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January 21, 2021

Rebecca Lord
Executive Director
ISA, Ontario Chapter

By email: Rebecca Lord rebecca@isaontario.com

Dear Ms. Lord,

**Re: Professional Foresters Act, 2000 and
the impact of the removal of the “Certified Arborists” exemption
presently granted by Ontario Regulation 145/01**

Introduction

On behalf of the International Society of Arboriculture, Ontario Chapter (ISA Ontario), you have asked for our opinion on the status of Certified arborists if their present exemption from the requirements of the Ontario *Professional Foresters Act, 2000* (hereafter “the *Act*”) is removed.

We understand that such removal is contemplated by changing the language of Ontario Regulation 145/01 (hereafter “the *Regulation*”), in place pursuant to the *Act*.

We also understand that ISA Ontario has just learned of this proposal, and that the Ontario Professional Foresters Association has been “pushing it” for two years without notice of consultation of any sort.

The Act and the present exemption

The *Act* applies to “the practice of professional forestry” as defined by s. 3. Anyone who is engaged in “professional forestry” is governed by the *Act*, unless exempted from it.

At present the Regulation, in s. 4, specifies that “a person” (note this includes individuals and corporations) is “not practising professional forestry” if acting within “the generally accepted scope” of the profession of “5. Certified arborist”.

Under this exemption, and since the *Act* came into force over 20 years ago, Certified arborists conducting their profession have been exempt from the *Act*.

The impact of removal of the exemption:

In our opinion Certified arborists, acting in the generally accepted scope of their profession, would suddenly become subject to the *Act* if the exemption is removed.

That is because the *Act* in s. 3(1), defines the practice of professional forestry to include “the provision of services in relation to the development, management, conservation and sustainability of forests **and urban forests**”.

“Urban forest” is defined in s. 3 (c) as “tree dominated vegetation and related features found within an urban area and includes woodlots, plantations, **shade trees**, fields in various stages of succession, wetland and riparian areas”.

As a consequence of these definitions, the services of Certified arborist in managing a shade tree, where those services include those that would be included in the knowledge, training and experience required to be a member of the Ontario Professional Foresters Association, would suddenly require compliance with the *Act*.

What does compliance with the Act involve?

Absent the exemption, all Certified arborists who wish to advertise and/or provide professional services involving shade trees, would have three choices:

- 1) To become a member and obtain a certificate of registration issued by the Ontario Professional Foresters Association;

- 2) To perform their services “under the supervision” of a member of that Association;
- 3) Run the risk of court action including prosecution.

Court action and risk of prosecution?

Under s. 13 of the *Act* there is a prohibition:

No person shall engage in or hold himself, herself or itself out as able to engage in the practice of professional forestry unless the person holds a certificate of registration issued by the Association.

In addition to being prohibited from providing Certified arborist services relating to shade trees, the language of the prohibition, absent the exemption, would require all Certified arborists to modify any advertising and any representations made to potential or actual customers.

The certified arborist will be precluded from representing a competence to service shade trees, for example (unless a member, or unless it is made clear that the arborist will only act under the supervision of a member).

This prohibition applies to people and corporations providing arborist services to shade trees.

Breach of the *Act* is subject to the to the following court action:

1. Under s. 59 (1) of the *Act* the Ontario Professional Foresters Association may apply to a judge of the Ontario Superior Court for an order directing compliance with the *Act*.
2. *Under* s. 62(1) of the *Act*, anyone who violates s. 13 (set out above) “is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$15,000 and for each subsequent offence to a fine of not more that \$30,000”.

Conclusion:

Removal of the exemption will be devastating for Certified arborists. It will become impossible to obtain insurance, absent compliance with the *Act*. Certified arborists need to modify their advertising, representations and contracts, and find a Professional Forester supervisor.

Certified arborists will be suddenly and completely at the mercy of the Ontario Professional Foresters Association.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Paul Stern', with a long horizontal flourish extending to the right.

Paul Stern
PDS/an