
Professional Reliance Principles for FRPA Operational Plans and Declarations

February 2007

GUIDELINE

Contents

Statement	3
Discussion	4
Operational Plans: Forest Stewardship and Woodlot Licence Plans	4
Section 107 Declarations	4
Professional Judgment under FRPA	5
Stewardship Advocacy	7

As part of its continuing regulatory mandate, the Association of BC Forest Professionals (ABC FP) publishes guidance to members on a range of issues. This guidance paper discusses the roles and responsibilities for forest professionals involved with preparing, reviewing, and/or approving forestry related operational plans and declarations under the *Forest and Range Practices Act* (FRPA). This includes plans and declarations governed by the *Forest Practices Code of BC Act* as it continues to apply under Part 11 of FRPA. As such, this guidance replaces the ABCFP October 12, 2005, statement—ABC FP Statement: Forest Appeals Commission Decision on Free to Grow Declarations—issued in response to the Forest Appeals Commission decisions (2004-FOR-020(a) and 2004-FOR-025(a)).

In the future, the association plans to provide more detailed guidance on a number of subject areas discussed in this document.

Statement

FRPA establishes mandatory content requirements and mandatory approval tests for operational plans and declarations¹. Under FRPA, an operational plan containing the prescribed content and meeting the prescribed approval tests must be approved by the delegated decision maker. Likewise, a declaration meeting the legislative requirements must not be rejected.

Within the application of the content and approval or acceptance/rejection (in the case of declarations) tests, there is discretion to apply professional judgment. However, exercising professional judgment does not authorize or require a statutory/delegated decision maker—who also happens to be a professional bound by the *Foresters Act* and ABCFP Bylaws—to add or omit approval tests not specified by legislation. Similarly, prescribing professionals bound and guided by the *Foresters Act* and ABCFP Bylaws must address the mandatory content requirements and approval tests for their FRPA plans and declarations².

A member who believes that good forest stewardship is at risk has the right and the duty to advocate for change. This duty can be met in a number of ways, including proposals for voluntary action or legislative change. However, any such advocacy efforts must not be used to subvert or frustrate the legally mandated preparation, review and approval processes for operational plans or declarations. In deciding what actions or advocacy efforts are required, a member must consider whether a

1 Forestry related operational plans are defined under FRPA as Forest Stewardship Plans and Woodlot Licence Plans. For the purpose of declarations under FRPA Section 107, operational plans also include Forest Development Plans, Logging Plans and Site Level Plans to which Part 11 of the *Foresters Act* applies.

2 Common to all forest professionals, whether they are involved in prescribing, reviewing, advising on or approving, plans, prescriptions, or declarations is the very high expectation of competence, conduct, collegiality, and quality of work that is placed upon them by their profession and the public interest in whose name they practice.

particular situation will result in a practice detrimental to good forest stewardship and if the Code of Ethics Bylaws 11.3.4. or 11.3.5. apply to this situation.

Finally, members asked to carry out a service in compliance with legislation that directs them to do something that, acting as a reasonable and responsible professional, they feel they cannot support may consider declining to carry out that service or withdrawing their services. In all cases, members must follow the *Foresters Act*, ABCFP Bylaws (including the Code of Ethics and Standards of Professional Practice) and resolutions³.

Discussion

Operational Plans: Forest Stewardship and Woodlot Licence Plans

The content requirements and approval tests for Forest Stewardship Plans (FSPs) and Woodlot Licence Plans (WLPs) are prescribed by FRPA. FRPA stipulates that a plan must be approved if in the case of an:

- FSP, the plan satisfies the requirements of Section 5 of FRPA; and
- WLP, the plan satisfies the requirements of Section 13 of FRPA.

When approving these plans, a registered professional forester (RPF) cannot substitute his/her own view of what the content requirements or approval tests in the forest practices legislation should be. The RPF's professional obligations do not authorize or require him/her to depart from the content or approval tests set out in FRPA where the legislature and Cabinet, in this case, have clearly spoken. Similarly, an RPF preparing these plans⁴ must address the content requirements and approval tests in his/her plans. Any forest professional who feels that good forest stewardship is not supported by the legislation has an obligation to advocate for change. Advocacy must be done in a professional manner with respect for the legislative framework.

Section 107 Declarations

Section 107 of FRPA allows an agreement holder to declare that he/she has met an obligation under the legislation, related plans, permits or other authorizations. Section 107 declarations are to be made by the agreement holder. Forest professionals will be called on to make the necessary assessments and provide opinion and/or advice as to whether the obligation has been met whenever the practice of

³ Section 22 of the *Foresters Act* authorizes a complaint made against a member for incompetence, conduct unbecoming a member (as defined in the *Foresters Act*), and contraventions of the *Foresters Act*, ABCFP Bylaws or resolutions.

⁴ The definition of the practice of professional forestry and operation of the *Foresters Act* requires that a forest professional (in this case an RPF) must oversee the production of and sign the FSP/WLP. This requirement is in addition to the requirements under FRPA for the agreement holder to sign the plan. The obligation arises out of the *Foresters Act* rather than FRPA.

professional forestry is engaged⁵. Bound and guided by the *Foresters Act* and ABCFP Bylaws, the forest professional preparing declarations on behalf of his/her employer/client or advising the employer/client on such declarations must address the question: has the agreement holder (client or employer) met their specified legal obligations?

Situations may arise in which the agreement holder has met the specific legal obligation mandated under the legislation, but the forest professional believes that, in the interest of good forest stewardship, something different could or should be done. The forest professional must then provide advice to the client/employer on what, if any, different action could/should be undertaken. Advice need not be given on every declaration provided that the overall duty to advocate for and practise good forest stewardship is met⁶.

The client/employer, exercising management prerogative, may or may not choose to act on the advice given. Normally, that would be the end of the issue and the forest professional will have met his/her professional obligations. In extreme cases, where a practice would be detrimental to good forest stewardship, the forest professional is obliged to consider his/her obligations under ABCFP Bylaws 11.3.4. and 11.3.5.

This principle of professional reliance, when upheld by the association and its members, allows for a results based legislative regime in which good forest stewardship interests are met, rather than one which prescribes detailed and specific processes to meet forest stewardship goals.

Professional Judgment under FRPA

Although the legislative tests discussed above prescribe the boundaries for content and approval of operational plans and acceptance/rejection of declarations, there is significant room and responsibility for professional judgment within these tests.

The legislative tests require that, unless the legislation states otherwise, a forest stewardship plan must include at least one result or strategy for each objective that applies to that plan. The result(s) or strategy(ies) must be consistent with the objectives. There is no simple answer as to what makes a result or strategy consistent. Therefore, professionals have the opportunity to consider and advance

⁵ The *Foresters Act*, being right to practice legislation, requires that a forest professional be retained for any work defined as professional forestry under the *Foresters Act* (unless otherwise specifically authorized by another act governing the practice of another profession or occupation). Whether the forest professional must be an RPF or RFT will depend on whether the work falls within the Guidelines on Scope of Practice for Registered Forest Technologists. The assessments, opinion and advice underpinning the declaration will be contained either in the declaration itself (in which case it will be a 'professional document' and must be signed and sealed by the forest professional) or in a separate signed and sealed professional document in support of the declaration.

⁶ Reference, for example, ABCFP Bylaws 11.3.1. through to 11.3.3.. This obligation applies to all aspects of stewardship related to the obligation that is the subject of the declaration, including the full range of values (timber and non-timber), and economic, environmental, and social considerations, to the extent they are relevant to the declaration.

various approaches to a particular objective. As long as an approach meets the consistency test, as well as other applicable tests, it is acceptable for approval. A professional forester called upon to prescribe an approach must ensure that it meets the prescribed content and approval tests that are consistent with the principles of good forest stewardship.

Professionals have the opportunity to give advice to licensees and BC Timber Sales managers that supports innovative approaches to achieve good stewardship of the forest land based on sound ecological principles to sustain its ability to provide those values that have been assigned to it by society. Although the approval tests differ, similar principles apply to the other contents of FSPs, namely stocking standards and measures.

Where a forest professional⁷ is called upon to assist a licensee or other person in making a declaration, the member must apply professional judgment in determining two critical matters: (i) what is the legal obligation that is the subject of the declaration; and (ii) has that legal obligation been met. The legal obligations are not always simple to determine or objective in nature. Judgment is required to determine the precise nature of complex commitments, which in and of themselves sometimes turn on subjective tests.

As has already been noted, FRPA has specific and mandatory language in relation to content requirements and approval tests for operational plans and acceptance/rejection of declarations. If the FRPA plan or declaration meets those mandatory content requirements and approval (operational plan) or acceptance/rejection (declaration) tests, in the case of:

- An operational plan, it must be approved; and
- A declaration, it must not be rejected.

Additional content requirements or approval, acceptance/rejections tests can neither be imposed nor requested by statutory/delegated decision makers, short of amending the legislation itself. This does not, however mean, that additional content in support of an operational plan or declaration cannot, or should not, be prepared. In many cases it is appropriate, and particularly in the case of operational plans may be necessary, to prepare additional supporting material. Such material necessary for the operational plan should be clearly separated, usually in separate documents, from the operational plan for which content requirements and approval or acceptance tests are specified in legislation.

⁷ Either an RPF or RFT depending on the nature of the declaration and whether it falls within the defined scope of practice for an RFT or an RPF.

Forest professionals are called upon to advise their clients/employers on the full range of issues relating to forest management and the practice of professional forestry. Some of those issues are included in/addressed by FRPA; others are not. Those issues covered by FRPA need to be dealt with in the FSP, operational plan or declaration and related supporting materials. Those issues not covered/addressed by FRPA must be addressed through other documents, plans, prescriptions, advice, memoranda, etc. responsive to the avenue(s) through which the issue(s) arise.

Stewardship Advocacy

Forest professionals have obligations under their Code of Ethics, among other things, to advocate and practise good stewardship of forest land based on sound ecological principles to sustain the ability of the forest land to provide those values that have been assigned to it by society (ABC FP Bylaw 11.3.1.), to uphold professional principles above the demands of employment (ABC FP Bylaw 11.3.2.), to work to improve practices and policies affecting stewardship of forest land and to take action where they believe a practice is detrimental to good stewardship (ABC FP Bylaws 11.3.4. and 11.3.5.).

One of the main sources forest professionals will consult to determine the values assigned by society is legislation. The forest professional must consider both non-legislative and legislative sources to understand the forest stewardship requirements and societal values he/she needs to address in his/her practice⁸. With respect to legislative requirements, a forest professional cannot, therefore be disciplined for carrying out an activity that is legally mandatory. Where legislation compels something to be done and the forest professional has been retained⁹ to do that which the legislation compels, that forest professional must either:

- Do as the legislation requires; or
- Decline to act in that particular case, or withdraw their services generally.

In deciding whether to withdraw his/her services, the forest professional must consider whether he/she has exhausted all other reasonable means to resolve the issue(s)¹⁰ and must, at all times, act as a reasonable and responsible professional who

8 See also ABCFP guidance paper "Interpreting the Public's Interests," May, 2002, at: http://www.abcfp.ca/regulating_the_profession/documents/guideline-public-interest.pdf; and "Managing for Species at Risk: What are a Forester's Professional Responsibilities?," February, 2003, at: http://www.abcfp.ca/regulating_the_profession/documents/guideline-species-at-risk.pdf, and the Guidelines for Interpretation to the Standards of Professional Practice, at: http://www.abcfp.ca/regulating_the_profession/documents/guideline-practice-standards.pdf, for a more full discussion of public interest and stewardship influences on professional practice.

9 The word 'retained' is used to include a range of types of employment relationships and ways in which work may be assigned to or accepted by a forest professional.

10 Including taking action required under Bylaws 11.3.4. and 11.3.5.

is mindful of his/her obligations to the public, the profession, his/her client, employer and fellow members. If withdrawing, forest professionals are advised to record their reasons for declining or withdrawing. The *Foresters Act* makes it an offence to take punitive action (including disciplinary action by the regulatory body) against a member who fulfils his/her obligations under the *Foresters Act*, ABCFP Bylaws and ABCFP resolutions to exercise professional judgment or take independent action in the practice of professional forestry.

A forest professional's obligations under the *Foresters Act* and ABCFP Bylaws includes the requirements of competence, independence, professional conduct and integrity as well as a member's requirements under the ABCFP Code of Ethics and Standards of Professional Practice. Under the Code of Ethics, for example, forest professionals are obliged to advocate and practise good stewardship of forest land and base their practice on sound ecological principles to sustain the ability of forest land to provide the values that have been assigned to it by society.

Forest professionals are called upon to advise clients and employers on professional forestry matters and to carry out professional forestry activities, which are reserved exclusively to those authorized to engage in the practice of professional forestry under the *Foresters Act*. When determining whether their work or work product represents good forest stewardship, forest professionals are entitled to rely on legislation as a valid expression of values assigned by society¹¹. This said, there is still considerable room for them to advocate generally that stewardship can be improved and that changes should be made either to the legislative scheme itself, if there are deficiencies in the scheme or unanticipated consequences detrimental to good forest stewardship exist, or through additional actions/measures that are consistent with the scheme and voluntarily undertaken by the client/employer that would address stewardship concerns.

A forest professional should advocate for improvement whenever, acting as a reasonable and responsible professional, he/she can demonstrate that good forest stewardship is at risk. This advocacy obligation can be met in a number of ways. One way is to advocate for change to legislation or land/resource use determinations made by government or promote new land use designations, new objectives, new resource features, etc., or promote changes to the legislative content requirements

¹¹ This is particularly the case in forestry where provincial-scale stewardship decisions (captured within legislative provisions) often involve a complex balancing of environmental, social, and economic considerations. These are questions that government, advised by forest professionals and others, must answer as representatives of the public trust. Conversely, there will often be site-specific circumstances that are not addressed in the legislation but do require forest professionals to exercise their judgment to achieve an appropriate balance of interests.

and approval tests themselves¹². Another way is to look for ways through which concerns may be addressed by the client or employer on a voluntary basis without the need for legislative change. The appropriate avenue to pursue will depend on individual circumstances and the judgment of the forest professional.

¹² In all cases the forest professional carefully analyzes the situation to separate out circumstances where something meets stewardship tests but he/she does not agree with (in which case advocacy for change is not required) from situations where, acting as a reasonable and responsible professional he/she can demonstrate that good stewardship is at risk.



**ASSOCIATION OF
BC FOREST PROFESSIONALS**

1030-1188 West Georgia Street
Vancouver, BC V6E 4A2

Tel: 604.687.8027 Fax: 604.687.3264

E-mail: info@abcfp.ca

Web Site: www.abcfp.ca

Ensuring BC's Forests Are In Good Hands.