



## **PROFESSIONAL PRACTICE**

Association of Alberta Forest Management Professionals  
February 25, 2017

Craig David Rose, QC, RPF

### **PRELIMINARY MATTERS**



The following presentation is given for the benefit of the forestry practitioners, students and others in attendance at the CAPF/CAPFT professional examination study session today and is intended as a general overview of some of the elements and considerations regarding professional practice that may apply to forestry practitioners in Alberta.

In the event that any specific matter arises that touches and concerns the subject matter of the following presentation, those forestry practitioners, students and others who are viewing or may otherwise have access to this presentation are strongly advised to seek the advice of a more senior forestry practitioner and their own legal counsel.

## WHAT IS PROFESSIONAL PRACTICE?



For a fee or remuneration,  
performing or directing works services or undertakings which,  
because of their scope and implications,  
require specialized knowledge, training and experience.

### *Regulated Forestry Profession Act, RSA 2000, c.R-13*

1(1)(x) “**professional service**” means a service provided by a regulated member of a college that comes within the practice of forestry;

## PRACTICE OF FORESTRY



### *Regulated Forestry Profession Act*

- 1(1)(u) “**practice of forestry**” means the development, acquisition or application of scientific principles and practices relating to forestry, products of forested land and integrated management of forested land and includes, without limitation,
- (i) the inventory, classification, appraisal and evaluation of forests and forested land,
  - (ii) the development and implementation of programs for harvesting and renewal of forests and forested land,
  - (iii) the conservation, reclamation, improvement or protection of forests, forested land or forest soils for forestry purposes,
  - (iv) the preparation of forest resource management plans,
  - (v) the development of integrated resource management plans and administration of forested land,
  - (vi) the teaching of forestry at a college, technical institute or university, and
  - (vii) the conducting of research activities related to forestry;

## CODES OF ETHICS/CONDUCT AND STANDARDS OF PRACTICE



### College of Alberta Professional Foresters

Note: Ethics/Standard of Practice

- **Retain the productivity of forest lands**
  - ensure all forest management plans comply with the law; advise employer or client of consequences of any contemplated course of action which in member's opinion is not based on sound forestry practices
- **Provide competent forestry services**
  - remain competent in area(s) of practice; apply best knowledge that is reasonably available and commitment to continuing education
- **Foster public safety, health and welfare**
  - be aware of, and comply with the laws, regulations and client/employer policies concerning public safety
- **Show professional and personal integrity**
  - give credit for assistance, methods, facts or opinions provided by others; sign only documents you prepared or were prepared under your direct supervision

## CODES OF ETHICS/CONDUCT AND STANDARDS OF PRACTICE



CAPF ... continued

- **Address [Avoid] conflicts of interest**
  - take appropriate action to resolve a real or perceived conflict of interest
- **Improve the practice of forestry**
  - advise complaints director of any practice by another regulated member which they believe to be contrary to code of ethics or standards of practice
- **Maintain confidentiality**
  - divulge confidential/proprietary info to an appropriate authority; with client's authorization, share confidential information with work associates

## CODES OF ETHICS/CONDUCT AND STANDARDS OF PRACTICE



### College of Alberta Professional Forest Technologists

Note: Code of Conduct sets out summarized Ethics with Standards of Practice

- **Maintaining the Integrity of the Forest Resource** (Duty as College Member)
  - consider forest resources for inherent value as well as value for economic, recreational, aesthetic, and cultural needs
- **Integrity and Courtesy** (Duty as College Member)
  - shall not lie to or knowingly mislead or misrepresent a client, an employer or other persons
- **Competency in the Performance of Work** (Duty as College Member)
  - maintain competence in all areas of their practice; only claim competency in those areas that they have training or experience
- **Continuing Education** (Duty as College Member)
  - strive to improve their education and knowledge of practice of forestry; continuing education

## CODES OF ETHICS/CONDUCT AND STANDARDS OF PRACTICE



- CAPFT ... continued
- **Professional Responsibility** (Duty as College Member)
  - be aware of, understand and uphold the Act, regulation, bylaws and ethics; notify the College of knowledge of a contravention of the Act, regulation, bylaws, policies or ethics
- **Regard for Safety, Health and Welfare** (Duty to Public)
  - comply with all laws and regulations concerning public safety; demonstrate proper safety practices/procedures; ensure necessary safety precautions and public notifications are maintained
- **Contributing to Public Understanding of Forestry** (Duty to Public)
  - strive to educate the public on forestry practices and issues; strive to be skilled in oral/written public presentation; promote the practice of forestry
- **Preparation/Signing of Documents** (Duty to Public)
  - ensure all work conducted on their behalf meets college standards; assign work only to others that are competent to perform that work; documents signed comply with the law

## CODES OF ETHICS/CONDUCT AND STANDARDS OF PRACTICE



CAPFT ... continued

- **Credit for Assistance** (Duty to Public)
  - give consideration and/or recognition for assistance, methods, facts or opinions provided by the public and special interest groups
- **Expressing Opinions Concerning the Practice of Forestry** (Duty to Public)
  - shall not render advice unless competent to do so; opinions shall be based on a given set of facts and assumptions and qualified accordingly;
- **Proper Practice** (Duty to Employer or Client)
  - provide services within their area of experience and expertise; return and respond to all inquiries in a timely manner
- **Confidentiality** (Duty to Employer or Client)
  - shall not disclose confidential or proprietary information without consent of employer/client; not accept compensation from more than one party for same product/service without consent of parties

## CODES OF ETHICS/CONDUCT AND STANDARDS OF PRACTICE



CAPFT ... continued

- **Conflict of Interest** (Duty to Employer or Client)
  - avoid suspected as well as clear conflicts of interest; shall immediately inform employer/client if conflict of interest arises unless the information is confidential
- **Advice to an Employer or Client** (Duty to Employer or Client)
  - notify employer/client if their actions are detrimental to good stewardship of forested land and use reasonable efforts to ensure employer/client comprehends member's concerns

## PROFESSIONAL LIABILITY



- One may be exposed to liability for acts done or failure to act as required when acting in the capacity of a regulated member of CAPF or CAPFT and engaged in the practice of forestry.
- 1(1)(dd) “regulated member” means a person who is registered as a member under section 27(1)(a);
- Section 27(1)(a) requires a council to establish a regulated member register for one or more categories of members who provide professional services of the regulated profession.
- **Sources of professional liability:**
  - *Regulated Forestry Profession Act*, RSA 2000, c.R-13;
  - Registered Professional Foresters Regulation, AR 75/2002;
  - Registered Professional Forest Technologists Regulation, AR 76/2002
  - Codes of Ethics and Practice Standards

## PROFESSIONAL LIABILITY



### *Regulated Forestry Profession Act*

- 1(1)(gg) “unprofessional conduct” means any or all of the following:
- (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
  - (ii) contravention of this Act, a code of ethics or standards of practice;
  - (iii) contravention of another enactment that applies to the profession;
  - (iv) representing or holding out that a person was a regulated member and in good standing while the person’s registration or practice permit was suspended or cancelled;
  - (v) representing or holding out that a person’s registration or practice permit is not subject to conditions when it is or misrepresenting the conditions;
  - (vi) failure or refusal to comply with the requirements of a continuing competence program;

## PROFESSIONAL LIABILITY



### *Regulated Forestry Profession Act ... continued*

- (vii) failure or refusal
  - (A) to comply with an agreement that is part of a ratified settlement,
  - (B) to comply with a request of or co-operate with an investigator, or
  - (C) to comply with a notice to attend or a notice to produce under Part 4;
- (viii) contravening an order under Part 4 or conditions imposed on a practice permit;
- (ix) carrying on the practice of the regulated profession with a person who is contravening an order under Part 4 or conditions imposed on a practice permit pursuant to Part 2 or Part 4;
- (x) conduct that harms the integrity of the regulated profession.

## PROFESSIONAL LIABILITY



- A finding of unprofessional conduct by a hearing tribunal can lead to sanctions and penalties under the *Regulated Forestry Profession Act*.
  - if hearing tribunal thinks that an investigated person committed a criminal offence can send a copy of its written decision to the Minister of Justice and Solicitor General
  - caution, reprimand
  - impose conditions on practice (e.g. practice under supervision or with one or more members, not practice in a certain area of the practice until course of studies completed
  - suspend a practice permit
  - cancel registration
  - reduce or repay fee for professional services
  - pay for investigation or hearing or both
  - pay a fine not exceeding \$5,000 for each finding of unprofessional conduct to an aggregate amount not exceeding \$25,000
- Failure to provide competent professional services may also expose a regulated member to criminal, regulatory or civil liability.

## REGULATORY/CRIMINAL LIABILITY



### Provincial Legislation

- *Environmental Protection and Enhancement Act*, RSA 2000, c.E-12 (false or misleading information, contravene terms/conditions of an approval or code of practice, reclamation/remediation certificate)
- *Forests Act*, RSA 2000, c.F-22 (unauthorized harvest, excessive waste, overcut, obstruction of forest officer, failure to report)
- *Forest and Prairie Protection Act*, RSA 2000, c.F-19 (Rx burns fail to take steps to control fire)

## REGULATORY/CRIMINAL LIABILITY



### Federal Legislation

- *Fisheries Act*, RSC 1985, c.F-14 (deposit of deleterious substances in waters frequented by fish)
- *Navigation Protection Act*, RSC 1985, c.N-22 (bridges, deposit of sawdust edgings, slabs bark or like rubbish that interferes with navigation)
- *Migratory Birds Convention Act*, 1994, SC 1994, c.22 (deposit of substance in waters frequented by migratory birds)
- *Species at Risk Act*, SC 2002, c.29 (kill/harm protected wildlife species)
- *Criminal Code of Canada*, RSC 1985, c.C-46 (fraud re: altered documents etc., timber theft from unauthorized cuts)



## CIVIL LIABILITY



- Regulated members may be exposed to civil liability for their acts or failures to act under the law of negligence or for our purposes, **professional negligence**.
- The law imposes the duty of care on professionals and requires certain standards of care of those individuals who provide professional services.
- **Duty of care** owed to someone if it is reasonably foreseeable that the person or person's property could be harmed by negligent conduct and involves:
  - application of a reasonable level of skill, diligence and judgement;
  - warning clients and third parties in relationship of proximity of risks inherent in implementing particular courses of action ;
  - avoiding foreseeable harm, even if a customary practice is involved

## CIVIL LIABILITY



- **Standard of Care** is the level of skill that must be applied by the average, reasonably competent and prudent practitioner of similar experience and standing
  - conduct below this standard will usually constitute a breach of the standard or care and usually results in a finding of negligence
  - following customary practice may provide a defence unless the customary practice is itself negligent
- All regulated members, acting in their professional capacities, are subject to the law of professional negligence.
- To successfully sue for professional negligence a plaintiff must:
  - prove that the forest practitioner owed a duty of care to client(s) or other person(s);
  - establish the standard of care that was required under the circumstances; and
  - prove that the standard of care was breached (by doing or failing to do something that results in damage)

## CIVIL LIABILITY



The plaintiff must also prove causation and the amount of damages sustained

Was the regulated member negligent in failing to take action to avoid risk?

- Application of pesticides: contamination of soils, ground/surface water or non-target vegetation and organisms
- Design of timber harvesting operations: damage to adjacent forest stands (blowdown) and property, erosion of soils or damages to wildlife habitat or fisheries.
- Advice to landowners: resulting in loss to the landowner.

## CIVIL LIABILITY



### *Alberta Evidence Act, RSA 2000, c.A-18*

#### Effect of apology on liability

- 26.1(1)** In this section, “apology” means an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault in connection with the matter to which the words or actions relate.
- (2)** An apology made by or on behalf of a person in connection with any matter
- (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter,
  - (b) does not constitute a confirmation or acknowledgment of a claim in relation to that matter for the purposes of the *Limitations Act*,
  - (c) does not, notwithstanding any wording to the contrary in any contract of insurance and notwithstanding any other enactment, void, impair or otherwise affect any insurance coverage that is available, or that would, but for the apology, be available, to the person in connection with that matter, and
  - (d) shall not be taken into account in any determination of fault or liability in connection with that matter.

## CIVIL LIABILITY



### *Alberta Evidence Act ... continued*

- (3) Notwithstanding any other enactment, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any court as evidence of the fault or liability of the person in connection with that matter.
- (4) This section does not apply to the prosecution of an offence.

## PRACTICE TIPS



- Apply reasonable level of skill, diligence and judgement in your professional actions and statements
- Practice within one's area(s) of competence
- Always respond to clients in a timely manner and address issues as they arise
- Know when you're getting in over your head and when to seek the advice of a more senior regulated member or legal counsel
- Participate in available continuing education opportunities to maintain or increase your level of competence
- Keep accurate notes contemporaneous with advice given or procedures or operations undertaken
- Errors and omissions insurance
  - regulated members employed by government or forest products companies may be insured or indemnified by their employer so long as they are acting within their scope of employment



Craig David Rose  
[craig.rose@dlapiper.com](mailto:craig.rose@dlapiper.com)  
(780) 429-6807

