UNDERSTANDING THE IMPACT OF BILL C-45 ON LOGGING CONTRACTORS

By Stephen Ross and Eric Ito

Logging can be a hazardous industry making safety a paramount priority. Occupational health and safety legislation provides safety standards and sanctions for their breach. Bill C-45 goes further by amending the Criminal Code to create a legal duty on everyone who undertakes, or has the authority, to direct how another person does work to take reasonable steps to prevent bodily harm to any person arising from that work or task. A breach of that duty can result in criminal charges against supervisors, employees, and the company itself—including senior management and its board of directors.

Logging contractors should be aware of the implications of Bill C-45, which resulted from the 1992 Westray coal mining disaster in Nova Scotia that claimed the lives of 26 miners. It affects their contracts, and their relationships, with both licence holders and subcontractors. Licence holders have ramped up the contractual safety obligations they impose on contractors, resulting in increased costs, paperwork and occasionally duplication of safety measures. At the same time, contractors must ensure that they comply with their legal duty under Bill C-45 in the direction of the operations of their subcontractors.

There is some concern that the independent contractor status of logging contractors is being undermined by excessive direction and supervision of their operations by licence holders. In theory, contractual provisions intended to meet the standard of safety required by Bill C-45 will not have that effect, any more than do provisions found in every contract that require contractors to comply with other legislation affecting their operations. Their independence is not compromised by reasonable contractual provisions that require their operations to be carried out safely.

That said, of greater concern is unnecessary or redundant duplication of safety measures, such as the imposition of the licence holder's entire safety program on a contractor who is already SAFE certified, has its own comprehensive safety program and is complying with all applicable occupational health & safety legislation. Consideration must also be given to the policies and requirements of WorkSafeBC and the BC Forest Safety Council that have increased the diligent application of safe practices in the industry. Within this context, consultation between licence holders and contractors regarding reasonable safety practices and processes which implement effective workplace health and safety programs should avoid such duplication and its costs. However, licence holders must accept that the industry costs of enhanced safety practices will impact logging rates, as provided by the rate setting provisions of the Timber Harvesting Contract and Subcontract Regulation.

The other question is what should contractors do to ensure they comply with their legal duty under Bill C-45 in directing the operations of subcontractors. The Criminal Code requires them to take "reasonable steps" to ensure the safety of workers and the public. Criminal liability can only result from "wanton or reckless disregard." In discussing Bill C-45 in parliament, the government stated that "the criminal law must be reserved for the most serious cases, those

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that involve grave moral faults."

In the 11 years since Bill C-45 was introduced, there have only been 10 prosecutions brought under it. None of those prosecutions arose from incidents in the forestry industry. Of those charged in other industries, six have been against individuals and three of them resulted in conviction. The remaining four prosecutions have been against companies, two of which resulted in conviction.

Why so few? There are several explanations. One reason is that the threshold the Crown must meet for a conviction is high. A mistake or carelessness on the part of an individual is not enough. In order to be convicted of criminal negligence, the defendant must have shown "wanton or reckless disregard."

Another reason is that the framework for enforcing workplace safety already exists through provincial occupational health and safety laws. Not only are those laws more specific to safety obligations, the standard under the Criminal Code of "wanton or reckless disregard" is not required in order to violate those laws. In addition, inspection officers and other members of workers' compensation boards are experts in workplace safety, and when an incident occurs, police and Crown prosecutors may be more comfortable deferring the matter to occupational health and safety officers.

Finally, Bill C-45 is likely to be applied to serious incidents involving moral fault. The March 2006 sinking of the Queen of the North in BC where two passengers were killed, and the 2009 Metron Construction accident resulting in the deaths of four workers in Toronto, are examples of successful prosecutions resulting in Bill C-45 convictions. While less serious incidents have led to charges under Bill C-45, 9 of the 10 prosecutions to date concerned incidents involving workplace fatalities.

It is not yet clear whether the introduction of Bill C-45 has resulted in an improvement in worker safety in BC. Between 2004 and 2013, the number of all workplace fatalities in BC remained relatively constant at an average of approximately 146 workplace deaths per year.

However, Bill C-45 is the law. Logging contractors must be aware of the legal duty it imposes on them. They must comply with that duty by assessing the hazards that exist in their workplace, implementing effective health and safety measures and informing their work force of those risks and hazards and providing appropriate training and protective equipment to them.

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