



File: 200-20/Professional Reliance Review

December 20, 2017

By email: ENV.minister@gov.bc.ca

The Honourable George Heyman
Minister of Environment and Climate Change
PO Box 9047 Stn Prov Govt
Room 112, Legislature Buildings
Victoria, BC V8W 9E2

Dear Minister Heyman:

Re: Professional Reliance Review

Please find enclosed a submission from the Forest Practices Board for consideration as part of government's review of the professional reliance model in British Columbia. The document has also been provided through the stakeholder submission process. The submission is based on the experience of the Forest Practices Board in auditing and investigating forest and range practices and reviewing the role of professionals in the course of that work. Should you have any questions or require further discussion of the submission, please contact Dave Clarke, Executive Director at 250-213-4702, or John Pennington, General Counsel at 250-213-4721.

Yours sincerely,

A handwritten signature in blue ink that reads "Timothy Ryan". The signature is fluid and cursive.

Timothy S. Ryan, RPF
Chair

cc: The Honourable Doug Donaldson
Christine Gelowitz, ABCFP
Peter Mitchell, EGBC

Forest Practices Board

Submission to Professional Reliance Review

As the public watchdog for sound forest and range practices the Forest Practices Board has taken an active interest in issues of professional reliance. The Board has published numerous reports and has made several recommendations touching on professional reliance as it relates to forest and range practices.

In general, since its inception, the Board has found that licensees engage professionals and rely on them to carry out a variety of scientific and technical functions, including on sound and appropriate practices under the *Forest and Range Practices Act* and the *Wildfire Act*. We have no doubt that this contributes to the generally high level of compliance the Board usually finds in its audits and investigations.

However, as the Board has previously noted, there are gaps in the regulatory framework that need to be filled in order to ensure that professional reliance is achieving its full potential and that the public has confidence in government resource management decisions. The Board's recommendations in this submission focus on correcting these deficiencies. These recommendations address the mandate of the Professional Reliance Review concerning "conditions governing the involvement of qualified professionals in government's resource management decisions."

Best practices

One area the Review is examining is whether professional associations employ best practices to protect the public interest. The Forest Practices Board believes it is important to note that the continual improvement loop, of which the Forest Practices Board and professional associations are a part, has worked well on many occasions. There are numerous examples where professional associations have responded to issues identified by the Board by issuing practice directives and guidelines, improving education and otherwise increasing awareness among professionals of issues related to compliance with legislation, public safety and management of resources.

District manager authority

One important step the BC Government could take in the short term would be to strengthen the authority of district managers to safeguard the public interest where proposed forestry activities put significant environmental and community values at risk.

One of the key conditions that must govern the involvement of professionals in government's resource management decisions is that government must reserve to itself the right to act when necessary to protect the public interest. The Forest Practices Board has seen situations where forestry development was putting environmental and community values at risk, yet district managers could do little to affect the development and protect the public interest. The Board has also encountered situations where

conflicts between resource users could have been avoided if district managers had the authority to intervene to ensure operations would meet local management objectives and respect tenured interests.

These situations have led the Board to conclude that there is a need for district managers to have authority over operational decision-making by giving them conditional discretion over the issuance of cutting permits and road permits. This discretion, which district managers currently do not have, would only be used in specific and limited circumstances. It would strengthen the district manager's role in safeguarding the public interest when dealing with matters such as logging on steep slopes, cumulative effects management, visual quality, conservation of species at risk or conflicts between tenure holders. This would improve public confidence in the professional reliance framework. In order to promote consistency of decision-making, district manager rationales in these situations should be made public.

The Forest Practices Board discussed these issues and provided examples in its 2015 report, *District Managers' Authority Over Forest Operations*. The report recommended enacting a regulation under section 81.1 of the *Forest Act* as a possible solution.

Setting objectives for important forest and range values

In the absence of suitable government direction, professionals cannot be expected to guess at government objectives or balance public values. In a results-based regime, where licensees are given a free hand to operate as long as they meet government objectives and follow practice requirements, it is incumbent on government to set clear, measurable and enforceable objectives at an appropriate scale. This has not yet been done to a sufficient degree. The Forest Practices Board noted, in its 2014 report, *A Decade in Review: Observations on Forest and Range Practices in British Columbia*, that

The full suite of government objectives has not been established, leaving, in some areas, a vacuum in government policy, which licensees and their professionals should not be expected to fill.

In order to fulfill the potential of professional reliance in forestry and range practices while maintaining public confidence, the government needs to set legal objectives applicable to all relevant activities; objectives that are periodically reviewed and updated. Setting such objectives needs to be a collaborative effort between government, First Nations and all parties potentially affected, in order to ensure balance among environmental, social and economic aspects of natural resource management. This could be done as part of a modernized land use planning process.

A related concern is that there is ambiguity about what responsibility individual professionals have when more than one licensee operates on the same landbase. Under the current legislative framework, one licensee may design access and harvesting to achieve certain results, including retention of wildlife habitat, only to have a subsequent licensee undermine these results by harvesting the retention areas. The Board has seen numerous examples of this.

Subject to direction from government or designation of licensee area planning responsibilities, it may be useful for the Association of BC Forest Professionals to provide guidance. Such guidance could address the extent to which individual foresters should inform themselves of the intent behind previous road construction and harvesting patterns and to what extent this intent should be respected.

Transparency of resource management decision making

It will be important to improve the transparency of decision making. When decisions affecting members of the public are made on the basis of professional assessments, greater transparency would help to promote public confidence.

For example, a Board investigation, *Laird Creek Landslide* (2013) looked into a landslide that caused damage to the water supply of about 100 homes. The slide was caused by a combination of factors, including logging that occurred in the area some years earlier. The licensee met the legal requirements but the Board identified opportunities for improvement in the overall management framework in situations where significant resource values are potentially at risk. This is especially the case if there is a high level of interest by the public and where the risk is borne by the public and not the professional or licensee making the decision.

The Board suggested that in such cases, prior to development, licensees should undertake a systematic, transparent and well-documented decision-making process that shows appropriate consideration of the potential impacts of harvesting, silviculture systems and roads to public and third-party interests. The process should include documentation of the professional advice received and how it was considered by the licensee. In order to build public confidence in the independence and objectivity of professionals, licensees need to be transparent about the way in which professional advice has been used in such situations. The rationale for these decisions should be made public.

In another example, *Haida Gwaii Visual Quality Objectives* (2014), the Board concluded that the failure to meet government objectives for visual quality arose due to the licensee's reliance on unsound professional assessments and a refusal to engage in dialogue with government officials and forest professionals who expressed concerns on several occasions. This is not the way professional reliance under the *Forest and Range Practices Act* should work.

The Forest and Range Evaluation Program

A key aspect of the professional reliance framework in the forest and range sectors is the government's Forest and Range Evaluation Program (FREP). The Board examined FREP in its 2017 report, *Special Report on the Forest and Range Evaluation Program*.

FREP is a process for continual improvement of forest practices. Improvements may be implemented through policy or legislation, on the one hand, or through voluntary action by licensees on the other. The Board found, however, that no process is in place for establishing which to use. In some cases, this leaves professionals in an unreasonable position of trying to implement FREP recommendations in a way that balances social and economic interests.

In its report, the Board recommended that:

FLNRO should implement a collaborative process at both the provincial and district levels to facilitate continuous improvement of practices based on FREP's monitoring results. At the provincial level, government should have a process to implement changes to legislation and/or policy where improvements are not made voluntarily

The Board makes this same recommendation to the Professional Reliance Review

Professional accountability

Professional reliance depends on professionals maintaining competence and on enforcement of standards by professional associations. However, the Board has found instances where non-compliance with legislation may have resulted from professionals acting outside their scope of practice or not following professional practice guidelines.

For example, the results of the Board's special investigation of bridge planning, design and construction, published in 2014, raised significant concerns. Of 216 bridges examined, 19 were unsafe and a further 13 had serious safety concerns.

The Board sounded a wake-up call to those who are not complying with the law or the professional practice guidelines and recommended that the Joint Practices Board of the Association of BC Forest Professionals and Engineers and Geoscientists BC advise it of the steps planned or taken to address the professional practice issues identified in the report. The Associations responded with a list of 12 actions taken or planned in response to the recommendation, including referring the relevant files for investigation through the regular complaint process.

In 2017, in its report, *Resource Road Construction in Steep Terrain*, the Board found that 21 of the 26 steep slope road segments examined had qualified registered professional (QRP) involvement and of the 21 segments where a professional was involved, only 10 met all the legal requirements and followed all of the professional practice guidelines. The Board also found that 6 of 26 steep slope road segments were considered structurally unsafe, and that 5 of these 6 road segments were constructed in a manner that did not reduce the likelihood of a landslide or ensure protection of the environment. These results are unacceptable.

Noting that these results are unacceptable, the Board asked that the Joint Practices Board of the Association of BC Forest Professionals and Engineers and Geoscientists BC advise the Board, by March, 2018, of the steps, planned or taken, to address the professional practice issues identified in this report.

The Board also hears concerns from members of the public about the clarity, accessibility and timeliness of decisions concerning complaints. For example, decisions can be difficult to find on some association websites. For the purposes of the Professional Reliance Review, the Board suggests that steps be taken to ensure that enforcement of professional standards by professional associations is clear, transparent and timely.

Unauthorized practice

Professional reliance does not depend only on professionals maintaining competence. It also depends on the legal requirement that, in order to practice in certain areas such as forestry or engineering, a person must be a registered member of the appropriate professional body. However, the Board has identified instances where professionally prepared site plans and road designs were changed without involvement of a qualified professional, leading to non-compliance with FRPA.

The Board encourages professional associations to be diligent in following up on unauthorized practice.

Conclusion and recommendations

Having been actively engaged in issues of professional reliance for many years, the Forest Practices Board welcomes the government's review of professional reliance in the natural resources sector. Recognizing that the review covers a broader range of issues than the Board's mandate of forest and range practices, the Board encourages the review to recommend the following, which should foster natural resource stewardship, improve public confidence in the independence, competence and accountability of professionals and strengthen the professional reliance framework:

1. That Government:
 - a. Strengthen the authority of district managers to safeguard the public interest in relation to forestry development;
 - b. Accelerate the process of setting legally enforceable objectives for forest and range development that are applicable to all relevant activities and are periodically reviewed and updated. This could be done as part of a modernized land use planning process.
 - c. Establish an expectation, where significant resource values are at risk, that licensees undertake a systematic, transparent and well-documented decision-making process that shows appropriate consideration of the risks to public and third-party interests.
 - d. Implement a collaborative process to facilitate continuous improvement of forest and range practices based on FREP's monitoring results, including implementing changes to legislation and/or policy where improvements are not made voluntarily
2. That professional associations:
 - a. Subject to direction from government or designation of licensee area planning responsibilities, provide guidance addressing the extent to which individual foresters should inform themselves of the intent behind previous road construction and harvesting patterns and to what extent this intent should be respected.
 - b. Ensure that enforcement of professional standards by professional associations is clear, transparent and timely.
 - c. Be diligent in following up on unauthorized practice