

Questions and Answers
“The Professional Foresters Act”
pertaining to Forest Conservation By-laws in Southern Ontario

updated July 22, 2003

The Act states:

Section 13.

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.

The Act definition “The Practice of Professional Forestry” as follows:

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;***
- (f) ***the planning and locating of forest transportation systems, including forest roads.***

3.(2) 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;***
- (b) ***by a person acting within the scope of practice of a profession, trade or occupation that is listed in the regulations;***
- (c) ***by persons acting under the supervision of a member;***

The Regulation as referred to above in 3. (2) (b) excludes what is generally done by the following professions from the definition of “the practice of professional forestry”:

Section 4.

For the purposes of clause 3 (2) (b) of the Act, a person who performs an act in relation to the management or manipulation of forests that is within the generally accepted scope of any of the following professions, trades or occupations is not practicing professional forestry when so acting, unless

the person is a registered professional forester:

- * ***Natural resource technician and technologist.***
- * ***Forest management plan approver certified under the "Managed Forest Tax Improvement Program".***
- * ***Certified tree marker.***
- * ***Biologist.***
- * ***Certified arborist.***
- * ***Landscape architect.***
- * ***Professional planner.***
- * ***Certified Ontario or Canadian land surveyor.***
- * ***Botanist.***
- * ***Zoologist.***
- * ***Professional engineer.***
- * ***Certified property appraisers.***
- * ***Agronomist.***
- * ***Ecologist. O. Reg. 145/01, s. 4.***

QUESTIONS & ANSWERS

Purpose of the Act

1. There has been some confusion about the purpose of the Professional Foresters Act.

i) What does the Professional Foresters Act do?

ANSWER: The Professional Foresters Act regulates the practice of professional forestry in Ontario.

ii) Professional Forester's Act:

- Defines the Scope of Practice of Professional Forestry
- Establishes the Ontario professional Foresters Association as the corporate body responsible for the regulation of the practice of professional forestry in the public interest
- Gives the Ontario Professional Foresters Association (OPFA) the legal authority to regulate the practice of its members
- The Act assures the public, that a person claiming to be "practicing Professional Forestry" must be a member to the OPFA and must be abide by the OPFA's code of ethics.

Anyone can claim to practice forestry, even practice good forest management practices, but unless they are a member of the OPFA they may not claim to be carrying out 'Professional Forestry'.

- iii) What is the purpose of regulating the practice of professional forestry:

Answer: To regulate the practice of professional forestry and to govern those who engage in the practice of professional forestry in accordance with the Professional Foresters Act 2000, the regulations, and the by-laws of the Ontario Professional Foresters Association in order that the public interest can be served and protected

- iv) What does the Professional Foresters Act NOT do?

ANSWER: The Act does not define good forestry practices and does not provide the OPFA with the authority to be the “tree police”.

- v) What is the Act intended to protect?

ANSWER: The Act is intended to protect the public interest by ensuring the sustainability of Ontario’s forests and it also substantially increases the accountability of OPFA members for their work.

- vi) Is the Professional Foresters Act in any way intended to protect the forest from bad forestry practices?

ANSWER: The Act permits the OPFA to regulate the practice of professional forestry through regulating the practice of its’ members. Therefore the OPFA can take action against members who carry out inappropriate forestry practices. The OPFA has no authority to be the “Tree Police” on private land.

The OPFA has no authority to regulate “practices” carried out by others. As an example, the OPFA has no authority in situations where a landowner comes to a contractual arrangement for work to be done on his or her property. If a contractor is posing as a member of the OPFA or if the contractor is carrying out work that would be considered to be professional forestry, then the OPFA can take action if a complaint is registered. This action would come from Section 3. (2) of the Act and the OPFA could take action to have the contractor cease these practices.

Enforcement of the Act

2. The Act gives the OPFA authority to act on what might be professional misconduct and a violation of the Code of Ethics by one of its members.

- i) Does the Act also give the OPFA the authority to act on what might be unauthorized practice by someone that is not a member?

ANSWER: Yes and unauthorized practice applies only to non-members. Section 13 of the Act states that individuals cannot engage in “professional forestry” unless they hold a certificate of registration issued by the Association. In situations where unauthorized practice does occur, The OPFA has the authority to order the individual in question to cease the activities and

if there is no compliance, the OPFA has the authority to take the individual in question to court.

ii) If so, what could the OPFA do?

ANSWER: The normal steps would be, once it has been determined that an unauthorized practice is taking or has taken place, for the OPFA to contact the individual and request by letter that the individual cease and desist. If this “order” is ignored, then the OPFA could take the individual to court to obtain a court order forcing the individual to cease and desist.

iii) Does the Act also give anyone the authority to act on what might be unauthorized practice by someone that is not a member of the OPFA, or does only the OPFA have that authority?

ANSWER: Only the OPFA has this authority.

3. Does the Ministry of Natural Resources, whose legislation it is, have any responsibility in enforcing this Act because of Section 2 that states, “*The Minister is responsible for the administration of this Act.*”? What is MNR’s responsibility under this Act?

ANSWER: The Ministry of Natural Resources has no authority for the day-to-day enforcement of the Act. The Minister’s powers are largely of an oversight nature, being responsible for ensuring that the OPFA is properly implementing the legislation. The Minister can order the OPFA to undertake some actions, but this would likely be in unusual situations.

Duties of a By-law Officer

4. As a Tree Cutting By-law officer, I get asked by landowners or consultants to review the forestry work they are planning to do. This seems reasonable since I am the one that judges if cutting is being done according to good forestry practices and if charges should be laid.

They may tell me about their plans, or ask me to review their management plan, or a prescription, or review the marking of the trees. I am not a member of the OPFA and wonder would this advice be construed as the practice of professional forestry and if I would be in contravention of the Act?

ANSWER: I would suggest that when you review “planned forestry work” that you would do that from the perspective of “does the work meet the requirements of the municipal by-law in question”. If you are not an OPFA member, you do not have any authority to comment on “professional forestry activities” which include, reviewing forest management plans, forest operating prescriptions or silvicultural prescriptions.

5. I am a Tree Cutting By-law officer but not an RPF. It is my responsibility to determine if good forestry practices have been used in the cutting of a forest when determining whether charges should be laid. If in my opinion, a member of the OPFA has marked a forest contrary to good forestry practices, I may warn them not to cut the forest according to this marking as I believe it to be contrary to the by-law.

i) By making that judgement and warning them, am I carrying out the practice of professional forestry?

ANSWER: No, you are making the judgment and warning because you believe that the prescription is contrary to the by-law. You should be aware that the determination of “good forestry practices” is very much a judgment call. So, if you wish to make a judgment call on the issue of does the prescription meet the definition of “good forestry practices” as defined in the Forestry Act, you should seek the opinion of at least one other Registered professional Forester or Associate member of the OPFA.

ii) I don't think this person is practicing professional forestry. I would like to make a complaint. What could I do?

ANSWER: If the person is an OPFA member, you can lodge a complaint with the OPFA. The OPFA is obligated to investigate all complaints.

If it is determined that the member is or is not practicing professional forestry up to the ethics and standards of the profession, disciplinary action will be taken. The ultimate disciplinary action would be for the member to have their certificate of registration revoked.

6. Tree Cutting By-law Officers often go out to a private forest to review and decide if the forest management practices that are planned or being carried out can be considered good forestry practices.

i) Would this activity be considered “auditing forest management practices” as per Section 3(a) of the Act?

ANSWER: No, I think it would be the “good forestry practices” definition from the Forestry Act.

ii) Should by-law officers that have this role be members of the OPFA?

ANSWER: Not necessarily. I think it is important that By-law officers be clear as to the legislation that they are empowered to work under. If they find themselves in situations where they are being asked about “professional forestry”, unless they are OPFA member, they should refer enquiries to Registered professional Foresters or Associate Members.

iii) Does the term "audit" imply a formal auditing process complete with a set of guidelines/standards according to which the audit is conducted (such as CSA)?

ANSWER: If this in reference to Section 3. (a) of the Act, then a formal auditing process is implied. The process could be different than the CSA standard but it would be formal in nature. The nature of the audit would depend on activity being audited and the purpose of the audit.

7. Does the development of by-law (e.g. creating a table of diameter limits, or minimum residual basal area) be considered the practice of professional forestry under the Act?

ANSWER: Tough question. If the by-law starts to get into “residual basal areas” then my suggestion would be to have these confirmed by a licensed member before they go to Council.

8. Many by-law officers just barely know enough forestry to do their job. For instance they can measure and identify some trees but that's about it.

- i) If it were found that a typical by-law officer's duties could be construed as ‘the practice of professional forestry’, would the OPFA consider granting by-law officers associate membership?

ANSWER: Certainly, but the by-law officer will still have to meet the criteria for associate membership. This will entail recognition of professional competency by two Registered Professional Foresters who are prepared to act as sponsors.

- ii) What would by-law officers need to do to become associate members?

ANSWER: This will depend on the activities that the individuals wish to carry out. Associate Membership is a form of limited license. Associate membership grants an individual the authority to carry out certain professional forestry activities that the individual has attained professional competence in. These activities can vary from member to member so it would very much depend on the activities for which the individual is seeking to be licensed.

The criteria for Associate Membership are available on the OPFA website. In general the OPFA will require an identification of academic history, about 10 years of experience, 4 sponsorships (2 of whom must be R.P.F.s), and examples of the individuals’ work so the Registration Committee can determine if the work is at a professional level.

Value of OPFA member

9. In a courtroom situation, where technical information is being presented in favour of a prosecution under a tree by-law, could a by-law officer’s work (measurements, species identification, basal area, etc.) hold up against the testimony of an RPF hired by the defense? That is, does a municipality stand a chance in court without an RPF on side?

ANSWER: Credentials such as OPFA status usually helps a case however there are so many variables in these situations such as credibility, and experience of the individuals etc that credentials alone are not the deciding factor in a judge's mind. It is doubtful that a by-law officer who knows little about forestry would be accepted by a court as an expert qualified to give an opinion on forestry practices.

10. I am a landowner. I have consulted with a forestry expert who has told me that they will conduct "good forestry practices" including preparing a management plan for my forest.

i) Is the preparation of such a forest management plan considered carrying out "professional forestry"?

ANSWER: Yes

ii) If yes, should I be making sure this forestry expert is a member of the OPFA?

ANSWER: Yes

Good Forestry Practices

11. Is the OPFA considering requiring all members to carry out "good forestry practices"?

ANSWER: Yes. The OPFA does require that all members practice in accordance with "good forestry practices". The OPFA has issue a Practice Bulletin to members advising that the preparation of forest operating prescriptions that are not considered to be good forestry practice could result in the member being in violation of the Code of Ethics and guilty of professional misconduct.

12. Will / can the OPFA define "good forestry"?

ANSWER: The definition is the same as used in the Forestry Act.

13. An experienced and intelligent forestry expert does not require a written prescription to mark trees, and do good forestry practices. The thinking required to select and mark the trees according to good forestry practices requires professional forestry principles. Would marking trees therefore be considered "Professional Forestry"? If no, why not?

ANSWER: The act of marking trees, by itself is not considered to be professional forestry. However, the preparation of the forest operating prescription is considered to be professional forestry. **The OPFA takes the view that a written prescription is required before any marking should take place.**

14. If a forestry expert that is not an RPF develops a forest management plan and clearly states that the plan prepared according to good forestry practices but that it is not professional forestry, would that be considered in contravention of the Act?

ANSWER: The preparation of a forest management plan is considered to be professional forestry. The only exception to this is a MFTIP plan.

15.i) How does the OPFA define “the Practice of Professional Forestry” versus “Good Forestry Practices”?

ANSWER: “Professional Forestry is defined in Section 3.(1) of 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,

- (g) the designing, specifying or approving of silvicultural prescriptions and treatments, including timber harvesting;*
- (h) the appraisal, evaluation and certification of forests and urban forests;*
- (i) the auditing of forest management practices;*
- (j) the assessment of impacts from planned activities on forests and urban forests*
- (k) the classification, inventory and mapping of forests and urban forests;*
- (l) the planning and locating of forest transportation systems, including forest roads.*

ii) As long as forestry experts can tell clients and assure them with a long history of credible forestry work that they are conducting ‘good forestry practices’ what is the incentive for forestry experts to become members of the OPFA?

ANSWER: As long as one is not practicing professional forestry, one is not required to be a member. If one is though, then it is a matter of being in compliance with the law.

In addition, OPFA members have, by virtue of their membership in the OPFA committed to be held publicly accountable for their work, to maintain their professional competency and to work to a legislated Code of Ethics. This may affect the decisions of some clients when it comes to choosing a “forestry expert”.

iii) If a forest owner hires a forestry expert that can assure them through a long history of credible forestry work, that they are conducting ‘good forestry practices’ what is the incentive for a forest owner to hire a member of the OPFA?

ANSWER: OPFA members have, by virtue of their membership in the OPFA committed to be held publicly accountable for their work, to maintain their professional competency and to work to a legislated Code of Ethics. The owner should know that in the case of a dispute, the owner can go to the OPFA in addition to trying to resolve the dispute with the individual.

In addition, given that the OPFA requires its members to maintain competency in their areas of practice, landowners can be assured that they are receiving the best professional knowledge available.

Forest Management Plan

16. What is the opinion of the OPFA regarding the skills required to prepare a forest management plan in southern Ontario? Does the preparation of a management plan require the skill, knowledge and training equivalent to that required to be a member of the OPFA? Is it considered "the practice of professional Forestry?"

ANSWER: Yes, the skills required to prepare a forest management plan in southern Ontario are equivalent to the skills, knowledge and training equivalent to that required by a member of the OPFA and it is considered the practice of professional Forestry.

Note that the Act has excluded the development of Managed Forest Tax Incentive Program plans.

On Crown forests, the information required for management plans is set out in the Forest Management Planning Manual for Crown forests. There are no detailed requirements and processes for management plans on private land. The Association relies on the professional judgement of its members to determine the "plan requirements" for any specific parcel of land.

Both Good Forestry Practices and Management Plans

17. Is it true that an R.P.F. can develop a forest management plan that is not written according to good forest management practices but still not be in contravention of the Act? If so, how is that?

ANSWER: Registered Professional Foresters and/or Associate members should not be preparing and/or signing Forest Management Plans that are not consistent with good forestry practice. In this type of situation the member has a duty to document to the landowner the reasons why the actions being requested are not good forestry and to provide the landowner with some realistic options. If the landowner still wishes to go ahead with the same work, the member should consult the OPFA Practice Bulletin for guidance on how to proceed. In all of these types of situations the member should document the decision together with the rationale for the decision.

18. Can an R.P.F. develop a forest management plan that is not written according to good forest management practices and still say they are carrying professional forestry?

ANSWER: No.

19. Some members of the Forest Conservation By-law Committee would like the OPFA to consider having an advisory role to by-law officers.

i) Would the OPFA consider having a tree by-law committee which also includes some non-RPF by-law types that could advise by-law officers on professional forestry practices, good forestry practices when they need assistance?

ANSWER: Yes, the OPFA would consider this.

ii) Could the OPFA assist by-law officers by holding education & information sessions?

ANSWER: This is certainly possible. We would need to work out the specifics as to how this would work.

OTHER QUESTIONS

20. According to an OPFA bulletin, it appears that a member of the OPFA under certain conditions might prescribe "bad forestry practices" and still be in accordance the OPFA code of ethics, and all other requirements under the legislation. Are the OPFA members aware that in practicing "bad forestry", although permitted under special circumstances by the OPFA, they might be subject to prosecution under a forestry by-law?

ANSWER: Registered Professional Foresters and/or Associate members should not be preparing and signing Forest management plans that are not consistent with good forestry practice. In addition the OPFA does not support the preparation of forest management plans or forest operating prescriptions that prescribe "bad forestry practices".

With respect to the knowledge of local by-laws, it is the responsibility of OPFA members as professionals to know and abide by all legislation, of which the local by-law is one.

21. The Act notes that the activities of *prescription writing, timber appraisals, auditing forest operations, inventory, mapping, and locating forest roads* are considered some professional forestry activities.

These are some of the key areas of a technicians/technologist education. And therefore, forest technicians and technologists have traditionally performed all of these tasks and in many cases were entirely responsible for them both as gov't employees and private consultants.

- i) Is it the OPFA's position that these activities are not within the generally accepted scope of the profession of a forest resource technician or technologist?

ANSWER: One needs to look at the detail of the activity here. As a general rule, the planning of the activity and the analysis of the results would be considered to be professional forestry. The OPFA acknowledges that the actual carrying out of the activities could be carried out either by OPFA members or technicians/technologists.

- ii) Will the OPFA be considering these activities done by forest technicians to be a contravention of the Act?

ANSWER: In the above noted example - No.

22. As a certified arborist with a B.Sc in Environment Science I've been practicing urban forestry in S. Ontario for several years.

- i) Does the Professional Foresters Act say I can't do my work because I'm not a member of the OPFA?"

ANSWER: Given that you are an arborist, you can do "arborist work" and the Act will not apply. If, as an arborist you do a 'professional forestry activity' that is within the scope of practice of both arboriculture and professional forestry, you are exempt from the Act.

- ii) Do I have to be a member of the OPFA to continue to practice urban forestry?

ANSWER: If you are doing work that is considered to be within the scope of practice of professional forestry AND is also considered to be within the scope of practice of an arborist, you are exempt and the Act does not apply. If you are doing work that is considered to be within the scope of practice of professional forestry and is NOT considered to be within the scope of practice of an arborist, then the Act does apply and you would be in violation of the Act unless you are a member of the OPFA.

- iii) If so, how can I become a member of the OPFA without having to go back to university for a B.Sc in Forestry?

ANSWER: You could choose to write the series of examinations that would qualify you. There are some 16 exams in total. This is the requirement for Full Membership. The requirements for Associate membership are different and permit members to carry out selected professional forestry activities. This may be a more appropriate in most cases.

- iv) What is the process for a person to become a member of the OPFA?

ANSWER: This information is available on our website. Generally – B.Sc. F. from an accredited university, 18 months work experience and two sponsors.

23. "There's a retired R.P.F. who has spent the last 30 years working in the bush north of Nakina. Now he's moved to Scarborough and is getting contracts writing management plans for urban woodlots. He has no experience in southern hardwood management but because he is an R.P.F. the Act allows him to do this. Why should he be able to do this and not me?"

ANSWER: The OPFA's Code of Ethics which is a Regulation attached to the Act says that:

"Professional Foresters undertake work that they are competent to perform by virtue of their training and experience and, where advisable, retain and cooperate with other professional foresters and specialists. Further, Professional Foresters endorse only those plans, reports, maps and specifications that they produce or directly supervise."

This means that an R.P.F can only perform work that he/she is competent to perform. The question here appears to be "is the R.P.F. in question qualified to perform the work? If a complaint were brought against the individual, the OPFA would investigate and if the complaint was valid, the member could be found to be in violation of the Code of Ethics and could face disciplinary action from the Association. There is a process in place for complaints to be registered against members of the Association.

END