events, the legislation, mechanisms of the legislation, and guidance.

Similarly, in the second myth, there is a belief that professional reliance is all that is necessary in the FRPA exchange to ensure good stewardship of forest land. However, once professional advice is acquired, much of the choice regarding how to achieve the results and the actual on-the-ground practices is a decision of the employers (tenure holder and government). Good stewardship of forest land is a result of several partnerships including the engagement of resource professional service.

Action for Continued Improvement: The ABCFP will communicate that the obligations of the MFR and holders of agreements under FRPA and the *Forest Act* are distinct and separate from the obligations of forest professionals under the *Foresters Act*. The obligations are related to the extent that both the MFR and holders of agreements require the services of forest professionals to carry out the practice of professional forestry. The ABCFP will provide professional development opportunity for forest professionals to continue to learn the facts regarding professional reliance and forest legislations (such as in-person and online workshops).

Areas of Concern in the Professional Reliance/FRPA Relationship

Professional reliance is an important component of the legal forestry framework in BC. Forestry on the landscape is driven by a results-based, tenure holder model. This model is predicated on the assumption that employers assign the services of forest professionals to the practice of professional forestry and follow the advice of professionals in the prescription, measure and achievement of results or strategies. This model also relies on the resource professions to regulate the rigor of the professional reliance and accountability exchange. As previously stated, relationships between the MFR and tenure holders are separate from relationships between professionals and their employers. While these facts are true, the ABCFP continues to hear from members about situations where the lines of distinction are blurred, or in fact disappear, causing gaps in the relationship of professional reliance to FRPA.

Concern Area 1: Expectation that an On-The-Ground Action Is the Preferred Choice or Advice of a Forest Professional

The FRPA relationship provides tenure holders with a management prerogative. Management prerogative affords tenure holders latitude to choose how they will meet legislative requirements, including consistency with objectives and achievement of results and strategies. Forest professionals employed by tenure

holders and other forest employers provide options and recommendations regarding a course of action for their employer's consideration. This includes forest professionals employed by the MFR when they provide options for the district manager to approve or not approve the FSP. The options identified by forest professionals include legal requirements and may incorporate other non-statutory expectations.

There is no specific requirement for employers to implement the recommendations or suggested options provided by their professionals. Employers have the prerogative to select against any options or to manage their own risks in approving or achieving results (e.g. reduction in planting program, training or monitoring in favour of low-cost alternatives). Therefore, although forest professionals will consider the balance of values when providing options for their employers' consideration, the choice or decision for balancing values in any situation is left to the employer.

Some believe that this process provides the best overall balance of social, economic and environmental values at one time. Employers do apply a standard of stewardship that is evident in their plans and processes. Additionally, forest professionals are compelled to provide advice, inform their employer/client, or the profession, if they believe that actions have compromised or may compromise principles of forest stewardship. Management prerogative is therefore applied to the most effective and efficient extent. Others believe that there is not a consistent application of stewardship across the forest land base.

Action for Continued Improvement:

The ABCFP can provide training and documentation that makes it clear to all parties, including the public, that on-the-ground actions may, or may not, reflect the choices or preferred advice of forest professionals. The ABCFP has established a standard of expectation for the use of quality rationales by forest professionals to support their professional choices and recommendations.

Concern Area 2: Lack of Conformance Requirements

Tenure holders are required to identify their planned results or strategies in an FSP. Other than the licensee prescription process and inspections to measure the achievement of results or strategies, neither FRPA nor the *Foresters Act* provide requirement for a sequence of written conformance reports to be completed by forest professionals. One exception to this circumstance is the report required of engineering professionals undertaking the practice of professional engineering and geoscience by their own profession. There has been concern from forest professionals that forestry legislation sets up a minimal amount of assessment markers.

Employers have varying degrees of required assessments following treatment and the scheduling of inspections and assessments is often subject to current strategies

to remain cost neutral or reduce operating costs. This does not mean that forest professionals never use conformance reports; however, they are not a routinely required aspect of professional forest activities. Conformance reporting is an opportunity to demonstrate good work and monitoring on the ground progress.

Action for Continued Improvement:

The ABCFP can establish a bylaw that compels a forest professional prescribing or designing a treatment to include in the prescription interim and final assessments necessary to achieve success of the treatments. Increased use of written conformance reports by employers will help to identify problems early, demonstrate diligence, and provide feedback for improvement. It may also contribute to increased levels of compliance with FRPA requirements and quality of work product and help to minimize any negative consequences to the land-base or the public. An ABCFP bylaw change instead of a FRPA change can maximize the use of professional judgement in conformance checks; however, the application will require employer support. Conversely a FRPA change will ensure employers utilize conformance and there is less flexibility in implementation of conformance during the period of the obligation.

Concern Area 3: Results and Strategies Are Written in a Vague Manner Causing Implementation and Enforcement Difficulties

The FRPA framework for forest management uses FSPs as the primary vehicle for forest planning and public review. Forest tenure holders are required to specify results and/or strategies in their FSPs that are consistent with legally set objectives. FRPA requires them also to meet these results and strategies. Tenure holders employ forest professionals to identify these necessary results and strategies as best suits their particular company and may engage the services of legal professionals to assist in legally defensible language. Because there is a risk to tenure holders when they do not meet their specified results or strategies, through MFR compliance and enforcement efforts and through liability from damages, professionals work to balance the legislated requirements with least risk to the employer in their wording of results and strategies in FSPs. The Ministry of Forests and Range employs professionals to review submitted FSPs for their conformance with legislated requirements and to recommend for or against approval, including the specified results and strategies, to the delegated decision maker.

The ABCFP has provided guidance to its members that will assist with the development and approval of results and strategies, including the Code of Ethics and Standards of Professional Practice, plus a guidance documents titled *Professional Reliance Principles for FRPA Operational Plans and Declarations* (February 2007) and *Applying Professional Reliance under FRPA* (May 2008). The association also contributed to the MFR administrative guides for FSPs, intending to highlight the professional reliance expectation for respectful regard and communication, and the use of rationales to support professional choices.

Some licensees may not check for and measure their achievement of results and strategies, instead preferring to implement through use of procedures. This could present difficulties for both implementation and inspections if vague language is used in the result or strategy. Implementation of conformance reporting, as mentioned above, should also help to improve the situation and reduce the gap.

Action for Continued Improvement: Communicate to tenure holders that clearly written, quantifiable results or strategies increases the success of a professional reliance approach and maximize the probability of:

- Successful internal implementation,
- Expedited review and approval by the MFR,
- Successful audits by compliance and enforcement or the Forest Practices Board, and
- Expedited public consultation due to a clear public understanding.

Concern Area 4: The Loss of the Learning Cycle

The ABCFP recognizes that training, including awareness and understanding of new technologies, costs money and requires employer support. During the Forest Resource Development Agreement and Forest Renewal BC programs of the past, forest professionals were able to use course work, workshops, discussion forums, etc. to improve their application of forest ecosystem knowledge. The continuous learning cycle begins with research or stand-level employment experience which is then transferred to the field practitioner; the cycle is continued when the field practitioner provides response and shares results with other practitioners, and the cycle is completed or restarted when researchers and employers adjust their practice based on the improved information. The net effect is an acceleration of learning and the application of management at the field practice level. Innovative solutions increase during this process. When fewer practitioners are supported in the learning cycle, then learning and management at the field level are negatively impacted, causing a dramatic reduction in innovation and an erosion of the quality of forest data. Field practitioners begin to rely on what is cheap and conventional. This situation

does not provide a breeding ground for innovation and has a negative effect on good stewardship of forest land. The learning cycle is a shared responsibility of the practitioner, the employer and the profession.

For one example, good quality data is an important attribute of forest management. The ABCFP has established voluntary certification for technical occupations to promote the practice standard of completeness and correctness. The opportunity exists, and the ABCFP has received concerns, that employers have 'shopped' for waste surveyors, cruisers, or environmental specialists who promise the most positive financial return to the employer. A loss of the learning cycle and professional practice isolation accentuates the potential for a singular management goal that subverts other goals. And it is often beyond ABCFP members' control alone to keep up to date with training which would enable them to ensure good quality data collection.

Action for Continued Improvement: A requirement for certification or a requirement for licensing would create conditions where our profession can proactively communicate practice standards and react with discipline when the problem of poor quality data arises. Both government and other employers can support their professional employees with professional development opportunities that will enhance their knowledge of the data collection process.

Summary

The concerns expressed by government, industry and the profession regarding professional reliance have the potential to cause a backslide toward a regulatory process that resembles the previous, prescriptive, command and control framework. If this backslide were to happen, it could result in new legislation that becomes outdated by the time it is enacted. The ABCFP contends that it would be difficult, if not impossible, to create new forest legislation that will be appropriate and flexible enough to allow for good stewardship of forest lands under all anticipated and unexpected conditions.

As we strive to manage BC forest resources in a way that best serves the public interest and is based on sound forest stewardship principles, we are faced with increasing amounts of change to our environmental, economic and social situations. Resource professionals are well equipped, with support from their employers, to develop sound plans and decisions for the management of our forests.



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Ensuring BC's Forests Are In Good Hands.