

# Professional Association Audit Report – Association of British Columbia Forest Professionals

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## 1. Introduction

This report is one component of the Professional Reliance Review announced by the Minister of Environment and Climate Change Strategy George Heyman in October 2017. The Province is conducting a review of the professional reliance model of the natural resource sector to ensure the highest professional, technical and ethical standards are being applied to resource development in British Columbia. The Review has several components, including assessing the enabling legislation and performance of professional associations that govern qualified professionals, including the BC Institute of Agrologists (BCIA), the Applied Science Technologists & Technicians of BC (ASTTBC), the College of Applied Biology (CAB), the Engineers and Geoscientists of BC (EGBC), and the Association of BC Forest Professionals (ABCFP). This report provides the results of an examination of the Association of British Columbia Forest Professionals.

Professional reliance takes different forms across the natural resources sector, but in general terms is a regulatory model in which government sets the natural resource management objectives or results to be achieved, and professionals hired by proponents decide how those objectives or results will be met. Generally, government oversight focuses on monitoring, compliance and enforcement, rather than reviewing and approving plans or project designs. In doing so, government relies on the professionalism of the qualified professional (QP), the professional and ethical codes they are required to follow, and oversight by the professional associations to which they belong.

The Professional Reliance Review will make recommendations on:

1. Whether professional associations that oversee QPs employ best practices to protect the public interest;
2. Whether government oversight of professional associations is adequate; and
3. Conditions governing the involvement of QPs in government's resource management decisions and the appropriate level of government oversight to assure the public their interests are protected.

## 2. Approach and Scope

A multi-agency government team of 4 members met with representatives of ABCFP to discuss how the association is meeting its obligations under the *Foresters Act (Act)*, and a number of issues relating to professional governance and professional reliance. A number of questions were provided in advance, and ABCFP provided considerable information and document both before and during the interview, which was held on November 21, 2017.

The focus of this report is to assess whether and how ABCFP is meeting its obligations under the *Act*, to help inform the Professional Reliance Review's consideration of Issue #1 above. The assessment in-

cludes issues such as: standards of enrollment, including continuing professional development and maintaining competency; code of ethics, including conflicts of interest; standards of professional conduct; and liability and professional negligence.

The interview team considered the current legislation, bylaws, formal submissions from ABCFP, documents publically available on ABCFP website, and the information from interviews with ABCFP staff. This report does not address whether the *Act*, council bylaws or ABCFP policies and procedures employ best management practices to protect the public interest, but provides important information for that evaluation. This report is one part of a broader review that will consider comments from professionals, members of the public, government employees, and other professional regulators and governance experts, all of which will inform any recommendations that result from the project.

### **3. ABCFP Governance Context**

ABCFP is established by the Foresters Act. The Foresters Act was first given Royal Assent on April 3, 1947, and last amended in 2011. The *Act* gives ABCFP the authority to regulate and govern professionals covered under the Act. In simplest terms, the *Act* defines the practise of professional forestry, establishes ABCFP, stipulates that one must be a member of the association to engage in the practise of professional forestry, charges the association with the administration of the *Act* and vests all authority to govern the association in its council. It is the duty of ABCFP to protect the public interest respecting the practice of professional forestry by ensuring BC has competent and accountable forest professionals who achieve excellence in forest stewardship.

The council consists of the president, a vice president, the immediate past president, not more than 2 lay councillors appointed by the Lieutenant Governor in Council, and not more than 8 elected councillors. Current membership is approximately 5,400, including Registered Professional Foresters and Registered Forest Technologists, representing the largest group of forestry professionals in Canada. The budget for 2017 was approximately \$2.7 million. Within government, the *Act* is the responsibility of the Ministry of Forest, Lands and Natural Resources Operations and Rural Development.

### **4. Membership**

There are 6 classes of membership in the association: registered members; enrolled members, retired registered members; holders of special permits; association members and honorary members. The majority of membership is within the registered member class, either as a Registered Professional Forester (RPF), or Registered Forest Technologist (RFT). ABCFP is a *right to practice* association, meaning that achieving membership in the association entitles members to not only use the professional titles associated with their membership category, but also restricts practice of forestry as defined in the *Act* to members of the association.

The *Act* grants council the authority to establish Bylaws to establish, monitor, and enforce conditions for enrolment and continued membership in the association. The *Act* specifies that council must admit RPF or RFT applicants who satisfy these entrance requirements: pay the registration fees, pass the examinations established by the council, pass the examinations of courses approved or specified by council, satisfies the thesis or professional report requirement, has had experience in forestry work as determined by

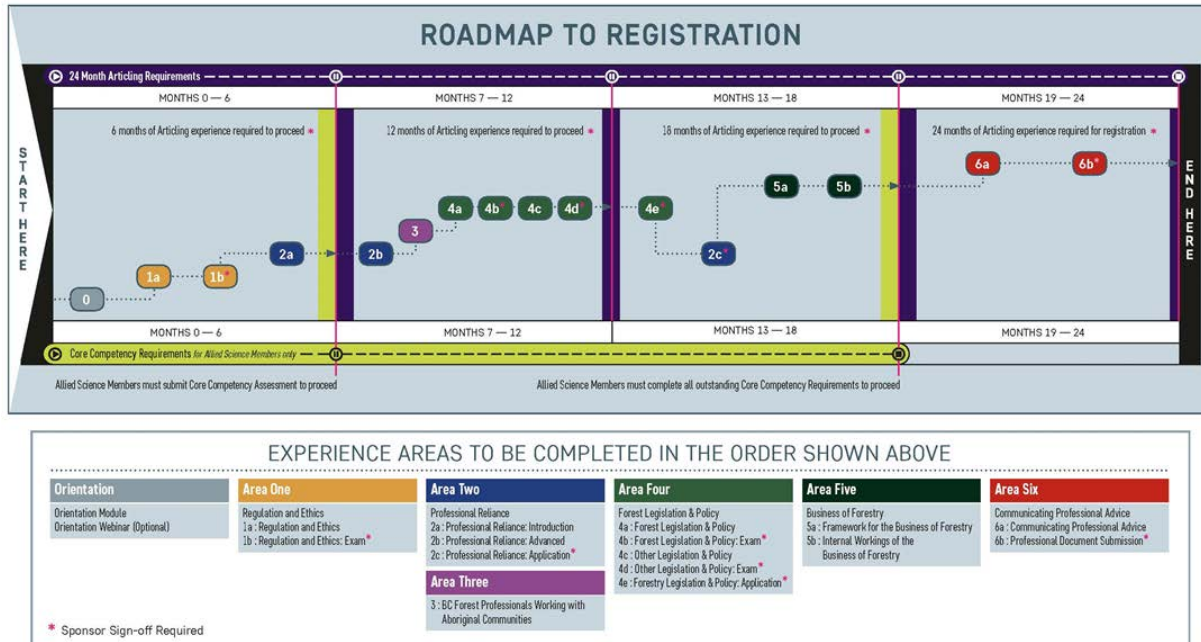
council, is of good character and repute; or if the council is obliged to under the Labour Mobility Act. The Act also enables council to establish certificates of accreditation within membership classes inside the practice of professional forestry or for technical occupations related to the practice. For example, under the associate membership class, the council has created the Accredited Timber Cruiser.

Members are required to renew their membership annually by completing a self-assessment, including a professional development plan, declaring any offences, and paying association fees. Failure to complete, or properly complete, the self-assessment or other annual renewal activities may result in discipline, financial penalty, or removal of practice rights.

#### **4.1. Enrollment Standards for Professional Membership and License**

Applicants to ABCFP for a RPF designation can enroll through the FIT program, the ASFIT program, or as a transferring forest professional depending on their background. Once enrolled, a series of modules in six experience areas must be completed. This includes demonstrating knowledge and application of BC's professional reliance model.

The Canadian Forestry Accreditation Board (CFAB), an organization with membership from each of the provincial forestry regulators in Canada and the Canadian Institute of Forestry, has accredited specific degree programs that satisfy the core competency requirements for RPF membership. Graduates from one of these programs may apply directly to the FIT program. Once enrolled, members of the FIT program must complete six experience area modules and the articling requirements, and have a sponsoring member oversee and sign off on the completion of these training modules (See figure 1, roadmap to registration). The association launched a fully redesigned registration process for new members in April 2016, and required courses, examinations and support materials are now offered online through the association's Learning Management System. New members working through the mandatory modules and articling requirements must complete a series of three modules related to professional reliance with enforced timelines for completion. The association has stated that the implementation in 2016 of this new process has been positive.



**Figure 1 - Roadmap to registration - Dark Blue representing Professional Reliance**

RPF applicants who are not graduating from a CFAB accredited program may apply as an ASFIT provided that they have completed a post-secondary degree program in forestry or a related field, they possess an equivalent combination of education and experience, or they have completed an international forestry degree program (defined as completed outside Canada or the USA) and have gone through a comprehensive assessment by the International Credential Evaluation Service to determine equivalency. ASFITs must fulfill the same six experience area modules and articling requirements as FITs, but must also meet the Core Competency Requirements to demonstrate how they have met the standards of education required for entrance to the profession. These requirements are set out by the Certification Standards for the Profession of Forestry in Canada and by the Canadian Federation of Professional Foresters Associations, and describe how much an RPF must know about:

1. Tree and stand dynamics;
2. Forest to landscape, structure and function;
3. Forest management;
4. Economics and administration of forestry;
5. Communication and critical reasoning;
6. Information acquisition and analysis, and;
7. Professionalism and ethics.

ASFITs have this additional requirement, as the CFAB accredited programs required to register as a FIT must sufficiently cover the core competency requirements to achieve and maintain their accreditation.

In compliance with the Federal Canadian Free Trade Agreement (CFTA), Canadian Federation of Professional Foresters Associations mutual recognition agreement, Trade Investment and Labour Mobility

Agreement (TILMA), and the New West Partnership Trade Agreement (NWPTA), ABCFP indicated that they are required to mutually recognize the qualifications of forest professionals from other Canadian jurisdictions. According to the association, members are still required to submit a transferring package to ABCFP, which will be reviewed for completeness and accuracy before being reviewed and approved by Council. Transferring applicants must complete the jurisprudence exam within six months of acceptance, including the professional reliance workshop and the professional ethics and obligations workshop required to write the exam.

ABCFP reports that of those applicants who meet the educational requirements, historically roughly 15-20 applicants per year are denied membership because they are unable to pass the registration exam or do not complete the work experience requirements. Under the previous registration system, three failures of the annually held registration exam would disallow the member from re-enrolling for a five year period. Currently, failure of any registration module exam requires a one month penalty delay.

#### **4.2. Continuing Professional Development and Training**

ABCFP requires that members maintain competence and provide a statutory declaration that they are only working in areas in which they are competent. There is, however, no clear requirement for type or amount of mandatory professional development or training, and no requirement for members to submit continuing professional development (CPD) hours. ABCFP stated that it provides a method that allows members to track and report the nature and amount of professional development they have completed on a voluntary basis.

#### **4.3. Professional Review (Audits)**

The association's peer and practice review program assesses a member's professional conduct and practice relative to their obligations identified in the Code of Ethics and Standards of Professional Practice, including: professional independence, integrity and competence; responsibilities to identify professional work; due diligence, and; stewardship practice and safety. There is a requirement to maintain competency included in the Bylaws, but no specified number of practice or CPD hours. Members are required to confirm annually that they are only doing work in areas where they are competent in addition to maintaining professional accountabilities. ABCFP reports about 25-30 practice audits are done each year where a member's technical and professional work is audited. High-risk practice areas are chosen to be audited in addition to choosing members at random. Additionally, the association stated that it performs between 60 and 80 random mandatory peer reviews annually, with an additional 20 reviews conducted voluntarily by members. These peer reviews audit continuing professional development and training completed by the member, as well as topics and statements declared in the self-assessment form. Members are not audited more than once in ten years, and the association has stated that every member will be subject to an audit or other form of review at least once at some point in their career.

### **5. Public Interest & Trust**

Government and the public share an expectation that a key role of regulatory bodies such as ABCFP is to ensure the competency and integrity of professionals in order to protect the public interest. The *Act* states that it is the primary duty of the association to serve and protect the public interest. The *Act* does not contain a definition of public interest, instead defining the duties and objects of the association as

upholding the public interest and respecting the practice of professional forestry by “ensuring the competence, independence, professional conduct and integrity of its members, and ensuring that each person engaged in the practice of professional forestry is accountable to the association” as identified under section 4 (2) of the *Act*. Principles of stewardship, governance, education, standards of practice, and certification are also considered objectives of the association but are not listed under the public interest.

ABCFFP published a paper in 2002 titled *Interpreting the Publics’ Interests* that is intended to help members understand and incorporate the public’s interests in their work. This paper explores the wide range of public interest, directing members to supply professional knowledge in a way that meets the broad spectrum of public interest. This does not mean that all interests are balanced, rather that all interests are considered for an informed decision for which the member is accountable.

During the audit interview, the association indicated that government has an important role in articulating the public interest and providing guidance on how to balance the public’s core values respecting forests and forest resources with the needs of those who benefit from, rely upon, have rights to, and interact with these resources by creating and implementing law, policy, and regulatory practices. The association expressed that greater guidance from government would assist forest professionals in carrying out their duties.

## **6. Code of Ethics**

The *Act* enables the council to establish bylaws including a Code of Ethics, making the Code of Ethics enforceable as a bylaw. Contravention of the Code of Ethics, as with any bylaw, can be addressed through the complaint process and if substantiated may result in disciplinary action including loss of membership, restriction of practice, or revocation of registration. Ethics and Professionalism are covered under the core competencies laid out by the Certification Standards for the Profession of Forestry in Canada and by the Canadian Federation of Professional Foresters Associations, and are included in the modules that FIT, TFT, and ASFITs must complete. The association has taken steps to ensure that members are aware of the Code of Ethics and remain familiar with its contents. To this end, they have published Guidelines for Interpretation of the Code of Ethics on their website and each member, upon induction, is presented with a copy of the Code of Ethics suitable for framing.

### **6.1. Conflicts of Interest**

Conflicts of interest are situations in which the actions, aims, or goals of parties seem incompatible. The Code of Ethics states that it is the responsibility of a member to the client or employer to “refuse any assignment that creates a conflict of interest.” The Guidelines for Interpretation of the Code of Ethics define what constitutes a conflict of interest, and states that members who are concerned that there may be a conflict of interest must declare that concern to the affected parties. Members are required by the bylaws to report illegal or unethical behavior on the part of other members, their employer or clients. Complaints received through members are investigated, and if substantiated, may result in disciplinary action. The association states that members are directed through training and guidance documents to refuse assignments which create or are perceived to create conflicts of interest, and failure to refuse or disclose a conflict can lead to disciplinary action or a professional accountability process.

Standards and codes detailing professional independence exist and include scenarios creating potential conflicts of interest to support members in managing potential or perceived conflicts of interest.

### **6.2. Employer and Proponent Relationships**

The *Act* does not address transparency in financial and employment relationships, and the association has not made any explicit bylaws pertaining to compensation for professional work. The Code of Ethics stipulates that members will not accept compensation from more than one employer or client without the consent of all parties, and members will levy only those charges for services that are fair and due.

### **6.3. Professional Conduct**

The *Act* and ABCFP Bylaws, including the Code of Ethics and Standards for Professional Practice, set out the expectations for member conduct. The Code of Ethics establishes the principles and rules associated with making moral choices within the practice of professional forestry, while the standards of Professional Practice define the measures of performance of professionals in their practice. Within these requirements, members are required to conduct themselves honourably and in ways which sustain and enhance their professional integrity and the integrity of the profession. As described in the Conflicts of Interest section 6.1, members also have an obligation to report a breach of professional conduct of other members. The association has informally reported that approximately 60% of all complaints originate from members, 25% from the public, and 15% from the President on behalf of ABCFP.

The practice of 'expert shopping,' where a client searches for a professional to support a specific course of action that the client finds favourable, is deemed unacceptable by the association and is specifically addressed in ethics training for members. However, there are instances where second or third opinions from other professionals are appropriate or required to manage risk. Therefore, the association believes that caution should be exercised when addressing perception of expert shopping to avoid deterring a responsible and thorough approach in seeking professional advice or opinion.

Accountability for the work or conduct of forest professionals is assessed against compliance with provisions contained in the *Act*, Bylaws, council resolutions, and ABCFP guidance to members published on their website. Professionals work in teams in situations where an individual professional does not have the experience or expertise necessary for the project, for example, when managing complex and multi-faceted issues like species at risk, retention harvesting, or watershed assessments. In situations where a member does not have the appropriate expertise, they are expected to acquire the appropriate resources, work with other professionals (foresters or professionals outside of ABCFP such as engineers, biologists, etc.), or access guidance information published by ABCFP to determine the best course of action moving forward. Joint practice boards between professions exist and are actively in use.

ABCFP has developed guidance in the form of professional practice standards and guidelines in areas where the association has identified risk or there is known professional practice complexity. These standards and some guidelines are enacted as Bylaws, and therefore require 66% vote approval from members. Members have not voted down any practice standards or guidelines proposed by the association.

## **7. Complaints and Discipline**

The *Act* enables council to make bylaws establishing complaint resolution practices and procedures. Through this authority the council appoints volunteer committees to support the registrar, who complaints are made to and accepted by, to manage complaint investigation and disciplinary processes. Three committees currently exist for this purpose, and two of the three include a non-member layperson. The association has indicated that committee members receive training for this task and are selected through a matrix to ensure diversity. Inconsistencies in document review, interviewing protocols, and investigation report writing in complaint cases over time reportedly still occur. Timing delays due to the capacity limitations of volunteers has been identified by the association as an issue needing to be addressed, although current resources do not allow for committees responsibilities to be more fully staffed or completely contracted out.

ABCFP representatives stated that they have sought legal advice to review the investigative processes of other similar regulators and provide the association with recommendations for improvement. As a result of this activity, the association has stated that it is currently developing an investigative procedure manual and has increased the complaints and discipline budget to enable some hired contractors to lead investigations. If the number of complaints rises above historic norms, it would become increasingly difficult for the association to fund the costs of investigations from its current base operating budget.

The association does not have the authority to launch an investigation in the absence of a complaint. In the absence of a complaint the association may look into matters when they become aware of situations that may be the interest of the public or the profession, however such activity is limited to fact finding. This may lead to the President on behalf of the association lodging a complaint against a member. The association has discussed with the Forest Practices Board means of transferring investigation information between organizations while maintaining necessary confidentiality and investigative fairness.

## **8. Liability and Negligence**

Professional liability refers to the legal responsibility of a professional to be held accountable for the outcomes of his or her professional work, specifically any errors and omissions. Professional negligence is where a professional fails to provide duty of care to their client, meaning that harm to people or property has occurred as a result of improper advice and precautions by the professional.

Professional liability insurance is not mandatory for forest professionals or members of ABCFP as professional liability risk to members varies greatly depending on the nature of their professional work. Members are not required to disclose whether or not they carry liability insurance, but are expected to do so if asked by a client or employer.

According to ABCFP, practice guidelines now include skill sets necessary to undertake specific work, and professionally certified assurance statements as a professional protection mechanism to fill perceived gaps in the *Forest and Range Practices Act* (FRPA), and the association believes it is generally accepted that they should be used more broadly and could be improved. While certified assurance statements are not mandatory, failure to follow or complete assurance statements could lead to discipline if tied direct-



ly to a member. One example of a certified professional record that does occur in the Forest Planning and Practices Regulation (FPPR) is section 77 (1)(b) Requirement for As-Built drawings. The ABCFP believes that more such mechanisms are necessary between the professional and resource practice legislation. The association does not have jurisdiction over companies or organizations that do not follow or have employees complete assurance statements.

## **9. Scope of Practice**

ABCFP is a *right to practice* association, meaning that except those authorized under the *Act*, no individual, corporation, partnership, or other legal entity may practice forestry, assume or use the title of professional forester or any other title under the Association, or act or advertise in the role of a professional forester. The *Act* defines the practice of forestry, and covers work specifically on those activities as defined. The Bylaws require that members only work in areas where they are competent and express opinions founded on adequate knowledge and experience. The Association does not require routine reporting of practice area or professional development, instead relying on voluntary disclosure as well as practice reviews and audits to evaluate scope of practice.

Registered Forest Technologists may practice aspects of professional forestry consistent with their education, training, and experience. The practice of RFTs is limited to four main areas of practice and is described in the Guidelines on Scope of Practice for Registered Forest Technologists, 2010, available on the association website.

## **10. Discussion and Conclusions**

This limited scope audit is one part of a broader review of the professional reliance model. Specifically this audit is intended to consider whether ABCFP is fulfilling legal obligations assessed in this report as the body that regulates forestry professionals in BC.

The *Act* incorporates ABCFP and gives it the authority to regulate and govern forest professionals. There is currently very limited legislative requirements in FRPA to define where a particular forest practice requires a specific professional, the *Act* does define the practice of professional forestry and restricts work that falls under this definition to members of the association.

The association considers its current legislation to be adequate to regulate the profession and its members. However, the association stated in the audit interview that the culture of companies and organizations employing forest professionals has a significant impact on practice outcomes, as professional advice can be followed or not by the resource user. Many of the obligations in FRPA are placed on forest companies who hold tenure agreements, rather than on the forest professionals, so the actions of the company or organization determine the methods to achieve an outcome. The association has stated that it has no legal mandate and limited other tools to support members where their employer's practice may impact their ability to effectively meet professional obligations, as their options are limited to sending letters identifying issues, which are not enforceable. The association has suggested that this could be partially addressed through the expanded use of professional certifications, assurance and conformance statements and other similar mechanisms to create linkages between the professional statute (Foresters Act) and the legislative regime (FRPA).

ABC FP membership application process is well supported by the Act and Bylaws, and the association has developed a process that they believe upholds the intentions of the enabling legislation. ABC FP has a mandatory professional development program but does not have a common method that allows members to track and report the nature and amount of professional development they have completed.

The association has published Guidelines for Interpretation of the Code of Ethics intended to support member understanding and application of the Code of Ethics. The Code of Ethics and Standards for Professional Practice set out expectations for member conduct and ethical issues including 'expert shopping' which is specifically addressed in member training. The association has also engaged in collaborative processes with other professional associations, including the EGBC and the CAB, to develop various practice guidelines such as for Riparian Area Assessments.

ABC FP has suggested that there are resource and capacity constraints for professional regulators to deliver more services. As the association is primarily funded by membership dues, and having previously sought membership approval for significant membership fee increases in 2010 and 2011 to support new responsibilities of an enhanced professional reliance model, they believe they are limited in their capacity to expand the scope of their work without reducing work in other areas.

Several areas were identified where changes could improve regulatory outcomes for the association as described above. Overall, this audit found that the association is fulfilling its legislative requirements as reviewed.