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# When to Comment on Potential Discipline Matters

February 2003

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**Policy**

## Preface

This policy was approved by council in February 2003.

## Background

Historically, the Association of British Columbia Professional Foresters<sup>1</sup> has maintained a policy that it would not comment on matters that may or may not be in front of disciplinary processes. Part of the rationale for this policy is rooted in the strongly-held presumption of innocence that anchors our legal system. The presumption of innocence is one that normally only applies to criminal and not civil matters. Professional regulatory matters—in which a person’s livelihood and professional reputation may be at stake—fall somewhere between criminal and civil standards of proof and process, hence the need for more than the civil protections such as a presumption of innocence and confidentiality through the investigatory stages.

A mere pronouncement that the professional governing body is looking into the practice of member X, or acknowledging that a complaint has been laid against member X, places that member under a cloud of suspicion, subjects that member to tremendous stress, and can have serious adverse consequences on a person’s career and personal life; all before a case has been proven or disproven through investigation and hearing.

The association must also take care not to place itself in a position of potential civil liability for imprudently speaking out on a matter before due process has been undertaken or completed.

## Policy

This said, council recognizes that in some circumstances, the interest of the public, or the profession (the integrity of the profession) demands that the association not remain quiet. In the past the circumstances where the balance tips towards speaking out have been rare; they must be determined on a case-by-case basis. The test to be applied will be whether the risk of harm to the public interest and/or profession by remaining silent outweighs the potential for harm to the individual(s) involved by commenting on the matter.

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<sup>1</sup> The association changed its name in December 2003 to the Association of BC Forest Professionals.

Therefore, council has concluded as follows:

1. The general rule is that the association will not comment on matters that may be the subject of complaints resolution processes, whether as a matter of investigation or alternative dispute resolution mechanisms such as (by way of example): negotiation; arbitration; or mediation.
2. Once a matter has passed through the investigation stage and a notice of inquiry has been issued the matter is considered to be “public” and the notice of inquiry may be published. To date, however, the association has not taken steps to publicize the issuance of a notice of inquiry or the fact that a hearing is under way. Council may, at some future date, re-visit this aspect of this policy in light of shifting public policy considerations and the need to ensure that, at all times, the association acts in the public, rather than self, interest.
3. Where council, acting in consultation with, and advice of the appropriate discipline committee and staff, decides that in a particular case, the risk of harm to the public interest and/or profession by remaining silent outweighs the potential for harm to the individual(s) involved by commenting on the matter, it will issue, or cause to be issued, a statement about that case.
4. When a decision to issue a statement is made, due regard will be paid to the need to preserve the rights and reputation of all person(s) involved in, or affected by the case, and the presumption of innocence to which they are entitled.
5. Council will make best efforts to contact the complainant and the member complained against to provide them with advance notice of its intention to issue a statement.
6. Words to the effect of: “We are aware of the situation and are studying/ investigating/looking into it,” may be used. Such other detail as may be necessary in the circumstances may be added, always erring on the side of caution and providing only as much information as is reasonably necessary in the circumstances. Care will be taken not only to point out that the association has a robust complaint resolution process, a key tenant of which is the presumption of innocence until and unless proven otherwise in a forum of competent jurisdiction, but also to preserve the integrity of this presumption in favour of the person subject to a complaint.



330-321 Water Street  
Vancouver, BC V6B 1B8  
Tel: 604.687.8027 Fax: 604.687.3264  
E-mail: [info@abcfp.ca](mailto:info@abcfp.ca)  
Website: [www.abcfp.ca](http://www.abcfp.ca)

*Ensuring BC's Forests Are In Good Hands.*