

FORESTRY SERVICE PROVIDERS COMPENSATION FUND MAKES A PAYMENT

By Eric van Soeren

Things have been fairly good for the forest industry recently and, perhaps as a result, there have been few applications to the Forestry Service Providers Compensation Fund (FSPCF). After more than a year of operations, it was starting to look like the FSPCF would not have to be used to address the claims of eligible contractors who were not paid for forestry services provided to a licensee.

While there have been several applications made over the past year, many could not be accepted since they didn't meet all the required criteria.

At first, enquiries received were for work done a long time before the applications were made and, as a result, they could not be addressed. Only work performed and not paid for after February 1, 2013 may be eligible. There were also applications made by contractors who

worked on Crown land, but they were working for a third-party contractor that was acting as a market logger. In this case, the third party was not the "licensee" by definition under the Act. It is only when an insolvent licensee does not pay for work done by a contractor on Crown land that the FSPCF can be involved. If you are considering doing work for a contractor who rents a license or is otherwise acting as a third party to the legal license holder, the Fund cannot help you if that contractor can't or won't pay you. These situations should be seen as a red flag when accepting work, especially if there is a concern over being paid.

There was, however, a successful claim and pay out from the Fund this year. In this case, a faller was contracted but knew that the timber sale holder he was contracted to work for might be in a bit

what was almost certainly a bad debt, the Fund was able to compensate the faller.

Hopefully the industry will stay strong and situations where contractors are not paid will not occur very often. However, it was good to see that the Fund was successfully used when a licensee became insolvent and a contractor was not paid for services, as was the intent of the Fund.

That said, if contractor claims as a result of licensee insolvency grow, or if all of the applicants detailed above that were not eligible actually were, it would not take long to use up the slightly more than \$5 million currently in the Fund. The Fund needs a mechanism for replenishment which is currently not in place. But that is a worry for another day. 🌲

Work done for a contractor who rents a license is not eligible for Fund compensation.

did work after February 1, 2013 and were not paid. However, they had also done work for the same licensee close to a year earlier for which they had not been paid. It is hard to understand why a contractor would give that much credit after not being paid the first time. In any event, the FSPCF can only provide compensation for the first unpaid invoice, plus 30 days, to a maximum of 60 days of unpaid work. Since the first unpaid invoice was well before February 1, 2013 in these cases, the fund could not be accessed for payment.

Requests have also come in for compensation from silviculture contractors that were left unpaid for work they had completed for licensees. In these cases, the fund could not be accessed because silviculture contractors are not included in the list of eligible forestry service providers under the Act.

The most recent requests for compensation from the fund that were also not eligible came from applicants who were performing otherwise eligible ser-

vices on financial difficulty, so he got an advance before he even went to work.

He then invoiced the license holder promptly as the falling was completed but, as feared, was not paid. Shortly after that, he stopped working so as not to get into a deeper hole (consistent with the time limitation requirements of the Act). A short time later, the timber sale expired and it could not be renewed because it had already received the maximum number of extensions. In the end, the logs on the ground were forfeited by the licensee and it became clear that the license holder was now insolvent as he continued to not pay the faller.

The faller then went to the FSPCF website at www.fspcf.com, downloaded and completed the compensation claim form and provided the required supporting documentation. It was confirmed with the ex-license holder that there was no money to pay the faller and with BC Timber Sales that there was no way the licensee could get another extension. After taking assignment of

Eric van Soeren is the Administrative Authority for the Forestry Service Providers Compensation Fund. He can be reached at 250-537-1533 or on the FSPCF website at fspcf.com/contact

Background on the Compensation Fund

The Forestry Service Providers Compensation Fund (FSPCF) was created on March 30, 2012 by the *Forestry Service Providers Compensation Fund Regulation* (BC Reg. 64/2012) and was seeded with a contribution of \$5,000,000 provided by the provincial government. Its purpose is to provide relief to contractors that provided forestry services and were not paid for those services because the recipient of the forestry services became insolvent. Forestry services are limited to those defined in BC Regulation 3/2013, Section 3, and must have been provided to a tenure holder under the *Forest Act*. Insolvency for the purposes of the FSPCF is defined in the FSPCF Administrative Agreement.