

Review of Professional Reliance in Natural Resources

Submission from the BC Council of Forest Industries and the Coast
Forest Products Association

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Introduction

The BC Council of Forest Industries (COFI) and the Coast Forest Products Association (CFPA) welcome the opportunity to provide a joint submission to the B.C. government's Review of Professional Reliance in Natural Resources.

COFI is the voice of the B.C. interior forest industry and its members produce lumber, pulp and paper, panels and engineered wood products at more than 60 facilities across the interior. CFPA represents producers in B.C.'s coastal region, who also produce similar types of forest products. The two associations will become one unified voice under COFI effective April 1, 2018.

The B.C. forest industry has long been a cornerstone of the provincial economy and one of its largest employers, generating 140,000 jobs overall and serving as a primary employer in 140 dependent communities¹. In 2016, the industry generated \$33 billion in output and \$12.9 billion in GDP, along with \$4.1 billion in payments to municipal, provincial and federal governments from operations.

There are significant challenges facing the industry in the near term. The ongoing softwood lumber trade dispute with the United States has lumber producers in B.C. paying more than 20% in duties for lumber shipments destined to our largest market in the U.S. Further, the industry is facing devastating impacts on timber supply from the Mountain Pine Beetle infestation and this past summer's wildfires, with a resultant rise in stumpage prices. As an export-driven industry, the industry is also facing increasing competition in the global marketplace and must remain competitive with other forest product producing jurisdictions that do not face the same challenges we face.

Key to the industry's competitiveness is the provincial regulatory environment that governs harvesting and milling and other related industry operations. The industry relies heavily on many professionals, including foresters, engineers and geoscientists, applied science technologists, biologists, and agronomists. These qualified professionals ensure that harvesting, manufacturing and transportation of its products take place within a framework of regulatory compliance that meets the public interest embodied in federal and provincial legislation.

The professional reliance model, as it has become known, manages results, or outcomes, against a set of government established objectives. Approximately 27 natural resource sector regulatory regimes rely on qualified professionals to provide information to government decision makers. While many of these 27 regulatory regimes apply to forest industry operations, we focus our discussion on the *Forest and Range Practices Act (FRPA)* in this submission since it is so fundamental to our sector.

¹ See British Columbia's Forest Industry and the BC Economy in 2016. PricewaterhouseCoopers, Vancouver, BC.

Within the forest sector, *FRPA* and its dependence on professional reliance is working well. However, some high-profile events have called into question the professional reliance model in B.C. and this review provides an opportunity for the provincial government to examine effectiveness of professional reliance across all resource sectors.

In the fall of 2017 the Ministry of Environment and Climate Change Strategy (the “Ministry”) initiated a professional reliance review, requesting interested respondents to answer three basic questions:

1. What is working well under the current professional reliance model?
2. What changes are required to maintain or improve public trust in professional reliance, and
3. Are there other observations or recommendations regarding the review?

What follows are our answers to the three questions posed.

What is Working Well?

To provide comment on what is working well, and to recommend areas of improvement, it is important to first understand the terms “public interest” and “professional reliance,” particularly as they are defined in legislative regimes for the forest industry.

Public interest

In the context of B.C.’s forest resources, public interest means resources are both conserved effectively and used wisely. Clean water, clean air, fertile soils, sufficient wildlife habitat, scenic vistas and protected areas are examples of key objectives that are in the public interest. Maintaining high standards that keeps these resources intact is very important to British Columbians, as is wise use of our renewable resources, such as sustainable forest harvesting and manufacturing and the jobs and revenue generated from this economic activity. The public interest is defined by government setting both conservation and harvesting objectives through a legislative framework.

Professional reliance

Professional reliance is “the practice of accepting and relying upon the decisions and advice of qualified professionals who accept responsibility and can be held accountable for the decisions they make and the advice they give”². Professional reliance is central to the results-based regulatory system that is structured in different ways in various resource sectors.

² See Association of BC Forest Professionals. *Professional reliance in Forest and Range Management in BC: From Concept to Practice*. July 2006.

For the forest sector, the public interest is captured within *FRPA* where objectives to maintain the integrity of eleven resource values, including soils, visual quality, timber, forage and plant communities, water, fish, wildlife, biodiversity, recreational resources, resource features and cultural heritage resources, are provided. The provincial government retains its legislative authority to direct both resource conservation and resource development. *FRPA* values and objectives can be amended as part of continual improvement, which was envisioned by *FRPA*'s drafters. As such, the *FRPA* legislative framework captures the Province's definition of the public interest and forest professionals are guided by this framework.

Forest professionals have been empowered under *FRPA* to achieve these objectives utilizing one or more alternative approaches to meet the public interest for the identified values. Professional reliance exists within and because of *FRPA*'s framework. Simply put, as long as forest (industry) professionals are in compliance with *FRPA*, they are meeting objectives that are consistent with the public interest and are not in conflict with it. If professionals are found to be in contravention of *FRPA*, the legislation and their professional associations provide remedies.

Professional reliance has proved itself to be a successful regime in B.C.'s forest sector. Forest management practices have met public interest and have become much more efficient since foresters and other professionals have been able to focus on specific management issues. Given the number of decisions made daily, a results-based *FRPA* allows professionals to find innovative and flexible solutions to problems on-the-ground, rather than being forced to deal with unwieldy administrative process to support pre-ordained prescriptive regimes. For example, the system in place under the *Forest Practices Code* proved to be very costly to both industry and government, as well as inflexible, bureaucratic and diminishing the exercise of professional judgment.

Recommendations for Improvements

While the professional reliance model has been successful in the forest sector, there are always opportunities for continuous improvement.

COFI would be pleased to discuss these recommendations with the provincial government to provide further explanation or clarification. In making improvements to the professional reliance model in B.C., COFI underscores the importance of making changes that improve the system by way of guidance, competency, and accountability, but that do not impair the industry's competitive position which is already under pressure from other factors such as trade disputes with the U.S., increasing costs and a decreasing timber supply.

In the 2014 report on the use of qualified persons (QPs)³, government identified three essential characteristics that are necessary for reliance on professionals (or QPs) – guidance, competency and accountability.

- **Guidance:** Guidance must be provided by government, in the form of clearly defined results or outcomes, objectives, standards, and practice guidelines. They are necessary for professionals to obtain results that are expected or acceptable. Guidance must also provide ways to evaluate professionals' completed work against established objectives or practice guidelines.
- **Competency:** Professionals must be competent, by first obtaining sufficient education, in the form of a degree or diploma from an accredited university, institute of technology or the Association of BC Forest Professionals pupil programme. They must also have sufficient training, experience and on-going professional development, either through their professional association or by other means of accreditation.
- **Accountability:** Professionals must be accountable to their peers, the public, their employer or client and their professional association and be subject to consequences if performance is unacceptable. Professional associations have procedures in place that hold their members (QPs) accountable for their actions, including codes of ethics, practice reviews, and complaint and disciplinary procedures.

It is within the context of these three essential characteristics of a QP that we make the recommendations provided below.

1. Guidance: Clarify land use objectives

Government has established objectives for eleven resources in higher level plans, but they are not well defined and therefore insufficient and subject to considerable interpretation. Clearer objectives would provide better guidance for decision-making with respect to trade-offs - such as how much timber, wildlife, water, etc. government intends to produce on the landscape. Climate change, for example, is complicating management efforts to achieve objectives, compelling all resource professionals to be flexible and innovative in their mitigation efforts. Innovation is better achieved in a results-based regulatory framework, rather than a prescriptive model.

- **Recommendation:** Professional reliance relies on government providing clear objectives. Higher level plans have provided objectives for eleven values as identified above but this is insufficient. Government should clearly define values, clarify desired results, set objectives and establish a hierarchy for values and objectives on the landscape. This will provide much clearer direction and

³ A Framework for the use of Qualified Persons in the Natural Resource Sector. Prepared by the Qualified Persons Cross-ministry Working Group. 9 pp. We use the term qualified persons to mean qualified professionals as well.

guidance to professionals, especially where multiple objectives and values exist and need to be balanced.

2. Guidance: Ensuring clarity around scope of practice for qualified professionals

A wide range of professionals work in the forest and related environmental sectors. It is important for regulations to be clear on which professionals are suitably qualified for specific functions. Required skill sets are broad and diverse. Consider the range of skills required to develop and harvest timber - engineers, planners, biologists or the range of different types of engineers required to re-habilitate contaminated sites. In each case, specific training, skills and experience are required.

- Recommendation: The provincial government should work with professional associations to clarify the definition of scope of practice for professionals working on public land. Define who is qualified, whether a specialization is required, and establish a policy that states the required combination of credentials and work experience needed for a particular function.

3. Competency: Implement continuous improvement practices

The architects of *FRPA* never believed the system was completed when the legislation was enacted. They recognized the need for *FRPA* to be continually improved and that improvement had to occur under a relatively formal procedure. They envisioned a program of continuous communication and education, especially about the distribution of accountability and liability. Key messages were to be made lock-step by professionals, government and industry wherever opportunities presented themselves. Government was to ensure that its business practices and procedures for decision-making and plan approval were assessed continually. Resource professionals were to take measures to ensure they maintained high standards of competence and professional practice and that these measures were to be reported publicly on an annual basis. Moreover, professional standards and practice guidelines were to be examined periodically.

- Recommendation: Implement the practice of continuous improvement within *FRPA* – more specifically by reassessing and modernizing the Forest and Range Evaluation Program (FREP). Monitoring is a key component to the professional reliance model. Forest professionals need to monitor their management prescriptions and course-correct where required to ensure they are compliant with the best and most current information. FREP was created to monitor forest practices and their impact on specific values and recommend improvements where required. This program would provide greater guidance by establishing protocols for all values in a cumulative effects context. FREP has also not

established enough monitoring information for some values to provide relevant information across the full range of forest conditions where it is needed.

4. Competency: Enhance ABCFP continuing education requirements

It is acknowledged that Association entrance and mandatory professional development requirements exist within the ABCFP. Members review their areas of practice annually to confirm their competency. However, continuous education programs should be expanded to ensure they are available for all areas of practice, and members should be required to document educational achievements.

- Recommendation: The ABCFP should adopt and implement an enhanced effective and compulsory continuing education program for its members.

5. Accountability: Renewed government leadership on communications

Since professional reliance was adopted as a regulatory strategy, government has resisted its legitimate role to support it. It has been relatively silent, neither defending nor advocating professional reliance policies. Government sponsored communications programs explaining the merits of professional reliance have been largely absent.

- Recommendation: Provincial government Ministries should provide more leadership of its professional reliance regulatory strategy. Develop and implement communication programs for the public that explains the purpose and results of a professional reliance regulatory regime and the opportunities they have for input. Implement initiatives to defend this policy when and where required, explain that a return to a prescriptive regime is too costly, unrealistic and totally unnecessary. COFI would be pleased to participate with government on this initiative.

Additional Observations

The Forest Practices Board (FPB) is an important component of *FRPA* and its role is to be an independent “watchdog” by auditing forest practices for compliance to the legislation through its audit function. Audit results show that forest licensees generally achieve a high level of regulatory compliance and non-compliance practices have been subject to penalties. Positive forest practice results are also provided by third party audits of environmental certification standards. In fact, there are 52 million hectares of certified forests in B.C., which accounts for 14% of certified forests in the world.

Achieving and maintaining forest certification is difficult. Certification audits are rigorous, since they must guarantee, both at home and abroad, that products are manufactured from sustainably managed forests. Some companies have implemented third party advisory boards,

providing feedback on forest management practices. Moreover, provincial Compliance and Enforcement staff inspect and audit operations routinely and have found compliance rates to be high. A significant amount of evidence shows that B.C. forest management practices have attained and sustained a high standard, in part, due to *FRPAs* professional reliance regime.

Summary

For the forest sector, the professional reliance model is largely working very well, but there is always room for continuous improvement.

FRPA provides the guidance to define public interest for the sector. British Columbians value clean water, fertile soils, sufficient habitat and other values - values that are expressed in the eleven objectives of higher level plans. British Columbians also value the array of forest products manufactured from Crown timber, along with the jobs, stumpage and taxes provided to the provincial treasury and communities. Audit results show that a professional reliance regulatory regime has worked well under *FRPA*, given the high level of forest practices. Various penalties have been imposed on companies or individuals found to be not in compliance.

Our recommendations for improvement are provided under three characteristics defining qualified professionals in a professional reliance regime: guidance, competency and accountability. We look forward to working with government on proposed recommendations so we can build upon professional reliance with continuous improvement.