



Discipline Case Digest

Notice to Members: Obligations when putting your professional name to your work

Please file this digest in your Professional Manual under the “Discipline Decisions” tab.

Introduction:

This notice to the profession is issued by the Discipline Committee “A” Panel in response to a recent discipline case resolved through alternative dispute resolution mechanisms. At issue were the questions:

- What obligations do professional foresters take on when they sign their name to a document such as a silviculture prescription?
- Can professional foresters rely on the work of others, including other professional foresters?
- If so, what steps (due diligence) must be taken before professional foresters can rely on the work of others?

The answers to these questions and the notice appearing below are part of the final resolution of the discipline case before the association.

Obligations:

When professional foresters sign a silviculture prescription, they are expressing a professional opinion. They are accountable for all of the content of that document, or any other documents that represent professional opinion, work, or practice (referred to collectively in this notice as a “document” or “documents”). Accountability attaches whether or not the professional forester has performed all the work underlying the documents themselves, or, as is more typical in the case of complex planning documents signed by a professional forester, they have relied on input (or adopted wording) from technical staff, allied professionals, and even other professional foresters for part of the content.

In signing documents, professional foresters are assuring the public (among other things) that:

- All the conditions represented in the document and on which opinion is based exist;
- Necessary data have been gathered appropriately;
- Experts and interest-holders have been consulted;
- All of these data and values have been considered and incorporated into the document;

- In the opinion of the professional, the document represents an expression of; “good stewardship of forest land based on sound ecological principles to sustain its ability to provide those values that have been assigned by society” (Bylaw 14.3.1); and
- The document meets all other requirements/expectations of the profession and the law.

Professional foresters are also accountable for the results of plans, prescriptions, and/or opinions when implemented or acted upon as directed in the documents.

What then, does the term accountability mean? Accountability means that professionals must be able to answer any challenge made to their work such that the public, profession, and client is satisfied that the professional is qualified to undertake the work and that the work was done in a competent manner. Accountability also means that when professional foresters rely on the work of others, the reliance was appropriately placed given all the circumstances of the case. In other words was appropriate due diligence exercised?

Reliance:

Professional foresters routinely rely on the assistance and advice of others in the discharge of their duties. The question is not whether they can, or ought to rely on others, but under what circumstances that reliance is exercised appropriately?

When professional foresters rely on technical staff or experts (including other professional foresters), they must take the necessary steps to satisfy themselves that the persons upon whom they are relying are competent and qualified to do the work assigned. Professional foresters must also satisfy themselves that the work has been carried out appropriately and to acceptable standards. Bylaw 13 provides further advice on this point. It states, in part, that:

13.2. Where the work detailed in any Document has not been carried out directly by a Active Member and where the Active Member has satisfied him-or-herself that the work has been carried out to a standard acceptable of an Association member, he/she may sign and seal the Document and depending on the type of review undertaken, shall add a certification statement in either of the following two forms:

13.2.1. I certify that the work described herein fulfills standards acceptable of a Registered Professional Forester and that I did personally supervise the work; or

13.2.2. I certify that I have reviewed this document and, while I did not personally supervise the work described, I have determined that this work has been done to standards acceptable of a Registered Professional Forester.

13.3. Notwithstanding any other provision in these Bylaws, a member shall be held professionally accountable for any and all Documents he or she prepares in his or her professional capacity and delivers, whether the Document is delivered in original hard copy, electronic, magnetic, or any such other format, or in the expectation that the Document has been prepared and delivered in his/her professional capacity whether or not it is signed, stamped, and/or sealed by that member.

When professional foresters receive work products from others, they must review them to ensure they make sense given their own knowledge of, for example the area and site conditions, and that the data and/or recommendations/opinions are incorporated appropriately into their own work product.

The necessary considerations when relying on the work of others will vary with the circumstances of each individual case. The following list represents but a few of the more pertinent considerations when considering professional due diligence:

- How well does the forester know the physical area or the area of practice/expertise?
- Does/do the individual(s) upon whom the forester is relying have the necessary degree of education, skill, training, and knowledge to carry out the task(s) assigned?
- What steps are in place to ensure adequate instruction and supervision of individual(s) upon whom reliance is placed?

- If the forester does not personally know the individual(s), what steps have been taken to check reputation, qualifications, and quality of work?

The following section discusses due diligence in more detail.

Due Diligence:

These statements on due diligence have been developed, in most part, by the Professional Practice Committee and are ones we, as the Discipline Committee “A” Panel adopts. They are also a refinement of statements made and materials provided to the profession over the years in the course of professional development training sessions and through policy and discussion papers.

Professional foresters exercise due diligence by being prudent and doing all work with constant and careful attention.

In its simplest form, due diligence is taking (and documenting) all the necessary steps to ensure that the desired outcome is achieved or that the chances of negative consequences or outcomes are minimized. As such, due diligence is a necessary component of all aspects of practice and professional life.

Being duely diligent connotes (among other things): completeness, correctness, consistency, repeatability, and the ability to demonstrate how conclusions are

reached. It includes the use of checklists, standard operating procedures, or other mechanisms through which it can be demonstrated that all appropriate procedures were followed to ensure no relevant steps or considerations were missed.

Due diligence includes taking all necessary steps to enable professionals to demonstrate to those who may question their work that all appropriate factors were considered and steps taken to do the job in a professional manner. A crucial aspect of due diligence, therefore, includes keeping and maintaining appropriate files and filing systems as well as document retention policies and practices.

The types and varieties of checklists, standard operating procedures, or other mechanisms through which professionals can demonstrate all appropriate procedures were followed to ensure no relevant steps or considerations were missed is as diverse as is the practice of professional forestry itself. Diligent foresters develop these tools for each of the areas of practice in which they engage. The following is a list of some over-arching considerations to be canvassed when developing due diligence mechanisms. It is not exhaustive and is provided for guidance only.

- Have all relevant legal requirements have been met?
- Does the professional forester have a clear understanding of client or employer objectives and how they relate to other values or interests which are relevant to, or may impact the work?
- Is the professional forester personally familiar with all relevant characteristics of the area¹ affected by the work?
- Has all necessary and relevant background information been gathered and incorporated?
- Has the professional forester consulted with experts and/or specialists for those areas for which the professional forester is not qualified to practice or express an opinion?
- When external advice is sought from a specialist or another person, is that specialist or person qualified and competent to give that advice and does the advice given make sense based on the professional foresters own personal knowledge?
- When data are collected by another person, is that person qualified and competent to collect that data and does the data collected make sense based on the professional forester’s own personal knowledge?
- Was sufficient data collected and was collection of data done to required standards?
- Has the professional forester made a proper assessment of risks and outcomes?

As stated above, a crucial aspect of due diligence includes keeping and maintaining appropriate files and filing systems as well as document retention policies and practices. This includes an obligation to ensure that professional foresters personally keep copies of their work and all relevant background information – ancillary documents² – on which the work is based. The document retention obligations extend as far as to ensure that the client or employer has systems in place to retain the documents so that other people who may be called on to rely on the professional forester's work are able to access the information in the future. The obligation to keep personal copies of the work and ancillary documents may be relieved if the professional forester can ensure that the client or employer has systems in place to retain them, maintain their integrity, archive them, and provide the professional forester with access to those documents if and when required (including to defend the professional forester's reputation or integrity if called into question).

Conclusion:

The Discipline Committee "A" Panel wishes to point out to members that obligations and due diligence requirements discussed in this decision are non-exhaustive and do not deny the existence of other obligations and due diligence requirements. Also these obligations and requirements do not remain static over time. New obligations and requirements can, and will, arise as the profession and the practice of professional forestry evolve.

¹ The word "area" has numerous contexts. It can mean a physical location so that, for example, when a professional forester is doing site-specific work (such as a prescription) the word will include the geography, site conditions, ecology, etc. It can also mean the "subject area" of the work in question.

² These are all documents prepared in support of, or as a pre-cursor to, professional documents. (A professional document is any plan or report prepared by a professional forester that requires professional judgement.) Examples of ancillary documents include, but are not limited to: E-mails, conceptual draft notes, field notes, notes on field maps, aerial photo stratification, memos, documentation of phone calls or verbal communication, draft versions, supporting documents or publications and letters. These ancillary documents may be needed to support professional judgement decisions. If employer-filing systems do not include ancillary documents, then members should create their own filing system to include these documents.