BILL 13: WHAT IT IS & WHY IT MATTERS

You have all heard of Bill 13 and replaceable logging contracts. As our industry evolves, timber tenure consolidates into the hands of fewer licence holders, and the push for global competitiveness remains paramount, it is clear that Bill 13 contracts remain a cornerstone to viability in the contract logging community today.

The *Timber Harvesting Contract and Subcontract Regulation* was introduced as "Bill 13" in 1991. When he introduced the bill that amended the *Forest Act* to create contract replaceability on June 21, 1991, the then Minister of Forests stated (Hansard):

"The second purpose of this bill is to address logging contractors' security in British Columbia. Independent contractors and subcontractors who harvest timber for larger forest companies are extremely important to British Columbia's forest sector. The stability of many families and, indeed, many communities are dependent on contractors maintaining secure and fair contracts with the holders of timber rights in their vicinity. This amendment will enable us to improve the balance in these contractual relationships. It will also provide a quick and inexpensive system for resolving contract disputes. This will ensure security and fairness for all parties involved in timber harvesting in British Columbia."

It was clear that the intent of Bill 13 was to "level the playing field" between licence holders who have the exclusive right to harvest and contractors who actually do the work. Before 1991, many logging contracts were not even in writing and the security of work was minimal. To resolve these deficiencies, Bill 13 requires logging contracts to be in writing, to detail the amount of work they represent, and to provide a dispute resolution process of mediation and arbitration and a rate dispute procedure.

Most significantly, Bill 13 introduced the concept of replaceability to contracts in order to make them comparable to the "evergreen" nature of forest tenure. Subject to satisfactory performance by the contractor, the licence holder must offer a replacement contract on substantially the same terms and conditions prior to the expiry of the term of the contract. This key concept then provided contractors with some security that they had future work, subject to satisfactory performance, and as a result they could risk investing in equipment and training a secure workforce.

Another key aspect of the 1991 Bill 13 was the provision of a rate test requiring that rates paid were competitive by industry standards and would permit a contractor operating in a reasonably efficient manner to earn a reasonable profit. This was important since the licence holders had the opportunity to profit through the market cycles, without having to pass profits along to the contract workforce. In 1996, Bill 13 made replaceable contracts more sustainable by requiring them to specify the amount of work to be performed in each year as a percentage of the work required to facilitate the operations of the licence holder over the cut control period.

Both license holders and contractors have obligations under replaceable contracts. Licence holders must allocate work to their replaceable contractors and the contractors must have the equipment and manpower available, when required, to perform that work. Contractors cannot stop work if they end up in a rate dispute, but rather must continue to work under provisional rates equal to the rates in effect for prior services unless those provisional rates are varied by an arbitrator.

Licence holders must also allocate work to their replaceable contractors and negotiate rates for that work in good faith. They cannot require their contractors to bid or submit rates for work, then reject those rates and allocate the work to other contractors who offer lower rates.

In 2004, Bill 13 changed its rate test to require "fair market rates", which do not allow for consideration of a contractor's efficiency or costs and therefore make their operations less financially stable and secure. Since the change, rates have deteriorated across BC and many contractors have sought insolvency protection or have simply left the industry as a result of an inability to secure sustainable rates. Given that over a decade has passed since implementation of the fair market rate test, perhaps it is time to review the effectiveness of the Regulation.

In order to provide harvesting services, contractors must make significant personal investments in equipment, safety training and infrastructure, as well as making commitments to people in communities through the provision of employment. With so few opportunities to market their services as a result of the licence holder tenure consolidation however, Bill 13 provides an important measure of security that allows the contractor to maintain its local workforce and pay for equipment purchased.

From a community perspective, the original intent of Bill 13 was to balance the interests of rural community independent contractors and the major licence holders who singularly control the right to harvest and when.

In an environment where demand for wood products is growing, but at the same time the industry is generally struggling to attract workers and reinvest to remain competitive, it makes sense that tenure holders who employ Bill 13 contractors would see the obvious benefits of a secure, stable and safety trained contractor workforce and equipment complement to support their supply chain. And for communities, the knowledge that local logging contractors who support the community and employ local people have security of work allows for a stable rural economy. Seems like a win-win for everyone.

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