

Draft Policy - Professional Conduct Process

The purpose of this proposed policy is to deal with lodging a complaint against an Association of Saskatchewan Forest Professionals (ASFP) member and what ASFP members should expect if complaints are lodged against them.

1. Lodging a complaint:

- (i) A complaint must be in writing and addressed to the ASFP registrar (refer to the complaint form available on the ASFP website at <http://www.asfp.ca/>).
- (ii) A complaint must concern a member or former member. When a complaint is received the member(s) involved are deemed to be the subject member(s) in the complaint. A complaint may only be lodged against a former member of the ASFP within two years of their resignation date.
- (iii) A complaint must provide sufficient information to allow an investigation to proceed. There is no definition of sufficient information; however, the ASFP registrar must be able to verify that there are suitable details provided to support the allegations made in the complaint.
- (iv) A complaint is only to be lodged against a member who demonstrates either professional incompetence and/or professional misconduct, as per the *Forestry Professions Act* or the ASFP bylaws. Complaints are not to be frivolous, vexatious or an abuse of policy. The Definitions section of this policy further defines what is meant by professional incompetence and professional misconduct.
- (v) All information regarding the names of the individuals involved in a complaint will be kept confidential until such time as there is a citation issued by the registrar or there is agreement on a finding of a breach of the *Forestry Professions Act* or the ASFP bylaws. The ASFP requires that all members involved in a complaint investigation maintain that confidentiality as well.
- (vi) All parties involved in a complaint need to understand that the complaint resolution process can take a considerable amount of time to complete. Generally the decision on accepting a complaint will take about a month. Depending on how the complaint is processed by Professional Conduct Committee, the process regarding how to deal with a complaint may take up to 120 days. If, after the investigation, the Professional Conduct Committee determines that a hearing is required, this process is likely to take at least another three to five months depending again upon the complexity of the case and the schedules of the lawyers involved.

2. Complainants role in the complaint review process:

- (i) Once a complaint is received, the ASFP registrar will review it and inform the complainant that the allegations are being considered.
- (ii) The ASFP registrar will refer each complaint to the Professional Conduct Committee for review. After review by the Professional Conduct Committee, the Chair (herein referred to as “the Chair”) must determine whether to accept a complaint. The complaint may be dismissed at this stage if it does not meet all the tests in section 1 (i) to (iv) above. The complainant will be informed whether the complaint is dismissed or accepted.
- (iii) The complaint may be referred to alternate complaint resolution (ACR) which includes negotiating a resolution, conditional admission, mediation, arbitration or a combination of the above. The complainant will be notified if the Chair believes that arrangements should be made for ACR. No ACR can take place without agreement by the complainant, the Chair and the member who is subject to the complaint.
- (iv) The question of whether ACR is appropriate is one that has to be considered on a case-by-case basis. Some factors to consider are¹:
 - a. Does an open conversation have the potential to repair a relationship or restore the confidence of the public (or a certain individual) in the profession?
 - b. Is it possible that an explanation, an apology, or commitments to future change will satisfy both the complainant and the public interest?
 - c. Has there been a breakdown in communication which has contributed to the problem?
 - d. Do the allegations include serious incapacity, incompetence, dishonesty or sexual abuse—or situations that might lead to the discovery of additional misconduct? (On most occasions, these situations will not be appropriate for mediation).
- (v) If ACR is not agreed to or is unsuccessful then the complaint becomes a matter between the ASFP and the subject member. The complainant has no further role to play other than providing evidence to an investigation committee or at a hearing.
- (vi) The registrar will inform the complainant of the status of the complaint in terms of whether it is going to an investigation or hearing and what the outcome of these activities may be.

¹ Law Reform Commission of Saskatchewan. 2007. Handbook on Professional Discipline Procedures.

3. The Professional Conduct Committee:

- (i) The Professional Conduct Committee operates on the principles of fairness, transparency, remaining unbiased, being straightforward, and serving the public interest.
- (ii) Will follow a terms of reference.
- (iii) Will undertake a thorough investigation, if necessary and through the advise of legal counsel.
- (iv) Will undertake ACR at the discretion of the Chair and can acquire assistance of professionals and/or legal counsel in the process.
- (v) The Chair will determine the severity of the complaint and decide if the Professional Conduct Committee needs to be involved. The process will allow for the complainant to discuss their complaint either to the Chair and/or the Professional Conduct Committee.
- (vi) The process will also allow for the member to discuss their allegations either to the Chair and/or the Professional Conduct Committee.
- (vii) The Professional Conduct Committee will try to ensure that the parties have attempted to resolve the matter on a reasonable and appropriate basis. In cases where this is not appropriate, then it is not required. However, in cases that involve disputes between two members the Chair will attempt to get the parties to resolve the complaint outside of the complaint review process.

4. What an ASFP member who is subject to a complaint should expect:

- (i) When a complaint is received, the member(s) involved is/are deemed to be the subject member(s) in the complaint. The ASFP registrar will inform the subject member(s) of the particulars of the complaint generally within a week of accepting the complaint.
- (ii) The name of the subject member will be kept confidential by the ASFP and will remain confidential until such time as there is a formal complaint issued by the registrar, or there is agreement on a finding of a breach of the *Forestry Professions Act* or the ASFP bylaws. If a case is closed without issuance of a formal complaint or a finding of a breach of the Act or bylaws the name(s) of the subject member(s) will remain confidential.
- (iii) Before accepting a complaint the registrar will want to ensure that the parties have attempted to resolve the complaint on a reasonable and appropriate basis. This means that the parties are expected to have made an attempt to resolve the complaint if it is appropriate to do so. The registrar may help to facilitate this process.

- (iv) If an accepted complaint cannot be reasonably resolved between the parties then the Registrar will give each subject member the opportunity to respond to the complaint. All reasonable time will be given to provide a response. Each subject member has the option of choosing not to respond but we do not advise this.
- (v) The subject member(s) response (if any) and the information provided by the complainant will then be referred to the Professional Conduct Committee for its review. The Professional Conduct Committee must then decide on how to proceed and will have the Registrar inform the subject member(s) of this decision.
- (vi) The complaint may be dismissed if it does not meet all the tests in section 1 (i) to (iv) above.
- (vii) The complaint may be referred to alternate complaint resolution (ACR) which could mean negotiation of a resolution, conditional admission, mediation, arbitration or a combination of the above. Each subject member will be notified of the decision of the registrar and arrangements will be made for ACR if all parties are in agreement to do so. No ACR can take place without agreement by the subject member(s), the complainant and the Chair.
- (viii) If ACR is not deemed to be appropriate or if ACR fails, the complaint may be recommended for investigation. Each subject member will be informed prior to the start of an investigation.
- (ix) The decision to investigate is not in any way an indication of professional incompetence or misconduct on the part of a subject member. The ASFP maintains at all times that members are innocent until proven guilty. The decision to investigate is a determination that there is insufficient information to make a decision at this time and more information and evidence are required to making a decision on how to proceed with the complaint.
- (x) Each subject member may be asked to meet with the Professional Conduct Committee to provide his or her side of the case. If so, the chair will contact each subject member to arrange for a confidential meeting where he or she can discuss the complaint and provide the Professional Conduct Committee with evidence such as documents, journals, photos, etc.
- (xi) Once the investigation is complete the Professional Conduct Committee will write a report outlining their findings. This report will then be referred to the registrar.
- (xii) If the report concludes that there are no grounds for issuing a formal complaint, then the complaint is dismissed and each subject member (and the complainant) will be notified of this decision.
- (xiii) If the report concludes that there are grounds for the issuance of a formal complaint, then the report will be sent to each subject member who will be given

the opportunity to respond to the report and explain his or her side of things. Each subject member will be given a reasonable time to provide a response. Each subject member has the option of choosing not to respond but we do not advise this.

- (xiv) The response from the subject member(s) (if any) and the investigation report will then be referred to the Professional Conduct Committee for their review. The Professional Conduct Committee must decide whether the complaint should be dismissed or whether there are grounds to issue a formal complaint.
- (xv) Each subject member (and the complainant) will be informed by the registrar whether the complaint was dismissed or if a formal complaint will be issued. If the complaint is dismissed then no further proceedings are required.
- (xvi) If a formal complaint is issued, the formal complaint must provide each subject member with sufficient detail to clearly understand the allegations and identify the matters to be considered at a discipline hearing. Though not required, each subject member may wish to obtain the services of a lawyer to aide in their defense at a hearing.

Definitions

All members of the ASFP are expected to conduct themselves professionally and responsibly towards the profession, the public, clients, other members and the employer. The following section contains important definitions to help understanding what it means to be a competent and responsible member in the context of our forestry profession.

Professional Competency can be measured by the extent of:

- (a) knowledge of various forestry-related fields
- (b) capacity to utilize skills and knowledge
- (c) good management
- (d) know personal limitations and inform clients
- (e) maintain and prepare files/project proposals and achieve objectives and mandates
- (f) physical, emotional and intellectual capacity

Professional Incompetence implies a continued or repeated lack of one or several of the above criteria.

A competent forestry professional:

- i. utilizes appropriate knowledge in the exercise of profession
- ii. applies principles of forest science and management
- iii. uses judgment in applying and integrating knowledge and skills

- iv. must manage in a responsible and efficient manner its practice based on a structured work approach combined with professional code of ethics, scientific knowledge and experience

Professional Practice implies:

- (a) client or employer satisfaction
- (b) professional responsibility and capacity to respect engagements
- (c) efficient use of resources
- (d) parameters and standards for quality control

Professional Responsibility means:

- (a) Duties and obligations of the forestry professional towards the public regardless of the employer or position held
- (b) Cannot be delegated under any circumstance
- (c) Must assume consequences of actions
- (d) Responsible for any advices or recommendations given at all time
- (e) Avoid providing opinion without supporting facts and clearly indicate limitations to interpretation
- (f) No doubtful, erroneous or false representation to anyone requesting service or advice
- (g) Entering into service agreements or contracts which meet personal skills, competence, knowledge and resources available

Professional Misconduct means:

- (a) negligence,
- (b) failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible,
- (c) failure to act to correct or report a situation that the practitioner believes may endanger the safety or the welfare of the public,
- (d) failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner,
- (e) failure of a practitioner to present clearly to the practitioner's employer the consequences to be expected from a deviation proposed in work, if the professional forestry judgment of the practitioner is overruled by non-technical authority in cases where the practitioner is responsible for the technical adequacy of professional forestry work,
- (f) breach of the *Forestry Professions Act* or the ASFP bylaws, other than an action that is solely a breach of the code of ethics,

(g) undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience,
(h) failure to make prompt, voluntary and complete disclosure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the practitioner in rendering service to the public, to an employer or to a client, and in particular, without limiting the generality of the foregoing, carrying out any of the following acts without making such a prior disclosure:

- i. Accepting compensation in any form for a particular service from more than one party;
- ii. Submitting a tender or acting as a contractor in respect of work upon which the practitioner may be performing as a forestry professional;
- iii. Participating in the supply of material or equipment to be used by the employer or client of the practitioner;
- iv. Contracting in the practitioner's own right to perform professional forestry services for other than the practitioner's employer;
- v. Expressing opinions or making statements concerning matters within the practice of professional forestry of public interest where the opinions or statements are inspired or paid for by other interests.

(i) conduct or an act relevant to the practice of professional forestry that, having regard to all the circumstances, would reasonably be regarded by the forestry profession as disgraceful, dishonourable or unprofessional,

(j) failure to supply documents or information requested by an investigator acting under section 27 of the *Forestry Professions Act*,

(k) harassment, and

(l) The Professional Conduct Committee may consider other allegations of what may constitute as professional misconduct on a case-by-case basis.

Code of Ethics:

The Association approved a *Code of Ethics* in 2006 to govern the professional conduct of its members. Registered members recognize that professional ethics are founded upon values such as trust, integrity, credibility, respect, diligence, confidentiality, and commitment to learning. This professional ethic guides their conduct to ensure just and honourable professional and human relationships, mutual confidence and respect, personal integrity, and competent service.

A complete version of this Code of Ethics is available on the ASFP website at:

(http://www.asfp.ca/code_of_ethics_long.html).