



## **Professional Reliance and the BC Forest Industry**

### **A Western Forestry Contractors' Association Perspective**

The Western Forestry Contractors' Association (WFCA) is an industry group representing reforestation and forestry businesses in British Columbia. Its membership includes silviculture contractors, seedling nurseries and consulting foresters. Although it has a code of ethics and business conduct for its volunteer members, it has no formal authority as a regulating body certifying or overseeing qualified professionals. Nevertheless, many of its members are professional foresters active in business providing professional decisions or advice for government and industry clients. It also has a strong interest in the proper management of our forests and rangelands in which professional reliance plays a crucial part. WFCA members who provide professional forestry services have close and practical experience with the practice of professional reliance in resource management. It is that working understanding that informs this contribution to our government's Review of Professional Reliance (PR).

#### **Preamble:**

In this submission we draw from our experience as qualified forest professionals practicing within the professional reliance model on a day-to-day basis. Citing some specific examples, we arrive at some larger conclusions and recommendations about PR. We think it is crucial to note that for the most part, our findings are concerned with the context in which the professional reliance operates rather than the practice itself.

From what we can gather, we are not the first to find that most perceived problems with the PR model are contextual. Of the 70, or so, recommendations, findings, and conclusions from six previous PR investigations, the majority of them point to factors related to, but outside of the actual reliance on professionals for advice and decisions on resource management. These reports were authored variously by a stakeholder task force, the Auditor General of BC, the BC Ombudsperson, and two watchdog groups. Reading their recommendations, it is evident to us that the resource management failures the public has found so troubling have a lot to do with the overall resource management regimes themselves, not just professional reliance.

A regime comprises the institutions and agencies, the rules, the practices and the animating ideas that shape management. In this concept, professional reliance is but one practice in a much larger and complex strategy. In one of the reports just mentioned — an incident involving a major resource failure — it was the commitment, capacity and competency of the responsible agencies that were cited as instrumental and not reliance on a practicing professional's opinion. Similarly in other instances, including our



findings, the scope and structure of regulations fell short of providing proper guidance and authority for qualified professionals to operate within.

Related, and sometimes confused with PR, are deregulation and results-based outcomes, which are part of the current regime. These are separate practices and ideas with their own problems that professional reliance unfortunately inherits. None of this is helped, as we find, with a generally unclear system of accountability.

Underpinning all this is the political idea that the private sector can more efficiently deliver outcomes than the public sector. This idea was ascendant when the new management regimes were introduced in the early 2000's. Over the last two decades, we have seen the transfer of resource management duties and decisions to the licensee private sector where businesses are granted private rights to public resources in a complex exchange including licensing, stumping and forestry obligations. Unfortunately, this idea has run into some complications. Considering this outsourcing, it would be worth examining if the province's public forests have benefitted from the best management they deserve during this period.

We find that concerns with professional reliance are actually deeper problems announcing themselves about how we manage resources in the province. From our perspective, our government and the public will not be well served if this review does not examine the current regime of forest management in our province in which PR plays but a part. There are, of course, likely to be improvements to be made to the practice of professional reliance, but those changes will have to take place alongside considering the dispositions of the agencies involved, the regulation framework, and the strategic ideas and assumptions that inform how we manage our forests. Otherwise, we risk jeopardizing the advantages and benefits currently available through PR by replacing them possibly with something less able to meet the need for flexibility, innovation and the public's expectations as we manage forests. Or worse, we'll just add to what already seems like a large catalogue of previous recommendations and findings regarding professional reliance.

As a final comment we would add that all three parties in the last election promised to review professional reliance. On its own, that popular commitment has created an inherent bias, besides being a partisan appeal to public sentiment (even the BC Liberals got on board, which amounted to campaigning against their own record). It assumes, without a lot of evidence, that PR was a (the) problem. This is a typical bias when it comes to governments and their tendency toward blame management in the face of large disasters involving public safety or the environment. Not only does this bias the review from the outset, it will likely lead to a hampering defensiveness on the part of government, and other stakeholders, when reviewers scrutinize their roles in any incidents.



Our prime concern is that professionals will fall victim to bias, and eventual blame, for what are deficiencies within a whole complex regime of factors and variables. If this is the only eventual outcome of the review, it will be unfortunate.

If the review is not already considering this, we recommend that it conduct a model exercise where only changes to the specific practice of PR within the regime are applied. That would allow us to see how much those changes might positively affect resource management decisions and outcomes. We doubt this will change things for the better because professionals are generally competent and not corrupt — their competency and integrity being the main effective elements of PR. Conducting the same exercise, this time leaving PR alone and changing other regime components, we think we will see more significant improvements. This exercise might also expose, as we see it, the troubling assumption defining the review.

Notwithstanding our reservations we see the review as an opportunity to provide some needed, helpful insights that could lead to real changes of behavior and thinking around how government, the private sector and professionals can work together to manage resources in the best interests of the public. That certainly will be a challenge given what we have said. But you have our full support in pursuing that crucial goal.

### **WFCA Perspective Background**

In 2013, the Forest Practices Board (FPB) released a bulletin on the topic of professional reliance in BC. In it they said, *“the Board’s view, based on experience, that professional reliance has proven to be a key element of BC forest management, and that the application of this principle does have limitations. Persistence of expectations that exceed those limitations undermines the existing model. In particular, the focus being placed on professional reliance to address many stewardship concerns may actually be distracting from important issues with the forest management framework that need to be addressed”*.

These issues included: *“weak or unclear objectives and priorities for specific resource values at appropriate scales, the lack of a process to coordinate multiple licensee activities across a landscape, and an imbalance in decision-making power between conflicting resource users”*.

In March of 2014, the Forest Practices Board (FPB) released an investigative report entitled: Bridge Planning Design and Construction Special Investigation. The report examined 216 bridges built on resource roads in five districts around the province. Nineteen bridges were found to be unsafe and investigators had serious safety concerns with 13 more. While most adequately protected the environment, there were problems found with bridge planning.



The FPB report focused on bridge issues specifically and drew a conclusion that professional reliance may be a cause of observed shortcomings. The issue of professional reliance, as it relates to BC's sustainable forest practices in general was at the heart of the FPB report. Key to this discussion was the FPB acknowledgement that:

- Only 60 percent of bridges investigated had complete plans and there was no professional assurance that 73 bridges were planned and built adequately,
- The professional associations have provided professional practice guidelines for bridge planning, design and construction to their members, but not all licensees and professionals are following them.

The Mount Polley mine disaster that began August 4 of 2014 put a significant focus on the issue of professional reliance. In February 2015, the Globe and Mail reported a principal finding of the panel reviewing the breach determined the tailings dam collapsed because of its construction on underlying earth containing a layer of glacial till that had been unaccounted for by the company's original engineering contractor<sup>1</sup>. These findings ultimately lead to more discussion of professional reliance.

In 2017, our provincial government decided to conduct a review of the Province's professional reliance model to ensure the highest professional, technical and ethical standards are being applied to resource management in B.C.

### **WFCA Perspectives**

As the association that represents the interests of forest professionals engaged in forestry consulting across BC, we too are concerned that if the FPB assertions are correct, that either:

- Some professionals are not following the required standards of practice, or alternatively;
- That the obligation by the tenure holders to engage a professional and to act on the recommendations of that professional in the planning, design or building phase of the bridge projects is not being properly addressed.

For our part, however, we need to dig deeper into the professional reliance issue and ask the question: "*just who is relying on whom and to what extent?*" if we are to better understand what breakdown in the professional reliance model is indicated. Specifically:

1. Is professional practice being ignored by the professional charged to do the work?

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<sup>1</sup> [https://en.wikipedia.org/wiki/Mount\\_Polley\\_mine\\_disaster](https://en.wikipedia.org/wiki/Mount_Polley_mine_disaster)



2. Perhaps those charged with the obligation (through tenure) to ensure professional oversight is being applied are not engaging the required level of professional oversight? or,
3. Is the advice provided by the forest professional not being followed?

These are all questions of accountability. With regard to the bridges issues, the FPB report does not specifically articulate who was ultimately accountable in each of the specific bridge failures outlined. Unfortunately, we cannot ascertain from the FPB report specific details on which employer groups (consultants, government, and industry) were responsible for each bridge issue.

That said, we are aware of work done in response to the bridge report that led to investigations of individual's training and competence with respect to bridge design and installation. We are not aware, however, that the investigation ever led to a review of any tenure holder's obligations to utilize professionals as part of the planning process. If not, then the issue of professional reliance breakdown did not rest with the individuals alone.

Clear transparency of who was responsible and accountable and at what stage did the professional reliance break down requires this information be made available so that the questions outlined above can be properly answered.

But just who is relying on whom when we speak of the professional reliance model in BC?

The public relies on the government to provide the policy framework, sustainability guidelines and resource management objectives that ensures BC's forests are managed sustainably and for the public benefit. Objectives need to be clear and achievable so that professionals relying on them for guidance when making professional decisions are not having to second guess what is required.

It is the opinion of the WFCA members that government legislation and regulation, may not be as supportive as it should be and as a result, failures to the professional reliance model have occurred. A key example is the requirement to manage for water quality in FRPA? without any clear guidelines as to what the objectives really are in any legislation or regulation. As a result, practicing professionals are left to their own training and experience when making decisions with respect to water quality, the results of which may be subject to review.

For its part, the government also relies on the legislation and regulations as a means of structuring professional reliance and when and where it can be applied and relied upon. Among these, the Forest and Range Practices Act, the Forest Act and the Foresters Act all speak to the issue of and opportunities for professional reliance. Key to these directives is clarity for tenure holders of when and where they must rely on



professionals and what their ultimate obligations are to employ, hire and act upon professional opinion. This includes the ability for government to ensure, especially in high risk paces, that the tenure holder obligations are being met.

Under the Foresters Act, it is the Association of BC Forest Professionals (ABC FP) responsibility to uphold the public interest regarding the practice of professional forestry by ensuring the competence, independence, professional conduct and integrity of its members. The ABCFP has established standards of education and qualifications to ensure members are qualified and remain up-to-date in their field of practice. This ensures members can be relied upon to act accordingly with respect to the requirements of the legislation and regulations. Where issues of faulty or questionable professional reliance by a member are identified, the ABCFP has disciplinary processes to deal with the member. This system of continuous improvement is a positive key to the use and reliance on professional opinion in resource management.

Individual companies who are given rights to operate on public lands by virtue of tenure then rely on guidance from the legislation and regulations to ensure their forest management is consistent with government objectives. They are then obligated to rely on either their staff forest professionals or hired consulting forest professionals to ensure their obligations for professional reliance are being met.

As consulting forest professionals, we are routinely engaged by those with the responsibility to manage natural resources via tenure. Professional reliance from our perspective is about doing what we are instructed to do within the regulatory framework we all work within. As the Executive Director of the WFCA, I can say that when one of our members is hired, they can be relied upon to provide professional services to their client as their business depends on it.

However, we suspect that in some cases, an indicted “*breakdown in the professional reliance model*” occurs where the party to the professional obligation does not:

- Accept and acknowledge the need to retain the appropriate level of professional help,
- The advice provided by the forest professional is simply not followed by the tenure holder, or
- The forest professional is not fully engaged (i.e. retained only for a portion of the work) to ensure completion of the required task, or
- There was no higher-level guidance provided via legislation, regulations or forest policy.

Regardless of the reason, it is the WFCA view that the tenure holder is ultimately responsible for the actions taken by forest professionals on their behalf and that



investigations into a breakdown in professional reliance cannot be solely focused on the professional at the heart of the issue.

Incompetent work by a forest professional requires investigation by the ABCFP and as the FPB noted, is a concern. But these instances alone may not be the sole cause of a breakdown in the professional reliance model.

Any perceived failure of the professional reliance model must also be shared with tenure holders who either don't retain, limit the scope, or don't follow the recommendations of forest professionals when obligated to do so, since they too have the ultimate obligation to ensure professional reliance is effectively implemented.

As forest professionals we have responsibilities to: the public; the profession; our client or employer; and other members as detailed in the ABCFP code of ethics. As practicing consulting forest professionals, we are also bound by the code of ethics and like our colleges practicing in other areas of the industry, we can be relied upon to ensure the work we do is to the best of our ability and in compliance with acts, regulations, the code of ethics and to ourselves. The success of our businesses are linked to the quality, integrity and professionalism of the services we provide. Not following the professional reliance model to the highest standard, will result in a loss of business reputation and or ultimately business failure.

### **Weaknesses in the Review Process**

It appears to the WFCA that the breakdown of the professional reliance model is being investigated from a "what did the professional do wrong" perspective as opposed to "is the structure of the model correct" and "who was accountable" in the process. None of the five components of the review process seeks to specifically identify where and who was accountable when failures in the professional reliance model have occurred or was there something missing in the legislation, regulation, or compliance monitoring that may have led to the failure.

Our fear is that the public sees the disappointing outcomes of failures in the professional reliance model and the failure of professionals as the same thing when in many cases, it is the system structure and not the individual. This has to be clear and must be addressed as part of the review process or public support for the industry and professionals will be lost.

It is government's responsibility, as the ultimate managers of the forest resources, to ensure that if the professional reliance model is to be utilized, that appropriate guidance and feedback (compliance) is provided.



## **Looking Forward**

When we consider the potential to address concerns over the professional reliance model, it is important to recognize that public support for the industry at large is at stake as is the reputation of the practicing forest professionals. That said, when the public hears that “professional reliance is being reviewed” they immediately assume the individuals are at fault without fully understanding the complimentary requirements for legislation, regulation, compliance enforcement, accountability and professional association diligence with its members. The WFCA therefore recommends that any public response to the ongoing investigation be made clear that professional reliance is not just about the practicing professional. Otherwise support for our industry members will be in jeopardy.

The WFCA recommends that the review process should lead to clarity and completeness of all resource management objectives. These need to be enforceable and at an appropriate level of detail to be meaningful for the professional opinion being rendered. It is imperative that accountability for professional reliance be clear throughout the forest industry supply chain. Simply put, it is the WFCA view that in many cases, the practicing professional is not in a position to exercise authority, because in some cases the needed authority may not exist. Often they are being asked to answer the larger questions of what is in the public interest in the absence of regulations legislation, policy or objectives laying out those public goals.

It is the WFCA view that government needs to strike a better balance between professional reliance and monitoring and enforcement of stated objectives and requirements. That said, we also believe that government does not have enough qualified people to ensure the ongoing accountability of the industry with respect to tenure management or professional reliance generally across all resource industries.

The solution to this issue is two-fold:

1. Develop a program to hire or retain qualified practicing professionals where appropriate within the government to ensure that guidance for the professional reliance model is clear. This does not simply mean “hire more people”, but hire or retain trained and experienced people to support the objective. Hiring people without the pre-requisite experience will not address the issue.
2. Where there is not sufficient people to ensure compliance with objectives in the professional reliance model, develop a risk framework by resource sector in order to focus compliance monitoring on areas most in need or at risk or in places where there is a high level of risk to the public interest where mistakes have the risk of significantly impacting the public and not the ones making professional decisions. The risk framework would ensure that scrutiny in



resource management decision is brought to bear in situations where significant resource values are potentially at risk.

This approach would be similar to the role that the current Forest Practices Board fills, a role that could be expanded to ensure the professional reliance model works and desired objectives are in place and being met using the risk framework as a guide to their mandate.

### **Summary of Recommendations**

The professional reliance model can increase productivity by reducing bureaucracy in resource management planning while increasing creative practices by planners.

Forestry, like our forests and range ecosystems, is dynamic and evolving. A lot has changed since our last rounds of provincial land use planning in the 90s. A lot also has changed since our government announced its “era of professional reliance” in 2002.

Professionals need guidance and rules to support them in making or recommending decisions involving the values and complexities that constitute the public interest in resource management.

We recommend our government:

1. Review and revise the Ministry of Forests Lands and Natural Resource Operations and Rural Development’s vision for the management of provincial forests and rangeland considering, for example, changes in social concerns, emerging climate change effects, and our economy. These should be considered in the context of our government’s commitment to rural development and its addition to MFLNRORD’s ambit.
2. Examine existing legislation, regulation and guidelines that lack clarity and develop clear and practical objectives, targets and guidelines at a provincial level that professionals can use in recommending and making planning decisions within the professional reliance model. Development of provincial guidelines should include input from working professionals outside of government.
3. Develop a program to hire or retain qualified practicing professionals where appropriate within the government to ensure that guidance for the professional reliance model is clear. This does not simply mean “hire more people”, but hire or retain trained and experienced people to support the objective. Hiring people without the pre-requisite experience will not address the issue.



4. Where there is not sufficient people to ensure monitoring of compliance with objectives in the professional reliance model, develop a risk framework by resource sector in order to focus compliance monitoring on areas most in need or at risk or in places where there is a high level of risk to the public interest where mistakes have the risk of significantly impacting the public and not the ones making professional decisions. The risk framework would ensure that scrutiny in resource management decision is brought to bear in situations where significant resource values are potentially at risk.
5. Establish regional working groups comprising government, the private sector, and other stakeholders to identify local forest and rangeland management objectives that are consistent with the Province's vision, legislation and regulation. This approach would allow professionals to put their expertise to work testing ideas, proposing solutions, deepening knowledge and refreshing perspectives. These groups would:
  - a. review and update current land use plans considering past and anticipated changes to the economy, the environment and social expectations;
  - b. develop new land use plans where provincial level guidance is not sufficient in providing professional reliance guidance to address local resource issues
  - c. meet regularly to report successes, lessons learned and share information about how well practices are meeting expectations and evolving circumstances within the professional reliance model;
6. Cooperate with academia to ensure recent knowledge and insights penetrate current policy and practice on an ongoing basis.
7. Fund and support fully the Forests & Range Evaluation Program so that it can do the necessary research, and data analysis to provide reliable guidance to professionals and other practitioners.
8. Expand oversight of resource management and professional reliance by expanding the mandate of the current forestry watchdog Forest Practices Board who have done a very commendable job over the past four years to identify and address resource issues, including shortfalls in the professional reliance model. At this writing the FPB has no chair. Given the ongoing professional reliance scrutiny and other reviews, including the province's review of this year's fires and floods, this crucial watchdog needs to have its full strategic capacity in place. Our government needs to fill this position as soon as practicable.



As always, the members of the WFCA remain available and willing to support development of a working professional reliance model given our membership consists of those practicing forest professionals who provide professional consulting services across BC and globally.

**Respectfully submitted on behalf of the WFCA Board of Directors**

John Betts, Executive Director

CC: WFCA Membership