



PRACTICE BULLETIN No. 1

GOOD FORESTRY PRACTICE On Private Lands

Review & Reissued

July, 2010

PURPOSE:

The purpose of this bulletin is to bring to the attention of members a situation that could result in a violation of the Code of Ethics and constitute Professional Misconduct. Some suggested actions are also identified.

ISSUE:

Should a member prepare or take responsibility for a silvicultural prescription on private land in instances where the actions planned in the prescription may not be considered to be good forestry practice?

BACKGROUND:

Professional Standards of Practice relate to how a member of the Association goes about his or her work. They refer to the application of professionally accepted methodologies and procedures in both obtaining and interpretation of information. They are applicable to professional conduct and action.

There are no provincial mandatory requirements that apply to private lands. However, the definition of good forestry practices from the *Forestry Act* provides a standard which must be met where it applies. Application of this standard could be required by the *Forestry Act* itself, by a municipal by-law, by a landowner or client or by other references to it. For example, as noted in the MFTIP Guide (2006), this standard must be met to qualify for the tax incentive. As well, the majority of municipal by-laws that govern tree removal that are passed under the authority of the *Municipal Act*, now either require, or allow as an option, good forestry practices as specified in a prescription written by, or prepared under the supervision of, an OPFA Member. (For more information on this topic, refer to Bulletin #8: Professional Practice and Tree Conservation By-Laws.)

The definition of good forestry practices in the *Forestry Act* is as follows:

“Good forestry practices means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape”

(*Forestry Act* R.S.O. 1990, c. F-26)

Consequently, it follows that good forestry practices are grounded in ecologically sound principles.

Professional Standards of Practice are distinct from technical standards that may be imposed by legislation or specified by an owner or employer. Silvicultural Standards and Guidelines are examples of technical standards. These are associated with professional activities and are the prerogative of the client.

Silvicultural guides issued by MNR are examples of both standards and guidelines. “*Silvicultural guides*” can be defined as “*silvicultural practices recommended for management of forest ecosystems*” (*Forest Management Planning Manual*). *Silvicultural guides* are in place for all of the provinces’ forest regions. The guides, published by the Ontario Ministry of Natural Resources, have been prepared to assist forest managers in the complex task of implementing ecological sustainable silvicultural practices. They are not intended to be a source of generic rules to define simplistic silvicultural prescriptions. **The guides describe both practices that are mandated (on Crown Land) and those that are considered to represent best practices** based on current knowledge and experience. The guides are used to complement thoughtful professional practice.

This bulletin contemplates the decision making considerations that members should follow when deciding what actions are most appropriate when asked to prepare silvicultural prescriptions that do not conform to good forestry practices.

In considering what actions are appropriate, members are referred to the following:

- The *Professional Foresters Act*, 2000
- The Code of Ethics
- The Definition of Professional Misconduct
- Principles and Standards of Professional Forestry

These four items are described in more detail below.

The *Professional Foresters Act*, 2000

The principle object of the *Professional Foresters Act*, 2000 is to regulate the practice of professional forestry in order that the public interest may be served and protected. To have one of the members of the Ontario Professional Foresters Association undertake an activity that falls below acceptable standards could legitimize the activity in the eyes of the client and potentially the public or could cause disrepute to the profession, regardless of the strength of any disclaimer produced by the member. It can be argued that to permit this would defeat the intent of the legislation.

Section 52 (1) says that, subject to the approval of the Lieutenant Governor in Council, the Council of OPFA may make regulations on various matters. Regulation 145/01 includes in part a Code of Ethics and an extensive definition of Professional Misconduct.

Section 53. (1) 31 says that Council may pass by-laws “prescribing and governing standards of practice of professional forestry”. The by-laws include a codification of the “Principles and Professional Standards of Practice.” (approved by Council in May of 2001)

Members are encouraged to review and remain aware of these “rules” in full.

The Code of Ethics

There are two sections of the Code of Ethics that are relevant to this discussion:

The Code of Ethics (Fidelity) states that “A member works in the interest of and with fidelity to citizens, employers, clients and fellow members and provides services that are specifically related to the objectives and requirements of the employer or client.”

The Code of Ethics (Diligence) indicates that a member must “disclose the consequences of actions to clients”. This means that a member has an obligation to indicate to the client the likely outcome of an action and whether the outcome will result in the achievement of the client’s objectives. Members are encouraged to document these “disclosures” in writing so that they are protected in the event of a dispute.

Professional Misconduct

The definition of Professional Misconduct set out in regulation 145/01 includes, among other matters:

2. “failing to maintain a standard of the profession or contravening a standard of practice as set out in the by-laws”

48. An act or omission relevant to the practice of professional forestry that, having regard to the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional conduct.

Principles and Standards of Professional Forestry

Principle 1 states that “A member of the Association shall undertake activities in conformity to all relevant legislation and regulations and in consideration of all guidelines and shall ensure the client is informed.”

Principle 2 states that “a member of the Association shall advocate and practice forest land management consistent with ecologically sound principles”.

It can be reasonably argued that the development of a prescription or undertaking not grounded in approved science where it exists is not based on “ecologically sound principles” and would therefore normally be considered to be contrary to the standards of practice of professional forestry.

DISCUSSION:

Reasons for deviating from silvicultural guidelines must be adequately documented and are subject to review and challenge. Various silvicultural guidelines may be available and the professional may choose which to follow.

Recognizing that there are differences between the technical and professional standards, it is likely that members could find themselves in situations where a landowner or client requests a member to prepare a silvicultural prescription that, in the opinion of the member, is not consistent with applicable silvicultural guides or otherwise does not constitute good forestry practice.

In other words, there could be occasions where the actions being suggested by the client would not normally be considered good forestry practice. Yet, there is a subsequent risk that if the member then does not proceed with developing a prescription and is not involved in the activity that the client may undertake even more destructive activities.

As with many professional decisions, Members can be faced with competing goals or influences.

CONCLUSION:

Based on the foregoing the Member may put him or herself in violation of the Code of Ethics and/or guilty of professional misconduct or unskilled practice and as such he or she could be subject to discipline.

RECOMMENDATIONS:

Given that a member considers that they are contemplating action in a situation where they may face a potential Code of Ethics violation or be guilty of professional misconduct, the following are the steps for the member to follow in order to determine the appropriate action to be taken:

- The Member may always choose to refuse work that they consider not good forestry practice;
- The Member should not undertake or support any activity that is not within the limits prescribed by law (federal, provincial or municipal), including a requirement of good forestry practice.

If neither of the above applies, then:

- The Member should not personally suggest practices that are not good forestry practice;
- If the Member decides to proceed, they are encouraged to:

- Personally ensure the landowner is aware of the various options and implications, whether or not the landowner is the client;
- Document the advice that they have given to the landowner and/or client advocating forest land management consistent with ecologically sound principles; (good forestry practices);
- Document reasons for deviating from a relevant silvicultural guide.
- In considering these matters, the Member would be well served to:
 - Ask themselves; Would the actions that they are contemplating:
 - be what a reasonable forester, experienced with this type of situation, would do in this circumstance and how would that forester view the situation if asked to comment?
 - be considered consistent with what a member of the public would expect from a professional?
 - be viewed as legitimizing the activity in the eyes of the client and potentially the public?
 - have the potential to cause disrepute to the profession?
 - consult with other professional colleagues for their professional opinions.
- The Member could consult the OPFA's Private Lands Forestry Committee for confidential advice.

If the prevalent opinion is that a potential violation of the Code of Ethics exists or that to continue would constitute professional misconduct the member should consider whether it would be appropriate to notify the supervisor or client and advise that he or she believes that continuation would constitute a violation of requirements under the *Professional Foresters Act, 2000* and that the member is not prepared to continue until these potential conflicts do not exist.