

The FRPA and Professional Reliance Intention versus Reality

Presented to SISCO
April 5, 2011

Ian Miller, RPF

Introduction

- Legislation and Policy Forester for the Code, and during the formulation of policy, legislation and training for FRPA and regulations
- Former Co-Chair JMC, member of PFIT and LPC
- Member of Professional Reliance Task Force
- Member of MFR's Professional Accountability Advisory Team
- Currently Manager, SFM

FRPA was a team event

- Government: Larry Pedersen, Ralph Archibald, Rod Davis, Rodger Stewart, Nancy Wilkin, Judy Godfrey, Mike Geisler, Ian Miller, Rick Manwaring, Charlie Western, Bill Quinn and many more
- Associations: Van Scoffield, Linda Mitcheluk, Don Rugg, Peter Mitchell
- Industry: John Allan, Ric Slaco, Brian Gilfillan, Peter Affleck, Bob Craven, James O'Hanley, Bill Waugh, Dave Paterson, Les Kiss, and many others
- Lawyers: Roberta Reader, Trevor Swan, Blake Ford and others

Caveats

- Intent, Expectation, and Reality are very subjective
- Little documented on Intent or Expectations of FRPA
- My recollections of the Intents and Expectations of FRPA are incomplete, and potentially inaccurate
- Intent has no legal impact; it doesn't really matter
- My view of Reality is no better than yours
- My professional views and opinions are not necessarily shared by my employer
- My views are not intended to be direction or guidance
- So.....what am I doing here?.....

To answer:

“What the hell were you thinking when....?”

- For example.....
 - The concept of “certification” of selected FSP content was developed, or
 - The requirement for assessments disappeared, or
 - Site plan approvals were removed
- ...and myriad others, mostly related to professional reliance.....

Sources

- First legal principles for a results-based Code (2001)
- The goals of FRPA, and other training materials
- Personal recollections
- RFL and OIC documentation
- R. Reader's discussion paper on "Expectations..."

Intent: Continuous improvement

- Legislation isn't perfect: build, try, learn, fix
- Training, understanding and implementation will take at least one FSP cycle (+/- 5 years), maybe two
- Implementation teams, operational issues forums, and oversight teams (PFIT, OIF, JMC) have been invaluable
- Results-based approach still seen as useful model, although some might wish for return to Code

My reality: CI started well, lost momentum;
global economic issues, MPB and government re-organizations etc etc are distractions

Intent: shared responsibility

- Professionals, tenure holders and government each have inter-connected responsibilities
- Over-lapping areas of professional practice
- Different accountability mechanisms

My reality:

A new post-Code equilibrium is forming

Intent: guidance for professionals

- What defines “good” generally well understood
- Guidance can be effective, but it can’t be counted on
- Initial training was thorough, well documented
- Provincial-scale follow-up on professional reliance
- Some good examples of collaborative guidance from professional associations
- FREP, Forest Practices Board, research findings

My reality:

Information overload for a “Twitter”-based society?
FRPA on Facebook?

Intent: “term of art”, common knowledge and flexibility

- Some things are so self-evident to a professional that it need not be defined in legislation
- Eg. Site plans for roads, cutblocks, assessments, rationales, documentation, referral to other professionals
- Public consultation
- Forest practice methodologies

My reality: less government direction with expected result of more variability; some successes, some problems

Intent: the “certify” test

- A pilot for giving the authority to approve some plan elements to the prescribing professional
- Limited scope of topics
- Different test than for SDM?
- Higher bar for approval?

My reality:

Rarely used, do we know why?

Intent: Results and Strategies

- Carry the weight of law
- Should only be approved if measurable or verifiable
- “consistent with” is part of freedom to manage goal
- Need to be clear and precise to be enforceable
- 5 year term usually, 10 at the most

My reality: no surprise that R/S seemingly written by lawyers; enforcement is therefore challenging. No expiry date for FSP is problematic.

Intent: Checks and Balances

- The plan is just a plan; what matters is what happens on the ground
- Less government influence in plan offset by many checks and balances:
- Due diligence and liability
- C&E: measurable, verifiable, enforceable
- Certification (SFI, CSA, FSC)
- Professional complaints/investigations
- FREP, FPBoard, media, public

My reality: The sky is not falling, but local showers are reported

Intent: Innovation

- Part of “freedom to manage”
- Professionals would prescribe non-standard approaches, with appropriate rationales, where consistent with objectives
- E.g. Different riparian area protection scheme
- Government would be prepared to approve where sound alternative planned

My reality: few examples to be found. Defaults most often used (do we need more?)

Intent: Effect of Expectations

- Beyond legal requirements for forest practices
- “The law is not a substitute for a commitment to stewardship”
- Do CoE-based obligations on resource professionals extend beyond legal requirements?
- The “court of public opinion”

My reality: hard to know for sure, opinions rendered by professionals are not always evident, may not be accepted by employer/client

Intent: Implementing Professional Reliance

- Start slow, test waters, expect more pressure from associations if successful
- Some collaboration among associations and with employer groups
- Initial focus on FSP transactions continues
- Association-sponsored and MFR-sponsored training

My reality: good start, but we're just getting going.
Many more facets to this puzzle

What I left out.....

- Joint FSPs
- Access to site plans
- Review and comment; FN, stakeholders, BN
- Measure for invasive plants, natural range barriers
- Coarse woody debris
- Timber objective; other objectives that don't apply

Thanks for your attention!!

- Question period to follow soon.....