

THE CULMINATION OF THE CONTRACTOR SUSTAINABILITY REVIEW

By Jim Girvan



The results of the three-year Contractor Sustainability Review (CSR) process culminated at the TLA's 76th Annual Convention & Trade Show with announcements made by Premier John Horgan and Minister Doug Donaldson.

During the Leaders' Lunch, the Premier announced the elimination of the fair market rate test. In the "Executive Meeting with the Minister" panel, Minister Donaldson outlined several pending changes to the Timber Harvesting Contractor and Subcontractor regulation (otherwise known as Bill 13), rate data sharing, cut control letters, forest harvest planning and best practices, many of which came from the 13 recommendations originally proposed in the CSR last spring.

The resulting policy changes announced at the convention were developed during the last phase of the CSR through a series of facilitated conversations by Dan Miller, former provincial Premier. Mr. Miller was tasked with identifying where there was consensus among contractors and licensees on the recommendations and making final recommendations to the Minister for implementation.

Paraphrasing the Minister's speech and the BC government's news release, the following describes the intended policy

changes that mark the conclusion of the Contractor Sustainability Review process. As you read these pending policy changes, keep in mind that they hopefully will address what was identified in the CSR, which was *a need to change adversarial relationships, to be replaced with commercial relationships characterized by transparency, accountability, and two-way communications of shared objectives and collaboration.*

Rate Models

A focus on the use of rate models as part of rate negotiations has become the central theme of the policy changes being made.

The Timber Harvesting Contractor and Subcontractor regulation will be amended requiring the parties to jointly develop rate models, which will include factors that will influence the calculation of the rate. Examples of such rate factors that are currently typical of rate models in use are: equipment rates, productivity estimates, labour cost, add-ons, overhead, profit/risk and total volume.

The regulation will be amended to allow the reassessment of rates in recognition of changed circumstances that underlined the original rate model assumptions.

Arbitration

When two parties enter into an arbitration process it is an indication that the business relationship has faltered (e.g. a last resort to seek resolution). Under the current Bill 13 process, arbitrations are considered onerous, costly, and defective based on the TLA's view that the fair market rate test used by arbitrators to resolve rate disputes is biased towards outcomes that favour licensees. It was the TLA's view that the fair market rate test is one of the single largest impediments to contractors achieving sustainability simply because there is no such thing as a fair market for timber harvesting services in BC.

As such it should be no surprise that the Premier received a standing ovation when he announced the elimination of the fair market rate test in favour of an approach that relies on rate models which will be engrained in the regulation. This is a significant change to the process that the Ministry hopes will become standard practice for all contractors, not solely just for the benefit of Bill 13 contractors. It is the TLA's view that no longer will the majors be able to set rates based on comparables that often times were simply not comparable to the setting under consideration, but were said to be the industry market rate. Looking forward,



site specific data will have to be incorporated into models used to predict sustainable rates.

Another recommendation embraced by the Minister was to address the cost and burden of arbitrations with amend-

ments of the regulation to focus on rate model factors as the basis for disputes, and that the arbitration process will be

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dramatically streamlined to a much-shortened timeframe to reach a decision, premised on a new requirement to produce concise summary submissions by the contractor and licensee.

Data Access

One new recommendation from Miller that was not included in the original 13 recommendations is for the Ministry to collect mandatory data (of contract rates) to improve transparency and awareness of harvesting rate information. In theory, it would help raise the knowledge base of the industry (contractor and licensee alike), and hopefully reduce the likelihood of disputes. While the details still need to be worked out, one concern the TLA and the other logging associations have collectively voiced is that the specific nature of individual logging plans result in specific rates associated with that logging plan. So, without a clear understanding of the assumptions that went into that mandatory reported rate, using it as a comparable rate to other contracts is potentially fraught with challenges.

Best Practices Guide

Another initiative that came out of the Miller facilitated sessions was a recommendation to develop a best practices guide to be jointly developed by licensees and contractors with government support to provide guidance for planning, rate model and arbitration.

Outside of regulation changes, more work will be put towards harvest planning, sharing of cut control letters and increased use of Light Detection and Ranging (LiDAR).

Although it is clear that there are no silver bullets to contractor sustainability, the elimination of the fair market rate test, while subtle in nature for those unfamiliar with the arbitration process, is a huge step in the right direction. Not all of the 13 recommendations proposed in the CSR were brought forward by Dan Miller in his own submission to the Minister, which we were disappointed to see; however, for the most part, the TLA sees these changes as a step in the right direction with respect to contractor sustainability.

It should become abundantly clear to contractors and licensees alike that to install transparency and accountability so as to rebuild business-to-business relationships, a greater reliance on the use of data will be key.

Looking forward, there is still work to be done to translate the announced policy changes into a working regulation and to facilitate the development of a best practices guide and rate database.

On the regulatory changes side, expectations are that the fall 2019 sitting of the legislature is when the changes will be formalized. As for the best practices guide, all parties are anxious to begin the work. As stated by Minister Donaldson at the convention, "we all need each other" and hopefully these changes will result in improved sustainability of contractors and a competitive forest sector overall.▲



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