



PRACTICE GUIDANCE

Exclusions to the Professional Foresters Act

Approved by Council: June 19, 2015

The intent of this document is to provide guidance to both OPFA members and non-members regarding "exclusions" and "acts not constituting professional forestry" as listed in the Professional Foresters Act, 2000, Ontario Regulation 145/01 and Association By-laws.

PRACTICE GUIDANCE

EXCLUSIONS TO THE PROFESSIONAL FORESTERS ACT

PURPOSE OF THIS GUIDANCE

The question of “what constitutes professional forestry in Ontario” results in a detailed answer and depends on several factors such as the nature of the activity being considered, who is doing it (and that person’s relevant qualifications), and whether they are being supervised while they undertake the activities in question.

Practice guidance has been approved by the Ontario Professional Foresters Association (“OPFA”) Council and provides clarity regarding the definition of the Scope of Practice of professional forestry. The *Professional Foresters Act, 2000* (the “Act”) defines professional forestry in Ontario. The Act and the “exclusions” under Ontario Regulation 145/01 both list specific activities that will not be considered to be acts of professional forestry if conducted by certain individuals in carrying out activities associated with the excluded profession, trade or occupation.

The main purpose of this document is to provide guidance to association members, individuals in related professions and occupations, consumers, the public, employers and policy makers in interpreting the exclusions to the practice of professional forestry in Ontario outlined in the Act, the regulations, and related by-laws, policies and guidelines of the Association.

This document has been developed to provide assistance in determining whether a person requires registration by the OPFA in order to lawfully conduct certain forestry activities in Ontario, and whether an unregistered person may undertake such activities under a legislative exclusion.

Where it appears to the OPFA that any person does not comply with any provision of the Act or the regulation, the Association may apply under section 59 of the Act for a cease and desist order or injunction to the Superior Court of Justice.

BACKGROUND

The principal object of the OPFA, as set out in subsection 5(1) of the Act is to regulate the practice of professional forestry and to govern its members in accordance with the Act, the regulations and the bylaws in order that the public interest may be served and protected.

A copy of the Act is available on the Ontario Government’s e-laws site at:
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00p18_e.htm

By authority of the Act, the OPFA regulates the practice of professional forestry in Ontario. Although the Act provides a legal definition of professional forestry in Ontario, regulating professional forestry occasionally requires an interpretation of that legal definition and how it applies to specific circumstances.

The legislative definition of the scope of practice of the profession of forestry in Ontario is set out in Section 3 of the Act. That section defines the types of activities, the performance of which requires a certificate of registration under the Act:

3(1) The practice of professional forestry is the provision of services in relation to the development, management, conservation and sustainability of forests and urban forests where those services require knowledge, training and experience equivalent to that required to become a member under this Act and includes:

- (a) the designing, specifying or approving of silvicultural prescriptions and treatments, including timber harvesting;
- (b) the appraisal, evaluation and certification of forests and urban forests;
- (c) the auditing of forest management practices;
- (d) the assessment of impacts from planned activities on forests and urban forests;
- (e) the classification, inventory and mapping of forests and urban forests; and
- (f) the planning and locating of forest transportation systems, including forest roads.

Elements of the practice of professional forestry may overlap with the work performed by members of other professions, trades and occupations. Defining the parameters of a scope of practice requires an approach that can accommodate current practices and adapt to future changes in techniques, education and management practices.

Section 13 of the Act states that:

“No person shall engage in or hold himself, herself or itself out as able to engage in the practice of professional forestry unless the person holds a certificate of registration issued by the Association.”

This means that a person must be a duly licensed member of the OPFA in order to lawfully conduct professional forestry activities in Ontario. Unregistered persons may not engage in professional forestry unless such activities are carried out in accordance with an exclusion listed in subsection 3(2) of the Act or in Ontario Regulation 145/01, because by definition, those activities do not constitute professional forestry.

This document summarizes the acts “not constituting professional forestry” as referenced in the Act and the OPFA’s interpretation of the conditions required for an individual in an excluded profession, trade or occupation to benefit from the exclusion in the Act (i.e., so as not to be required to be a member of the OPFA).

EXCLUSIONS UNDER THE PROFESSIONAL FORESTERS ACT, 2000

A copy of the *Professional Foresters Act, 2000* is available on the Ontario Government's e-laws site at: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00p18_e.htm

Certain persons will not be seen to be practising professional forestry if they are conducting certain activities in accordance with exclusions in the Act (Section 3(2)) or Ontario Regulation 145/01. The following is the OPFA's interpretation of the circumstances under which a person may be able to claim the benefit of the exclusions in subsection 3(2) of the Act:

"The practice of professional forestry does not include acts performed in relation to the management or manipulation of forests if they are performed:

(a) personally by individuals on land which they own;

This is designed to exclude woodlot owners from the application of the Act. As a result, the rights of landowners with respect to their properties are unaffected by the Act, so long as activities are performed personally by owners on their own land.

This clause only excludes landowners who plan and perform the forestry work themselves, and does not exclude consultants or contractors hired by the landowner or landowner's agent. Persons hired or directed by a landowner or landowner's agent, in either a paid or volunteer capacity, to conduct aspects of professional forestry must only do so as a registered OPFA member or under some other applicable exclusion under the Act or Regulation 145/01 and in accordance with the interpretation of that exclusion.

(b) by a person acting within the scope of practice of a profession, trade or occupation that is listed in the regulations;

See next section: Exclusions under Ontario Regulation 145/01 for excluded professions and interpretation.

(c) by persons responding to an emergency situation such as a forest fire;

Emergency situations that may be expected to affect forests and urban forests include forest fires, floods and severe weather events such as ice storms or tornadoes. A secondary impact of the response to these types of emergency situations by authorized emergency personnel may include decisions that affect the forest cover to help address the emergency. While the response to forest fires is the primary emergency situation considered by this exclusion, response to any emergency situation would be included.

Manipulation, or change to the forest canopy may occur in accordance with

instructions from the Officer in Charge in an emergency (or reasonably perceived as an emergency) situation.

- *In the event of a forest fire, instructions may originate from the Fire Officer. Where there is no assigned fire crew or Fire Officer, the person must be undertaking activities to manipulate the forest canopy for the containment of the fire, or for the construction of emergency access points and roads necessary to provide fire responder access, or evacuation of personnel.*
- *In the event of a non-fire emergency, manipulation of tree or forest cover may occur to protect public safety in accordance with instructions from authorized emergency personnel.*

(d) by persons acting under the supervision of a member;

The person must be directly supervised by a licensed member (Full member or an Associate member with a relevant established scope of practice) who is willing to take professional responsibility for the professional forestry work being undertaken by the unregistered person.

See Practice Guidance – Supervision for the description of what constitutes direct supervision (i.e. competent and adequate) that will ensure quality professional forestry work products and outcomes.

(e) by students enrolled in a forestry education program and under the supervision of the course instructor in the program;

Students must be currently enrolled in a university or community college forestry program. Activities must be conducted in the course of academic study and be supervised by the course instructor in the program. If students are preparing or implementing silvicultural prescriptions resulting in change to the forest canopy under the supervision of a course instructor, the course instructor must be a registered member.

(f) by a member of the armed forces while on duty; or

Activity must be in the authorized duties/orders of the member of the armed forces.

(g) by a person engaged in scientific research.

A scientific research project, implemented by qualified individuals to do such research, may include alteration of the forest canopy. Landowner approval, along with confirmation by the research organization or institution duly authorizing the individuals involved to conduct the research, is required.

EXCLUSIONS UNDER ONTARIO REGULATION 145/01: PART III – ACTS NOT CONSTITUTING PROFESSIONAL FORESTRY

Section 13 of the Act reads as follows:

“No person shall engage in or hold himself, herself or itself out as able to engage in the practice of professional forestry unless the person holds a certificate of registration issued by the Association.”

However, a number of professions, trades and occupations are not required to be registered under the Act even if their work could be seen to constitute professional forestry, by virtue of the application of Regulation 145/01. Professional forestry activities are excluded if: 1) conducted personally by the specified professionals; and (2) the activity is within the generally accepted scope of practice of that particular profession. If either of these conditions are not met, the person is not able to rely on the exclusions in the Act or Regulation 145/01. Enforcement of the regulation is made more complex due to the fact that several of the excluded occupations are not regulated and do not have official scopes of practice.

Regulation 145/01 lists forest technician, arborist, and biologist within the excluded professions. These professions are likely excluded because their scopes of practice may overlap that of the profession of forestry. For example, an activity being performed by a forest technician may fall within the definition of the practice of **professional forestry, but it is also an activity that is normally carried out by forest technicians and is one for which they are normally trained and educated.** In this case, the person carrying out the activity need not obtain a certificate of registration under the Act.

However, if the activity falls within the definition of the practice of professional forestry, and is outside the scope of practice of the profession, trade or occupation in question, then the person performing the activity must obtain a certificate of registration under the Act.

The scope of practice of these professions, trades or occupations may or may not be codified. To determine whether or not an activity falls within their generally accepted scope of practice, regulators, representatives or members of the professions, trades or occupations in question may have to be consulted. The regulation reads as follows:

“For the purposes of section 3(2)(b) of the Act, the Act does not apply to persons engaged in another established profession, trade or occupation provided that the person is acting within its generally accepted scope of practice, including the following professions, trades or occupations:...”

The OPFA interpretation of each exclusion has been developed to serve as guidance as to the circumstances under which persons may benefit from the exclusion. These interpretations, as noted below in italics, are not legal definitions:

a) Natural Resource Technician and Technologist

Graduate of a post-secondary Forest Technician, Forest Technology or Natural Resource Technician diploma program and undertaking work in the forest that is within the generally accepted scope of practice of a Forest Technician.

Examples of the scope of practice of technical level forestry includes conducting forest inventories, implementing or supervising the implementation of silvicultural prescriptions (as prepared by an R.P.F.), including individual forestry activities such as timber harvesting, site preparation, tree planting, regeneration surveys, juvenile thinning, assessment for forest insect and disease, herbicide application, compliance assessment, etc.

b) Certified Forest Management Plan Approver

Current certification as a Managed Forest Plan Approver (MFPA) in good standing is required for this exclusion to apply. Certification is conferred and registered by the Managed Forest Tax Incentive (or Improvement) Program (MFTIP), administered by the Ontario Ministry of Natural Resources and Forestry. The generally accepted scope of practice includes preparation and/or approval of a Managed Forest Plan for the purposes of satisfying the tax benefit plan associated with the program.

If a silvicultural prescription or a forest inventory is to be included in the Managed Forest Plan, the prescription and design of the inventory must be prepared by a registered member of the Association or under the direct supervision of a registered member. Certification as a Managed Plan Approver does not allow for preparation of forest inventories or silvicultural prescriptions unless the MFPA is also a licensed member of the OPFA.

c) Certified Tree Marker

Tree Marker Certification must be current and in good standing as conveyed by the Ontario Tree Marker Program (Ontario Ministry of Natural Resources and Forestry)

Level I – may mark trees in accordance with a prescription prepared by a registered and competent OPFA member; or as prepared personally by the landowner. No revision to the prescription is permitted.

Level II – may mark trees as per Level I Tree Markers (as above), and may audit tree marking marked by another tree marker. This audit may only be an assessment of tree marking in accordance with a prescription prepared by an R.P.F. prior to harvest activities being implemented (if applicable) and does not include revising a prescription, assessing the prescription against planned objectives, auditing tree marking after harvest activities have commenced, or any such other assessment of impacts of planned forest management activities.

Level III – This level recognizes those persons certified as Tree Marker course

instructors. Level III Tree Markers may do all activities referenced for Level I and Level II.

d) Biologist

Graduate of an undergraduate or graduate Biology degree from a recognized university and working within the scope of practice of their academic training and qualifications.

From the College of Applied Biology: (<https://www.cab-bc.org>):

“Applied biology” means the application of the applied biological sciences, including collecting or analyzing inventories or other data or carrying out of research or assessments, to design, evaluate, advise on, direct or otherwise provide professional or technical support to projects, works, undertakings or field practices on public or private lands.

e) Certified Arborist

Includes arborists currently certified and in good standing by the International Society of Arboriculture (ISA) while conducting acts in the generally accepted scope of practice of arboriculture.

Definition of Arboriculture: The cultivation, management, and study of individual trees, shrubs, vines, and other perennial woody plants. It is both a practice and a science. (Wikipedia: <http://en.wikipedia.org/wiki/Arborist>)

The exclusion allows for a Certified Arborist to inventory, manage and prescribe silvicultural treatments for individual trees, and does not apply to activities on forested areas, including parks, where management is done on a scale greater than individual trees.

f) Landscape Architect

Member in good standing of the Ontario Association of Landscape Architects and working within the scope of practice of their academic training.

g) Professional Planner

Member in good standing of the Ontario Professional Planners Institute and working within the scope of practice permitted by membership in that organization.

h) Certified Ontario or Canadian Lands Surveyor

Member in good standing of the Association of Ontario Land Surveyors or the Association of Canada Lands Surveyors and working within the scope of practice permitted by membership in that organization.

(Ontario) The Surveyors Act, 1990: The “practice of professional surveying” means the determination or analysis of spatial attributes of natural and artificial features on, above or below the surface of the earth, whether or not the surface of the earth is situated below water, and the storage and representation of such features on a chart, map, plan or graphic representation, and includes the practice of cadastral surveying;

Certified Land Surveyors may not recommend or offer opinion on forest management or manipulation of forest cover.

i) Botanist

Graduate of an undergraduate or graduate Botany degree from a recognized university and working within the scope of practice of their academic training and qualifications.

j) Zoologist

Graduate of an undergraduate or graduate Zoology degree from a recognized university and working within the scope of practice of their academic training and qualifications.

k) Professional Engineer

Only includes currently registered Professional Engineers in good standing with the Professional Engineers of Ontario (PEO) that are practising within a documented general Scope of Practice of Professional Engineers.

l) Certified Property Appraisers

A Property Appraiser certified by an organization duly authorized to provide such certification and working within the scope of that certification.

m) Agronomist

An Agronomist with a recognized Agronomy degree, or certification by an organization duly authorized to provide such certification, and working within the scope of practice of his/her academic training and/or certification.

n) Ecologist

Graduate of an undergraduate or graduate Ecology degree from a recognized university and working within the scope of practice of their academic training and qualifications.

This document has been developed to give guidance on exclusions to the Professional Foresters Act, 2000, so that the public interest, and the public expectation of the profession, is served and protected. Persons are encouraged to contact the Executive Director of the OPFA should they wish to discuss specific applications of this practice guidance document.