

Qualified Professional Submission to the Government's Professional Reliance Review

Submitted by Bryan Fraser, RPF (BC, Sask.)¹

The Forest Practices Board's submission to this professional reliance review marks its third publication of its conclusion that the cutblocks I certified in *Haida Gwaii Visual Quality Objectives* "did not meet the legally-required visual quality objective, contrary to FRPA."² As described in the attached letter from the ABCFP Registrar, neither Ministry Compliance & Enforcement nor the ABCFP Complaints Resolution Committee was able to substantiate such a finding. The Board's continued assertion of the failure of professional reliance with respect to the Haida Gwaii cutblocks in the face of these two contrary determinations demonstrates its commitment to subjugating the legal processes regulating forest management in British Columbia to non-legal political influence.

The Haida Gwaii cutblocks involved five years of planning, design, field assessment, road reactivation, and log dump construction. They were fully compliant with all legislated and approved forest practice obligations. The licensee had also undertaken a federal fish habitat restoration project in order to offset marine foreshore impacts. In contrast, the visual landscape design research the district manager brought to bear at the cutting permit application stage was not cited in legislation, Ministry policy or in the approved forest stewardship plan ("FSP"). The issues in the Board's investigation therefore go to the core of the tension between non-statutory expectations and legal requirements.

The Board has recommended that district managers be given authority to withhold cutting authority "when forestry development puts local environmental and community values at risk" [emphasis added]. This language is significant because I would have expected the Board to advocate for district manager intervention authority when forestry development is legally non-compliant. In the absence of *Haida Gwaii Visual Quality Objectives* we would be left to speculate how and when the Board believes a district manager would exercise this authority. However, *Haida Gwaii Visual Quality Objectives* makes it clear that the Board believes a district manager should have authority to rely on any non-legal information he deems relevant in declining to issue cutting authority.

I accept the argument that reliance on industry QPs to approve their employers' roads and cutblocks creates a risk of conflict of interest. I do not accept the argument that reliance on district managers to approve them does not. While not political appointees, district managers exercise their authority in settings politically-charged by diverse stakeholder interests. Government must often balance the conflicting values of prevailing stakeholder opinion versus legal practice obligations. [Dr. Fraser's submission](#) reminds us of the FRPA goal of making "statutory decision makers 'free from political interference' responding to science not

¹ While I am currently an employee of the Saskatchewan Ministry of Environment and President of the Association of Saskatchewan Forestry Professionals, my comments are exclusively my own and do not represent the views of these two public bodies.

² [District Managers' Authority Over Forest Operations](#)

government policy pressures.” It is fair to say that we traded the demon of political reliance we had under the Code for the demon of professional reliance under FRPA.

Under the Code, the political use of a district manager's authority Dr. Fraser describes was exercised under s. 41(1)(b) of the *Forest Practices Code of British Columbia Act*. A district manager's unrestricted discretion to determine if a plan “adequately managed and conserved” forest resources was found to be unsatisfactory because industry could never know if a district manager would approve a fully-engineered cutblock meeting all regulatory and planning requirements. That process was found to be unworkable for three reasons: (1) it was not realistic for industry to provide a detailed five-year projection of operations due to shifting market forces, (2) it was unreasonable to force industry to re-advertise every engineered cutblock that deviated from its original projected footprint and (3) industry suffered excessive costs in re-engineering “completed” cutblocks at the district manager's pleasure.

I am sympathetic to the Environmental Law Centre's view in [*Professional Reliance and Environmental Regulation in British Columbia*](#) that decision-making professional reliance is inappropriate “where the activity requires decision making that is values-laden as opposed to technical expertise squarely within a professional's expertise.” However, it is important to note that seven values-laden government approvals involving substantial public consultation precede decision-making professional reliance at the technical level: (1) legislated forest practice requirements, (2) policy guidance, (3) orders for government objectives, (4) land use plans, (5) AAC determinations, (6) license volume allocations, and (7) FSPs. In my experience, much stakeholder opposition to site-level QP approvals is actually disagreement with preliminary government approvals industry QPs do not control. Even though industry QPs approve only the final technical step of this sequence, they often bear the brunt of stakeholder dissatisfaction with prior government approvals. This is exactly what happened to me with the Haida Gwaii cutblocks.

I also agree with much of the Board's criticisms of the current FSP configuration. It is fundamentally an industry-friendly/public-unfriendly process. Innovation by licensees is rare and FRPA contains too many “must approve” provisions for results and strategies satisfying generic, boilerplate criteria. I would be in favour of an FSP protocol increasing district managers' authority to require results and strategies specific to the particular needs and issues of their districts.

The cutting authority application is not a forum for revisiting local environmental and community values already addressed in previous government consultation processes. In my opinion, much of the present opposition to professional reliance under FRPA arises not from an honest belief in industry QP bias, but from the frustration that government no longer has the last at bat where a district manager can veto politically-unpopular development. Yet this is exactly what the Board advocates. It wants district managers to have the authority to rely on non-legal information in overruling a QP's compliance with government-approved forest practice obligations.

Let's be clear: the Board wants district managers to have 11th-hour authority to place local political sentiment over government's completed approval processes, often after substantial licensee development investment. If district managers are given such authority we are right back to section 41(1)(b). It is therefore incumbent on government to forge a realistic solution to balancing non-statutory expectations and legal requirements and not return to a district manager authority regime we already know doesn't work.



Ensuring BC's Forests Are In Good Hands.

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STRICTLY PRIVATE AND CONFIDENTIAL

Mr. Bryan J. Fraser, RPF, ATE
3192 Grey Owl Cres
Prince Albert, SK
S6V 6X5

Dear Mr. Fraser:

RE: ABCFP Complaint # 2016-03

Thank you for the response letter and attachments you provided on July 22nd and July 28th, 2016. Your response was invited following the complaint that was filed by the ABCFP President on June 21, 2016, pursuant to Section 22(2) of the *Foresters Act* (the “Complaint”). The Complaint contained allegations that you may have contravened the *Foresters Act* and/or the ABCFP Bylaws in your capacity as a prescribing forest professional. This Complaint arose following professional practice concerns expressed in the Forest Practices Board’s complaint investigation report #131091 regarding visual quality impacts in the Haida Gwaii Forest District, following a complaint the FPB received in March, 2013 (the “FPB Report”).

The Complaint, along with your response materials, was referred to the Complaints Resolution Committee (“CRC”), pursuant to ABCFP Bylaw 13.8. Following a thorough review of the Complaint information and your response materials, the CRC recommended that the Complaint be dismissed, as the CRC believes there are insufficient grounds to support an investigation. I have now accepted the CRC recommendation and have dismissed the Complaint, pursuant to ABCFP Bylaw 13.17.5.

My decision not to investigate further and to dismiss the Complaint, is based on a review and assessment of the Complaint information and your response materials, having regard to the CRC’s recommendation. In particular, I have noted the following points:

- you provided a very thorough and detailed response to the Complaint, which provided additional information and explanations for your conduct which was not referenced or addressed in the FPB Report;
- you clarified that you did not supervise the design of the cutblocks (this was done by previous licensee staff) but you did conduct your own review of the visual impacts prior to signing the Site Plans and you have provided a reasonable explanation for the conclusions you reached even though the FPB reached different conclusions;

- the CRC considers the evaluation of visual quality effectiveness in this situation to be problematic (i.e. not a “black and white” exercise) given the wording of applicable legislation at the time. In turn, measuring compliance for the cut blocks in question was not straightforward and, thus, reasonable RPFs could have differing views as to how compliance was to be measured and whether it was achieved in this situation. The CRC noted that the District Manager’s policy for managing visual resources was issued after these blocks were harvested and thus was not available to you at the time you signed the Site Plans;
- the Ministry Compliance and Enforcement investigation did not find the licensee (i.e. your employer at the time) to be in contravention;
- RPFs have an obligation to their employers and clients not to disclose confidential information without the consent of the client or employer except as required by law. In light of this, you were put in a difficult position when asked to respond to requests for information from the District at certain points; and
- you provided evidence that District staff canceled a meeting which they originally requested and that you had agreed to professional dialogue with those who had raised concerns once the licensee’s cutting permit was issued.

Thank you for the time and effort you have taken to provide a response in this matter.

This complaint is now closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Casey Macaulay".

Casey Macaulay, RPF
Registrar and Director of Act Compliance, ABCFP