

# **The Expectations That Affect The Management Of Public Forest and Range Lands In British Columbia: Looking Outside The Legislation**

A Discussion Paper prepared for the Ministry of Forests and Range  
and the Ministry of Environment  
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(February 2006)

## **Part 1 – Context**

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#### NOTE

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tenure holders. This means that tenure holders will have to come to terms with what it means to be a steward.

A steward is someone who manages property belonging to another person with due regard for the owner's interests. In the case of public lands, the nominal owner is the government, but the government's ownership is "burdened" by the duty that it owes to the public. In this regard, the government's role is akin to that of a trustee, since it holds public lands on behalf of the public. This makes the public the true "beneficial" owners of public lands.

In turn, this means that government officials and tenure holders alike are accountable to the public for the decisions they make with respect to the management of public forest and range lands. This was true under the FPC and continues to be true under the FRPA. The difference is that, under the FRPA, many more of the decisions that affect these public lands now fall to tenure holders to make, rather than government officials.

Notwithstanding the larger management role played by tenure holders, the importance of the responsibilities borne by government officials should not be discounted. As the trustee of public forest and range lands, the government – and hence government officials – continue to play an important *oversight* role, which manifests itself in a number of ways, including:

- The approval of certain plans required by the FRPA, such as the new forest stewardship plan (the FSP), which entails the application of statutory tests governing the preparation and approval of these plans;
- The establishment of objectives, general wildlife measures and other orders governing the management of public forest and range lands, as provided for under the Government Actions Regulation; and
- The enforcement of the statutory obligations that the FRPA imposes on tenure holders.

This oversight role is an integral part of the FRPA. However, it does not have the same scope that it did under the FPC. Which means that one of the biggest challenges for government officials will be coming to terms with the limitations, as well as the nature, of their new role.

Even tenure holders may have difficulty accepting that government officials are not the final arbiters of what should – or should not – happen on public lands. Indeed, it may come as something of a shock to realize that there are other forces at work, outside the control of government officials, that have a direct bearing on the management of these lands.

Which brings us to another way in which the FPC may have distorted our perceptions regarding the management of public forest and range lands. In addition to fostering the notion that government officials can and should dictate to tenure holders, the FPC also

# The Expectations That Affect The Management Of Public Forest and Range Lands In British Columbia: Looking Outside The Legislation

## Executive Summary

With the enactment of the *Forest and Range Practices Act* (the FRPA), the roles played by government officials in the Ministry of Forests and Range (the MOFR) and the Ministry of Environment (the MOE), as well as the roles played by forest and range tenure holders, have changed in a number of ways. In turn, this has also affected the professionals who advise and assist government officials and tenure holders.

Many of the regulatory constraints formerly imposed on tenure holders under the *Forest Practices Code of British Columbia Act* (the FPC) have *not* been carried forward into the FRPA. As a result, government officials no longer control many of the decisions that tenure holders make – decisions that can have a profound effect on public forest and range lands. Coming to term with what this means is a challenge shared by government officials, tenure holders, professionals and the public alike.

The FPC reinforced a common misconception about the powers of government officials. Many have come to believe that, simply by virtue of their office, government officials in the MOFR and the MOE can “dictate” what does (or does not) happen on public forest and range lands. In turn, this has fostered a belief that the expectations of government officials are the most important expectations affecting the management of public lands. However, this is not in fact the case. It was not even the case under the FPC, and it is certainly not the case under the FRPA.

Within any statutory regime, the most important expectations are those of the Legislature – as set out in the applicable legislation. The next most important expectations are those of the Courts, who are the arbiters of the legislation’s meaning and the legality and fairness of the actions and decisions of government officials. In short, government officials serve the Legislature, under the supervision of the Courts.

In this regard, it is important to remember that government officials have no “inherent” powers simply because they work for the government. They can only do what they have been given the legal authority to do. As it happens, the FPC gave government officials in the MOFR and the MOE a great deal of power. It authorized – and even required – them to involve themselves in almost every aspect of the management of public forest and range lands. So much so, in fact, that tenure holders were left with almost no decision-making responsibilities of their own.

The FRPA has changed this paradigm. Many of the responsibilities associated with the role of “steward” – a role traditionally fulfilled by government officials – now fall to

tenure holders. This means that tenure holders will have to come to terms with what it means to be a steward.

A steward is someone who manages property belonging to another person with due regard for the owner's interests. In the case of public lands, the nominal owner is the government, but the government's ownership is "burdened" by the duty that it owes to the public. In this regard, the government's role is akin to that of a trustee, since it holds public lands on behalf of the public. This makes the public the true "beneficial" owners of public lands.

In turn, this means that government officials and tenure holders alike are accountable to the public for the decisions they make with respect to the management of public forest and range lands. This was true under the FPC and continues to be true under the FRPA. The difference is that, under the FRPA, many more of the decisions that affect these public lands now fall to tenure holders to make, rather than government officials.

Notwithstanding the larger management role played by tenure holders, the importance of the responsibilities borne by government officials should not be discounted. As the trustee of public forest and range lands, the government – and hence government officials – continue to play an important *oversight* role, which manifests itself in a number of ways, including:

- The approval of certain plans required by the FRPA, such as the new forest stewardship plan (the FSP), which entails the application of statutory tests governing the preparation and approval of these plans;
- The establishment of objectives, general wildlife measures and other orders governing the management of public forest and range lands, as provided for under the Government Actions Regulation; and
- The enforcement of the statutory obligations that the FRPA imposes on tenure holders.

This oversight role is an integral part of the FRPA. However, it does not have the same scope that it did under the FPC. Which means that one of the biggest challenges for government officials will be coming to terms with the limitations, as well as the nature, of their new role.

Even tenure holders may have difficulty accepting that government officials are not the final arbiters of what should – or should not – happen on public lands. Indeed, it may come as something of a shock to realize that there are other forces at work, outside the control of government officials, that have a direct bearing on the management of these lands.

Which brings us to another way in which the FPC may have distorted our perceptions regarding the management of public forest and range lands. In addition to fostering the notion that government officials can and should dictate to tenure holders, the FPC also

shifted attention *away* from a broad range of expectations that arise *outside* statutory regimes administered by government officials.

Within the legal realm, of which the FRPA is but one small part, there are other expectations that matter – expectations that owe nothing whatever to legislation, like the FRPA, that creates statutory regimes administered by government officials. The expectations that govern the professionals who advise and assist tenure holders and government officials are a case in point.

Professionals who are members of one of the self-regulating profession – including professional foresters, biologists, agrologists, engineers and geoscientists – are subject to their own statutory regimes, which are *not* administered by government officials. The regimes that apply to these professionals are administered by their professional associations, which are charged with imposing and enforcing strict standards of conduct and competence. These standards shape the nature and scope of the advice and assistance that professionals can (or cannot) provide. For this reason, professional standards are, in many respects, as important as, if not more important than, the requirements imposed on tenure holders under the FRPA.

There are also other expectations arising in the legal realm that exist outside any statutory regime, i.e. they are independent of any kind of legislation. Our legal system consists of two equally important parts: (1) legislation or statute law, and (2) the common law. The latter also has a direct bearing on the management of public forest and range lands.

Take, for example, the common law principles that govern civil liability. These have evolved – and continue to evolve – through the disputes that the Courts are called upon to arbitrate. Recently, the principles governing civil liability evolved in a rather unexpected way. In 2004, the Supreme Court of Canada recognized a new form of liability, namely liability for environmental damage to public lands. The upshot is that compliance with the requirements of the FRPA – or with any other legislation – may not be sufficient to protect tenure holders – or even the government – from liability for failing to adequately protect public lands or resources.

Which brings us to the expectations that arise outside the legal realm of statute law and common law. In this paper, the world outside the legal realm is referred to as the “non-legal realm.” Expectations arising in the non-legal realm can also have a profound effect on the management of public forest and range lands.

In our day-to-day lives, societal expectations, which arise in the non-legal realm, are usually the most powerful influences on our actions and decisions. What our neighbours, clients or customers think of us is generally of greater concern to us than anything the law may require of us in our roles as members of society, public servants, professionals, business-people, landowners, stewards, etc.

With respect to the management of public forest and range lands, the importance of societal expectations easily rivals that of anything found within the legal realm. The

pivotal role played by the environmental movement in B.C. illustrates this point, as do environmentally-conscious marketplace initiatives, such as the certification of forest products.

Equally important, insofar as forest and range management decisions are concerned, are the expectations created by scientific/technical knowledge. Not only does this knowledge shape societal expectations, it also has a direct bearing on important concepts arising in the legal realm, such as the due diligence defence that applies under the FRPA and the standard of care that applies in the context of a common law negligence suit.

All of which means that, even though forest and range tenure holders are no longer subject to the tight controls that were formerly exerted by government officials under the FPC, they are by no means free to do whatever they wish. Greater freedom generally leads to greater responsibility, and this is likely to prove true with respect to the actions and decisions of tenure holders.

In an attempt to “manage” these outside forces, as well to help themselves come to terms with the new statutory regime created by the FRPA, tenure holders and government officials alike may look to guidance documents for “direction.” Unfortunately, guidance and direction are very different concepts. Which does not mean that guidance documents are not useful. Quite the contrary. However, it does mean that these documents can only *influence* actions and decisions; they cannot *control* them.

No one has a monopoly on the development or dissemination of guidance documents. Guidance documents developed by or on behalf of the government are not fundamentally different from guidance documents developed outside of government. In short, anyone – including government officials, tenure holders, professional associations and public interest groups – can provide guidance, as long as they understand its limitations.

The most important limitation is that no one can be compelled to follow guidance. Compulsion is the defining characteristic of direction. Government officials can only give direction if they have been given the legal authority to do so. The same holds true for tenure holders, professional associations and public interest groups.

Which means that guidance documents will only be effective if they are useful to – and used by – their intended audience. To that end, it is necessary for guidance documents to be compelling and persuasive. Which brings us back to the importance of scientific/technical knowledge. Guidance in the forest and range management context draws much of its power from this knowledge.

This paper discusses two important ways in which scientific/technical knowledge can be brought to bear on forest and range management decisions:

- Through the effective use of well-qualified, dedicated professionals; and
- Through the effective use of well-crafted, thoughtful guidance documents.

The concept of “professional reliance” is predicated on professionals being able to demonstrate their adherence to the highest professional standards. In turn, these standards need to accurately reflect what it means to be a truly *competent* professional. Professional reliance does *not* mean “blind reliance.” Reliance is only justified if professionals are true experts in their fields.

Tenure holders and government officials alike cannot simply accept “on faith” what a professional says. In this context, the process followed by the Courts when considering expert testimony may provide a useful model for the kind of scrutiny that can and should be brought to bear on the advice or opinions proffered by professionals. This is the focus of Chapter 8 of this paper.

The development of effective guidance documents is also discussed at length in this paper. Appendix 4 focuses specifically on this issue. Readers who are intimidated by the length of the paper, but want to learn more about the development of guidance documents, may find it easier to go directly to Appendix 4, after which they may want to look at the following chapters:

- Chapter 2, which provides an overview of the expectations, arising in the legal and non-legal realms, that affect the management of public forest and range lands;
- Chapter 3, which provides a more detailed discussion of expectations arising inside statutory regimes administered by government officials; and
- The second, third and fourth sections of Chapter 9, which provide an overview of the kinds of guidance documents that may be developed inside and outside of government.

Finally, a caution for the reader. This paper is very lengthy. The topics it discusses are wide-ranging, just as the expectations that affect the management of public forest and range lands are wide-ranging. Rather than trying to read everything in the paper, you may prefer to focus on those issues that are of particular interest to you. Take a look at the table of contents. If you find a heading that interests you, feel free to “enter” the paper at that point, rather than starting from the beginning. There is sufficient cross-referencing to make this a practicable approach.

\* \* \* \*

## ***The rationale for professional reliance***

When the Legislature enacted the FRPA, it also enacted a new *College of Applied Biology Act* and repealed and replaced the old *Foresters Act* and *Agrologists Act*. The decision to introduce three professional Acts, at the same time that the FRPA was introduced, is hardly coincidental. It would seem that the Legislature believes, or at least hopes, that forest and range tenure holders will draw on the expertise of the professionals named in these Acts. Indeed, the timing of the three Acts suggests that the Legislature expects reliance on the expertise of these and other resource management professionals to provide a viable alternative to the kinds of governmental controls that used to be found in the FPC, controls that have not been carried forward – or at least not to the same extent – into the FRPA.

Clearly, the Legislature has expectations respecting the professions on which it has chosen to confer self-regulating status. These expectations are arguably centred on rigorous standards of *conduct* and *competence*. Taken together, these two concepts *are* the rationale for professional reliance.

Conduct essentially means two things:

- Complying with a strict ethical code; and
- Demonstrating an unwavering dedication to the principles underlying a particular profession.<sup>76</sup>

Competence means having the requisite expertise to address a particular issue or problem.<sup>77</sup>

So, how exactly do these two concepts play out in the forest or range management context? Let's begin by looking at competence. As noted in Chapter 5, dedication to the principles underlying a profession is of little use if a professional lacks the requisite expertise. This raises the following question: What is the nature and scope of the expertise that the members of the resource management professions bring to bear on issues and problems associated with the management of forest and range lands?

In Chapter 4, we looked at three examples that are central to forest management decision-making:<sup>78</sup>

1. Conserving the productivity and hydrologic function of soils;
2. Developing stocking standards for the reforestation of harvested areas; and
3. Conserving water quality, fish habitat, wildlife habitat and biodiversity in riparian areas.

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<sup>76</sup> See the discussion of professional independence and neutrality in Chapter 5 on p. 170 and again on 176.

<sup>77</sup> See the brief discussion of expertise in Chapter 5, starting on p. 170. We will consider this concept in greater depth here.

<sup>78</sup> See the discussion in Chapter 4, starting on p. 96.

While these examples are taken from the forest management context, what they tell us about the competence that is expected of resource management professionals is equally applicable to the range management context. Together, the three examples give us some sense of the level of complexity associated with resource management decision-making, and hence the level of expertise that is likely to be required of resource management professionals who:

- Provide advice and assistance to tenure holders charged with making forest or range management decisions; or
- Support government officials who, in their capacity as statutory decision-makers, are charged with reviewing the decisions of these tenure holders, in either a plan approval or an enforcement context.

As the discussion in Chapter 4 illustrates, a cursory understanding of soils, stocking standards or riparian areas will *not* be sufficient for either of these purposes. Resource management professionals who have taken the applicable undergraduate courses at university and read through the applicable textbooks and government guidebooks are *not* automatically experts. Much more will be required before they can take on the role of advisor or doer.<sup>79</sup>

Indeed, if a professional's knowledge of a particular resource management issue is confined to taking a few courses and reading a few books, then the most that they are likely to have gained is an appreciation of just *how little they know* and *how much more they will need to learn* before they presume to proffer advice, assistance or support to a tenure holder or a government official. Much more will be required before their advice, assistance or support can be reasonably relied upon.

The level of competence that underlies the concept of professional reliance connotes an *in-depth* knowledge that usually entails *years* of careful study and "hands-on" experience, both of which need to be directly "on point." I recall a meeting I once had with a soils expert who was quite prepared to discuss soils on the east coast of Vancouver Island, based on his many years of experience. However, he declined to say anything at all about soils on the west coast of the Island, citing his lack of expertise with respect to the latter. His reticence in this regard exemplifies one of the hallmarks of a true professional.

To be truly competent, professionals must have three things:

- An accurate understanding of what they need to know about a particular matter in order to form a valid opinion;
- An unflinching assessment of the state of their own knowledge of that matter in comparison to what is required to form a valid opinion; and
- An unwavering determination not to express an opinion unless the state of their knowledge "stands up" under this assessment.

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<sup>79</sup> See the discussion in Chapter 3 of the roles played by professionals employed or retained by tenure holders, starting on p. 33, and by professionals employed or retained by the government, starting on p. 37.

Unlike the FPC, the FRPA does not offer any “instructions” with respect to these points. For example, in the context of soils, stocking standards and riparian areas, the Forest Planning and Practices Regulation makes no attempt to identify or describe everything that a resource professional needs to know when:

- Assessing the sensitivity of different soils to disturbance;
- Defining a proxy for the long-term effects of soil disturbance, as an alternative to the default limits provided in the Regulation;
- Deciding what kinds of activities should or should not be permitted in an area, in order to achieve the disturbance limits or other soil disturbance proxies that apply to the area;
- Selecting appropriate silvicultural systems, having regard to the proposed design of a future forest;
- Selecting ecologically suitable and economically valuable tree species for reforestation purposes, as part of the proposed design of a future forest, as well as appropriate distributions and densities for these species;
- Classifying streams, wetlands or lakes, based on their size and characteristics, including the presence or absence of fish;
- Defining ecologically appropriate riparian zones for streams, wetlands or lakes, as an alternative to the default zones provided in the Regulation; and
- Designing management regimes for riparian zones, having regard to their different functions and sensitivities, as an alternative to the default standards in the Regulation.

Instead of spelling out what should (or should not) be done in these or other forest management contexts, the Regulation merely offers some “factors” for consideration: see section 12 (1) and Schedule 1 of the Regulation. However, any consideration given to these factors is strictly voluntarily.

The contrast with the regulations that were enacted under the FPC is quite striking. Unlike those regulations, the Forest Planning and Practice Regulation is entirely silent with respect to:

- The assessments, surveys, inventories, and other data that a prudent resource management professional would collect or prepare in order to establish a solid information base for forest or range management decisions; and
- The various plans, prescriptions, maps, etc. that this same professional would prepare (over and above the FSP and site plan specifically required by the FRPA) in order to formulate or convey these decisions.

The FRPA simply assumes that resource management professionals have the kind of competence that will enable *them* to identify *everything* that they need to know or do, and everything that a forest or range tenure holder needs to know or do, with respect to a particular forest or range management issue – without any promptings from the Legislature. Which means that it is up to these professionals – and the governing bodies of their professions – to ensure that every professional actually has this kind of competence.

This is not to suggest that resource management professionals can or should ignore the FRPA or its regulations. It simply means that their knowledge should extend far beyond the comparatively narrow ambit of the statutory regime that the FRPA has created.

In sum, if resource management professionals have the kind of competence that justifies reliance on their professional expertise, then they are likely to be more struck by what the FRPA does *not* say than what it does. Accordingly, while these professionals may find it expedient and even necessary to refer to the legislation from time to time as a kind of “checklist” of their employer or client’s statutory obligations, their focus is likely to be elsewhere – on the forest and range management issues that they have been trained to recognize and address.

To put it another way, if resource management professionals find themselves looking to the FRPA or its regulations to “tell” them what is or is not relevant from a forest or range management perspective, then they probably lack the kind of competence that would justify reliance on their professional expertise. For the concept of professional reliance to have real meaning, their knowledge should far exceed anything touched on in the legislation.

In this context, there is another facet to competence that is worth noting. It never achieves a “steady-state,” i.e. it is not something that can be maintained without effort. Quite the contrary. Competence is not only hard-won, it is also easily lost.

To remain competent, resource management professionals need to keep abreast of emerging issues in their field,<sup>80</sup> either by:

- Conducting their own research; or
- Taking note of research done by others, as documented in publications like those referred to in Appendices 2 and 3.

Because competence – i.e. expertise that is both on point and up-to-date – is so important to the concept of professional reliance, we will revisit it in Chapter 8, where we will spend some time looking at how expert opinions are evaluated. Needless to say, a professional is never retained to provide a “non-expert” opinion. However, before we get to Chapter 8, we need to look at the other half of the professional reliance equation: conduct.

Competence alone is not enough to ensure that resource management professionals will act in a way that justifies the confidence of tenure holders, the government and the public alike. Professional conduct is equally important to the concept of professional reliance,

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<sup>80</sup> Different approaches to maintaining competence are used by different professions. For example, medical practitioners, like resource management professionals, often engage in scientific research. I know from personal experience the value of having a family doctor who is actively engaged in medical research. On the other hand, a lawyer will generally take a different path, which may include legal research (such as tracing the common law back to the 13<sup>th</sup> century as was done in the *Stone Creek Fire* case discussed in Chapter 5) or the “distillation” of new legal concepts in the “crucible” of the courtroom, where most legal “experiments” are conducted. Whatever approach is used, the goal is the same: to remain on the cutting edge with respect to any area of practice in which a professional purports to be an expert.

which gives rise to the following questions: What are the *principles* that govern the conduct of resource management professionals? What are the *ideals* that make their professions *true* professions?

Despite certain differences in nuance, the principles underlying the resource management professions described in this chapter appear to be clustered around two core beliefs:

- A belief in *science*, i.e. in the scientific/technical principles that underpin the applied sciences, which, in turn, underpin the resource management professions; and
- A belief in *stewardship*.

As discussed in Chapter 4, in B.C., the latter concept has evolved in response to some of the unique challenges associated with the management of public forest lands in this province. In the forest management context at least, it has come to connote a balancing of factors. (What it means in the range management context is not as yet entirely clear.)

For the government, finding a balance between the sustainability of the timber supply, the conservation and protection of non-timber resources, and the economic interests of tenure holders has often been achieved through political decisions. In other words, the government has used its power to make public policy choices to resolve issues that do not necessarily lend themselves to purely scientific/technical solutions.

Individual resource management professionals do *not* have the power to make public policy choices.<sup>81</sup> The rationale for their actions and decisions will be drawn primarily from the scientific/technical realm. On the other hand, the governing bodies of the resource management professions *do* have the power to make at least some public policy choices by virtue of their power to define what stewardship means to their professions.

Just how far this power extends has not as yet been tested. Accordingly, we do not know what would happen if the governing body of one of these professions were to define stewardship in a way that differed from, or conflicted with, the public policy choices that the government has already made respecting the management or use of public lands. Obviously, the task of defining what stewardship means in the context of the standards of conduct and competence that apply to their members is not something to be undertaken lightly by the governing bodies of the resource management professions.

Another important consideration to keep in mind in this context is that standards of conduct, which are set out in rules or bylaws, are but the tip of the iceberg when it comes to defining the beliefs that permeate a profession. The core beliefs of a true professional go much deeper. And it is these core beliefs that usually determine how that professional's expertise is used.

On its own, professional expertise is essentially "value neutral." Whether it is used for good or ill will depend on the professionals who wield this expertise. It is the core beliefs

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<sup>81</sup> See the discussion in Chapter 9, in the context of guidance relating to biological diversity, starting on p. 245.

of these professionals that define what is “good” and what is “ill,” at least from their perspective. Which means that a professional’s beliefs could ultimately decide the fate of an entire profession. The reputations of *all* members of a profession are coloured by the beliefs, and hence the conduct, of each *individual* member.

All in all, the challenges confronting the resource management professions should not be underestimated. As noted in Chapter 1, professionals who advise and assist tenure holders, as well as the tenure holders themselves, bear much of the burden of justifying the Legislature’s decision to abandon the command and control approach exemplified by the FPC. However, it is the professionals who have the most to lose if the Legislature should ever regret its decision.

The worst that can happen to tenure holders is to find themselves once again subjected to the command and control approach. This has already happened to forest tenure holders once before, when the era of sympathetic administration, which started in the early 1980s, came to an abrupt end. Forest tenure holders survived that particular transition back to the command and control approach, and they are likely to survive another, if it happens again.

The same may not hold true for the resource management professionals who advise and assist forest and range tenure holders. The worst that can happen to them is to lose their self-regulating status. Indeed, this outcome does not seem unlikely if the Legislature were to conclude that its belief in professional reliance is ill-founded.

Whether the Legislature’s decision to replace the FPC with the FRPA is judged to be a wise decision or not, based on its assumption that professional reliance can provide a viable alternative to government controls, is likely to depend on whether the governing bodies of the resource management professions are successful in:

- Establishing appropriate standards of conduct *and* competence that inspire *confidence* in tenure holders, the government and the public; and
- Nurturing a professional *culture* that expands on, and complements, these standards by giving gives them *real meaning* for resource management professionals – in a way that:
  - Shapes their core beliefs; and
  - Also inspires confidence in tenure holders, the government and the public.

In this context, it is worth stressing that the rationale for professional reliance has more in view than simply achieving compliance with the requirements of the FRPA. While this is certainly one of the goals that resource professionals need to keep in mind, there is a far larger goal that should not be forgotten.

Professionals who advise and assist forest and range tenure holders need to be keenly aware of – and able to address – *all* of the expectations that affect the management of public forest and range lands in B.C. In giving up control of so many forest and range management decisions, the Legislature is effectively gambling on the ability of these professionals to focus the attention of forest and range tenure holders on issues falling

*outside* the statutory regime created by the FRPA, as well as *inside*, and to help these tenure holders to make prudent decisions with respect to both.

Ultimately, the decisions made by tenure holders – based on the advice and assistance of resource management professionals – will be subjected to the scrutiny discussed in Chapter 10. As we will discover when we get to that chapter, whether or not these decisions are in compliance with the requirements of the FRPA is not the focus of this kind of scrutiny. Compliance with *any* statutory regime is at best a secondary consideration in the context of such scrutiny. A far more important consideration is whether or not forest and range management decisions are inherently “sound.”

In the end, the Legislature’s faith in resource management professionals will only be well-founded if the decisions made by tenure holders – based on the advice and assistance of these professionals – stand up under this scrutiny, and are found to be sound based on the full gamut of forest and range management considerations that can and should be brought to bear on such decisions. Only then will we be in a position to say that professional reliance really is a viable alternative to government controls.

Which means that until the final results are tallied, we cannot answer the following question: How big a role will the professions really play? But even if we can’t answer this question, we can take a moment to examine it a little more closely.

### ***How big a role will the professions really play?***

The question posed by the title to this section actually has two parts:

1. How big a role will *resource management professionals* play with respect to the management of public forest and range lands in B.C.?
2. How big a role will their *professional associations* play?

The role that professionals play in their chosen field of practice depends on their relationship with – and influence over – their employers or clients. In turn, the nature of this relationship, and the extent of their influence, is largely a reflection of the *value* that an employer or client places on the advice and assistance that a particular professional is able to provide, and the *confidence* that this professional is able to inspire.

What makes their advice or assistance valuable, and inspires confidence, is a clear demonstration that professionals, in their own right, amply possess the combination of knowledge and professionalism that characterizes their profession. In this regard, it is important to remember that the power of knowledge – which is the only real power that a professional has – is very different from the regulatory power that government officials are often able to wield.<sup>82</sup>

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<sup>82</sup> See the discussion of the power of knowledge in Chapter 9, starting on p. 251.

A professional cannot give “orders” to an employer or client. The phrase “Because I said so” cuts no ice here! If a professional’s opinions are to carry any weight at all, then they will have to have intrinsic merit. In other words, these opinions will only have value, and inspire confidence, if they are compelling and persuasive.

During the course of this paper, reference has been made to various professions besides the resource management professions, including those of the law and medicine. What has defined the roles of the latter two professions is the *relationship* that exists between lawyers and their clients, and between doctors and their patients. In both cases, these relationships are marked by a high degree of trust in, and reliance on, the knowledge of lawyers and doctors, as well as confidence in the professional standards that bind these two professions.

There is another example that may be even more apt for our purposes, given the context within which resource management professionals operate. Let’s take a brief look at the accounting professions.

Without the core business principles developed by these professions, it seems unlikely that our modern market-based economy would have evolved as it did. The professional standards that define the accounting professions have also come to define what we mean by acceptable business practices. It would be difficult, indeed it might well be impossible, to talk about what we mean by a well-run business without eventually referring to “generally accepted accounting principles” or “generally accepted reporting principles.” The very language we use to discuss key business concepts comes to us from the accounting professions.

So pivotal is the role played by accounting professionals that the slightest doubt cast on their professionalism can throw the entire business world into turmoil. Witness the fall-out from several recent, highly publicized accounting scandals.

The reaction to these scandals highlights the importance of maintaining public confidence even, or perhaps especially, in the business world. Indeed, one of the main reasons for retaining the services of any professional in the business context is to maintain *credibility* – credibility with customers, credibility with competitors, credibility with regulators and credibility with the public.

Which brings us to the role played by professional associations. Faced with a number of accounting scandals, the governing bodies of the accounting professions had to act quickly and decisively to maintain the credibility of their members.<sup>83</sup> At the same time,

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<sup>83</sup> One is tempted to wonder whether the fact that chartered accountants, certified general accountants and certified management accountants have *not* been granted an exclusive right to practice has played some part in their success. They cannot afford to be complacent, since they have never had a monopoly over the provision of accounting services. Having worked hard to win the confidence of their clients and the public, they must continue to work hard to retain that confidence. They can take nothing for granted. Which may explain why the governing bodies of the accounting professions were both able and willing to act so quickly when confronted with accounting scandals.

these scandals have drawn attention to a problem that confronts *all* professionals whose field of practice takes them into the business world.

Employers and clients engaged in business are interested in making money. Accordingly, they may be inclined to favour advice or assistance that seems to be “advantageous” to their economic interests. However, if that advice or assistance does not stand up under external scrutiny, then its advantages are likely to be illusory.

The upshot is that inexperienced or foolhardy employers or clients may start out thinking that it is a good idea to retain the services of a “pliable” professional, but at the first sign of trouble they are quick to change their minds. Advice or assistance that lacks credibility is ultimately “value-less.” Indeed, it may even be a liability.

Smart employers and clients already know this. They recognize that the duty that a professional owes to the public can also benefit the professional’s employer or client. In short, smart employers and clients are well aware that expertise backed by integrity is “better value.” And it is hardly a difficult business decision to turn away from a professional – or even a profession – with less or even no value.

This means that professionals who are rather more pliable than they should be represents a very real risk to their profession. The same holds true for professionals who are simply incompetent. Whether it is lack of integrity or lack of expertise, such risks cannot be ignored. Which is why professional associations have been given the power to address them.

In this context, the following adage may be trite, but it is still true: “An ounce of prevention is worth a pound of cure.” Which brings us back to the importance of establishing appropriate standards of conduct and competence, and nurturing a professional culture. However, if either of these should fail for any reason, then swift and appropriate disciplinary action is essential.

So, how do we relate all this to the roles played by resource management professionals and the professional associations to which they belong? Let’s start with an observation. It would appear that these roles are still evolving. At present, the role played by resource management professionals – or at least those who work outside of government – seems to lack the kind of intimate connection to the management of public forest and range lands that one might expect. There is a connection, but it is rather weak. It is certainly nothing like the connection that ties professional accountants to the world of business.

The lower profile of the resource management professions can arguably be attributed (at least in part) to the command and control approach adopted by the government for so many years with respect to almost every aspect of the management of public forest and range lands. As noted at the beginning of this chapter, this approach focused on the role of government officials, and de-emphasized the role of professionals working outside of government.

At the same time, legislation like the FPC sometimes gave the appearance of promoting the role of certain resource management professionals, primarily by requiring their “sign-off” for certain kinds of documents. However, rather than strengthening the role of professionals, these sign-off requirements may have done little more than create a false impression. After all, the real power remained with government officials – and the responsibility that goes with real power was also theirs. To the jaundiced eye, the role assigned to private sector resource management professionals had all of the hallmarks of “busy-work.”

All this has changed with the FRPA. Not only has the Legislature de-emphasized the role of government officials, it has also eliminated the sign-off requirements that kept some private sector resource management professional so busy under the FPC. The only signature that the FRPA requires on an FSP is that of the tenure holder. Indeed, throughout the FRPA, it is tenure holders who are the focus of attention.<sup>84</sup>

Ironically, it is this focus on tenure holders that may ultimately enhance the role of resource management professionals. Along with their newfound freedom, tenure holders are discovering newfound responsibilities. Which means they are likely to find that substantive advice and assistance is more valuable to them than the signatures that resource management professionals were previously called upon to provide.

What’s more, this substantive advice and assistance is likely to have as much, if not more, value *outside* the statutory regime created by the FRPA as *inside*. Which may be a novel experience for tenure holders and resource management professionals alike, at least in B.C.

Under the FPC, almost everything that tenure holders did – including every type of plan they might conceivably utilize as a means of organizing, coordinating, prioritizing or designing their activities – was regulated. In this regard, the philosophy underlying the FPC could be summed up as follows:

If tenure holders are going to use a particular type of plan anyway, why not “codify” its contents and have them submit the plan to a government official for approval?

As a result, the FPC not only regulated every aspect of planning related to the development of public forest or range lands, it also served as a comprehensive and extremely detailed operating manual.

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<sup>84</sup> There is only one explicit reference to professionals in the FRPA. This reference is found in section 22.1 (1) of the Forest Planning and Practices Regulation, which is tied to section 16 (1.01) of the FRPA. Together, these sections provide for the certification of certain content elements in FSPs by professional foresters, professional biologists, agronomists, professional engineers, and professional geoscientists. See the discussion in Chapter 4, starting on p. 78. However, certification of an FSP is merely a way of facilitating approval under section 16 of the FRPA. It is not a mandatory requirement. On the contrary, insofar as the FRPA is concerned, there is no reason why an FSP that is *not* certified, prepared or signed by a resource management professional cannot be approved under section 16.

In contrast, the FRPA makes no attempt to address everything a tenure holder needs to know about planning development activities. It would make a very poor operating manual.<sup>85</sup> But then that is not its purpose.

Take the FSP, for example. As noted in Chapter 4, it is essentially a set of stewardship commitments, which come in a variety of forms: results, strategies, stocking standards and measures. These commitments become part of the “goals” that shape a forest tenure holder’s forest management decisions.

But how are forest tenure holders supposed to go about meeting these goals? This is not something that the FRPA makes any attempt to address. It is up to the tenure holders to work this out for themselves.

In this context, it is important not to overlook the fact that forest tenure holders are likely to have other goals *besides* the commitments that they have made in an FSP. Some of these goals may encompass environmental protection measures that go beyond the “minimum requirements” set out or provided for in the FRPA. The motivation for these additional measures may be a tenure holder’s own economic interests (e.g. they may be seeking private sector certification), or their acceptance of certain moral obligations that go along with their “social licence.”<sup>86</sup>

Either way, unless these goals are expressly tied to one of the content requirements that apply to FSPs, they will fall outside the ambit of the FRPA – and outside the purview of government officials.<sup>87</sup> Which means that forest tenure holders cannot look to these officials to vet or endorse these goals. Similarly, when it comes to meeting the goals that they have set for themselves, whether these goals take the form of commitments in an FSP or fall entirely outside of the FRPA, forest tenure holders can no longer look to government officials to decide what needs to be done.

All of which suggests that there may a number of reasons why tenure holders may turn to resource management professionals for substantive advice and assistance.

Of course, it does not follow that forest and range tenure holders will automatically consider the advice and assistance of resource management professionals to be of value. Nor does it follow that a tenure holder’s reliance on the advice or assistance of a resource management professional will automatically confer public credibility.

In this regard, the challenge confronting resource management professionals and their professional associations is two-fold:

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<sup>85</sup> This same point is made in Chapter 4, in the context of the transition from cookbook forestry to professional expertise: see p. 106.

<sup>86</sup> See the discussion in Chapter 5 of societal expectations, which form part of the non-legal realm, including the concept of the social licence, starting on p. 148.

<sup>87</sup> See the discussion in Chapter 4 of the limited role played by FSPs, starting on p. 71. See also the discussion of the implications that this has for decisions under the Government Actions Regulation, starting on p. 86.

- To prove to tenure holders that the advice and assistance of these professionals has value; and
- To prove to the government and the public that this advice and assistance has credibility.

Neither of these tasks will necessarily be easy, but, whether they are or not, both tasks will have to be accomplished if the resource management professions are to play anything other than a minor role with respect to the management of public forest and range lands in B.C.

As noted earlier, it is still too soon to say how big their role might be. However, regardless of the form it takes, the role played by any professional inevitably attracts scrutiny. So, let's turn our attention to the way in which the opinions of resource management professionals are likely to be evaluated.

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