

NO. S236214
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1392752 B.C. LTD.

PLAINTIFF

AND:

SKEENA SAWMILLS LTD.
SKEENA BIOENERGY LTD. and
ROC HOLDINGS LTD.

DEFENDANT

APPLICATION RESPONSE

Application Response of Interior Logging Association (the “application respondent”)

THIS IS A RESPONSE TO the Notice of Application of the Plaintiff filed February 29, 2024.
The application respondent(s) estimate(s) that the application will take one day.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms [*set out paragraph numbers and any proposed terms*]:

1. NIL

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraph 1 (a) through (j) of Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in paragraph 2 (a) through (b) of Part 1 of the Notice of Application.

Part 4: FACTUAL BASIS

1. The Interior Logging Association is a non-profit society incorporated to advance the interests of logging contractors in the interior of British Columbia. It has existed for more than 40 years. It has approximately 300 members.
2. The Application Respondent says that the application for a Reverse Vesting Order, to the extent that it will preserve the renewable tree farm and forest licenses, but bring to an end the Bill 13 replaceable logging contracts that pertain to those renewable licenses, should not be granted. Such an order will undermine provincial forestry law and policy. It will prejudice the interests of the harvesting sector and cause contractors to lose a valuable asset.

Part 5: LEGAL BASIS

1. The vast majority of standing timber in the province is on crown land and owned by the province itself.
2. A social contract exists between government and licensees such as Skeena Sawmills Ltd. Pursuant to that social contract, licensees commit to building and operating sawmills which convert timber into lumber. Those licensees make significant capital investments in mills in order to do that. They employ workers and contractors. They support local economies. Those licensees commit, as well, to paying stumpage to the province, which is a significant source of revenue for the province.
3. In order to support their significant capital investments, licensees have demanded and received what is effectively an assurance of an indefinite source of timber. This comes in the form of the “renewable forest license” and “renewable tree farm license”. These renewable licenses are assignable, i.e., sellable, by licensees. They are valuable assets in the hands of the licensees.
4. There is a third partner to this relationship, namely the harvesting sector. The harvesting sector is made up of contractors that are hired by the licensees, and who enter the forest with their workers and equipment to harvest the timber and to haul that timber to the sawmills.
5. In the 1950’s, as a matter of government policy, it was decided that renewable forest licences would contain “contractor clauses”, which would obligate the licensees to use contractors to harvest at least 50% of the timber that was harvested under the licence, i.e., as opposed to the licensee using its own workers and equipment to perform that task under what is known as a “company crew”. Those obligations persist to today, and are to be found in Skeena’s renewable licences. As a matter of practice, in the interior, all

harvesting is performed by contractors, and none by company crews. (On the coast, company crews are more prevalent.)

6. In the early 1990's there was government recognition that the harvesting sector also made significant capital investments in equipment and engaged a significant workforce, akin to what the licensees had done. But, those contractors lacked that same security of tenure to support those capital investments and hiring decisions. They were at risk of having their work taken away from them by the licensees on little notice and for no reason. They were at a bargaining disadvantage with their much larger employers.
7. In 1991, in order to give the harvesting sector an assurance of work that was equivalent to the licensees' assurance of timber, "Bill 13" became the law. At its most basic, Bill 13 created the "replaceable logging contract." That contract provided the logging contractor with an assurance of indefinite work. It linked that replaceable contract to the renewable tree farm/forest license. It was assignable, i.e., sellable, by the logging contractor. The regulation created a dispute resolution method, by mediation and arbitration, to settle rate and other disputes.
8. Section 152 of the *Forest Act* defines the "replaceable contract".
9. For a good description of the underlying policy behind this legislation, see *Hayes Forest Services Limited, v. Pacific Forest Products Limited*, 2000 BCCA 66, commencing at para. 17.
10. Although Bill 13 has seen a number of revisions and amendments from time to time, in substance it remains the same. But, in 2004, it became the case that existing replaceable contracts were "grandfathered"; licensees were not compelled to issue any new ones. See s. 12(3) of the regulation. Thus, if this court were to grant the order sought, the replaceable contracts lost would not be re-issued to the existing contractors, nor to others.
11. Under the *Timber Harvesting Contract and Subcontract Regulation*, a replaceable contract "pertains" to a replaceable tree farm licence or replaceable forest licence.
12. A replaceable logging contract is a valuable asset to a logging contractor. In addition to providing an assurance of future work, it also stands as an asset which may be bought and sold.
13. In 2004, the provincial government undertook its forestry revitalization plan (commonly called "Bill 28"), in which it took back from licensees some percentage of their replaceable forest licenses. Holders of replaceable harvesting contracts were correspondingly impacted. A government compensation scheme was set up. In the interior of the province, that compensation scheme generally provided \$10 per m³ in compensation for a lost replaceable contract, plus some additional compensation where contractor equipment was liquidated. It was meant to reflect the market value of the asset

then lost. So, for example, a replaceable logging contract with an amount-of-work of 60,000 m³ per year would be compensated at \$600,000. Compensation for coastal contracts was higher. That was 20 years ago. Inflation has pushed those figures up. Generally, market prices for interior replaceable contracts exceed \$10 per m³.

14. Section 54(2)(d.1) of the act provides:

(2) A disposition of an agreement is without effect unless all of the following conditions have been met:

(d.1) in the case of a disposition of an agreement in relation to which the holder of the agreement has a replaceable contract with a contractor, all obligations of the holder of the agreement under the replaceable contract are assumed by the recipient of the agreement;

An “agreement” includes a tree farm licence and a forest licence, per ss. 12 and 53.

15. Were it the case that an ordinary Vesting Order were to be made by the Court, the transfer of the renewable tree farm and forest licenses would bring with it the obligation, on behalf of the transferee, to honor the replaceable logging contracts. On the other hand, dealing with this through a Reverse Vesting Order will leave those logging contractors without those replaceable contracts and without that assurance of future work. The fact that Bill 13 contracts have been “grandfathered” means that the license holder is not obliged to issue replaceable logging contracts in respect of that very timber to be harvested under its replaceable tree farm license and replaceable forest licenses. That imbalance in the relationship between licensee and contractor will be returned to.

16. Given that the “contractor clause” continues to exist in the renewable licences, and those obligations will persist if a reverse vesting order is made, one must ask the harm or cost to the licensee of having replaceable logging contracts persist. Not only do replaceable logging contracts benefit the contractors, they also benefit the licensees. They ensure that there are stable, long-term, properly staffed and properly equipped harvesting contractors working for them.

Part 6: MATERIALS TO BE RELIED ON

1. Affidavit #1 of Becky Cook.

[Check whichever one of the following boxes is correct and complete any required information.]

☐ The application respondent has filed in this proceeding a document that contains the application respondent’s address for service.

☒ The application respondent has not filed in this proceeding a document that contains an

address for service. The application respondent's ADDRESS FOR SERVICE is:

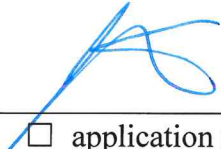
Gibraltar Law, #202-444 Victoria Street, Kamloops, BC V2C 2A7.

Fax: 250-374-0035

Email: service@glmail.ca

[Set out the application respondent's address(es) for service in compliance with Rule 4-1 (1) of the Supreme Court Civil Rules and any additional address(es) under Rule 4-1 (2) that the application respondent wishes to include.]

Date: March 7, 2024

Signature of  ☐ application respondent
☒ lawyer for application respondent(s)
JOHN M. DRAYTON