

The Professional Forester

June 2009

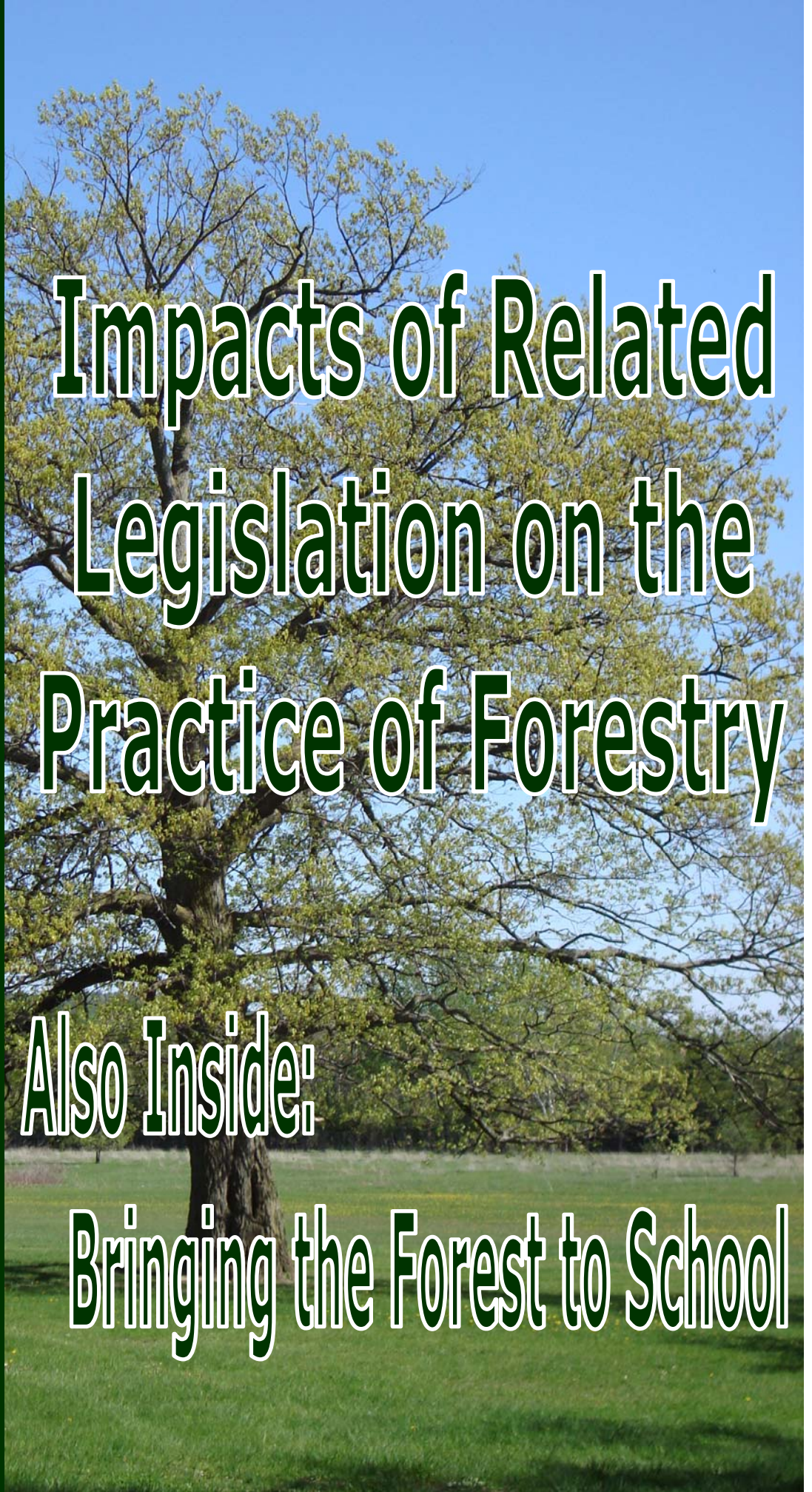
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Impacts of Related Legislation on the Practice of Forestry

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Bringing the Forest to School



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Ontario Professional Foresters Association
5 Wesleyan St., #201, Box 91523,
Georgetown, ON L7G 2E2
905-877-3679 or opfa@opfa.ca

EDITOR

Caroline Mach, R.P.F.
newsletter@opfa.ca

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Unless specifically stated, views and opinions expressed do not necessarily represent those of the Association, its Council or the employers of members.

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The Foresters Almanac

Matt Meade
Species at Risk Education & Outreach
Coordinator



By the time you read this, the one year *Endangered Species Act, 2007* (ESA) exemption on forestry operations will have just about expired. How will this impact forests; forestry; and foresters? Good question, answering it is where the almanac part of this will come into play. An almanac, by definition, records and predicts events over time (weather, for instance). Unlike the author of *The Old Farmer's Almanac*, who based his predictions on a complex series of natural cycles, I'm basing my predictions on my experiences, exchanges and correspondence with the diverse group of stakeholders I've encountered this past year. For the future sake of the Foresters Almanac, hopefully my forecasting formula will bring as accurate a result.

If recording events defines half of what an almanac is, let's begin there. Currently, there are 59 species at risk (SAR) inhabiting the area of undertaking for commercial forestry. Last summer the ESA came into effect here in Ontario, prohibiting the killing, harming or harassing of species at risk, or their habitats. The forest industry was granted an exemption to this legislation by the Ontario Ministry of Natural Resources (MNR). This time has been used to find ways of integrating existing forest management processes with ESA requirements. To date, little has been published on what has been accomplished; however, there have been reassurances issued that progress has been made. In a recent letter sent to the Canadian Institute of Forestry (CIF/IFC), by Donna Cansfield, Minister of Natural Resources, stated "We have been exploring the tools available to help achieve this, including flexibility tools within the act as they might relate to forestry." "The MNR is committed to working with the forest sector to meet the high standards for protection in the act and ease some of the challenges being faced by the industry," added Minister Cansfield. In addition to the exemption ruling, forestry professionals and practitioners should be mindful of the habitat regulations being developed under the ESA (provides clarity on habitat protection), as well as the Caribou Conservation Plan, both set for release this June. And that in a beech nut shell is where we are so far.

Next, in regards to predicting the future, the Foresters Almanac is forecasting that after

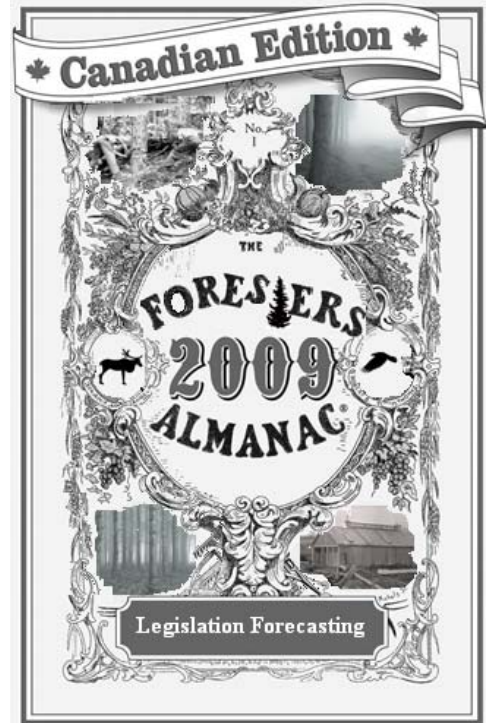
the proposed timeframe forest operations will be required to comply with the new Act. Okay, that's hardly a prediction since the MNR has been quoted as saying so. On the other hand, when it comes to the specifics of how this will impact forests, forestry and foresters, the almanac's predictive powers will play a more significant role.

My first prediction is that in cases where forestry operations are likely to have an impact on a threatened or endangered species or its habitat and that impact cannot be avoided, a permit will be required. There are several kinds of permits that can be issued under the ESA; however, the one that will most likely be issued related to forestry operations is based on clause 17 (2) (c) of the ESA. A permit issued under this clause will require the proponent to show "overall benefit" to the affected species, where the activities have had a negative impact on species at risk and/or protected habitat. The Provincial SAR Branch has developed draft guidance for issuing this type of permit.

Secondly, I predict that if forestry operations already under way become "occupied" by a species that is listed as threatened or endangered; the full content of the ESA will apply. This means that unless operations are progressing under the authority of an ESA permit, agreement, instrument or exemption, the activities will not be allowed to kill, harm, harass, capture or take a listed species at risk, or to damage or destroy the legally protected habitat of the species.

Finally, it is likely that in the case of accidental harm, any person has the opportunity to raise a defence of "due diligence". This is consistent with the vast majority of legislation in the province and species at risk legislation in other jurisdictions.

Only time will tell whether or not these predictions will come true. Love it or loath it, the ESA is on our doorstep and it's not going away. Like many of you, I see this as an opportunity, not an obligation to further our long-standing stewardship of Ontario's natural resources. The ESA is an important piece of legislation, as it protects our biodiversity and all the ecological goods and services which that biodiversity provides. The successful implementation of the ESA will require all of us to work together to ensure effective recovery of species and their



habitats, while balancing the need for Ontario to remain economically viable.

Urban Development - The City of Ottawa's Perspective

Tracy Smith, R.P.F.
Forester
City of Ottawa



With its green and open character, 898 000 residents call Ottawa home. A city that is 80% rural in character and over 2,800 square kilometers in size and has an expected growth rate of 50% by the year 2021, the trees within

this green infrastructure are under immense pressure by urban and rural development. With hundreds of site plans and subdivision plans received yearly, trees are constantly under threat of removal. To mitigate the loss of trees, the City of Ottawa has implemented various measures to help meet the city's 30% forest cover target. This is achieved partly through the city's tree conservation report process as well as various tree-planting programs administered by the city's Forestry Services Branch. These policies and programs have been put in place to ensure Ottawa's hallmark character persists for generations to come.

The development review process for site and subdivision plans is governed by the Province of Ontario's Planning and Municipal Acts. At the direction of the Planning Act, the City of Ottawa uses its official plan as its overall master-planning document. The official plan stipulates that each site and subdivision plan must be supported by both a tree conservation report and a landscape plan. The tree conservation report has two purposes: one is to identify certain trees as potential retention trees within the area that is being developed and the other aspect is to protect those trees that have been identified for retention. This is accomplished by collaborating with the developer to implement various mitigation measures such as erecting fencing around the trees, proper limb removal, and no stock piling against the tree, as examples. A landscape plan must also be part of the package submission, it identifies species and locations of trees to be planted post-construction.

Once the above-mentioned plans are submitted to the city, they are reviewed by the City's Forestry Services Branch and the Policy Development and Urban Design Branch to determine if appropriate tree preservation and protection measures have been proposed for both privately and publicly owned trees. The process usually requires an on site visit with forestry staff, the developer and their

consultants. Once construction has commenced, numerous inspections are conducted to ensure compliance with the approved tree conservation report. These inspections are critical to ensure the developer is implementing the tree protection measures set forth in the report.

Tree removal on privately owned development lands sometimes occurs prior to an approved tree conservation report. Presently there is no mechanism in place to regulate and enforce instances where tree cutting occurs before a tree conservation report is submitted or where the developer is in contravention of the conditions identified in the tree conservation report. Currently, the Urban Tree Conservation By-law for privately owned land is in development. This by-law will provide the City of Ottawa with the tools to enforce the policies set forth in the official plan. In instances where tree preservation is not feasible, the by-law will give the City the opportunity to provide input into post development tree planting.

If trees are damaged or removed on public property, the City's Trees and Municipal Natural Areas Protection By-law is enforced. In these circumstances, Forestry Services staff evaluate the tree as per the Council of Tree and Landscape Appraisers' Guide for Plant Appraisal and the developer is required to pay the evaluated amount plus the value of a replacement tree. These monies are then directed to the tree-planting budget for replacement plantings.

In conjunction with the City's tree protection efforts, tree planting also forms an integral part in accomplishing the city's forest cover targets. This is achieved through landscape plans that are prepared during the development review process and tree planting that is performed as part of the various programs Forestry Services offers.

As per the site and subdivision plan process, landscape plans are required and are prepared by the developer. Forestry Services reviews these plans to ensure they are in compliance with the city's tree planting standards. As many of you know, planting trees, as easy as it sounds, is not always easy when soils, utilities, sidewalks, overhead wires, and the list goes on, must be taken into consideration. One of the challenges in

planting trees within the City of Ottawa lies within the soils themselves. Approximately 25% of Ottawa's soils are in sensitive marine clay (Leda clay), which can cause foundation damage that sometimes occurs as a result of soil shrinkage. Depending on the site conditions, trees have been found to be a contributing factor to the failing foundations which has resulted in numerous claims against the city. As a result, in 2005, City Council adopted the Trees and Foundation Damage Strategy. This strategy includes corrective measures that address problems caused by existing conditions and preventative measures that protect against future problems; one of them being that only small growing trees may be approved for planting.

Forestry Services also offers programs that are helping to achieve the 30% forest cover target as identified in the official plan. The Trees in Trust Program accepts registrations from homeowners who would like a tree planted on the city-owned property in front of their home. In 2007, Forestry Services launched their TREE (Trees, Reforestation and Environmental Enhancement) Program that aims to enhance the City of Ottawa's urban and rural forests through the planting of 100,000 trees between 2007 and 2010. The Program empowers Ottawa residents, businesses, community groups and schools to participate in planting trees to enhance and maintain the city's forest cover and combat climate change. In addition, the City of Ottawa's Green Acres program helps landowners transform empty idle fields into thriving green woodlands.

Every municipality, no matter how big or small, is challenged when trees are within a proposed development site. The City's forest cover is constantly being threatened making the tree conservation report and landscape plan process even more valuable.

For more information on the City of Ottawa's Forestry's programs please visit www.ottawa.ca/TREE.

Forest Management in Algonquin Park

Carl Corbett, R.P.F.



Algonquin Provincial Park is Ontario's oldest and best known park. Algonquin is often referred to as the "jewel" of the Ontario Parks system and is well known internationally. The Park is not only important for the recreational opportunities and wildlife habitat it provides, but it is also an important source of wood supply for local mills adjacent to its boundaries. Forest management activities are permitted under the *Provincial Parks and Conservation Reserve Act, 2006*. All planning, forest management and logging activities are overseen by the Algonquin Forestry Authority, a crown agency that was established by legislation in 1974.

The Park has over one million visitor days each year. Planning and implementing forest operations in a manner that maintains a visitor's recreational experience is a key focus. Timing and location restrictions for both harvesting and hauling operations are fundamental to maintaining recreational quality. The term "separation by time and space" is often used to refer to this management practice which has been very successful since first implemented in the mid 1970s.

Algonquin has two basic forest complexes:

1. the sugar maple, beech, yellow birch and hemlock forests on the west side of the Park (Precambrian Uplands), and
2. the white pine, red pine, poplar and white birch forests in the eastern portions (Ottawa Lowlands).

There are 32 tree species in Algonquin of which 18 are commercially harvested. Algonquin has been referred to as a transition area between the northern and southern ecosystems. This results in varied tree species mixtures on certain sites which presents some forest management challenges.

Two key activities result in the successful implementation of the forest management prescription. First is the designation of which trees to harvest and which ones to retain by highly trained tree markers, and the second is the harvesting of the area using minimum logging damage techniques. Forest management prescriptions are prepared by

Registered Professional Foresters, but these prescriptions cannot cover the many variations of tree species and site conditions that tree markers will encounter. Extensive tree marker training is carried out to assist the tree markers to identify and mark the various conditions that exist while considering guidelines for wildlife habitat, water quality, tree species diversity, genetic diversity and forest structure. Local, long time logging contractors and their employees successfully conduct harvesting operations which leave a healthy, vigorous forest. The quality of their operations has been noted in several forest management audits.

The majority of tree species present in Algonquin Park lend themselves to partial harvesting using the selection and uniform shelterwood systems. Clear cutting is used on approximately 5% of the area to maintain tree species such as red pine, jack pine, poplar and white birch. The forest management systems used rely heavily on natural regeneration. To date, this has been very successful, with artificial regeneration being implemented on a small minority of sites encountered. Also, the predominant use of these partial harvesting systems ensures that forest cover is maintained on the vast majority of the land base at all times and forest fragmentation is minimized. In addition to these harvesting systems, the Authority also has an active annual road decommissioning program which also minimizes the impacts of these roads.

Day to day management practices take into account the site specific conditions, including protection of values, which are implemented by tree markers. Landscape objectives are incorporated during forest management planning and are reviewed in annual reports and independent forest audits. Examples of landscape objectives that are monitored are the size and distribution of clear cuts, providing forested areas of white and red pine greater than or equal to the level that existed in the year 2000, and the desired level of pileated woodpecker habitat.

Forest management in Ontario is undertaken in a very complex legislative environment. A key component of management for the Algonquin Forestry Authority was the establishment of an environmental management system (EMS) which was registered to the ISO 14001 standard in

2001. The (400) EMS provides an organized system to identify key environmental risks and puts in place checks and balances to minimize negative impacts of such risks. The EMS also includes annual independent audits and management review of all activities. Key components of the EMS are prevention of pollution, continual improvement and obey the laws. It has been my experience that this is one of the most significant accomplishments of the AFA in the last 10 + years. In addition, the EMS meets a significant portion of the requirements for forest certification to the Canadian Standards Association Z-809 forest management standard which the Algonquin Park Forest was registered to in February, 2008.

The *Provincial Parks and Conservation Reserves Act* specifies "commercial timber harvesting" is allowed in Algonquin Provincial Park as an exception. Fire suppression is still a key management tool in provincial parks. To maintain ecological integrity in some parks, it is my belief that there is an active role for professional foresters to use scientifically proven forest management techniques, which may include some non-commercial timber harvesting, to accomplish this goal.

Ontario's Cosmetic Pesticides Ban

from the Ministry of Environment
website at www.ene.gov.on.ca/en/news/2009/030401mb.php



Ontario's cosmetic pesticides ban will take effect April 22, 2009. The requirements of the ban are detailed in Ontario Regulation 63/09 and the Pesticides Act, which was amended by the Cosmetic Pesticides Ban Act, 2008.

The provincial ban supersedes local municipal pesticides bylaws to create one clear, transparent and understandable set of rules across the province.

Pesticides cannot be used for cosmetic purposes on lawns, vegetable and ornamental gardens, patios, driveways, cemeteries, and in parks and school yards. There are **no** exceptions for pest infestations (insects, fungi or weeds) in these areas, as lower risk pesticides, biopesticides and alternatives to pesticides exist. More than 250 pesticide products are banned for sale and over 80 pesticide ingredients are banned for cosmetic uses.

Exceptions

- **Public health or safety:** Pesticides can be used to control plants that are poisonous to the touch, such as poison ivy; insects that bite, sting, are venomous or are disease carrying, like mosquitoes; and animals, insects or plants that may cause damage to a structure or infrastructure, such as termites.
 - **Natural resources:** There is an exception, with Ministry of Natural Resources approval, to control invasive species that may be detrimental to health, the environment or the economy, or to protect a native plant, animal or a rare ecosystem.
 - **Golf courses** are conditionally excepted from the ban provided they follow tough new rules. They must become accredited for Integrated Pest Management (IPM) by an approved accreditation body. IPM uses a variety of tools, including best practices, mechanical and biological methods, along with pesticides when necessary, to manage pest populations. Golf courses must prepare an annual report on how they minimized their pesticide use and make the report accessible to the public. Also, they must hold a public meeting annually to present the report.
 - **Sports fields** are allowed a short term exception from the ban to host national or international level sports competitions.
- Written approval for the exception must be granted by the Minister of the Environment. Once the event concludes, the use of pesticides must end. Areas such as lawns and gardens around the sports fields are not excepted from the ban.
- **Specialty turf:** Pesticides can be used to maintain specialty turf used for lawn bowling, cricket, lawn tennis and croquet if certain conditions are met. Areas such as lawns and gardens around the specialty turf are not excepted from the ban. IPM and annual reporting conditions, similar to those imposed on golf courses, must be followed.
 - **Trees:** Since trees are so important to protecting our climate, licensed exterminators can use conventional pesticides with the written opinion of a tree care professional that states that the use of the pesticide is necessary to protect the health of the tree. Homeowners and licensed exterminators can also buy and use biopesticides and lower risk pesticides (e.g., *Btk* - a biopesticide sprayed over Ontario cities for Gypsy moth control) to care for trees without requiring an opinion from a tree care professional.
 - **Agriculture:** The use of pesticides is necessary for agriculture from an economic and operational perspective. Ontario farmers already have stringent rules on the use, handling, storage and application of pesticides, and these rules will continue. The exception does not apply to a farmer's household vegetable garden and lawn.
 - **Forestry:** The use of pesticides in forestry is essential to protect trees from pests, and to control competing vegetation. Ontario's forestry workers must follow stringent rules on the use, handling, storage and application of pesticides. The exception applies to a range of forestry activities including harvest and reforestation.
 - **Public works:** Under the health or safety exception, pesticides are allowed to be used to maintain safe conditions, and the security of and emergency access to public works. Public works include highways, railways, power works, gas works, water works and other utilities, transit/transportation corridors and the

perimeter of nuclear facilities. The exception does not apply to the use of a pesticide on a portion of a highway to which pedestrians have access on a regular basis or where the public is invited to stop including picnic and rest areas.

Notice Signs

Homeowners can apply biopesticides or lower risk pesticides to control weeds and other pests on lawns, gardens, driveways and other areas around the home. However, if licensed exterminators use a lower risk pesticide or biopesticide, the exterminator must post a green notice sign on the lawn. This sign makes it clear that the exterminator is not using an illegal pesticide and satisfies the public's right to know about the use of a pesticide. For example, if an exterminator treated a lawn with corn gluten meal to suppress weeds, he/she would need to post a green sign.

Pesticide Storage and Fire Department Notification

The ministry has harmonized storage and fire department notification requirements for manufacturers with existing requirements for operators (including commercial lawn care companies) and vendors. These requirements ensure that local fire departments know where pesticides are stored to protect human health and the environment.

Pesticide Classification

To support the cosmetic pesticides ban, a pesticide classification system consisting of eleven classes of pesticides has been established. Please also refer to the Pesticide Classification Guideline for Ontario for the criteria for each class of pesticide.

- Class 1 are manufacturing concentrates used in the manufacture of a pesticide product.
- Classes 2, 3 and 4 are commercial or restricted pesticides that can continue to be used by farmers and licensed exterminators for non-banned uses. If the pesticide contains a Class 9 pesticide, it may only be used for an exception to the ban (e.g., agriculture, forestry, golf courses).
- Classes 5 and 6 pesticides can be used by homeowners and include biopesticides and lower risk pesticides allowed for cosmetic uses.
- Class 7 includes dual-use pesticides (i.e. indoor/outdoor uses). Such pesticides will

(Continued on page 8)

Bringing the Forest to School

Mack Williams, R.P.F.



Recent days have seen announcements of Provincial funding of repairs/retrofits of schools across Ontario to make them environmentally friendly. This is good news, especially if the things that are done also help increase environmental awareness and conscience for students and others.

I have also heard (but not yet verified) that Natural Resources Minister Donna Cansfield was giving serious thought to planting trees on school grounds. This too is good news, the more so if the trees are cared for, and if treed areas are actively used in the learning experience, especially if it leads to enhanced citizen awareness of Canadian forests and forestry.

A decade or so ago I did classroom volunteer work in two Toronto schools. I saw a general lack of awareness of nature, forests or other, a lack of opportunity on the school grounds to improve awareness, and a lack of opportunity or incentive for adults to help the kids develop this awareness.

On my own time and usually in off-hours, I visited over 100 schoolyards, and saw among them a few (too few) wonderful examples of treed or otherwise naturalized grounds that offered wonderful learning opportunities for young and old. One of those, in the heart of downtown Toronto, had attracted visitors from across Canada and abroad to see how they had transformed a previously dismal setting.

I learned, too, of the growing number of adults, including some school board staff, who saw that things could be better, and have worked hard to this day toward making it so.

Two such people were Donna Cansfield, now Minister of Natural Resources, and Kathleen Wynne, now Minister of Education. Both were trustees in the Toronto District School Board, part of a growing number of trustees working for change.

It got me dreaming that if all of Ontario's 6,000 or so schools could have a school forest on or near the grounds, cared for it, and actually used it in the learning process, it would make a big difference to forestry

awareness of the next generation, and their elders, an awareness that might lead in time to better public understanding of, and support for, forestry.

I thought it timely to share with you an article I wrote for the newsletter of the Gararaska Hiking Trail Association, one in a series I've done for them over the past 12 years.

#10. FALL, 2000 BRINGING THE FOREST TO SCHOOL.

We who know and enjoy the outdoors may want to share our awareness with others, especially young people. If they can come to understand and respect nature they are more likely to be environmentally responsible through life.

Can we bring nature into schoolyards, for young people to experience daily, in formal learning and in free time. Yes, and it is a tall order. In, say, Toronto District School Board (TDSB) are over 550 schools, 300,000 young people and 25,000 staff. With 16,000 schools across Canada both the opportunity and the job to do are vast.

For a student to see how humanity relates to the rest of nature, class field trips are great, but may not be easy to arrange, nor take the place of seeing see nature right in the schoolyard, and are not always easy to organize. It may be seeing small things, like new life taking shape inside a tree bud or tree seed. Or showing nature's seasonal cycles. Or getting hands and even clothes dirty, and wondering at the countless living things in a handful of forest soil. Nature includes biotic, abiotic, infinite and infinitesimal. It often gives unexpected, spur of the moment things to see.

At many schools chances may be limited; at many, yes, even in beautiful rural areas, nature has had precious little place in the schoolyard; this can change, over time with concerted effort. But there's lots you can do with even one tree. The shade of a lawn tree becomes an outdoor classroom, lunch room, or place to sit & talk. It offers lessons in vast numbers. Suitable logs, if available (e.g. from parks department or a dead schoolyard tree) can form a circle to seat a class. Leaves changing colour in the fall then falling off happens right before the student. A single boulder may introduce the region's geological past. To stop mowing some part of the grounds

would offer a close-up glimpse of natural succession, and of some of nature's surprises, like a duck raising a family on a downtown rooftop garden.

A class I know saw a video on plant and animal reproduction. At that moment, tiny cones, and male flowers dropping pollen, on the front lawn pine tree let us bring real life to the video lesson.

A stream course near one urban school is paved; slopes into it are mowed grass. This could be renaturalized. A nearby wooded park is heavily used; so the forest floor and many tree roots are badly damaged. To confine foot traffic to paths might help restore & renaturalize it.

A tree grove around a school can bring nature to the door or classroom window, cut the school's heating and cooling energy needs, cut pollution by lower fuel use and by the trees helping filter pollutants. Ground conditions on the forest floor and on a nearby lawn can be compared. Or if space is too limited for a tree grove, a single row of cedars, or a cover of evergreen vines against the wall can be helpful.

Flat roofs on many schools and other buildings are heat islands likely adding to climate change. To put a garden on a roof (that will support it) reduces heating due to shade, transpiration, & insulation. Growing numbers of Toronto roofs have impressive gardens or tree groves.

Growing numbers of schools are doing great things. One in an exposed rural area made a shelterbelt on its exposed side, with a mix of species & spacings of trees, shrubs, & other material. Small wet pockets are dug then stone-lined. Another included in its project a rock pile where snakes hibernate. One school germinates acorns indoors, outplants the seedlings in suitably protected beds, to grow until used in community planting projects. A downtown Toronto school's work involved the community & is so outstanding that educators have visited it from abroad. These schools' students can tell us a few things about nature, & also about good relations between school and community.

I dream that one day schools will become the
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Join Us in Nanaimo - September, 2009!



Forests and forest products have outgrown their traditional social and economic boundaries, taking centre stage in the world fight against global warming. Seen as the climate change heroes, trees sequester

atmospheric carbon and convert it into wood, locking away harmful greenhouse gasses. At the same time, carbon-neutral biomass energy derived from wood fibre offsets the use of fossil fuels, leading to cleaner, more earth friendly technologies.

Current global and economic conditions have created an ideal opportunity for private and public sectors to partner in the quest to mitigate climate change. Policymakers from across the political and intellectual spectrum have recognized the potential this holds for

long term job growth and industry stimulation. Climate change mitigation is well-suited for public equity markets and particularly private markets such as venture capital, private equity, infrastructure and timberland.

At this three-day conference, the Canadian Institute of Forestry will explore these emerging aspects of forest management, bringing those involved in the carbon marketplace to the discussion. For more information about the conference itself, the final agenda, or for registration, please visit www.viu.ca/cif/.

(Continued from page 6)

only be allowed to be used for non-cosmetic purposes. For example, they can be used indoors to kill pests or outdoors for public health or safety reasons, but cannot be used outdoors to kill weeds. Retailers must give information to notify purchasers that only certain uses of these pesticides are legal. In two years' time, consumers will also not have ready access to these products, and continue to receive notification about the legal uses.

- Class 8 are banned domestic products. (e.g., pesticide-fertilizer combination products, weed and insect control products for lawns and gardens).
- Class 9 lists ingredients in pesticide products. These ingredients are banned for cosmetic use. Commercial or restricted products containing these ingredients may still be used by farmers or licensed exterminators for exceptions under the ban.
- Class 10 pesticides are ingredients in pesticide products. These are the only

ingredients that may be used to control plants that are poisonous to the touch under the public health or safety exception.

Class 11 lists ingredients that are biopesticides or lower risk pesticides. Licensed exterminators that use Class 11 pesticides are required to post a green notice sign to provide public notice of the use of these pesticides.

(Continued from page 7)

good example and inspiration for their communities, a setting where our young people will learn scientific and environmental things; also find in them a setting for art, music, drama, and for reflecting on their spirituality and the wisdom of aboriginal people.

So what can we learn in the schoolyard? Much for the mind, for sure. Just as important, something for the heart and soul, including a desire for peace, harmony and justice, knowledge that we are part of the web of life, that we need to conserve not destroy it.

CSA Announces Newest Edition of Sustainable Forest Mgmt Standard

from the CSA website at www.csa.ca



Canadian Standards Association (CSA), a leading developer of standards and codes, today officially announces the availability of the third edition of the CSA Z809 *Sustainable forest management standard*. The standard is designed to provide organizations with a system for continual improvement of their sustainable forest management (SFM) programs.

The newest version of the Z809 SFM standard includes updated requirements for sustainable forest management (SFM) of a defined forest area (DFA), including public participation, understanding and incorporation of Aboriginal rights and title, performance (ie. sustainable harvest levels and reforestation, understanding the net carbon uptake in a particular forest, protection of water and soil, etc), management systems, review of actions, monitoring of effectiveness, and continual improvement. It outlines the auditing process used to determine whether SFM requirements are effectively implemented.

The third edition of the standard has undergone significant revision to better address the interests of environment, aboriginal and community groups. The concept of continual improvement in SFM is central to the standard. This standard uses adaptive management procedures that recognize SFM as a dynamic process that incorporates new knowledge acquired through time, experience, and research, and also evolves with society's changing environmental, social, and economic values. Changes to the third edition include:

- A new set of 35 mandatory indicators have been added under each SFM element to bring a core level of consistency to SFM plans. Locally-applicable indicators are still to be identified through the public participation process.

- The adoption of Canadian Council of Forest Ministers (CCFM) criteria and an adaption of the elements to ensure their applicability at the local level. These broad criteria and elements apply to all of Canada. Local public advisory committees then develop indicators and targets for each element that are adapted to local conditions. These elements address important Canadian forest and sustainability values, including: biological diversity, ecosystem condition and productivity, soil and water, role in global ecological

cycles, economic and social benefits, society's responsibility and aboriginal community concerns.

- Revisions to the public consultation requirements including the addition of key topics for discussion during the public consultation process. Revisions also include the addition of a mechanism to measure participants' level of satisfaction with the process, and a transparency section that identifies information requiring full public disclosure.

- Alignment of the systems component with CAN/CSA-ISO 14001 environmental management requirements to ensure goals are reached, and then improved upon, remains as a foundation of the standard.

The standard is based on the internationally recognized Helsinki and Montreal processes. It is also complementary to the international ISO 9001 for quality management and ISO 14001 for environmental management standards. By being complementary, there is no need to have several different systems in place in order to be certified to all of these standards, saving costs in implementation and auditing.

As with previous versions, this edition of CSA Z809 was developed in an open, inclusive forum. It reflects the ideas, positions, and concerns of a wide array of individuals and groups from across Canada with an interest in SFM, including academics, scientists, technical experts, Aboriginal Peoples, the forest industry, woodlot owners, governments, unions, consumer groups, and conservation, environmental, and social organizations. A Canada-wide public review of this standard was conducted during the revision process. Public advisory committees operating in CSA certified forests across Canada were also engaged, along with a broad group of stakeholders with environmental and social interest in forest operations.

A separate Aboriginal Working Group was formed within the Technical Committee to review the requirements and guidances relating to Aboriginal Peoples. The group used feedback from Aboriginal organizations, resource documents and expert advice, and proposed changes that resulted in new or strengthened requirements. Those requirements include the understanding of applicable Aboriginal rights and title, as well as

forest values, knowledge, and uses identified through the Aboriginal input process, and incorporating them into forestry plans.

The standard specifies requirements for full public disclosure of all SFM plans developed under the standard, annual reports on progress against SFM plans, and results of independent certification and surveillance audit reports. While the standard provides guidance to users regarding certification, requirements for certification and decisions regarding approval rest with the certification bodies. CSA does not conduct audits to the standard. Certification to the standard involves regular and rigorous independent, third-party certification audits.

The standard forms a part of an expanding suite of products and training provided by CSA that help address global environmental management issues such as greenhouse gas quantification, life cycle assessment, the labelling of products that have a reduced negative impact on the environment, and corporate social responsibility. The CSA Z809, *Sustainable Forest Management standard* may be downloaded at no cost by visiting www.shopcsa.ca.

About CSA

Canadian Standards Association (CSA) is a membership association serving industry, government, consumers and other interested parties in Canada and the global marketplace. As a leading solutions-based standards organization providing standards and codes development, application products, training and advisory services, CSA aims to enhance public safety, improve quality of life, preserve the environment and facilitate trade. The Canadian Standards Association is a division of CSA Group, which also consists of CSA International, which provides testing and certification services for electrical, mechanical, plumbing, gas and a variety of other products; and OnSpeX, a provider of consumer product evaluation, inspection and advisory services for retailers and manufacturers. For more information visit www.csa.ca.

Contact: Anthony Toderian
Senior Media Relations Officer
CSA Group
T: 416-747-2620
E: anthony.toderian@csagroup.org

Grey Areas - Self-Regulation Under Seige



Editor's Note: The O.P.F.A. office receives the newsletter *Grey Areas* from Steinecke Maciura LeBlanc, a law firm practicing in the field of professional regulation. Articles from *Grey Areas* are reprinted on this page and the next for members' reference.

Earlier articles of this newsletter have observed that Canada is one of the few remaining jurisdictions in the world still using the self-regulation model for professions and industries (see: www.sml-law.com, *Grey Areas*, issue No. 126). However, recent events in Ontario raise questions about the commitment to self-regulation in Ontario.

In recent years a pattern has developed where the media raises concerns about the effectiveness of a particular regulator and the government makes changes or amends legislation to increase the accountability of the regulator (or sometimes many regulators). The nature and extent of the changes have cumulatively resulted in the erosion of the concept of self-regulation to the point that it is, in some circumstances, almost unrecognizable.

One trend has been that the number of public appointees to the governing Council or Board of regulators has increased. Two or three decades ago about 20-25% of the composition of the Council or Board, on average, were public appointees. Today it is just under 50% for most self-regulating bodies.

Another trend has seen the number and authority of independent "watch-dogs" increase significantly. Most regulators now have an independent body that reviews the handling of individual registration and complaints matters. The health professions also have the Health Professions Regulatory Advisory Council that conducts systemic reviews of some of the programs of the various health Colleges and regularly studies and makes recommendations on policy issues affecting them. In addition, the creation of the new Human Rights Tribunal has increased the number of complaints made against regulators. Of course, regulators have always been subject to the scrutiny of the courts.

The Office of the Fairness Commissioner is now heavily involved in all systemic

registration matters including amendments to regulations, annual self-reports and regular external audits of registration practices. Bill 175 enacting the *Ontario Labour Mobility Act* has been introduced into the legislature giving the government the authority to require regulators to take action implementing the Agreement on Internal Trade (AIT), imposing administrative penalties if they do not and authorizing the recovery of any penalties paid by the Ontario government for breaches of the AIT.

Government ministries have always scrutinized regulations proposed by self-regulating bodies. However, until recently this review tended to be at a high level (ensuring there was nothing fundamentally contrary to government policy) and legal in nature. In recent years, there is a perception that the scrutiny has become much more intense, down to justifying why a regulation requires 14 days notice of public meetings as opposed to 7 or 30 days.

Many regulatory bodies find the burden of complying with these various requirements to be enormous. Some feel that they spend more resources justifying their regulatory actions than actually regulating.

Earlier this month the government introduced Bill 179 amending the *Regulated Health Professions Act*. Two of the proposed amendments will further undermine the concept of self-regulation. The first allows the Minister to appoint a Supervisor to take over the administration of a regulatory College. This would be similar to the power of the Minister to take over the administration of a public hospital or a school board. The Supervisor would have the power of the Council, the Registrar and, it appears, the committees of the College.

The second amendment would allow the Minister to appoint auditors to examine the operations of the regulatory Colleges. The audit would not be restricted to financial matters, but of administrative and regulatory matters as well. The report would be made to the Minister and it would be up to the Minister to determine if a copy be given to the College.

These changes would significantly alter the concept of self-regulation. They would permit significant government involvement in regulatory matters without having to first

enact legislation or even make a regulation. In addition, the implicit threat of exercising these powers could induce regulators to implement a government directive in order to avoid the alternative.

It is, of course, difficult to argue against enhanced accountability. On the surface it appears popular and sensible. And, sometimes it is. However, regulators need to defend the principle of self-regulation if they are to remain viable. Otherwise the cost of self-regulation will be too high for the profession or industry to bear and the profession will give up on its regulatory body.

Some strategies for defending self-regulation might include the following:

1. Articulate the benefits of self-regulation to the public. Professional buy-in to its public interest mandate is essential to prevent widespread and even condoned non-compliance as one sometimes sees with government regulation (viz. income and sales tax). In addition, self-regulation allows the most knowledgeable people to do the regulating.
2. Identify the costs of excessive accountability requirements. Regulatory action is delayed when staff are compiling lengthy and repetitive reports or preparing for extensive audits. Talented members of the profession will not volunteer or work for regulators if they perceive that they are little more than another government department.
3. Do a good job. Being fast, effective and fair removes the incentive for additional government involvement. Ensure that the entire organization accepts and adopts the public interest mandate of the regulator.
4. Engage in public relations. Communicate what the regulator is doing in a manner that might interest the media. When there is a crisis or criticism, respond quickly and appropriately. Maintain good communications with one's Ministry. Good informal problem solving will remove the need for formal accountability structures.

Self-regulation is a form of participatory democracy. When it works, it is the best option. When it fails, everyone including the public is left with second-best.

Grey Areas - Short Snappers



Set out below are brief summaries of a number of recent cases that will be of interest to professional regulators.

Confidentiality of Client Information

Frequently, misconduct investigations involve the review of records of clients who have not raised any concerns with the regulator. For example, there could be an audit of a representative sampling of client files to determine if the concerns are isolated or recurring. Entire discipline hearings can be held discussing those files and services without the clients even knowing that their personal information is being discussed.

Ideally, the client identities are “redacted” (e.g., initials are used) so that their privacy is respected. However, in *Osif v. College of Physicians and Surgeons of Nova Scotia*, 2008 NSCA 113, a case involving an emergency room physician, the large amount of information, involving numerous and voluminous medical charts and 3,000 pages of transcripts, made redaction impractical.

At both the discipline hearing and the court on the appeal, the preferred solution was to use the names of the clients but ban publication of their identities and deny public access to the files themselves. Thus, while a small group of people could find out who the clients were (i.e., by attending at the hearings), the use or spread of the information was protected.

The Court condoned this approach. The Court did insist that the key documents describing the issues (e.g., the legal arguments, etc.) be publicly available. In those documents, initials were used to distinguish the clients. This was necessary to ensure that the usual right of the public to observe and scrutinize legal proceedings was preserved.

Witness Interviews by Prosecuting Counsel

A remaining area of tension in the disclosure debate relates to witness interviews by prosecuting counsel before discipline hearings. On one hand, the member is

entitled to disclosure of any new information that arises during the interview. On the other, counsel have the privilege of making notes of their hearing preparation without fear that opposing counsel will read them.

A common approach is for prosecuting counsel to prepare a summary (often in the form of a letter) of any new information that arises and to send it to defence counsel. But, what if defence counsel wishes to compare the original notes to the summary to verify its completeness and accuracy? That issue arose in *Ontario Provincial Police v. MacDonald*, 2009 CanLII 9751 (ON S.C.D.C.). The Divisional Court accepted that there could be circumstances where this issue required scrutiny. The Court indicated that there were a number of possible solutions:

There may be various ways that the problem could be avoided: a meeting of investigators and counsel with the witness to obtain new information followed by a separate meeting of counsel with the witness to prepare the witness for trial. It is not evident that such a two-stage process would be impracticable. If it is not impracticable, then if the choice is made to do both things in the same meeting, why should the court be barred from enquiring as to which notes are new information and which are not? Another possible approach would be, in circumstances like the present case, for the notes to be produced to the Adjudicator for his assessment.

Another solution might be for the investigator and the prosecuting counsel to perform separate roles when meeting with the witness. The role of the investigator would be to make notes of any factual information arising from the conversation, but not to record non-factual information (e.g., educating the witness of the hearing process, discussing the order questions will be asked of the witness, identifying likely questions to be put to the witness on cross-examination). Prosecuting counsel could confine his or her notes to the latter topics.

The *MacDonald* case is also of interest on its primary issue: how to challenge an adjudicator on his or her appearance of bias.

Appealing One’s Own Guilty Plea

When a member admits the allegations and agrees to a sanction, one can usually assume that is the end of the matter. Courts are hesitant to permit a person to seek to withdraw their “guilty pleas” after the fact. In criminal cases, such “an appeal may only be granted after a guilty plea in exceptional circumstances, such as ignorance, deceit, duress or mistake where the plea does not express an accused’s true intention”.

However, in *Gough v. Peel Regional Police Service*, 2009 CanLII 12112 (ON S.C.D.C.), the member was permitted to appeal the decision. Under the relevant legislation, discipline proceedings must be commenced within six months of the chief of police becoming aware of the misconduct. Here it took eleven months. The Divisional Court held that in the circumstances of the relevant statute the police force lost jurisdiction to discipline the officer. His plea of guilty did not, on the facts, amount to an informed, express waiver of the delay (assuming that a jurisdictional requirement could be waived at all). The appeal succeeded.

Copies of the above cases can be located at: www.canlii.org.

MNR/MNDM Update



Editor's Note: The following was sent by e-mail to all members for whom we have valid email addresses. It is reproduced here primarily for the benefit of those who have not provided e-mail addresses.

To OPFA Members,

As you may know, OPFA Council wrote to the Hon. Michael Gravelle within days of his being announced as Minister of Northern Development, Mines and Forestry. We copied the Hon. Donna Cansfield and both Deputies. While the details of the "transfer of Forestry" to a renamed MNDMF were not clear, we presumed that many of our Members would be affected. There was also the potential of an impact on aspects of professional practice. We noted that we had regular meetings with the Hon. Donna Cansfield, Minister of Natural Resources, which were viewed as useful and we presumed similar meetings might be logical with the Hon. Michael Gravelle, Minister of Northern Development, Mines and Forestry.

Last Week members of your Executive Committee met with each of the Ministers. It seems clear that both Ministries will be involved in our future. Broadly, thinking of the three legs of the Sustainable Forestry stool, we gathered that the "economic" side of Forestry will be in MNDMF, while the "environmental" will stay with MNR; presumably, both will have impact on the "Social" aspects.

OPFA representatives did not advocate any particular approach to the division of responsibilities, but did offer advice in how changes might impact the professional practice of Members and assistance in identifying concerns as implementation proceeds. We did encourage the greatest clarity possible in explaining the outcomes being sought through

the changes.

We gathered, too that no final decisions have yet been made regarding the responsibilities for &/or any need for changes to relevant legislation. A further meeting with each Minister is being arranged for late September, by which time decisions

are expected to be clear. Meanwhile we can share the following observations:

- * While both responded that no job reductions were being sought in this transfer, clearly some jobs will change;
- * Both Ministers acknowledged the complexity of the current Forestry processes and recognized our concern for any impacts on Members' ability to apply professional judgment ;
- * Both are encouraging a balance between thoroughness and speed in sorting out the changes;
- * Both see a need for strong, cooperative links between Ministries
- * Both agreed that streamlining processes efforts should continue;

The above matters deal with Crown Land Forestry. It is worthy recording that Private Lands and Urban Forestry were raised in discussion with each Minister.

Take Care,

Tony Jennings, RPF
Registrar & Executive Director

Professional Forestry and the Need for Professional Liability Insurance

Christopher Fay, B.A (Law), CIP, CRM.
Account Executive - OPFA Insurance
Program



If I'm not insured, I won't get sued." Are you at risk?

As a Professional Forester you possess extensive technical knowledge and training, so when your clients hire you, they are relying on your

technical abilities and opinions. If you fail to use the degree and skill expected as governed by the standards of your profession, you can be held legally responsible for any harm caused to people or their property.

Lawsuits can be initiated for any actual or alleged wrongful act or perceived negligence by a third party. The high level of education, training and experience that a professional forester exhibits, have led the courts and the public to expect a higher duty of care owed to them and greater responsibility for retribution if wronged.

Today, the public and our legal system expect more from professionals and are much more inclined to initiate a suit against them.

Lawyers are not only becoming more aggressive in their demands for compensation, but are seeking even larger and more extensive settlements. Make no mistake, lawsuits can be costly.

To illustrate the necessity for such coverage, I have included the following claim brought against a OPFA member. The member was retained by a third party to advise them on the potential sale of standing timber on their land. Rather than scout around for the best prices, the member recommended and retained a firm that did not follow acceptable guidelines. As a result the third party sued the member for professional negligence resulting in financial loss associated with the valuation error of the timber and also sued for resulting damages to their property. The claim is currently before the courts and defense costs incurred to date are in excess of \$35,000.

A major component of Professional Liability coverage is defence costs, as legal expenses are often just as high, if not higher, than any indemnity that may be awarded. Even in

cases where no actual negligence is proven, defence costs represent a significant expense, one which may severely impact an individual or firm's financial well-being.

Professional liability insurance, first and foremost, is a tool to transfer the financial obligation of defence costs and legal expenses to an insurer, as well as the burden of selecting and retaining legal counsel and managing the legal process that may ensue. In cases where damages are awarded to the plaintiff, professional liability policies will indemnify accordingly, subject to the maximum amount of insurance available under the policy.

Don't be at risk... protect yourself, protect your firm.

For more information about the Ontario Professional Foresters Association's Professional Liability Insurance Program, please contact Marie at 416-644-7743 or by email at: mariep@lms.ca.

Your Theme Ideas Wanted!

Since *The Professional Forester* switched to a theme-based format several years ago, the Editorial Board has worked hard to bring you interesting, timely, and sometimes controversial themes. Now, we are asking for your help. Is there a current issue that you are dying to learn more about? A current issue that you would be willing to write about to get the ball rolling? Please send any and all ideas to the Editor at newsletter@opfa.ca.

Upcoming themes include: forests to manage carbon and First Nations forestry.

CALLING ALL PHOTOGRAPHERS

We are looking for photos for future Annual Reports, other publications, and the website. These photos should be of forests in Ontario. We would particularly like to see photos of foresters at work. Please email your photos in a jpg format to opfa@opfa.ca. If your photo is selected, your name will be printed with it.

Business Cards

Your Business Card Here!

Advertise your company or services here.

Members \$25 per single issue
 \$80 per year (four issues)

Non Members \$40 per single issue
 \$140 per year (four issues)

If you would like to be included in the Business Card section please email opfa@opfa.ca.



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The Forestry Chronicle
the national journal for forest practitioners

Our membership includes foresters, forest technicians and technologists, educators, scientists and others with a professional interest in forestry.

Reduced membership fees for OPFA members

www.cif-ifc.org



The benefits of being a member! The OPFA has arranged a Corporate Class Business Rental Program agreement with Enterprise Rent-a-Car. To receive your special rate you can do one of three things:

1. Book online at www.enterprise.com
2. Call 1-800-736-8222
3. Contact your local branch

You will be asked to provide your Corporate Class ID number which has been mailed to all members. Your Corporate Class Business Rental Program offers special pricing anytime, any day with unlimited mileage. And you can rent anywhere in North America – even for the family trip! If you have any questions, call the OPFA office at 905-877-3679.



OPFA Group Benefits Plan



Coverage designed for individuals, couples, families, & single parents.

Customized features available to meet your financial & insurance needs.

Features include extended health care, dental, life insurance, AD&D, short & long-term disability, and members assistance plan.

For More Information Contact

Mary Armstrong 416-644-7704
MARYA@LMS.CA

Jessica Sheehan 416-644-7730
JESSICAS@LMS.CA

1-800-663-6628 WWW.LMS.CA/OPFA

Putting the pieces together For you

Errors and Omissions Insurance: Do you have yours yet?

The Ontario Professional Foresters Association (OPFA) offers a group Errors and Omissions insurance policy to its members through LMS PROLINK Insurance Group and a master insurance policy underwritten by Lombard. This covers liability for suits initiated in Canada for alleged claims of professional malpractice occurring in Canada. For more information or an application form, call the OPFA office at 905-877-3679 or email opfa@opfa.ca

Member News

New Members

Full

C. Philip Brown
Adrian Bryant
Leigh Anne Cecchetto (transfer)
Tim Harapiak
Kyle Macadam
Jason McLellan
John Sullivan (transfer)

Rerinstatement to Full Membership

Samantha Chung

Provisional

Damaso Sambrana

Student

Don Grebstad
Paul Piascik

Inactive

Alec Denys
Gordon LeMaistre
Larry Skinkle
Mark Stevens
Dianne Vella
John Wilson

Resignations

Brian Bulley
Tim Griffin
David Neave
Geoffrey Pattyson
Mike Turner

50 Year Members

At the 2009 Annual General Meeting in Sudbury, the following 50 Year members (1958-2008) were honoured. Those present were presented with the first O.P.F.A. Gold Pins.

Ken Armson
Edwin F. Ault
George B. Bailey (deceased after fiscal 2008)
William A. Bartlett

Garnet W. Bell (deceased after fiscal 2008) * lost contact

John C. Biggar
J. Edmund Bothwell
George P. Breckenridge
Robert Bunney
Robert Bugar
Alfred J. Campbell
William J. Charlesworth
Jas D. Coats
Douglas P. Drysdale
Wilfred G. Dyer
Lloyd Eckel
Donald J. Finan
John Fingland
William K. Fullerton
George Garner (deceased after fiscal 2008)
J. Walter Giles
Dr. Alan G. Gordon
John D. Griffiths
Ridley Groves
A.D. (Dal) Hall
R. John Hall
William Hall
Sidney G. Holmes
John H. Hope (deceased after fiscal 2008)
J. Douglas Hughes
Frederick Jackson
William E. Jonas
Erik Jorgensen
Lotars J. Kakis
Peter J.O. Kirby*
Paul G. Masterson
Peter Murray
John K. Naysmith
William L. Oliphant
Cameron R. Parks
William A. Perrin
Ronald E. Powell
Grant L. Puttock
Lewis Ringham
Paul Secker*
Robert N. Staley
Rudolf Susanik
John E. Tait
R. Eric Thomson
Norma J. Turnbull
James A.G. Waddell
Stanley B. White
J.R.M. (Mack) Williams

If you know any of these members, please take a moment and congratulate them. If you have any information on those we have lost contact with, please forward it to us.

Deceased Member

John Lambie

Lost Members

(If you know the whereabouts of any of these members, please ask them to contact the OPFA office.)

Kenneth Broughton
Michael Crawford
Mike Dey
David Flood
Travis Gellhaus

∞ ∞ ∞

The Professional Forester is now delivered electronically except for those who have requested a paper copy. A copy is also available on the website (www.opfa.ca). To make sure that you receive all important member information, **please check that your email address and other personal information are accurate on the website. Thank you.**

Despite the introduction of the late payment charge, we still have members who owe for past years membership fees. Please check your records and contact our office.



The Professional Forester

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Georgetown, ON L7G 2E2

Coming Events

EVENT	DATE	LOCATION	CONTACT
2009 CIF Conference - Stewardship: Energizing Forestry Through New Strategies	Sept. 21 - 23	Nanaimo, BC	www.cif-ifc.org
International Plowing Match and Rural Expo	Sept. 22 - 26	Earlton, ON	www.ipm2009.net
Eastern Ontario Forest Fair and Log/Lumber Auction	Sept. 26	Kemptville, ON	Eastern Ontario Model Forest 613-258-8241
Renfrew County Outdoor Woodlot Conference	Oct. 3	Wilno, ON	
XIII World Forestry Congress	Oct. 18-25	Buenos Aires, Argentina	www.wfc2009.org
Harnessing Biomass: From the Forest to the Marketplace A Practical Conference on	Oct. 22 - 23	North Bay, ON	www.nipissingu.ca/biomass/
Forest Pest Management Forum	Dec. 1 - 3	Gatineau, PQ	stan.phippen@nrca.gc.ca
Canadian Urban Forest Conference 9	Oct. 5 - 8, 2010	Truro, NS	www.treecanada.ca

If you know about an event that should be listed here, please send the information to the editor at newsletter@opfa.ca.

OPFA Dates

EVENT	DATE
Watch this space for dates of fall seminars!	

Submissions

Submissions are welcome; please send them to:
Caroline Mach, R.P.F., Editor
newsletter@opfa.ca

Deadline for the next issue: August 1, 2009

