



DIFFERENT CONTRACTS, DIFFERENT EXPERIENCES: LEVELING THE PLAYING FIELD THROUGH CHANGING CONTRACTS

Contracts between licensees and timber harvesting contractors tend to include difficult to understand legal language and are hard to amend as the work unfolds and project parameters change. This is impacting contractor sustainability across the province. One way to address this issue is to look at the type of contract contractors work under, who writes it and how it impacts work on the ground.

The forest profile isn't uniform and the rate structure within contracts should consider all the different conditions. Factors include whether its old-growth or second-growth, volume per hectare, topography, yarding distance, hauling distance, the measure of mechanization, and remoteness. All criteria need to be considered and then used to populate

a matrix to formulate a rate. Once the rate is negotiated, it forms the basis of the contract.

It's a question of who writes the contract and whose interests it protects. It's been my experience that the contract is typically prepared by the forest land owner who has a much more sophisticated business. Also, their interest is a fixed cubic metre price for logs delivered. The contractor's business model, however, works on the amount of capital employed in their assets and the utilization they derive from them. This contributes to their margin. Labour and supplies are a variable cost, though the capital costs are fixed. The capital unit costs are based on the hours of use over a lifecycle and what use can be reasonably expected over a year.

In a contract, there are a series of conditions discussed and agreed upon to arrive at the rate. But what happens if the conditions change?

Changes in the conditions of the work can create an impact on the margin. It's my experience that typical forestry contracts can contain a phrase such as "The licensee reserves the right to change the log utilization specifications for market conditions", or a *force majeure clause*. For example, if log utilization moves from 6" top diameter on hemlock, balsam and spruce to 10" or 12" diameter, it can significantly change the volume per hectare removed from a block, which in turn impacts on productivity of falling, yarding and processing. Also, a decrease in overall volume harvested can further impact mobilizing and de-mobilizing



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costs that may have been embedded into the rate structure.

In today's contracting world, contractors typically have little opportunity/ability to address a change in contract conditions nor can they afford to stop work in the examination of the change. Moving a crew out of a remote camp can cost \$20,000, shutting down a camp can cost substantively more. Equipment idling creates a further financial impact. The forest owner is not impacted by these changes as their contract is fixed to a delivered log price. This single reality is having a significant impact on contractor sustainability province-wide.

Could a new contract environment mitigate these issues and could it lead to balancing the interests of both the timber owner and the contractor? The construction industry uses the stipulated price contract or CCDC2 which is a standard prime contract between owners and prime contractors that establishes a single, pre-determined fixed price (or lump sum), regardless of the contractor's actual costs.

The CCDC2 is much more comprehensive than logging contracts today and

it has mechanisms built in to adapt to changes in conditions. There is a *Notice of Change* mechanism, which gives both parties the ability to review condition changes and determine the impact on costs. If significant, this leads to a *Change Order* which is the process to modify the contract rate. These events have time limitations which if not met, can lead to a *Stop Work Order*. A work stoppage is defined in the contract terms and allows for the idle costs of equipment and crew to be charged back to the project. In the case of forestry, the project would be the defined work in the contract and could have an impact on the delivered cost of logs.

The CCDC2 is a sophisticated—but well established—contract arrangement that stresses clarity and simplicity of language. They are drafted in a style intended to be easily understood by all parties and use terms and expressions familiar to the industry.¹ It certainly balances the interest between the parties much more than the current forms of forestry contracts and may be worth considering as one way to build contractor sustainability which is key to maintaining a healthy forest industry in BC.

The forest worker is the back bone of BC's resource-based communities and they are dependent on the stability of their employer—the small independent contractors who deliver 90 per cent of all coastal logs. Over the past two decades, the forest industry has retooled and re-focused in reaction to the changing market conditions. But in the face of these changes, many contractors are unable to run sustainable businesses as measured by the rate of return they realize on the capital they invested. Changing the type of contracts contractors work under, who writes it and how it impacts work on-the-ground could play a major role in building contractor sustainability and leveling the playing field.▲

Tom Olsen is a Past President of the TLA and owner of Triumph Timber which operates on the mid and north coast of BC.

¹A guide to the use of the CCDC2 1994 stipulated price contract:
<http://www.schuetzlaw.com/>

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