



## General Practice Guidance for OPFA members

*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.*

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## Overview

As the governing body of a self-regulating profession, the Ontario Professional Foresters Association (OPFA) is responsible for regulating the practice of its members which includes conforming to recognized norms of practice.

These recognized norms of practice are supportive of members in satisfying the Standards of Practice and should be read in conjunction with, and interpreted in a manner that is consistent with, the Code of Ethics and the definition of professional misconduct established in Regulation 145/01.

It is recognized that adherence by members to quality standards for professional services plays an important part in shaping both the role and the image of the profession. In order to ensure that this can be achieved, the **Professional Foresters Act 2000** gives OPFA Council the authority to establish, develop and maintain standards of practice to be adhered to by all members in order to meet their obligations as regulated professionals. The standards of practice provided in the OPFA by-laws are listed as follows:

### Standard 1 - Conforming to Legislation

A member of the OPFA 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. This standard also requires members to be in compliance with OPFA bylaws.

### Standard 2 - Understanding of Ecological Processes and Principles

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

The intent of this document is to give general guidance in response to member inquiries, formal complaints received and complement existing practice guidance documents that have been developed by the OPFA. Practice Guidance documents are established by a resolution of the

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OPFA Council and articulate a standard of expectation for members of the OPFA. Further it is expected that members will use their experience, knowledge, and professional training in making use of practice guidance documents issued by the OPFA.

However, guidelines are not obligatory. This means that members are expected to use their professional judgment and discretion in site and situation specific cases, to follow a different approach where warranted if the reasons for departure are documented in a professional practice rationale. It is essential that the choices made or recommended by a member are well documented and communicated to their clients and employers.

*At the heart of the professional's obligation is the commitment to act competently, ethically, and professionally as a private practitioner or as an employee.*

The following listed areas have general guidance provided in this document. It is important for individual members to undertake further investigation to ensure that their practice models and actions adhere to the Standards of Practice and Code of Ethics of the OPFA.

1. Records Management and Documentation
2. Use of Professional Seal, including Electronic
3. Confidentiality
4. Conflict of Interest
5. Risk Management and Professional Liability
6. Communications

### Records Management and Documentation

Appropriately managing records is a significant element of being a professional, whether working in private practice or as an employee providing professional forestry services.

For those members in private practice there are business requirements for which document and records management and retention are required, such as regulations from the Canada Revenue Agencies, Ontario Business Corporations Act, etc.

This section addresses the need for all members to ensure that records related to their professional practice are set up, well maintained, retained, and filed securely.

Records of professional services and documentation will be essential to be able to respond to inquiry, audit and potential formal complaints related to a members' professional practice.

OPFA members must be able to demonstrate that they are conforming to the standards of practice through effective documentation and management of client or employer practice records.

In addition, protecting the confidentiality of client and employer information and following Federal, Provincial and Municipal Freedom of Information and Protection of Personal Information legislation is essential for all members.

OPFA members are encouraged to set up appropriate document and records management practices.

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Members producing documents for clients or employers often find that storage of these documents is costly and want to dispose of them when they no longer serve a purpose to the client or employer.

Unlike certain corporate business type documents, there is no legal requirement under the Professional Foresters Act 2000 or other legislation stipulating how long forestry related documents must be kept. The OPFA has the authority to establish retention of document periods through the OPFA Bylaws (section 53(1)29) “prescribing and requiring the making and keeping of records by members of the OPFA in respect of the practice of professional forestry”. A bylaw is currently being prepared in this regard.

It is recommended that members keep their records for at least 7 years. This is in keeping with the existing bylaw related to maintaining quality assurance documents for seven years

Paper records can be scanned electronically to reduce the administrative inconvenience. Members should always inform clients about their document retention policies and confirm they are acceptable to their clients.

Records and documents produced in an employment context are normally seen to be owned by the employer and members should ensure they have a complete understanding of the employer policies regarding records use and retention and should ensure that their employment contracts will allow them to access their professional forestry records even after they have left their employment. This should include obligations on the practitioner to protect, store or destroy documents related to each individual service or assignment completed and to be able to access professional forestry records even after the practitioner has left the employment, in order to be able to respond appropriately to such things as lawsuits filed against the practitioner or complaints made to the OPFA.

It is also suggested that notes taken by members in the preparation of documents, in conversations with employer or client should be retained by the member for reference should the need arise to be able to defend an action undertaken by the member.

### Use of Professional Seal (including electronic)

#### General

The provision of a seal to each member is provided in the [OPFA By-laws](#) Article 11.30 – Issuance of Certificate of Registration and Professional Seal

Every applicant who meets the requirements for registration as a member shall be issued a certificate of registration, in the appropriate membership category, bearing the seal of the OPFA and the signatures of the President and Registrar, or a likeness thereof and Full and Associate members shall also be issued a Professional Seal and Card.

Despite being issued, the Certificate, Professional Seal and Card remain the property of the OPFA and shall be used only in accordance with the law and professional Standards.

The OPFA delegates the use of the Seal, subject to conditions set out in this guidance document.

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## Conditions for Use of Seal

- The application of the Professional Seal to a document or a portion thereof signifies that the contents conform to the Code of Ethics and professional forestry standards. Certification must take the form of the seal's imprint, signature of the member, and current date.
- The Professional Seal should be applied whenever the member prepares official estimates, specifications, prescriptions, reports, plans and all other documents in his/her professional capacity.
- The work represented by the sealed document shall have been personally carried out by the member or shall have been carried out under the member's "direct supervision" or review. (For the meaning of "supervision", see the OPFA practice guidance document entitled "Supervision" approved by Council on November 16, 2014. Supervision must be such that the member can monitor and accept full responsibility for the work of the person being supervised. The member must also hold a certificate of registration enabling the member to supervise the activity in question.)
- Alterations or amendments to a document after it has been sealed by a member, whether made by the author or another individual will immediately void the seal and signature of the member. Altered or amended documents can be re-signed and dated by the original member or another member as the circumstances require.
- There is no difference between using the member seal on a paper document or in an electronic document. The same rules apply in both situations. The member is responsible for the use of their assigned seal in all formats and shall not delegate its use.

## Implications of the Use of Seal

The OPFA Code of Ethics requires that (in part): *"a member shall undertake only work that he or she is competent to perform by virtue of training and experience"*

This implies that members limit their practice to those areas of forestry wherein they maintain a competence by virtue of education and/or experience and do not extend their endeavours beyond the realm of competence.

A note regarding implications of the Code of Ethics and Use of Seal:

- The code restricts some members' use of seal for certain documents where they do not have the required competency. It is expected that members would recognize their competency limitations and would not seal and sign a document where they did not have the required competence, to review or prepare documents and to perform the work.
- The use of the seal also has implications regarding liability and discipline. Sealing a document signifies that the member is accepting responsibility for the contents of the document. If the seal is misused, or if the document sealed is not prepared in accordance with the standards and code of ethics of the profession, members could be held liable or be subject to disciplinary action.

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- The use of the Professional Seal is subject to investigation and disciplinary action as provided in the Professional Foresters Act 2000 and the OPFA By-laws.
- Each Professional Seal is the property of the Ontario Professional Foresters Association. It must be returned to the OPFA upon termination of membership.

### Examples of Documents

Because members of the public, including other professions, may be relying on the information in sealed documents, a member's seal should be considered to be a mark of reliance, giving assurance of the competence and professional standards of those who prepared the documents.

The examples of documents, which a member may use the Professional Seal are listed below.

In each circumstance, the member must first be satisfied that the application of the Professional Seal and signature conforms to the Professional Foresters Act, 2000, the OPFA By-laws, and this guidance document.

- cost claims associated with forestry activities or programs,
- forest protection plans,
- forest management plans,
- planting plans,
- site remediation plans,
- annual or long-term forest operating plans,
- appraisal of penalties for infractions under existing legislation, silvicultural plans, and prescriptions,
- volume surveys and estimates,
- timber volume cruise plans and reports,
- timber sales agreements and contracts,
- letters, plans, and/or reports incorporating professional forestry opinions and recommendations,
- annual reports, and
- forest audits.

Occasionally, a member will need to revise documents sealed by another member. Where the revisions are a new undertaking involving modifications to an existing plan, prescription or other professional document, the member should treat the original document as background information. The member responsible for the modifications must seal the new document.

The seals of both the original member and the member responsible for the revisions must appear on the document with clear indications of which part, original or revision(s), each seal

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refers to. As a professional courtesy, the member responsible for the revisions must inform the original member of changes made to the document.

### **Use of Electronic Seal**

The OPFA concludes that there is no difference between using the member seal on a paper document or in an electronic document. The same rules apply in both situations:

- The seal is the property of the Association.
- The member to whom the seal is assigned may not delegate its use.
- The work represented by the sealed document shall have been personally carried out by the member or shall have been carried out under the member's "direct supervision".
- Use of the seal must be accompanied by the signature of the member and dated.

The member is responsible for the use of their seal in all formats and cannot delegate its use.

### **Theft and Fraudulent Use**

The following suggestions are offered to minimize the risk of theft and fraudulent use of a member's signature and seal:

1. Do not provide an electronic version of your signature or seal to anyone else.
2. Do not retain electronic copies of your signature or seal on unsecured computers.
3. The OPFA does not permit the use of the professional seal by any person other than the member to which it was assigned.
4. The member should keep a copy of each certification page they sign and seal.
5. The member should personally produce a certification page that applies to only specific information (i.e. print, sign, and seal a paper copy of the certification page, then scan the document to produce an electronic version in .JPG or .PDF formats and electronically encrypt to protect the document).

If the member assesses the risk and decides to proceed with use of their signature and seal electronically in a document administratively assembled by another person (not a delegation of use of seal or professional responsibility), the following points should be considered:

- Is it more appropriate that another member involved in the work be responsible for professional certification?
- Can administrative procedures be changed to avoid the need for a third party to administratively assemble a document?
- Is there a member who can administratively assemble the document?

If so, the member should document the specific conditions under which their signature and seal may be used (i.e. for what specific document, for what types of documents for a specific limited



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timeframe). Under this situation, the OPFA Code of Ethics would apply to the secondary member administratively assembling the document.

If another member cannot assemble the document, and the document administrative assembly is being carried out by a non-member, the member should document the specific conditions under which their signature and seal may be used (i.e. for what specific document, for what types of documents for a specific limited timeframe.). This situation should be considered as a last resort as the member assumes significant risk of misuse of seal and signature in this scenario.

### Confidentiality

The OPFA Code of Ethics requires that members maintain client confidentiality:

- A member shall hold as confidential information concerning the business affairs, technical methods, processes or practices of employers or clients and shall only disclose such information with the consent of the employer or client or where required to do so by law.

In addition, clause 3.5 of Ontario Regulation 145/01 under the Professional Foresters Act, 2000 makes the following an act of professional misconduct:

- Revealing information concerning any professional service or any property which is the subject of a professional service to a person, other than the client or employer or another member engaged by the client or employer, except with the consent of the client or employer or when authorized or required to do so by law.

OPFA members have a duty to clients and employers to ensure that confidential information is protected and not disclosed in order that trust in the member and the profession is maintained.

Privacy of individual client or employer information is to be protected to avoid unintended disclosure through electronic intrusion to databases or other records of information kept by the member.

### Conflict of Interest

Employers and clients must be able to trust members. Trust cannot be maintained when relevant information is not shared. The problem is to determine what information is relevant and when it should be shared. This depends on OPFA members being able to recognize situations when members should tell clients and employers about an interest that might be seen to affect their judgment.

The OPFA Code of Ethics includes mention of conflict of interest related to integrity as follows:

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- A member is obligated to disclose fully any direct or indirect pecuniary interests related to the work undertaken in his or her professional capacity and to take active measures to prevent the perception of any conflict of interest.

Disclosure of conflicting interests does not mean a practitioner is admitting a lapse in judgment will happen or that the member is susceptible to pressure. Informing clients of circumstances that might affect the practitioner's motivation or decision-making recognizes the client's right to decide whether to continue with the relationship in light of those other interests.

However, as society becomes more litigious and as issues become more entwined, the problem of conflict of interest is increasing for the professions including forestry. As professionals, members must be aware of what constitutes conflicts of interest and how to avoid them.

A conflict of interest is a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest (i.e., regarding the client's interest) will be unduly influenced by a secondary interest. The secondary interest includes personal benefit but is not limited to only financial gain. It can include motivation such as the desire for professional advancement or the wish to do favours for family or friends. The secondary interests are not wrong in and of themselves but may become problematic when they negatively influence, or are seen to negatively influence, the primary interest.

The simplest and most effective way to deal with potential conflicts of interest is to be forthright and talk to the appropriate parties about any circumstances that could lead those parties to question the member's judgment. In most cases, there will either be no perceived conflict (i.e. the parties are willing to accept the situation) or steps can be taken to eliminate the possibility of one occurring. The member needs to document the discussion and share the report with the other parties.

By obtaining the agreement of all interested parties that there is no conflict of interest or that it can be managed appropriately, OPFA members reduce the possibility of litigation and charges of professional misconduct. If agreement cannot be found, members have no option but to withdraw their services.

### Risk Management and Professional Liability

Failure to follow reasonable standards of conduct can increase the risk of liability. A proper risk management plan can reduce, transfer, retain or eliminate the potential loss or injury. Insurance is necessary for business and is seen as an important part of a risk management program.

Insurance must never be thought of as an entire risk management program. When insurance combined with the other parts of a risk management program, insurance transfers responsibility for monetary loss away from the practice to an outside source. Insurance is necessary in situations where the risk cannot be eliminated, reduced, or absorbed by the business. Insurance allows the business and regulated professional to get adequate funds to compensate for potential losses.

#### **Risk Management**

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A good risk management strategy can perform four major functions:

1. **REDUCES** risk by limiting the chance of mishap. Enforcing rules is an example of risk education.
2. **TRANSFERS** risk by making others responsible for injuries or loss. For example, contracts and insurance transfer responsibility for injuries away from the business.
3. **RETAINS** risk by being prepared for mishaps. Having an emergency action plan ensures that if an incident occurs the actual loss or damage will be minimized.
4. **ELIMINATES** risk by stopping activities which will cause injury. By stopping work on a project when conditions become dangerous or blocking off an unsafe area or site a member can ensure that injuries will not occur.

### **Liability**

In private forestry practice, it is important for members to understand their legal obligations. When a third party is injured because of someone else's mistake, financial reimbursement may be obtainable through a lawsuit. Failure to follow or enforce appropriate rules and regulations, not correcting dangerous situations or improper preparation for foreseeable emergencies, are all scenarios that have the potential to result in liability.

A liability insurance policy is not a medical or accident policy to insure companies against losses from injuries. It is a contract insuring the firm - its employees, directors, and officers - while acting on its behalf against liability to third parties for negligence. For coverage to apply, the activity must be a company function.

Liability equates with responsibility - it is the responsibility which falls upon persons by actions or arising from their ownership or use of something - it is liability imposed by law.

OPFA members in private practice are strongly encouraged to consult with risk management and insurance professionals to confirm their need for professional liability insurance.

## Communications

The focus on communication relates to an important aspect of professionalism. Members need to ensure that clients and employers have clear and concise information that will assist them in making best choices in managing their forest resources in an ecologically sound manner. The OPFA standards of practice outlined below provide the standard for communication:

### **Standard 4 - Information Used**

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

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A member shall inform the client of:

- The existence of applicable legislation and guidelines,
- The forestry related social, economic, and environmental outcomes expected with a recommended option,
- The likelihood of the planned activities in meeting stated objectives, and
- The most probable spatial and temporal changes in the forest resulting from planned activities.

It is important that members document their verbal communication with clients and employers to be able to respond to audit, inquiry, or formal complaint. It serves the public interest to be able to demonstrate through documentation that the member acted in a professional manner in providing forestry services that served the public, the client or employer interest.

### Summary

This practice guidance document discusses several matters affecting professional practice for members of the OPFA in general terms. It is intended to be helpful in achieving a high standard of professionalism by members of the OPFA in protecting the public interest. As regulated professionals, OPFA members are required to ensure that they comply with professional standards and code of ethics established by their regulatory body.

### Acknowledgement

This document was developed based on existing OPFA guidance documents concerning practice management along with information from the following professional regulatory bodies in Ontario and Canada. OPFA members are encouraged to research these association web sites for further information if required.

- Association of British Columbia Forest Professionals [https://abcfp.ca/web/ABCFFP/members/Practising\\_in\\_BC/Professional\\_Practice/ABCFFP/Practising\\_in\\_BC/Professional\\_Practice.aspx?hkey=4c8a303d-5de7-4a2d-8a50-78b4f0fa7a65](https://abcfp.ca/web/ABCFFP/members/Practising_in_BC/Professional_Practice/ABCFFP/Practising_in_BC/Professional_Practice.aspx?hkey=4c8a303d-5de7-4a2d-8a50-78b4f0fa7a65)
- Ontario College of Veterinarians <https://cvo.org/Resources/Professional-Practice-Standards-and-College-Policy.aspx>
- Ontario College of Social Workers <https://ocswssw.org/professional-practice/private-practice/>
- Ontario Society of Geoscientists <https://www.apgo.net/files/logo-use.pdf>
- Ontario Professional Engineers [http://www.peo.on.ca/index.php/ci\\_id/1834/la\\_id/1.htm](http://www.peo.on.ca/index.php/ci_id/1834/la_id/1.htm)
- Upper Canada Law Society <http://www.lsuc.on.ca/For-Lawyers/Manage-Your-Practice/>

All other practice guidance documents of the OPFA can be found at the following link

<https://opfa.ca/publications/practice-guidance/>