
Guidance for Managing Non-Statutory Expectations in Forest Practices

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Guidelines

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During the Forest Practices Code (the Code) era in British Columbia, management of forest resources was focused primarily on meeting all the requirements of related statutes and associated regulations. This situation placed an emphasis on the legal context of resource management, as the Acts and regulations were prescriptive and provided detail on how things were to be done. In addition, all plans and submissions were reviewed and either approved or rejected by government workers and officials based on their understanding of the legislation. Although the government attempted to include both science and the public's interest in the forest practices statutes, expectations regarding a forest professional's practice were focused on statutory requirements. As a result, the Code made it easy for forest professionals to default to a narrow interpretation of the legislation in order to have their plans approved. In short, there was less opportunity for forest professionals to apply new knowledge, use professional judgment, experiment with ideas or engage continuous improvement strategies.

BC's *Forest and Range Practices Act 2002* (FRPA) and associated regulations do not include the same practice detail, or references to practitioners, as the previous Code. It is considered by most to be a "results based" legislative regime, with less focus on detailed requirements. So what is the role of the forest professional under FRPA? The following quote helps to answer this question.

*"While reliance on professionals in the resource sector is not new, it takes on greater significance under this new regime. The recent regulatory changes, particularly the Forest and Range Practices Act are leading to an increased level of reliance on professionals, not only to competently plan, advise, carry out and take accountability for complex tasks, but also to achieve an appropriate balance between the interests of their employers and the public – all while operating within the law."*¹

FRPA relies on professional legislation, such as the *Foresters Act 2003*, for the planning, directing, monitoring of forest practices and for achieving good forest management. It is the duty of the association to serve and protect the public interest, and ABCFP members have responsibilities to the public, the profession, to clients or employers and to other members². The *Foresters Act*, Bylaws and resolutions by council are all legal requirements for forest professionals in the practice of professional forestry. Our professional legislation, including the code of ethics and standards of professional practice, is an important component of our service to the public interest in relation to forest resource management.

It may appear that FRPA, the *Forest Act* and other legislation governing our forest

¹ "Professional Reliance in Forest & Range Management in British Columbia – From Concept to Practice," Professional Reliance Task Force, July 2006

² ABCFP Bylaw 11 Code of Ethics, March 2003.

resources lack the necessary detail to address all forest management situations. In addition, societal expectations regarding our forest resources can be both broad and specific, and do evolve over time. The FRPA statutory framework is intended to provide for responsible forest management in all types of situations, and to address the public's present and future non-statutory expectations, through the services of resource professionals who are regulated by professional legislation. Forest professionals and forest practice legislation together can provide a level of consultation and action that will achieve public expectations. To this end, forest professionals need to be aware of the important forces that evolve and exist within societal expectations for management of our forest resources.

What are non-statutory expectations?

“Non-statutory” refers to a condition, or requirement, that is not part of legislation or regulation and therefore has no legal effect. Non-statutory expectations are not specifically contained in or directed by legislation. They reflect both social values (public expectations) and professional values (personal and peer expectations) that are beyond, or additional to, the *Foresters Act* and bylaws. In this context, consideration of non-statutory expectations can be viewed as a professional obligation. Use of the word “expectation” is related to professional reliance in that the public, and users of professional service, rely on resource professionals to take into account non-statutory expectations in their practice of good forest stewardship.

This ABCFP guidance document is intended to help members understand the significance of non-statutory expectations and to influence their thinking. Outside the legal authority of ‘must do,’ is the need for resource professionals to apply their knowledge, skills and experience to positively influence outcomes and to advocate for change. Forest professionals have many opportunities to influence outcomes, including activities such as public consultation, delivery of specified results and strategies, or communication of forest management successes. Forest professionals are obliged to use science, plus their professional experience and knowledge, when they interpret and accommodate non-statutory expectations.

What are examples of non-statutory expectations?

Non-statutory expectations can be found in many written works including:

- Local area agreements with First Nations
- Local area agreements with user groups

- Non-statutory resource management plans - developed through public input and consultation
- Forest management certification requirements (e.g. Environmental Management Systems, Sustainable Forest Management Plans)
- Scientific panel recommendations
- Best management practices
- Information gathered through public consultation
- Guidebooks
- Corporate policies and procedures,
- Standard operating procedures, and
- Internal budgets and financial targets, business plans

What about good forest stewardship?

Similar to the case of new science that modifies technical application over time, societal values and expectations will cause changes to forest stewardship over time. The forest professional is responsible to seek understanding of non-statutory expectations as they relate to the principles of good forest stewardship. If non-statutory expectations advance or promote good forest stewardship, then professional consideration might include these expectations in the plan or activity. If non-statutory expectations work against good forest stewardship, then professional planning and activities would not incorporate these expectations. In both instances the forest professional is responsible to provide a rationale and to advocate for a better understanding of how their plans and actions affect the principles of good forest stewardship. The following are examples of questions that can be used to evaluate whether the quality of non-statutory expectations meet the test of good forest stewardship:

Does this non-statutory expectation:

- Adequately address relevant resource values, as identified through the various sources for determining public interest? (Refer to Interpreting the Public Interest guidance paper 2002).
- Adversely affect identified resource values, beyond the required statutory limits, within the next few years?

c) Adversely affect the quality and quantity of identified resource values for future generations?

d) Adversely affect the capacity of the land, at the local and/or landscape levels, to provide valued forest resources for future generations?

e) Involve competing expectations or special interest expectations or the expression of value judgments? Will my consideration of these expectations and my subsequent actions impact the sustainability of the resource? What is my duty and role where trade-offs are necessary?

How do I consider the non-statutory expectations in my professional work?

The following actions can demonstrate that forest professionals have considered non-statutory expectations in their professional work:

- Remain open to questions, ideas, comments from others who have an interest in your prescriptions, designs, plans and actions. (Refer to Interpreting the Publics Interest guidance paper 2002)
- Be committed to your professional obligations, and to your employment role, relative to non-statutory expectations you've identified. Take opportunities to explain the relationship. (Refer to Professional Independence guidance paper 2000)
- Include sufficient plan and/or prescription detail to communicate both current conditions and expected results. (Refer to Professional Quality Field Work guidance paper 2008).
- Adapt to changing conditions and circumstances. Use a professional quality rationale to communicate what is proposed and why. (Refer to Professional Quality Rationales and Commitments guidance paper 2008).
- Use professional documentation as a means to explain your forest management decisions, to record follow up and to demonstrate good forest stewardship.
- Demonstrate quality assurance and continuous improvement processes. The public and users of professional services need to have reason for continuing to support and believe in our forest professionals and our practice of professional forestry. (Refer to ABCFP Continuing Competency Program).

What about non-statutory expectations that I am not aware of or the ones I miss? Am I expected to cover all bases - leaving no stone unturned? When have I done enough?

The standard for identifying non-statutory expectations is based on the test of reasonableness. A “reasonable” decision is cogent and appropriate for the circumstances, and is to the same standard of care expected of any reasonably prudent forest professional in a similar situation. Therefore, a professional must take reasonable care and not exclude from consideration, in planning or action, those expectations which they can reasonably foresee. Additionally, each forest professional is responsible to make reasonable efforts to identify any expectations that may be affected by his/her planning or actions. A forest professional will demonstrate ongoing diligence by documenting his/her ongoing exploration of non-statutory expectations - in advance, during and after the forest management planning or action.

Scenario

A volume-based tenure holder partially operates in a sensitive area with unique ecosystems and forest cover types. This area has received worldwide attention because of old-growth forests that supply important habitat for a species at risk. Various publics opposed conventional harvesting in this unique area, and after many protests and much conflict, the licensee, environmental groups and the provincial government agreed that harvesting would only be carried out in conformance to recommendations from an independent board of experts.

An ABCFP member is tasked to prepare a forest stewardship plan for the licensee. It is to be publicly advertised and then reviewed for approval by other members who work for the provincial government. Stewardship plans must comply with provincial statutory requirements and the content of these plans is dictated by regulation, which specifies a set of resource objectives that must be addressed in the plan. These statutory planning requirements do not specify independent board recommendations; therefore, these expert recommendations become non-statutory expectations.

The member is not obligated under legislation to include the board’s recommendations in the forest stewardship plan, but has a public and professional responsibility to consider them. The member and the licensee have jointly discussed the potential consequences of remaining silent on these non-statutory expectations, and both agree that the consequences could include a loss of the licensee’s “social license” to practise forest stewardship in the area. In addition, there would be

potentially negative consequences for the member. What are the member's options for recommendation to the licensee?

Member's Options: (not a complete list, nor a list of obligations)

1. Include the independent board recommendations in the forest stewardship plan, which would turn these recommendations into statutory requirements
2. Address the independent board recommendations in a separate plan that is developed through consultation with other groups involved in developing and approving the recommendations.
3. Address the independent board recommendations in a separate plan that is developed through public consultation.
4. Consider an all-inclusive resource stewardship plan.
5. Publicly advertise the separate independent board recommendations plan along with the statutory required forest stewardship plan.
6. Establish a monitoring plan to continually improve the independent board recommendations.
7. Keep the public informed of how the independent board recommendations are being implemented and continually improved.

Summary

Non-statutory expectations count! Non-statutory expectations come from a variety of sources. Forest management success is no longer measured by just meeting the letter of statutory requirements. Plans can state that they are consistent with a litany of statutory requirements, which is appropriate; however, professional plans need to include consideration of more than just the statutory obligations. Forest professionals are required to exercise professional judgment and to use professional principles when considering and applying non-statutory expectations in their professional practice. Self-regulated professional status in the practice of professional forestry is a privilege granted by government for the purpose of serving and protecting the public's interest. Effective management that includes non-statutory expectations will contribute to public trust, good forest stewardship, and forest management success for clients/employers, the profession and forest professionals.



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