



**Ontario Professional
Foresters Association**

Forestry Practice on Private Lands in Ontario

PRACTICE GUIDANCE

The intent of this document is to provide practice guidance to members in the practice of professional forestry to protect the public interest as provided for in the Professional Foresters Act, 2000, Ontario Regulation 145/01 and Association By-laws.

The document is a consolidation of former practice bulletins 1,8 and 10

Approved by Resolution of Council 2018-07-08

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Overview

This document has been developed to give practice guidance to the members of the OPFA regarding their practice of professional forestry on private land in Ontario and

- to help members in meeting the standards of professional practice on private land to serve and protect the public interest; and
- to help members achieve compliance with the requirements and standards in municipal legislation, the *Professional Foresters Act, 2000* and regulations and by-laws of the OPFA including standards of practice, code of ethics, and professional misconduct.

NOTE: *This document is a consolidation, revision and updating of what were formerly known as Practice Bulletins #1, #8, and #10. These bulletins each dealt with separate but related issues with respect to professional practice on private land in Ontario and are noted below:*

- *Practice Bulletin 1 - Good Forestry Practice on Private Lands – July 10, 2010*
- *Practice Bulletin 8 - Professional Practice and Municipal Tree Cutting By-Laws - September 2012*
- *Practice Bulletin 10 – Minimum Content for Prescriptions for Partial Harvesting on Private Land in Ontario - October 2010*

Issues Addressed in this Practice Guidance

1. Actions Planned by Landowner or Client May Not Be Considered by the Member as Good Forestry Practices
2. Member's Role and Responsibilities Regarding Municipal Tree Cutting By-laws
3. Preparation of Prescriptions for Partial Harvesting on Private Land

1. Actions Planned by Landowner or Client Actions Not in Keeping with Good Forestry Practices

Members sometimes 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 practices”.

“Good Forestry Practices” is defined in the *Forestry Act* as meaning:

“the proper implementation of harvest, renewal and maintenance activities known to be

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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”

Local municipalities may prohibit or regulate the destruction or injuring of trees in woodlands through the establishment of by-laws. In passing such by-laws, the municipality must have regard to “good forestry practices” as defined in the *Forestry Act*.

If a member is in a situation as described above, where his or her action may lead to a potential Code of Ethics violation or a guilty finding of professional misconduct, the following are the suggested actions:

- The member may always choose to refuse work that they consider to not be “good forestry practices”;
- 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 practices”.

If the member believes that what the landowner or client is proposing is not “good forestry practices”, then:

- The Member should not prepare or sign a prescription that the member does not believe is consistent with good forestry practices The OPFA expects that a member should
 - Personally, ensure the landowner is aware of the distinct management options and implications, whether the landowner is the client or whether the client is a third party such as a lumber company;
 - Document the advice that they have given to the landowner and/or client advocating forest land management consistent with good forestry practices;
 - In considering these matters, the Member should ask themselves if the actions they contemplate are:
 - 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?
 - considered consistent with what a member of the public would expect from a professional?
 - viewed as legitimizing the activity in the eyes of the client and potentially the public?
 - having the potential to cause disrepute to the profession?

The Member should also consider consulting with other professional colleagues for their professional opinions.

If the member determines that there exists a potential violation of the Code of Ethics or that to continue would constitute professional misconduct the member should consider whether it would be appropriate to notify the supervisor or client/landowner and advise that the member 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 are remedied.

2. Member's Role and Responsibilities Regarding Municipal Tree Cutting By-laws

Issues:

1. 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?
2. What responsibilities do OPFA members have when issuing a harvest permit when the member is also a municipal tree cutting by-law officer?
3. How should the review of a prescription prepared by an OPFA member and submitted under a municipal tree cutting by-law, be conducted to ensure there are no contraventions of 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.

Some municipal tree cutting by-laws include a statement that requires good forestry practices. In this regard, a good forestry practices application would require the submission of a prescription approved by a member of the OPFA.

An application made for a permit to destroy or injure trees following good forestry practices is reviewed by a municipal by-law officer to decide 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 about 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 not.

The OPFA supports the hiring of by-law officers who can attain membership with the OPFA to enforce tree by-laws consistent with good forestry practices provisions.

Where a by-law officer is not a member of the OPFA a municipality could use the services of a registered member to review any prescription on their behalf that was developed by another member or a landowner.

In some cases, municipalities may set conditions on tree cutting permits 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 additional requirements that are of local knowledge, interest or concern or part of the overall municipal planning for the area in question.

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There may be some municipalities that may not require good forestry practices in their tree by-law and the requirement the preparation of the prescription by an OPFA member may not be required. The Provincial Foresters Act 2000 provides an exclusion for landowners who are undertaking forestry practices personally on their own property, but they must comply with all municipal requirements outlined in municipal bylaws. OPFA members who are aware of bylaws not requiring good forestry practices may wish to advise the municipality to consider the introduction of this requirement. Members are also encouraged to advise the Executive Director of these situations to assist the member in this regard.

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 of the permit. The conditions may serve to improve the prescription and add to the conservation and management of the resource.

OPFA Member Role

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.
- A non-member could prepare the prescription if under the supervision of a member of the OPFA

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 would be in contravention of the *Professional Foresters Act*.

Municipal by-law officers who are not OPFA members and who are not otherwise exempted under the *Professional Foresters Act, 2000* are reminded that they may be in violation of the statute if they undertake “assessment of impacts from planned activities on forests or urban forests” or the “auditing of forest management practices”. 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 profession listed under the Regulation under the Act for which the assessment would be part of the scope of practice of that profession.

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. The standards outlined in the OPFA by-laws read as follows:

Standard 1 - Conforming to Legislation

A member of the Association shall undertake activities in conformity to all applicable legislation and in consideration of all applicable guidelines. To do this, the member must maintain familiarity with the legislation, regulations, and guidelines which are applicable or relevant to the member's practice.

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Standard 2 - Understanding of Ecological Processes and Principles

A member of the Association shall demonstrate an understanding of the relevant ecological processes related to forestry practices and shall practice professional forestry consistent with ecologically sound principles.

Standard 3 - Competency

A member of the Association shall undertake only such work as he/she is competent to perform by virtue of his or her training and experience.

Standard 4 – Information Used

A member of the Association shall ensure that the type, currency, and reliability of the information upon which he or she is basing professional forestry decisions, is suitable and sufficient for the intended purposes.

Standard 5 – Communication with Clients

A member of the Association shall provide the client with explicit and viable forestry options, within the standards of practice, to meet the client's stated objectives.

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.

OPFA Members Preparing Prescriptions

The OPFA member will 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 options available and associated consequences of each option. The consequences need to describe how the different options affect landowner's objectives and how consistent the results of each option is to applicable laws.

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.

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 the current silvicultural guide(s) and other related information 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) or outside of their approved scope of practice
- 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 member's

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work.

- Consult with professional colleagues for their professional opinions.

Should a municipality deny a permit or attach conditions to the permit based on 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.

Municipal by-law officers who are not OPFA members and who are not otherwise exempted under the *Professional Foresters Act, 2000* are reminded that they may be in violation of the statute if they undertake “assessment of impacts from planned activities on forests or urban forests” or the “auditing of forest management practices”. 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 profession listed under the Regulation under the Act for which the assessment would be part of the scope of practice of that profession.

While a Member may agree to change 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.

OPFA Members Who Are Municipal By-Law Officers

Should a municipal by-law officer who is an OPFA member have a concern about a prescription approved by a member of the OPFA and submitted as part of a tree harvest permit application, they should consider the following:

1. Review and consider the current silvicultural guide(s) and other related information relevant to the area.
2. Confirm whether the prescription meets the administrative standards and intent of the municipal tree cutting by-law;
3. Approach the OPFA member associated with the application to discuss the concerns and to attempt to find clarification and/or resolution of the issue.
4. If the issue remains unresolved, the municipality may consider correspondence to the OPFA member, requesting additional information to justify or explain the prescription.
5. 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.
6. 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 management practices or may differ from what they personally would author, it may still meet the minimum standards of the profession and also meet the requirements of the relevant municipal by-law.

3. Preparation of Prescriptions for Partial Harvesting on Private Land

Whether or not the landowner is the client, the OPFA member is encouraged to personally ensure the landowner is aware of the options available in the management of their land. The consequences of each available option should also be discussed to ensure the prescription aligns with the landowner's objectives and relevant laws.

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.

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:

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 a member 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 Standards of Professional Forestry, Standard 2 states that:

- A member of the Association shall demonstrate an understanding of the relevant ecological processes related to forestry practices and shall practice professional forestry consistent with ecologically sound principles.

The development of a prescription not supported by the best available science is not based on "ecologically sound principles" and would therefore normally be contrary to the standards of practice of professional forestry.

Minimum Expectations for Forest Operations Prescriptions on Private Land

These prescriptions require a certain set of components to provide guidance to tree markers who will choose which trees will be cut, retained, or identified for other social or ecological purposes, and to allow effective review.

Additional information may be required for specific situations, and further detail may be appropriate. The prescription must comply with all applicable federal, provincial, and local laws.

- Based on landowner objectives, and reflecting acceptable practices, the prescription should describe the intended long-term direction for a forest stand or a group of stands with similar attributes, together with the immediate actions to be taken.
- The prescription should provide sufficient documentation to enable review by one or more OPFA members or review agencies who may audit or regulate harvesting or forest management on private land in the designated area, or for consideration should there be a complaint about the member's practice.

The following are the minimum elements that should be included in every prescription:

1. Prescriptions to be written or prepared under direction of a qualified Member of the Ontario Professional Foresters Association

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Unless working under the supervision of a qualified member, only members of the OPFA able to demonstrate competence in the area covered by the prescription, or Associate Members whose restricted scope of practice covers the functions and geography involved, may authorize/prepare the prescription.

Those supervising individuals preparing prescriptions for landowners take professional responsibility for the work undertaken and must certify with their signature that the resulting prescription meets the standards of the OPFA including guidance provided through practice guidance documents.

2. Location, Map, Ownership, Client, and Contact Information

This information must allow anyone unfamiliar with the site to be able to locate the property and understand exactly where within the property the prescription is to be applied. As well, it must specify who the landowner is, who the Member's client is (if not the landowner), and how each may be contacted. A suitable map with the treatment boundaries and relevant details should be part of the prescription.

3. Site and Stand Condition

The site and stand must be described in enough detail to allow markers and other evaluators to understand the stand's: composition, density, stage of development, regeneration status, quality, limitations, stand history, and potential. As well, any sensitive or specific features should be discussed here. This section provides a description of the data sources used, including any dates of the prescription approver's site inspections and inventory work. This background data should be retained on file for future reference for a minimum period equal to the dates mentioned in Section 10 below.

The prescription must provide current **stocking, stand structure or basal area** figures relevant to the silvicultural system being applied.

4. Habitat, Biodiversity, and Recreation Considerations

Describe features to be protected or enhanced through tree marking, such as: trails, access, logging history, regeneration establishment and/or maintenance, and including guidelines for any Species at Risk. Wildlife habitat and cultural values protection decisions and direction must consider available science and management guidelines for the forest type and location and be appropriate for the landowner's objectives for the property.

5. Last Silvicultural Operation

The prescription must provide the date and a brief description of the last stand disturbance or silvicultural operation, to the best of the author's ability.

6. Objectives

Prescriptions will have regard for existing approved management plans and through direct consultation with landowners (preferred) or through a landowner signed document will describe the following:

- i) **long-term** desired future forest condition and
- ii) objectives for the **current** silvicultural intervention (E.g. Partial harvest tree marking), including an indication of which **silvicultural system** is to be used and what stage this

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system is at (e.g. regeneration cut vs. removal cut). The objectives should be realistic expectations given the site and current forest conditions.

7. Silvicultural Tree Marking Direction

Prescriptions must give direction about the improvement of health, quality, species diversity, stand structure and/or size class distribution. Tree marking direction must comply with all applicable laws, including municipal by-laws, and must consider the best available science and management guidelines for the forest type and location and be appropriate for the landowner's objectives for the property.

8. Boundary Marking

The location of access roads and paths and boundaries of operations must be consistent with the forest plan or silvicultural prescription. These boundaries may be marked in the forest or provided to the individuals conducting forestry operations.

9. Paint/Marks

Where individual trees are to be marked, a distinct approach must be used and recorded (symbols, paint colours, etc.).

10. Estimated Time of Next Silvicultural Intervention

Provide the year and a brief description of the next logical silvicultural intervention that would continue the path towards the long-term objective(s). The prescription may also recommend the timing of stand assessments.

11. Author and Legal Approval

The prescription must show the name of the prescription author, the date it was prepared, and the stamp, signature, and date of the member of the OPFA who has authored or has supervised the preparation and has the authority to approve this type of prescription in this location.

12. Reference to Other Documents

Particularly on larger properties, some of the required information may be contained in other documents. Where it is not reasonable to repeat such information in the prescription and the documents are accessible, clear references and locations should be provided.

In all instances members of the OPFA are strongly encouraged to consult other professionals and OPFA members when there are additional complexities associated with undertaking professional forestry services on private land that may be outside or on the limit of their approved scope of practice or competence. Examples of this might include potential impacts on other natural features, endangered species, or land ownership matters.

Acknowledgement

The OPFA wishes to acknowledge that this Practice Guidance has been developed with input from documents developed by the Association of British Columbia Forestry Professionals (ABCFP), the Association of Saskatchewan Forestry Professionals (ASFP) and the Association of Ontario Geoscientists along with the earlier work of the OPFA Private Lands Committee.