

October 3, 2006

INFORMATION

To: All Staff

From: Tim Sheldan
Assistant Deputy Minister
Operations Division

**Re: Guidance on Recognizing and Responding to Potential Professional
Accountability Issues.**

The final report of the Registered Forest Technologists Working Group (RFTWG) submitted to Executive last year recommended, among other things, that the Forest Service provide guidance and support to staff regarding professional accountability and professional discipline processes (Recommendations 12 and 13). The final report is located on the RFTWG website at http://icw.for.gov.bc.ca/mof/rftwg/final_report.pdf.

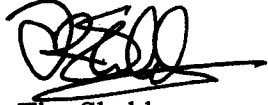


The document attached to this memo, titled "Recognizing and Responding to Potential Professional Accountability Issues," (also available on the C&E Branch website at <http://icw.for.gov.bc.ca/hen/>) is a response to those recommendations. As you know, the new "results-based" legislative framework depends heavily on the concept of "professional reliance". Professional accountability goes hand-in-hand with professional reliance.

Professional accountability, particularly in the forestry context, depends to a great extent on the willingness of members of the professions to "self-police" and to hold themselves and others to appropriate standards of practice and conduct. The Forest Service Executive recognizes that facilitation of professional accountability will require that a level of time and support be made available to staff to pursue these processes in appropriate circumstances, or alternatively to defend against them if a complaint is made against a member of the Forest Service. In this regard I am especially pleased with the creation of a Forest Service internal Professional Accountability Advisory Team (PAAT) that will be available to provide support to staff on professional accountability issues as they arise. The PAAT will be available to provide confidential advice to staff, and in some circumstances may act to initiate a complaint to a professional association.

All Staff

I expect that the attached document will provide valuable information and guidance as we continue to implement the new suite of legislation.

A handwritten signature in black ink, appearing to read 'Tim Sheldon', with a horizontal line extending to the right from the end of the signature.

Tim Sheldon
Assistant Deputy Minister
Operations Division

Attachment: (1)

RECOGNIZING AND RESPONDING TO POTENTIAL
PROFESSIONAL ACCOUNTABILITY ISSUES

September 26th, 2006

A. Introduction

The move from the *Forest Practices Code of British Columbia Act* (the Code) to *The Forest and Range Practices Act* (FRPA) represents a shift from front-end “control by process” to case-specific reliance on professional judgment. Forest practices under the Code or FRPA are not the only area where professional reliance is engaged – certification of matters under section 16 of FRPA, and sign-off of appraisal data sheets by RPFs or RFTs are others. However, an essential element of professional reliance is that mechanisms must be in place not only to hold forest licensees accountable to comply with statutory obligations *but also to hold forest professionals accountable to appropriate standards of practice and conduct.*

Professional accountability is important for at least two reasons:

1. The professional discipline process, and case-specific decisions made by discipline hearing panels, is one mechanism for developing, defining, articulating and communicating standards of practice and conduct for any self-governing profession.
2. The FRPA professional reliance model transfers a significant level of discretion and authority to forest professionals for managing the public forests in the public interest. Discretion and authority exercised without accountability inevitably leads to an erosion of public trust. In order to demonstrate that the public trust in forest professionals is well-placed, forest professionals must police themselves and must be seen to be policing themselves through credible, transparent and public accountability processes.

Because of their role as inspectors of statutory obligations and as commentators on proposed results and strategies in operational plans under FRPA, compliance and enforcement (C&E) staff are likely to come across professional practice issues more frequently than other government or non-government staff. All Forest Service staff have a responsibility to monitor the actions of professionals under a results-based/professional reliance regime. Staff who are also members of a self-governing profession have an additional professional obligation to deal with professional malpractice or misconduct in a diligent, courteous, and forthright manner. (For example, see ABCFP Bylaw 11.4.3) Staff who are not members of a self-governing profession should act no less diligently, courteously and forthrightly.

The Forest Service Executive has acknowledged that professional accountability goes hand in hand with professional reliance. Accordingly, the Forest Service will make resources available to support staff who either initiate professional accountability processes or who are themselves the subject of a complaint.

This paper will attempt to provide some assistance to Forest Service staff in assessing professional accountability issues, and some guidance as to how to address them. The paper will discuss these issues primarily in the context of forest professionals (that is, members of the Association of British Columbia Forest Professionals, or ABCFP), but the principles also apply to other self-governing professional organizations.

B. How are Forest Professionals Held Accountable?

There are a number of legal mechanisms through which forest professionals are held to account. They may be sued by unhappy clients, or they may be charged with contraventions of various statutory obligations. The accountability mechanism that is relevant to this paper, however, is the professional discipline regime, which is available to the ABCFP to ensure that forest professionals abide by the *Foresters Act*, the [ABCFP] bylaws (including the *Code of Ethics* and *Standards of Practice*, which are Bylaws 11 and 12 respectively), and council resolutions (including policies and guidelines).¹

Like that of most professional organizations, the ABCFP discipline process responds to queries or complaints from both members and non-members of the profession. It is a model, however, that depends heavily on self-policing by fellow professionals, with Bylaw 11 imposing a positive duty on members to take action on alleged professional misconduct.

It should be noted at the outset, that under FRPA, it is the licensee/agreement holder that has responsibility to ensure obligations under that legislation are met. Forest professionals are accountable for ensuring they live up to their practice standards and obligations and for the quality of the advice they give their clients, whether that client is government, industry or otherwise characterized.

C. Outline of the ABCFP Discipline Process

(See also the schematic diagram of the process attached to this paper as Appendix I.)

The structure and operation of the ABCFP discipline process is described in detail in sections 22 to 30 of the *Foresters Act* and in ABCFP Bylaw 14. Anyone, whether or not he or she is a member of the ABCFP, may make a complaint against a member who he or she believes has incompetently engaged in the practice of professional forestry, engaged in conduct unbecoming a member (as defined in the definition section of the *Foresters Act*), or contravened the *Foresters Act*, bylaws or resolutions. (sec. 22(1)) Complaints must be made in writing. (sec. 22(3))

The Registrar will review each complaint, and must accept it if satisfied that the criteria in sec. 22(6) are met. (These criteria are described in more detail below under the heading When and How to Engage Formal Professional Processes.) In

¹ ABCFP Guideline, *Definition of Professional Reliance*, September 2004.

appropriate circumstances, the Registrar may seek to resolve the complaint as a dispute between the complainant and the member concerning whom the complaint was made (the “subject member”) – perhaps through negotiation or mediation. This “alternative complaint resolution” process can only be engaged with the consent of each of the complainant, the Registrar and the subject member. (sec. 23(1))

If the sec. 22(6) criteria are met and alternative complaint resolution is either unsuccessful or inappropriate, the Registrar will invite the subject member to provide a written response to the complaint within a specified period of time. (Bylaw 14.4) Within 6 business days of receiving the subject member’s response, or the expiry of the specified time period (whichever comes first), the Registrar must refer the complaint to the complaints resolution committee.

The complaints resolution committee will review the complaint and may either dismiss the complaint or decide on a range of possible appropriate dispute resolution mechanisms ranging from admissions, negotiation, mediation, fact finding, arbitration, or formal investigation. The complaints resolution committee will refer the file back to the Registrar with instructions for further action. In the most serious of cases and where other complaint resolution mechanisms have failed or are inappropriate in the circumstances, the Registrar may then refer the complaint to the standing investigations committee, who will assign an individual or a team to investigate the complaint. The investigators have broad powers of investigation, and may among other things interview persons who they believe possess information or records relevant to the investigation, either orally or through written requests.

The investigators will determine whether grounds do or do not exist for a discipline hearing under section 27 of the *Foresters Act*, and will submit a report to the Registrar who will forward a copy to the subject member within 7 business days. If the investigators determine that grounds do exist, the subject member will be invited to comment on the report within 15 business days. The Registrar will submit the investigators’ report and the comments from the subject member to the complaints resolution committee. The complaints resolution committee will determine whether the matter should be the subject of a discipline hearing or whether other resolution means are available.

If the matter is to go to hearing, the subject member will be issued a citation which will provide notice of the specific allegations made against him or her. The Registrar will forward a copy of the citation to the chair of the discipline committee, who will designate a panel to conduct a discipline hearing into the allegations contained in the citation. A subject member may, at any time prior to the conclusion of a discipline hearing, make a settlement offer or conditional admission of the allegations to the Registrar. (Bylaw 14.49)

After the completion of the discipline hearing, if the hearing panel decides that one or more of the allegations have been proven against the subject member, the panel must do one or more of the following (sec. 27(4)):

- a) reprimand the member;

- b) impose a penalty of up to \$10,000;
- c) impose conditions on the member's enrollment, registration or special permit;
- d) suspend the member's enrollment, registration or special permit;
- e) rescind the member's enrollment, registration or special permit;
- f) require the member to undergo training and/or examination;
- g) give written reasons for its determination;
- h) record in writing an order for the member to pay costs.

Either the subject member or the ABCFP may appeal the panel's decision to the B.C. Supreme Court on a question of law or jurisdiction. (sec. 30)

D. Recognizing Potential Professional Misconduct

Forest Service staff should be able to recognize not only when a set of circumstances may or may not constitute professional misconduct, but also should be able to determine the most appropriate response to the situation.

1) Distinguishing Licensee Non-Compliance from Professional Accountability Issues

Firstly, it is important to distinguish misconduct by a forest licensee from misconduct by a forest professional acting on behalf of the forest licensee. A contravention of a forest licensee's legal obligations may or may not also involve the misconduct of a professional acting for the licensee. Conversely, professional misconduct may arise in circumstances that do not constitute a contravention by a licensee. One must carefully assess the case-specific circumstances and the applicable legislation to determine the legal obligations and potential liabilities of each party.

C&E staff in particular must be sure to distinguish enforcement processes from professional accountability processes, and ensure that the two are pursued separately. Misconduct or contraventions of either party are pursued in accordance with the legislation under which the misconduct or contravention is alleged to have occurred. C&E staff who are also professionals will have different obligations with respect to pursuit of professional accountability issues than they will for pursuit of enforcement actions against a licensee.

Scenario 1: *Consider a scenario where a licensee has harvested timber within a riparian reserve zone without authorization. The cutblock boundary was laid out by a forest professional, and the licensee harvested in accordance with the boundary as laid out by the forest professional. Leaving aside the issue as to whether the licensee may have a due diligence defence, this is a situation where the licensee has allegedly contravened section 52 of FRPA [unauthorized timber harvesting], or sections 51(1) or (2) of the Forest Planning and Practices Regulation (FPPR) [restrictions in a riparian reserve zone]. The forest professional may have "incompetently engaged in the practice of professional forestry" as contemplated by section 22(1)(a) of the Foresters Act, or may have "engaged in conduct unbecoming a member" (sec. 22(1)(b)), or may have*

breached the obligation imposed by Bylaw 11.5.1 “to act conscientiously and diligently in providing professional services”.

C&E staff will pursue the licensee’s contraventions by means of their enforcement authorities under FRPA. Correspondence with the licensee should deal solely with the contravention issues and not commingle the professional accountability issue. Consideration should be given to the timing of the two processes...proceeding with the professional accountability issue in some circumstances may have to wait until the investigation of the alleged licensee contravention is complete so as to avoid compromising the investigation.

C&E staff and other Forest Service staff who are also forest professionals have an obligation under Bylaw 11.4.3 to pursue the professional accountability issue individually:

The responsibility of a member to the Profession is:

11.4.3. Where a member believes another member may be guilty of infamous or unprofessional conduct, conduct unbecoming a member, negligence, or a breach of the *Foresters Act* or these bylaws:

11.4.3.1. To raise the matter with that other member, and if the matter is not resolved, to inform council immediately in writing of the particulars; or

11.4.3.2. If it is not possible to raise the matter with that other member or it is inappropriate in the circumstances to do so, to advise council immediately in writing of the particulars.

The issue as to when it is “inappropriate” to raise the matter with the subject member is discussed in more detail below under the heading “When and How to Engage Formal Professional Processes”.

C&E staff who are also forest professionals should note that they are NOT bound by the considerations of Bylaw 11.4.3 when pursuing contraventions against the licensee. Bylaw 11.4.3 governs the relationship between forest professionals where there is a potential issue of professional accountability. It does not govern the relationship between C&E staff and licensees or licensee staff while investigating an alleged contravention by a licensee.

Forest Service staff who are not forest professionals are, of course, not bound by Bylaw 11.4.3. Nonetheless, as public servants concerned with seeing the professional reliance model succeed in protecting the public interest, staff should address professional accountability issues in the way contemplated by Bylaw 11.4.3.

Scenario 2: *Assume that in Scenario 1 the cutblock boundary had been located so as to respect the riparian reserve zone, but that the forest professional was on site and instructed the logging crew to cross the boundary to salvage beetle-killed timber within the reserve zone. In that situation, not only would there be a professional accountability issue, but the forest professional may also be personally liable for contravening section 52 of FRPA by means of the operation*

of section 52(4). The FRPA contravention and the professional accountability issue should be pursued separately using the appropriate processes and the appropriate legislation.

2) Matters of Practice and Matters of Conduct²

The ABCFP has jurisdiction to discipline its members for matters of practice and matters of conduct. Practice concerns the technical quality of a member's work, while conduct concerns a member's duty to behave in an ethical fashion. Many of the standards against which a forest professional's practice and conduct should be measured are set out in Bylaw 11 (Code of Ethics) and Bylaw 12 (Standards of Professional Practice). Breaches of any of these standards may be referred to as professional misconduct.

a) *Standards of Practice*

With respect to standards of practice, members are, among other things, required to "maintain sufficient knowledge in their fields of practice", "ensure their work is complete, correct and clear", and "exercise appropriate judgement and discretion with due care." Practicing to an industry standard does not necessarily constitute an appropriate professional standard. The appropriateness of doing so depends on the case-specific circumstances.

The "practice" at issue here is the "practice of professional forestry" as defined in the *Foresters Act*. For other professions the relevant "practice" will be as defined in the legislation governing those professions. Incompetence in work that is not "professional practice" as defined may or may not constitute a matter of misconduct. (See "Standards of Conduct" below.)

Practicing to a professional standard doesn't mean that one has to achieve a level of super human perfection. Accordingly, not every mistake made by a professional necessarily constitutes misconduct. "[A]n exercise of professional judgment which turns out to be incorrect is not necessarily outside of the range of possible courses that a reasonably competent professional might choose to make and as a result is not necessarily professional misconduct...It is a question of degree as to whether a mistake made by a professional will be of such significance so as to constitute incompetence."³

"Incompetence" and "negligence" are two separate aspects of inappropriate professional practice, though depending on circumstances they may be linked. Incompetence means that a person is not qualified or able to perform a particular practice. For example, a forest professional who has spent his or her entire career in road and cutblock design and layout may not be competent to write a silviculture prescription without additional training and experience. By-law 11.3.7 requires a member to practice only in those fields where training and

² With respect to matters of conduct, this section relies extensively on an article by Bryan Fraser, RPF, titled Association Jurisdiction and Private Life, from the September/October 2002 issue of *FORUM*, page 7.

³ Casey, James T., *The Regulation of Professions in Canada*, (Carswell:Toronto), 2002, 13-13, 13-14.

ability make the member professionally competent. By-law 12.2 sets standards of competence.

Negligence refers to a situation where there was a lack of reasonable or proper care and attention. It will arise in a situation where:

- It is foreseeable, or ought reasonably be foreseeable, to the professional that some course of action or failure to act may result in potential harm or damage;
- The potential harm or damage will be suffered by some individual(s) to whom the professional owes a duty of care;
- The professional fails to exercise reasonable care (i.e. fails to practice to an appropriate standard); and
- This failure results in harm or damage to the individual(s) to whom a duty is owed.

In the case of forest professionals, the Code of Ethics identifies responsibilities (or duties) owed by each member to the public, the profession, the client/employer, and to other members. The types of harm or damage that can occur from the improper practice of professional forestry include, among others, environmental damage, economic loss, social harm such as loss of employment or livelihood, damage to the reputation of the profession, enforcement action being taken against a client, property loss or damage, personal injury etc. The Code of Ethics is not the only source of a legal duty – circumstances and the professional’s own, personal relationship with another party can also give rise to a legal duty to exercise reasonable care. By-law 11.8 recognizes this by providing that “This Code of Ethics does not deny the existence of other important duties which are not specifically included.”

The appropriate standard of care in each case may be one that is expressly spelled out by the ABCFP in by-laws or practice directives. In most situations, however, the determination of the appropriate standard of care depends on the circumstances of each case. It will generally be determined by assessing specific circumstances such as the nature of the task, site conditions, the likelihood of harm occurring, the magnitude of the potential harm or damage, and what reasonable steps can or should be taken to avoid causing the harm or damage. Consideration of “standard practice” in the industry is helpful but not definitive of the standard of care required in a specific situation.

If the evidence shows that the subject member acted with due diligence, that is, thoughtfully and reasonably assessed relevant circumstances and acted rationally in good faith on the basis of a defensible risk assessment, he or she will likely have practiced to a professional standard. Case law suggests that the standard of practice “should be measured by the judgment of the individual’s fellow professionals of good repute and competency.”⁴

Scenario 3: *A proposed forest stewardship plan or appraisal data submission contains a simple error in fact or information. Normally this would be a*

⁴ *Ibid*, at 13-2.

professional accountability issue only if there is a) evidence of intent to mislead, b) conduct amounting to negligence (i.e. inappropriate standard of care as weighed against the potential risk of harm), or c) a pattern of such behaviour is evident within the plan/submission or based on previous experience with the subject member.

Professional reliance requires that prescribing forest professionals should produce high quality, defensible professional documents, and that delegated decision makers and their staff reviewing those documents should give due deference – or “respectful regard” – to the professional judgment of the prescribing professional. “Respectful regard” does not mean that statutory decision makers or their staff must accept plans *or* practices without comment simply because they are prescribed or undertaken by a licensee’s professional.

Having “respectful regard” for the licensee’s professional doesn’t preclude reviewing staff from questioning a proposed plan/appraisal data submission/application or from suggesting improvements⁵. The licensee’s professional should also be respectful of the opinion of reviewing staff, should engage in a professional dialogue when the submission is questioned, and should provide such supporting information as reasonably required to answer the questions posed.

Bylaw 11.3.4 requires all forest professionals to respond promptly to practices that are detrimental to good stewardship of forest land, by seeking to resolve the matter with the “person responsible” whenever possible, or otherwise by informing the ABCFP Council in writing. This applies to forest professionals who are Forest Service staff as well as to forest professionals who are employed by or retained by the “person responsible”.

b) Standards of Conduct

The limits of jurisdiction of the professional discipline processes with respect to standards of conduct are less well defined than they are for matters of practice. ABCFP Bylaw 12.4.1 requires that “Members, in private life, professional practice, or outside professional activities, always conduct themselves honourably and in ways which sustain and enhance their professional integrity and the integrity of the profession as a whole.”

The following criteria are helpful in determining whether a matter of conduct may fall within the jurisdiction of the ABCFP discipline process:

- i. *Does the member’s alleged misconduct relate to the stewardship of forest land?* (Bylaws 11.3.1 and 12.6) Generally, with the exception of infamous conduct (see next criterion) there should be a strong and logical connection to the mandate of the ABCFP.

⁵ Forest Service professionals have to exercise judgment and care when offering suggestions. If what a licensee professional is proposing is professionally defensible and sound but is something the Forest Service professional would do differently, they cannot demand that their opinion or way of doing things be adopted by the licensee professional. They may suggest the licensee professional consider their suggestion but must not imply that the licensee professional must adopt it.

- ii. *Does the member's alleged misconduct strongly impact the public interest?* (Bylaw 12.3) The public is considered to have a strong interest when the alleged misconduct has either compromised the stewardship of forest land or would seriously undermine the public's confidence in the subject member or the profession as a whole. For example, conviction on an indictable offence such as fraud could fall within the association's jurisdiction.
- iii. *Does the member's alleged misconduct occur in a context in which he or she is primarily recognized as a member of the association?* (Bylaw 12.3) Examples would be when volunteering in a land use planning process, or when commenting on matters related to forestry or land use at a public hearing.

E. When and How to Engage Formal Professional Processes

It is unprofessional and inappropriate to jump to conclusions about matters of potential professional misconduct. Situations that at first blush appear to present professional accountability issues may turn out not to once they are examined in more detail. Specifically, legitimate differences in professional opinion can frequently be mistaken as substandard practice. On the other hand, it is also unprofessional and inappropriate to turn a blind eye to potential issues when you know or ought to know that they exist. (Bylaw 11.4.3)

It is not necessary for the complainant to conduct a detailed investigation and have an unassailable package of evidence to submit to the professional association in order to initiate a complaint. On the other hand, there should be no fishing expeditions. What is necessary is that the complainant has a reasonable belief that there has been a professional breach, that the subject member be identified, and that sufficient evidence be provided to make out a reasonable likelihood that the subject member was responsible for the professional breach.

1) Taking Action:

a) Know What Specific Allegation is Being Made

The first step when you encounter a potential discipline issue is to verify the facts as known to you, and clarify in your own mind exactly what professional obligation may have been breached. Verification of the facts usually just means following up on information that is readily available to you in the normal course of business, including requesting supporting information from the subject member.

It is then usually a good idea to consult with one or more professional colleagues to get a better feel for whether it is just a difference in professional opinion or whether it may actually be a professional breach. When engaged in this consultation it is best to be restrained in your language, bearing in mind the professional obligation "not to unfairly criticize the work of other members or attempt to injure the professional reputation or business of another member." (Bylaw 11.6.2)

Additionally, the Forest Service has established a Professional Accountability Advisory Team (PAAT) of senior forest professionals who are available to provide confidential advice on ethics and practice issues on request. The PAAT will also advise on professional matters arising in the context of professions other than forestry as well, by engaging members of those other professions. More detail on PAAT and its mandate is provided on page 13. Contact information for members of the PAAT is attached as Appendix 2.

External resources available to Forest Service staff include:

- the ABCFP’s Practice Advisory Committee, and
- results of previous discipline cases which can be viewed on the ABCFP website and may provide some guidance.

If there are still concerns, they should normally then be discussed with the individual professional whose actions are in dispute. If you are convinced that there is a professional practice or conduct issue and if respectful professional discourse fails to resolve the issue, or if it is “not possible” or “inappropriate in the circumstances” to raise the matter with the subject member, reporting to the ABCFP is required. While it may be disagreeable to involve oneself in formally finding fault with another person, forest professionals have a duty to do so as part of the rights they enjoy and the obligations they owe as professionals. (Bylaw 11.4.3)

The nature of these issues can be such that an individual instance viewed on its own won’t constitute a breach of professional standards, but when repeated, or when considered in context with other similar instances, may form a pattern of behaviour that does constitute a problem. In these situations individuals who deal with the subject professional should make note of suspected issues. Those individuals should keep those issues in mind in future dealings with the subject professional, and should advise their colleagues when that professional has dealings with others in the individual’s office. To avoid potential liability, any records kept of an alleged incident should be factual (for example “the cruise plan was rejected because...” or “the licensee’s professional was advised that...and responded that...”). Opinions as to professionalism (for example, “this was unprofessional practice”) should be avoided.

b) Decide Whether to Contact the Subject Member or to Advise the Association

It is up to each member to assess the specific circumstances to determine whether or not it is appropriate to first raise the matter with the subject member or whether the ABCFP Council should be advised immediately in writing. Generally speaking, Council should be notified immediately in circumstances where:

- It is reasonable to believe that the alleged action was serious and intentional;
- the alleged action was repetitious or continuous and previous attempts to deal with the subject member were unsuccessful;

- the alleged action resulted in, or had the potential to result in, significant negative environmental, social or economic consequences;
- the subject member has previously been disciplined for similar actions;
- the subject member personally benefited economically from the alleged action; or
- failure to deal with the matter in a formal, transparent and public manner will tend to bring the profession and its discipline process into disrepute.

Section 109(3) of FRPA prohibits the disclosure of “any information obtained in the exercise of a power or the performance of a duty under this Act...except...as permitted in this section or under the *Freedom of Information and Protection of Privacy Act.*” (FOIPPA) Section 33.1(1)(c) of FOIPPA provides that a public body can disclose personal information in accordance with an enactment (including the ABCFP Bylaws) which authorizes or requires disclosure. Additionally, section 33.1(1)(l) of FOIPPA permits disclosure “for the purposes of ...investigation or discipline of persons regulated inside or outside of Canada by governing bodies of professions and occupations.”

c) *Initiating a Complaint*

Where a decision is made to initiate a complaint, it must be done by a letter to Council. The complaint may be made by one or more persons. The complainant need not be a forest professional. The letter to Council should contain sufficient information to allow the Registrar to determine whether the following criteria in section 22(6) of the *Foresters Act* are satisfied:

- a) the complaint concerns a member or former member;
- b) sufficient information has been provided to allow an investigation to proceed;
- c) the allegations, if proven, involve a breach of the *Foresters Act*, the bylaws or the resolutions of the association; and
- d) the parties cannot resolve the matter on a reasonable and appropriate basis. (The circumstances referred to above with respect to the “appropriateness” of contacting Council will be relevant to section 22(6)(d).

This generally means the letter should include at least the following:

- Your name, address, telephone number and other contact information.
- The name of the forest professional that is the subject of the complaint.
- Full, accurate information relating to the complaint, including:
 - What the forest professional did that should not have been done.
 - What the forest professional did not do that should have been done.
 - Steps you took, if any, to resolve the matter with the forest professional.
 - If applicable in the circumstances, information as to why it is “not possible” or “inappropriate” to resolve the matter with the forest professional.
- Copies of all relevant documents.
- The names and contact information of any witnesses or other sources of information relating to the complaint.

Any evidence that is submitted by a complainant should be credible and capable of independent verification.

In some situations, a staff member may be convinced that a professional accountability problem exists, but none of his or her colleagues feel the same way. He or she is free, of course, to discuss the matter with the subject member and subsequently to complain to the ABCPF. However, in such cases, a careful assessment should be made as to whether the matter is just a difference of opinion or whether it is actually a professional breach.

2) Support in Pursuing a Professional Accountability Issue

a) *Staff Time and Resources*

Challenging other professionals and being challenged by other professionals are inherent and indispensable components of professionalism and the professional reliance model. If staff do agree there is a professional accountability issue that cannot be resolved with the subject member, the Forest Service will provide reasonable time and resources to allow the complaint to be made and adequately followed up. What is reasonable in terms of time and resources will normally be determined by the management team at the local responsibility centre considering the views of professional staff and circumstances of the case.

Usually it will be reasonable to pursue a potential professional breach where the majority of the necessary information to form a substantive opinion as to the likelihood of the breach has come to the attention of Forest Service staff in the ordinary course of their work. It will usually not be reasonable to pursue a potential professional breach where there is only a suspicion of an issue and a significant amount of investigation effort would be required to be able to form a substantive opinion.

Scenario 4: *Routine inspection of a small scale salvage site shows that the professional application has misrepresented the timber volume and the ground conditions at the site. It is an issue that has been noted and discussed on previous applications submitted by this particular professional applicant. It will take time to gather and organize the file material, to discuss the course of action with colleagues, and to prepare a letter of complaint. It may be necessary to take colleagues into the field to get a "second opinion". It would normally be reasonable for time and resources to be made available for this follow-up to occur.*

Scenario 5: *A Forest Service staff member who is also a C&E technician is conducting an inspection in a remote area that requires access by helicopter. She finds no evidence of non-compliance with the legislation for which she has enforcement authority, but feels there may be a professional accountability issue that will require some surveying and helicopter time to confirm. Unless there is a link to potential licensee non-compliance, or significant negative environmental, social or economic consequences, it would likely not be reasonable to expend time and resources pursuing this potential professional breach.*

b) Professional Accountability Advisory Team (PAAT)

As mentioned previously, staff may contact any member of the Forest Service's internal Professional Accountability Advisory Team (PAAT) for confidential advice and information on assessing and responding to potential incidents of professional misconduct. Consultation with PAAT is, of course, entirely voluntary.

In some circumstances, the PAAT may agree to act as complainants. If, for example, the issue has broad provincial application, or has particular significance for the Forest Service, the PAAT may wish to ensure that a complaint is pursued by taking on the role of complainant. Or perhaps because of particular sensitivities exacerbated by local dynamics or the nature of the relationships among the various parties, it may be preferable for the complaint to originate from an objective outside observer (PAAT). Having the PAAT take on the role of complainant will likely be the exception rather than the rule, but each situation will have to be considered on its own merits.

F. Conclusion

Professional accountability is an essential element of every self-governing profession generally, and of the FRPA professional reliance model in particular.

The lives of some men and women are structurally shaped by the fact that they are deeply versed in advanced and subtle bodies of knowledge, which they apply with dedication in solving complex problems. They learn by study, apprenticeship, and experience, both by expanding their comprehension of formal disciplines and by finding new ways to use them to achieve specific ends, constantly moving forward and backward from theory to practice so that each enriches the other. Such people protect one another and are sometimes extended special protection by society far beyond that granted to other citizens. The price of protection is vigilance against poor performance and unethical behaviour, and that vigilance is exercised by the privileged person, by others of similar specialization, and by society. These people are called professionals.⁶

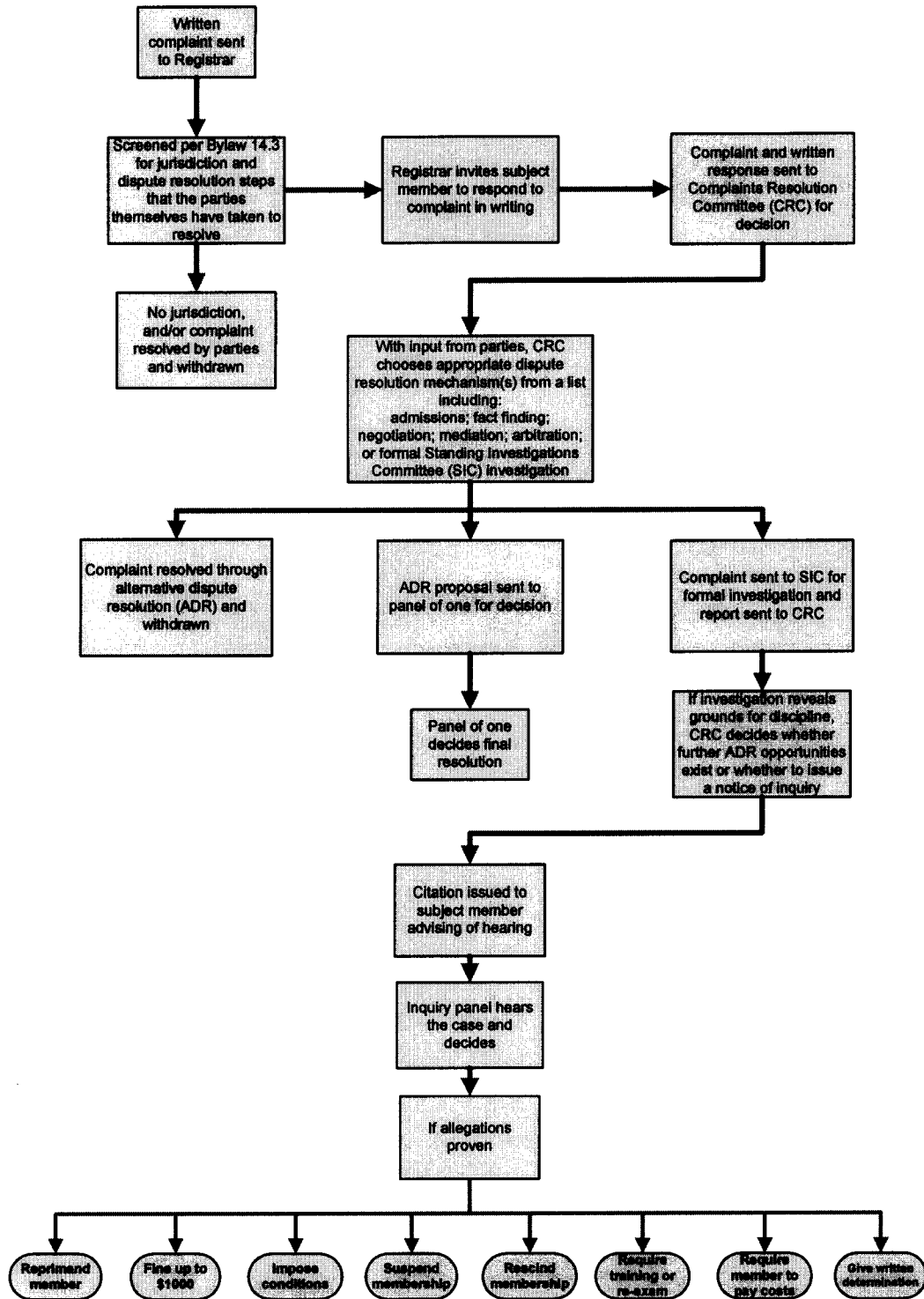
Professional accountability requires vigilance by all forest professionals, but this vigilance must be exercised diligently and responsibly. Forest Service staff who have concerns about the professional conduct of an individual should consult with colleagues or the PAAT to gain the perspective provided by a dispassionate second opinion. However, if the evidence supports the conclusion that an individual has failed to achieve a professional standard in practice or conduct,

⁶ Cyril O. Houle, *Continuing Learning in the Professions*, Jossey-Bass Publishers, 1981, p. 1, cited by Sophia Sperdakos in *Self-Regulation and the Independence of the Legal Profession in Ontario*, Policy Secretariat, Law Society of Upper Canada, May, 2003, p. 1[emphasis added].

then Forest Service staff have a public interest obligation to pursue the matter, and Forest Service staff who are also forest professionals have a professional *obligation* to either resolve the issue with the subject member or to advise Council immediately in writing.

The Forest Service will support staff who either initiate professional accountability processes or who are themselves the subject of a complaint.

Appendix I Outline of the ABCFP Disciplinary Process



Note: This diagram is intended as a general outline only. It does not identify every possible element of the discipline process. For complete details refer to the *Forsters Act* and bylaws.

Appendix II
Professional Accountability Advisory Team
Contact Information

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