



PRACTICE BULLETIN No. 8

PROFESSIONAL PRACTICE
&
MUNICIPAL TREE CUTTING BY-
LAWS

Revised
&
Approved by Council

September 2010

PURPOSE:

The purpose of this bulletin is to clarify the role and responsibilities of OPFA members under the *Professional Foresters Act* with regard to prescriptions required under municipal tree cutting by-laws enacted under the *Municipal Act*. These are often referred to as Forest Conservation By-laws.

ISSUES:

What responsibility does an OPFA member have when preparing and submitting prescriptions as supporting documentation for an application to harvest trees within woodlands under a municipal tree cutting or forest conservation by-law?

What responsibilities do OPFA members have when issuing harvest permits if they are a municipal tree cutting by-law officer?

How should the review of a prescription be conducted that is prepared by an OPFA member and submitted under a municipal tree cutting by-law to ensure there are no contraventions with the *Professional Foresters Act*?

BACKGROUND:

The provisions for municipal tree cutting by-laws under the *Municipal Act* provide municipalities with the authority to prepare by-laws that prohibit or regulate the destruction or injuring of trees on privately owned lands. The majority of these by-laws have an option for and encourage good forestry practices. Some by-laws require good forestry practices only. In either case, a good forestry practices application requires the submission of prescriptions approved by a member of the OPFA. An application made for a permit to conduct good forestry practices is reviewed by a municipal by-law officer to determine if the standards contained in the municipal tree cutting by-law have been adhered to and if a permit to cut will be granted.

There has been significant discussion about the role of municipal by-law officers in the decisions regarding the appropriateness of prescriptions submitted by OPFA members for permit applications and their implementation. Municipal by-law officers include both OPFA members and non-members.

Situations have arisen where municipal by-law officers have not agreed with the prescriptions submitted as part of a permit application and it has been unclear what their best course of action should be, regardless of whether they are OPFA members or non-members.

The OPFA recommends that municipalities hire by-law officers which can attain membership with the OPFA to enforce tree by-laws with good forestry practices provisions. This may reduce the need to retain the services of OPFA members from outside the municipal organization.

Conditions to permits may be set by municipalities that include various items such as operating seasons, timing and use of municipal roads for hauling, buffer trees along boundaries, location of species at risk mitigation requirements, etc. Some of these conditions may not be considered core elements of professional forestry but rather additional requirements that are of local knowledge, interest or concern. Municipalities may require stricter conditions to specific operating practices than what a member might prescribe due to the local knowledge the municipality may have about matters such as site sensitivity or species at risk habitat. This type of direction would be included in the conditions to the permit. The conditions may serve to improve the prescription and add to the conservation of the resource.

A municipality may also include conditions to the elements of the prescription that relate to the practice of forestry, when acting on the advice of an OPFA member.

DISCUSSION:

Where a municipal tree cutting by-law application requires the submission and adherence to a prescription prepared by a member of the OPFA, the municipal by-law officer plays a key role in ensuring that:

- the prescription has been approved and submitted by an OPFA member (with an appropriate scope of practice),
- the prescription meets the requirements of the by-law e.g. good forestry practices, and
- the work is carried out in accordance with that prescription.

In cases where the municipal tree cutting by-law requires good forestry practices, but a harvest prescription is submitted without the participation of an OPFA member, the parties proposing the activity are in contravention of the *Professional Foresters Act* (unless otherwise permitted in the Act). The municipal by-law officer would deem that the application does not meet the standards set out in the municipal tree cutting by-law. The OPFA would urge the municipality to bring this situation to the OPFA's attention.

Importance of a well written prescription

The principal 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 such as the writing of a prescription that falls below acceptable standards could cause disrepute to the profession in the eyes of the public.

Under the Principles and Standards of Professional Forestry, Principle 2 states that:

“A member of the Association shall advocate and practice forest land management consistent with ecologically sound principles”, with the associated standard being to “Demonstrate an understanding of the relevant ecological processes related to forest practices”.

It can be reasonably argued that the development of a prescription not supported by available science is not based on “ecologically sound principles” and would therefore normally be considered to be contrary to the standards of practice of professional forestry.

Tree Marking

A municipal by-law officer has the authority to judge whether the woodland is marked according to the prescription submitted with the application and may deny the permit or place conditions such that the marking is corrected to their satisfaction.

GENERAL RECOMMENDATIONS:

OPFA Members Preparing Prescriptions

The OPFA member should prescribe forestry practices which are consistent with the relevant municipal by-law such as the requirement for good forestry practices.

Whether or not the landowner is the client, the OPFA member is encouraged to personally ensure the landowner is aware of the various options available to them which could be prescribed to achieve their objectives.

In addition to providing a copy of the prescription, the OPFA member is advised to document the advice given the landowner and/or client advocating the use of good forestry practices consistent with ecologically sound principles.

Should OPFA members require guidance in the development of a prescription or if they are unsure about the appropriateness of a prescription they are developing, they may wish to consider the following:

- Review and consider Practice Bulletin No. 1 on Good Forestry Practice on Private Land and the Practice Bulletin (currently under development) regarding minimum content standards for silvicultural tree marking prescriptions.
- Review and consider the appropriate silvicultural guide(s) relevant to the area.
- A member should not undertake or support any activity that is not within the limits prescribed by law (federal, provincial or municipal).
- A member should ask themselves whether there are alternative options or solutions and how other foresters might view this situation if asked to review or comment on the members work.
- Consult with other professional colleagues for their professional opinions.
- Consult the OPFA's Private Lands Forestry Committee for confidential advice.

Should a municipality deny a permit or attach conditions to the permit on the basis of a review, the OPFA member who submitted the prescription may execute their right to take their concerns to the council of the municipality for review.

OPFA members who are Municipal By-law Officers

Should municipal by-law officers who are OPFA members have a concern about a prescription submitted as part of a tree harvest permit application that has been approved by a member of the OPFA , they should consider the following:

1. Review the OPFA's Practice Bulletin No. 1 on Good Forestry Practice on Private Land and Practice and the Practice Bulletin currently under development regarding minimum content standards for silvicultural tree marking prescriptions.
2. Review the appropriate silvicultural guide(s) relevant to the area.
3. Confirm whether the prescription meets the administrative standards and intent of the municipal tree cutting by-law;
4. Approach the OPFA member that is associated with the application to discuss the concerns and to attempt to find clarification and/or resolution to the issue.
5. If the issue remains unresolved, the municipality may consider correspondence to the OPFA member, requesting additional information to justify or explain the prescription.
6. If the municipality continues to have concerns, it may wish to have qualified staff conduct a further review of the prescription, or retain another qualified member of the OPFA to conduct a review.
7. Should the review suggest a prescription is not appropriate, the municipality may
 - a. request the prescription and associated marking and recommendations be revised,
 - b. deny the permit application,
 - c. grant the permit with conditions based on the recommendations from the review,
 - d. advise the OPFA of the concerns or file a formal complaint with the OPFA.

OPFA members who are municipal by-law officers must respectfully consider prescriptions prepared by other OPFA members, recognizing that although a prescription may not meet someone's opinion of the best possible management practices or may differ from what they personally would author, it may still be acceptable under 'good forestry practices'. (See Bulletin #1 Good Forestry Practice on Private Land for additional advice.)

Municipal by-law officers who are not OPFA members may be reminded that they may be in violation of the Professional Foresters Act if they undertake "assessment of the impacts of planned activities on forests or urban forests". Denying a prescription or applying conditions based on such an assessment, without input from another OPFA member, would be inappropriate unless they belong to a designated profession for which the assessment would be part of the "generally accepted scope of practice".

While a Member may agree to modify a prescription he or she has prepared, it is not appropriate for any other person to “modify” a prescription or other professional work (typically signed and sealed) of an OPFA member. Changes would create a new document for which the original author would no longer be responsible.

If an OPFA member or non-member is believed to be in violation of the Professional Foresters Act, contact should be made with the OPFA.