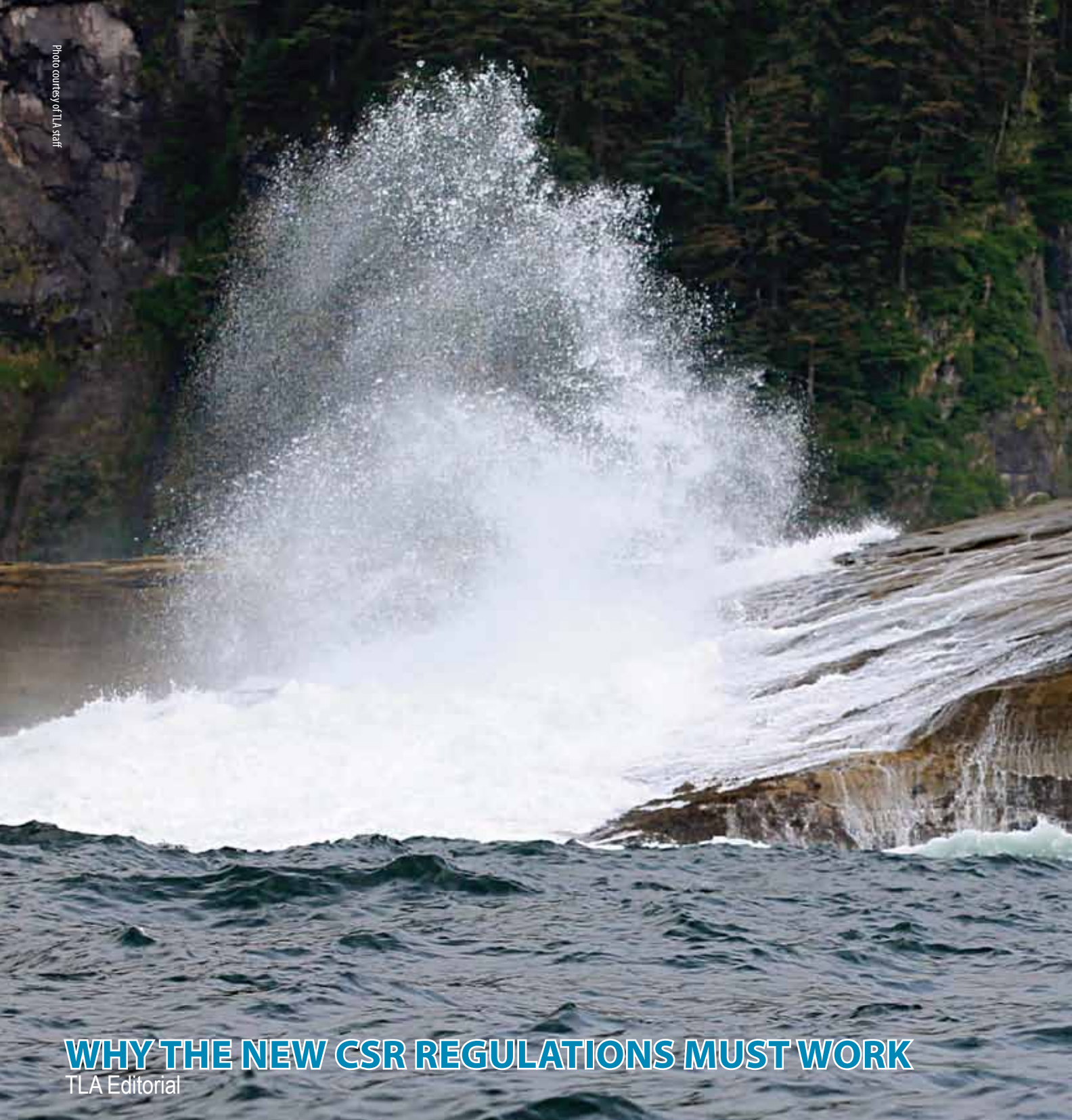

Photo courtesy of TLA staff

WHY THE NEW CSR REGULATIONS MUST WORK

TLA Editorial

In the Fall 2014 issue of *Truck LoggerBC* magazine, the editorial *Logging Rate Negotiation: When David Meets Goliath* detailed the economic plight of BC logging contractors in the face of industry consolidation and the Timber Harvesting Contract & Subcontract Regulation (commonly known as Bill13) fair market rate test used by licensees to push contractors to the edge of insolvency province wide. It was not only contractors who felt the pain; the plethora of suppliers that supported community based contractors also took a big hit when unsustainable rates pushed some contractors over the edge.

In 2016, the provincial government agreed to conduct an independent review of licensee/contractor relationships. Subsequent reviews of over 120 logging contractors' financial statements (representing 26 per cent of the annual provincial harvest) confirmed that contractors were in fact facing significant financial hardship.

In 2018, that work set the stage for the 13 recommendations for change. Facilitated meetings followed with contractor and licensee groups to find consensus on how to implement the

recommendations, resulting in the pathway for eventual change.

To say that contractor and industry representatives were on opposite sides of the table on many issues is not an understatement, as the future of licensee/contractor relationships province wide were debated.

Todd Chamberlain of the ILA noted: "there were lots of no holds barred discussions around the table." At issue were topics such as rate model use, Bill 13 arbitration procedures, a best practices guide, shared access to rate determination data, and, of course, the elimination of the fair market rate test in the Bill 13 regulation, which Premier Horgan confirmed in January 2019.

By 2020, a consensus was reached among the stakeholders for changes to the regulation and rate test. As Chamberlain points out, "the discussions fundamentally humanized the issues for the stakeholders on both sides and with government, which led to an eventual agreement between parties."

Despite the consensus, the final changes to the Timber Harvesting Contract & Subcontract Regulation have sat with government for more than a

year, although they have assured us it will finally be put into place this Spring. What remains to be seen is if the new regulation remains consistent with the consensus agreement between all parties at the table and, more importantly, heralds a new era in fair and transparent rate negotiations.

A lot of time has passed, and many might question if the CSR process—which has taken over five years to complete—is still relevant in a post-COVID-19 world where lumber demand and prices are at all-time highs.

TLA Executive Director Bob Brash believes that now, more than ever, changes to Bill 13 are critical to the continued success of the industry, but the majors may not see it that way just yet. "During this period of very strong lumber markets, contractors continue to be saddled with demands by many licensees for more rate reductions, even though current surveys and studies verify the current rates are not satisfactory for the long-term health of their business. In many cases, contractors are being forced to take rate reductions, or they're told they don't have work," says Brash. "We are hopeful that finally the new regulation will fix this kind of behaviour. All we really want is a fair and cooperative process recognizing realistic costs."

Greg Main of Main Logging was at the table through the entire process to ensure that contractor perspectives were heard. "Personally, I am very excited about the outcome since government has committed to implementing what we all agreed to in the regulation. It will benefit all contractors and not just those with Bill 13 contracts. There should no longer be a need for rate arbitration," notes Main.

Since 2004, contractors working under the regulation have been regularly forced to accept lower and lower rates driven by the fair market rate test. Notably, some licensees in the north still believe that an appropriate market rate is simply the lowest rate they can get, regardless of site conditions. That was never the intent of the market rate test implemented in 2004, but that seems to be how it was interpreted over the years. Even today, this approach has resulted in the need for continued costly arbitration for some contractors, which was the stimulus for its eventual elimination in the coming new regulation.

"We need to finish the process by ensuring we all cooperate—government included—in order to develop and share good data to support the rate determination process," notes Brash.

Tim Menning of Hytest Timber in Williams Lake agrees with Main: "I never wanted a process that led to arbitration. I wanted a process that allows me to go to work for a reasonable rate and I think that is what our consensus recommendations will do if they are put into the new regulation."

So, what does the new regulation mean for contractors?

Fundamentally, if a rate dispute is deemed to exist, a contractor will now no longer be subject to an arbitrator's assessment of a fair market rate based on comparable rates put forward by the licence holder (typically the lowest rates a licensee could produce).

Rather, they will be subject to what an arbitrator believes to be the reasonable costs (plus profit) for a reasonably efficient contractor. This test is similar to what was used in the regulation prior to the 2004 change that created the fair market rate test. "The old [pre-2004] rate test allowed an arbitrator to make a balanced decision that was fair to all parties," noted one stakeholder. "It worked for 15 years and it will still work going forward in the new regulation."

While we all continue to impatiently wait for its eventual implementation, the new regulation will definitely require that contractors have a good handle on their costs as they will potentially be brought to bear if a rate dispute is to be settled via arbitration.

And while everyone at the table during the CSR process believed that data collection and sharing was a critical component to an improved understanding of rates, government and industry are now reluctant to support initiatives that would deliver on that goal.

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Rate negotiations are always based on three major factors: equipment productivity, hourly costs to operate, and site factors. The new regulation should provide all parties, and eventually an arbitrator, with the information needed to narrow the gap in terms of operating costs and, by extension, rates.

To this end, the associations produced a detailed equipment hourly rate sheet, which is a good first step in support of data sharing, but more data is needed in order for there to be full transparency in rate determination. "We are just not getting that cooperation yet and the contractors who worked to bring closure to this file say it is a disappointing outcome," notes Brash.

But what may be a sign of what is to come, some licensees in the southern Interior have already begun competing for contractor services (specifically truckers) as the markets fluctuate, weather limits opportunities to fill log yards, and the new regulation is put into place.

"While it is good for short spells, in the longer term, rates need to be sustainable if contractors are to remain viable. The new regulation should make that happen. If so, maybe the industry and the rural communities where contractors live can finally see some stability again. That is what we need right now," notes Chamberlain.

John Nester of the NWLA also believes that the unnecessary delays by government to implement the consensus recommendations into the new regulation continue to harm local contractors as it has done for the past decade. "In the five years we have been in this process, the majors have seen a lot more good times than bad. However, contractors are still just hanging on. Without change to the regulation, even more may not survive."