

Getting Closer To Level – Changes To The *Timber Harvesting Contract & Subcontract Regulation* (aka Bill 13)

The Province has recently [announced changes to regulation](#) that governs the relationship between forest licence holders and timber harvesting contractors and road builders. The regulation commonly known as “Bill 13” has been the primary target for advocacy by the Truck Loggers Association (TLA) given its influence on rate negotiations since the last major revisions were done in 2004. This announcement is the culmination of the [Contractor Sustainability Review \(CSR\)](#).

I have more than a passing curiosity to review what changes were made as for five years it was my mission as the Executive Director of the TLA to lobby the BC government to make changes to this regulation (*and for those that were unaware, it was also the reason I resigned from that role*). From when I left the file, it took over another year and a half for government to complete negotiations on specific changes.

A review of the amended regulation reveals there have been many changes, with several new sections. My comments are not meant to be an exhaustive assessment of these changes, (and nor do they represent a legal view). Some of the highlights to note are changes to:

- Fees and expenses of the mediator, the arbitrator and parties,
- Addition of term definitions including productivity and various costs,
- Flexibility to address change,
- The information a licence holder must provide prior to rate negotiations,
- Provisions for change of circumstances, and
- Changes to the rate dispute and arbitration process.

There is much to note, however, my comments here will focus on rate dispute changes.

RATE TEST: Thankfully, this is not a cosmetic makeover of the regulation, especially with Premier Horgan sticking to his [January 2019 commitment](#) of removing the “*fair market rate*” wording from the rate test in *s26.01*. Its replacement is the centre piece of this amendment.

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Blending in wording from the 1996 version of this regulation, the new rate test now embeds the concept that timber harvesting contractors are service providers, and causes the arbitrator to make decisions that

...“would permit a contractor operating in a manner that is reasonably efficient in the circumstance, in terms of costs and productivity, to earn a reasonable profit.”

RATE TEST CONSIDERATIONS: While the rate test has largely been recycled from the 1996 amendment, there is some never-before used language specific to costs that an arbitrator may consider as part of rate test considerations in *s26.02 (1)(a)*

...fixed and variable costs incurred by the contractor, including:

- (i) equipment cost,*
- (ii) labour costs,*
- (iii) costs of extras, and*
- (iv) administrative and overhead costs.*

Whether to include such costs has historically been a contentious issue in negotiations. Hopefully that tension will ease in rate negotiations for all harvesting contracts, not just Bill 13 contracts, as there is now regulatory reference that legitimizes these cost items.

COMPARABILITY of costs and rates are still components of the new regulation, as they were in the 1996 and 2004 versions; however, there are new parameters to guide the arbitrator. Many of these parameters in s26.02(2) will need legal interpretation which means I will hold off for now on commenting specifically, but it appears the intent of these new parameters is an attempt to provide greater limitations of scope for comparability.

CONCLUSION: Moving to a “cost-based” arbitration was one of George Abbott’s proposals from *the Logging Contractor Sustainability Review*. The revisions to include contractors’ costs in the arbitration should be welcomed; however, until this regulation is tested by an arbitration, there is only so much that can be said. After all, the introduction of the fair market rate test in 2004 was accepted at that time, only to be proven later by legal interpretation to contain faults (from a contractor perspective).

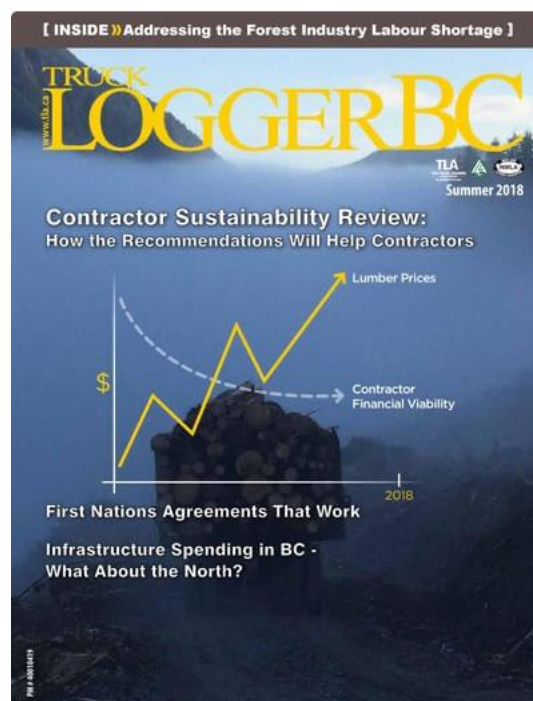
In my opinion, the newly worded regulation has the potential to improve contractors’ chances of achieving sustainable rates. But...the regulation’s arbitration process will not be a fast route to resolve a dispute. New sections on covering costs of an arbitration will limit abuse. There are many new sections added or revised that will need legal interpretations and precedence to add clarity.

The verdict will remain undetermined on the impact to the financial sustainability of the sector’s broader contracting community until the amended regulation is put through the motions of an arbitration. The goal was never

to have regulation written for one party to win an arbitration, but to dissuade both parties from going to arbitration.

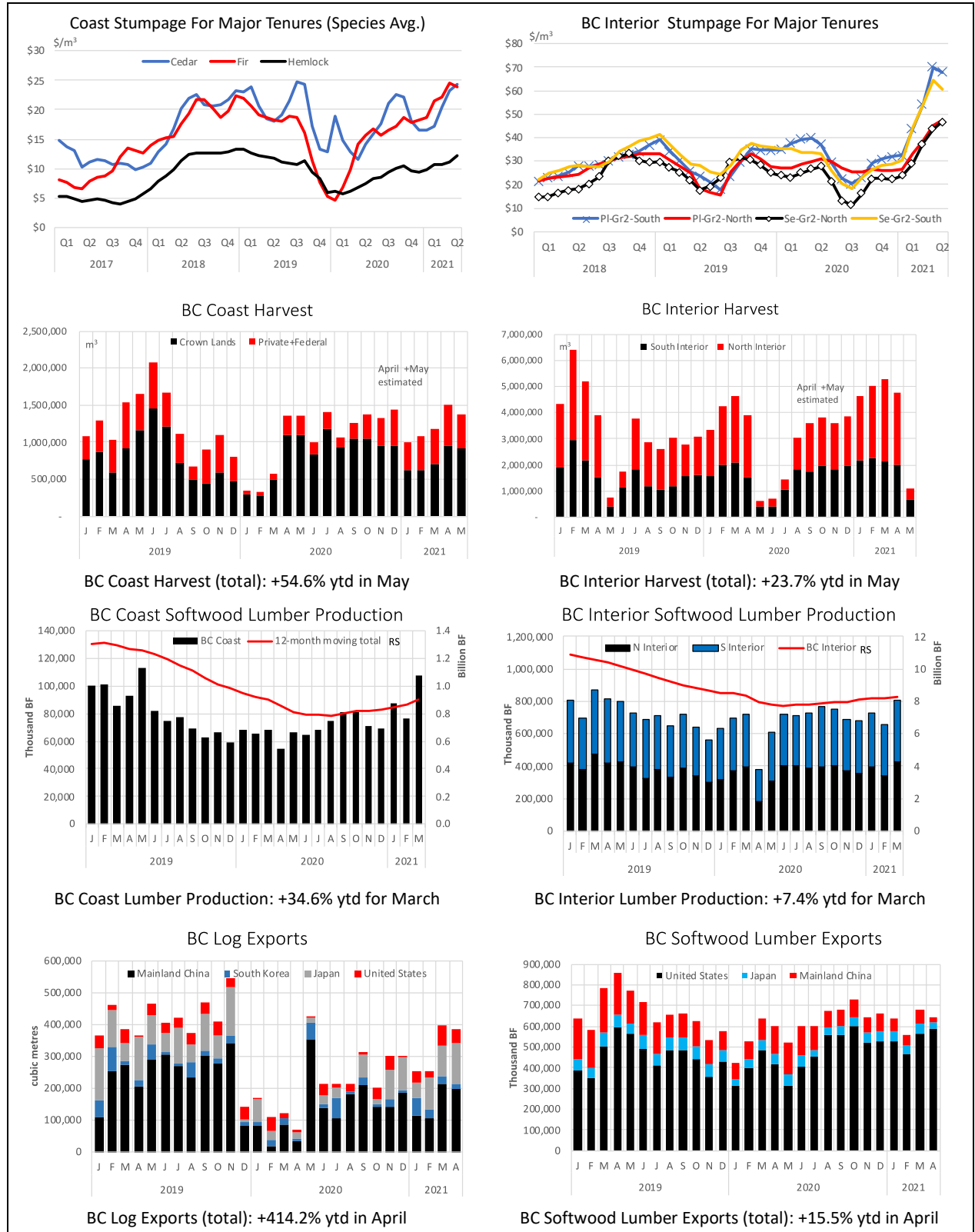
Final Word On Contractor Sustainability

I am no longer an advocate for contractors and have no vested interest in their success; however, I am well aware of their financial state given my past role. Based on recent feedback from a few contractors, it seems the message implied in the chart on the cover of the [Summer 2018 Truck LoggerBC](#) magazine remains pointedly true today, despite the recent rally in lumber prices. Achieving these Bill 13 changes should not be the end of the CSR initiative.



The probability of success increases for those who track their data (costs and productivity) and regard contracting as a business, not a lifestyle. The amended Bill 13 regulation hopefully will help in “levelling the field”, but if contractors (or licence holders) do not have organized data, they will not get what they need to be sustainable.

BC Forest Industry Metrics



The Radar Screen....a summary of announcements including new government policies that you must have on your radar screen as they will affect the BC forest sector supply chain:

[Modernizing BC's Forest Sector](#) – recent announcement outlining the Province's intentions for future forest policy change.

[Contractor Sustainability Review](#) – on June 10, 2021 changes were finally announced to the Timber Harvesting Contract & Subcontract Regulation (aka Bill 13).

[Old Growth Strategic Review](#) – the report is now public! Upon release of the report, the BC Government moved immediately to defer harvesting of nine areas around the province. The number of [deferrals](#) are increasing with total area of old growth forests at 196,000 ha

[Softwood Lumber Dispute](#) – on May 21, 2021 the U.S. Department of Commerce released its preliminary determination for the Second Administrative Review (AR2) in antidumping duty (AD) and countervailing duty (CVD) investigations of imports of certain softwood lumber products from Canada. The preliminary combined rates vary for selected companies, with non-selected companies facing an AD+CVD rate of 18.32% effective November 24, 2021, when the final determination will be made for AR2, which was for the period of January 1, 2019 to December 31, 2019 (when lumber prices were substantially lower). This preliminary rate is double the current rate.

[Manufactured Forest Products Regulation](#) – updates came into effect on September 30, 2020 - when there will be a fee-in-lieu on exports of minimally processed sawn-wood on all permits as of October 30, 2020.

[Short-term Work Opportunities For Interior Contractors](#) – Forest Employment Program (FEP) has \$21 million in funding for short-term employment opportunities (fiscal 2020/2021), with the program ending in 2021/2022.

[Coast Logging Equipment Support Trust](#) – offers bridge financing from a \$5 million fund for coastal contractors – the majority of funds remain unused.

[BC Carbon Tax](#) – carbon tax increases increased effective April 1, 2021 rates of 9.969 ¢/litre for gasoline and 11.71 ¢/litre for diesel.

[Industrial Inquiry Commission](#) – recently announced Ministry of Labour review of contract tendering in the forestry sector to assess protections for fair wages and job security when services are tendered.

[BC Increased Employment Incentive](#) – as part of the recently announced BC Economic Recovery Plan, a tax credit for businesses hiring new employees.

[BC PST Rebate on Select Machinery and Equipment](#) – as part of the recently announced BC Economic Recovery Plan, a 100% PST rebate on equipment purchases – ends September 30, 2021

Russia To Ban Coniferous Log Exports – Putin requested a complete ban effective January 1, 2022 as well as has ordered a subsidization program for wood processing facilities effective January 1, 2021. *CAUTION - unverified Russian tariff increases on log exports back in 2010 triggered China to look to BC for logs and lumber*

[Special Tree Protection Regulation](#) – effective September 11, 2020 - \$100,000 fine for cutting trees with exceptional diameters (dbh)
