

Foresters Act Enforcement Policy

(Approved by council May 28, 2004)

1.0 Introduction

One of the Association of BC Forest Professional's (ABC FP) duties listed in Section 4 of the *Foresters Act*¹ is to enforce the *Foresters Act*. There are two avenues for enforcement. The first is through the complaints resolution process to resolve complaints made against members for issues of practice and conduct (discipline complaints). The processes and procedures for discipline complaints are described in Section 22 through Section 30, inclusive, of the *Foresters Act* and in ABCFP Bylaw 14. Discipline complaints are not dealt with in this policy.

The second avenue for *Foresters Act* enforcement is through actions that may be taken to enforce the rights of title and practice granted under the *Foresters Act* against non-members who engage in unauthorized practice or who use a title or designation reserved under the *Foresters Act*. This avenue of enforcement is the subject matter of this policy. This Foresters Act Enforcement Policy will first set out the statutory authority on which such enforcement actions are based. It will then describe the role of individual ABCFP members in enforcing the *Foresters Act*. Finally the policy will describe the role of the ABCFP in enforcement actions.

2.0 Statutory Authority

Appendix 1 contains a description of all of the sections of the *Foresters Act* relevant to this policy. In brief, the *Foresters Act* defines the practice of professional forestry in Section 1 and reserves the right to practice to Registered Professional Foresters (RPFs) in Section 20. Section 20 also permits Registered Forest Technologists (RFTs) to engage in certain aspects of the practice of professional forestry under terms and conditions set out in the *Foresters Act*, bylaws and council resolutions.

Section 19 of the *Foresters Act* describes the titles (such as "Registered Professional Forester" and "Registered Forest Technologist") and designations (such as "RPF" and "RFT") that can only be used by people who are members of the ABCFP. Appendix 1 contains a more complete list of titles and designations reserved under the *Foresters Act*.

A variety of remedies are available under the *Foresters Act* to deal with issues of unauthorized practice or use of title or designation. Section 21 of the *Foresters Act* gives the association the authority to apply for an injunction against persons who contravene the *Foresters Act*, bylaws or council resolutions. Section 32 of the *Foresters Act* provides offence remedies including monetary penalties of up to no less than \$10,000 per occurrence for persons who commit offences as defined under the *Foresters Act*. Although the prosecution for offence provisions do exist and can be utilized, the more readily available method for enforcement action would be to apply to the courts for an injunction to restrain a person from contravening the *Foresters Act*, bylaws or council resolutions.

Prosecutions under the offence provisions of the *Foresters Act* or applications to the courts for injunctions are the most severe enforcement measures available under the *Foresters Act*. Resort to these measures are reserved for the most serious of cases or where other efforts to gain compliance with the *Foresters Act* have failed. Both members of the ABCFP and the ABCFP itself have roles to play in *Foresters Act* enforcement. The remainder of this policy will describe the roles played by each.

¹Bill 5 of the 4th Session of the 37th Parliament, to which Royal Assent was given on June 20, 2003.

3.0 Role of the ABCFP Member in Act Enforcement

Any member of the association (or the public), who believes that a person is violating title or practice rights reserved under the *Foresters Act*, may seek enforcement under the *Foresters Act*. In most cases, individual members will be aware of potential contraventions of the *Foresters Act* well before the ABCFP. If and when a member becomes aware of a potential contravention of the *Foresters Act*, it is expected that they will take immediate steps to address the issue. In some cases, this will mean referring the matter directly to the association. In most cases, however, members can address and resolve the issue directly with the person(s) involved either on their own or with the help of colleagues and supervisors.

Members who are aware of a potential contravention of the *Foresters Act* must take care to gather the necessary facts before engaging in discussions with the person(s) they think are contravening the *Foresters Act* (the “contravening person(s)”) as a first attempt to rectify the situation. The contravening person’s employer (whether it be an individual or corporate entity) may also be included in the discussions.

If this first level of interaction fails to remedy the situation, members can seek the assistance of colleagues or supervisors. Only if the situation is not resolved at this stage (or it is impossible or impractical to resolve through these methods) is the member expected to bring the matter to the attention of the association through the registrar. Members are encouraged to provide as much information about the specifics of the situation as they can. This will assist in decision making relative to what, if any, further steps need to be taken against the contravening person(s).

Advertisements for employment in British Columbia for individuals with professional forestry expertise to engage in activities falling within the restricted rights to practice under the *Foresters Act*, but without making a specific requirement of membership in the association, should also be dealt with in the same manner. In these cases, it is often best to communicate with the agency or organization that placed the advertisement rather than the publication that carried it.

4.0 The Role of the ABCFP in Act Enforcement

The association may become aware of potential contraventions of the *Foresters Act* from a number of sources. First, it may receive notice of a concern from its own members who have not been able to resolve a concern following the steps set out in the preceding section of this policy. Second it may receive notice of potential contraventions from the public, other professional regulatory bodies, employers and government boards and agencies. Lastly, notice of possible contraventions may come from association council and staff in the course of their duties.

Notification(s) of possible contraventions of the *Foresters Act* will be forwarded to the registrar who will maintain a case ledger to record the issue and track subsequent actions aimed at resolving it. If a member has forwarded a concern about a potential contravention to the association or if the registrar is made aware that a member has made previous attempts to resolve the potential contravention, the registrar will make best efforts to contact the member to discuss the situation and determine what, if any, further actions are advisable and may be taken by the association.

Where the facts of a case suggest that a potential contravention has arisen out of ignorance of the *Foresters Act* and is of minor consequence to the public interest, the registrar will forward a standard advice letter pointing out the apparent contraventions of the *Foresters Act* and request future compliance. The registrar will follow up on this letter to ensure compliance with the *Foresters Act* is achieved.

Where the concern is over advertising for employment, the registrar will first contact the employer to obtain a full description of the activities required of the person filling the position advertised.

In almost all cases, an incremental approach to seeking compliance with the *Foresters Act* will be selected. As a first step, voluntary compliance from the person suspected of contravening the *Foresters Act* will be sought through education and discussion. If these steps do not work, or are not appropriate in the circumstances, more formal steps will be initiated. At the far end of the enforcement spectrum, where the facts of a case suggest that an application for injunction or a prosecution is warranted and will succeed, the registrar will prepare a case brief outlining the issues, relevant case law (if available) and an assessment of likelihood of success.

The registrar will consult with the executive director and such other persons, if any, designated by council from time to time to assist staff with enforcement related matters. The registrar will then decide whether to proceed with an injunction application or whether council should be consulted before any further action will be attempted.

Where the case is serious, but the registrar believes that injunction or prosecution will not be an efficient or effective remedy, the matter will be brought to council for deliberation.

The registrar may retain and instruct legal counsel to assist with some or all aspects of enforcement considerations and enforcement proceedings contemplated under this policy.

5.0 Applying for Injunction

Without limiting the registrar from performing his or her duties to manage enforcement proceedings the registrar may seek an injunction where in his or her opinion:

- The alleged contraventions place the public interest at risk;
- The alleged contraventions impinge upon the statutorily granted rights of members of the association, and less drastic enforcement actions are impractical in the circumstances or have been attempted and have failed;
- The alleged contraventions appear to be the result of ignorance of the law, blatant disregard for the law, or a belief that the actions are otherwise authorized;
- An injunction serves the interests of the association better than other forms of resolution.

6.0 Reporting

All actions taken to enforce the *Foresters Act*, other than those relating to minor matters, together with the disposition of these, will be reported by the registrar to council at its regularly scheduled meetings. A summary and synopsis report will be prepared for the association's annual report. In the event no formal actions were taken in the year, the registrar will prepare a report that records this fact.

All minor matters dealt with by investigation and correspondence will be reported by the registrar at regular council meetings and recorded in the minutes.

The case ledger will record the final disposition of all compliance and enforcement matters. A summary of this ledger will be kept on the ABCFP's web site.

7.0 Evolution of Foresters Act Enforcement Policy

Council, will annually review the *Foresters Act* Enforcement Policy in conjunction with the portfolio "Goals and Responsibilities" document revision. Consideration can be given to developing compliance and enforcement bylaws if experience suggests that this would better serve the association.

Appendix 1: Description of Relevant Sections of the *Foresters Act*

Section 1

Definition section in which the practice of professional forestry is defined.

Section 4(1)(c)

Establishes the duty of the association to enforce the *Foresters Act*.

Section 4(2)(a)(ii)

Makes it an object of the association to uphold the public interest in the practice of professional forestry by ensuring that each person engaged in the practice of professional forestry is accountable to the association.

Section 19

Restricts the titles “Professional Forester,” “Registered Professional Forester,” “Transferring Professional Forester,” “Visiting Professional Forester,” “Registered Forest Technologist,” “Forester in Training,” “Forestry Pupil,” “Trainee Forest Technologist”; and the designations “RPF,” “RFT,” “FIT,” “FP” and “TFT,” to members of the association.

Section 20

Restricts the right to practice professional forestry to Registered Professional Foresters and permits Registered Forest Technologists to engage in aspects of professional forestry practice (under terms and conditions set out in the *Foresters Act* and bylaws) without offending the *Foresters Act*.

Section 20 also recognizes that: (a) special permit holders acting within the limits of their permits; and (b) enrolled members practising under supervision do not contravene the *Foresters Act* when they perform activities that fall within the definition of professional forestry practice.

Section 21

Gives the association the ability to apply to the courts for an injunction to restrain a person from contravening the *Foresters Act* or bylaws or resolutions of council.

Section 32(1)

Makes it an offence for a person who is not a member of the ABCFP to assume the titles or designations listed in Section 19 of the *Foresters Act* or to use those titles or designations to advertise or promote their businesses.

Section 32(6)

Sets out the monetary penalties for committing an offence under the *Foresters Act*.