The Problem Of Multiple Owners And Prime Contractors

Section 118 of the *Workers Compensation Act* (the Act) requires a "prime contractor" to coordinate the safety activities of workers, employers and other persons at any "multiple-employer workplace" and to establish and maintain a system to ensure compliance with the Act and the regulations in terms of occupational health and safety at the multiple-employer workplace. Under the Act, "the" owner of a multiple-employer workplace is the default prime contractor unless some other party enters into a written agreement with "the" owner to become prime contractor. Identification of "the" owner of a multiple-employer workplace, then, appears critical to the identification of "the" prime contractor. Unfortunately, the legislative implementation of the Act's policy with respect to multiple-employer workplaces lacks legal certainty when it comes to the identification of prime contractors.

The problem is that neither the Act nor its regulations identify a single "owner." Part 3 of the Act provides a definition of "owner" that "includes" (among other things) a tenant, lessee, licensee or occupier of a workplace. Since the definition is inclusive (that is, it does not exclude other potential owners that are not specifically identified in the definition), a fee simple owner of a workplace is undoubtedly also an "owner" for purposes of Part 3 of the Act.

So, as WorkSafeBC acknowledges in its policies and guidelines, any given workplace can have multiple owners. This is particularly so with forestry sector workplaces where, contemporaneously, the Crown will hold underlying title, the tenure holder and the holder of any market-logging (quota rental) agreement are "licensees," and a stump-to-dump contractor is potentially an "occupier." Each of these actors fall within the definition of "owner" under the Act, but the Act does not identify "the" owner for purposes of prime contractor liability under the Act.

While the Act and regulations made thereunder clearly contemplate that only a single owner will exist at any given multiple-employer workplace for purposes of prime contractor liability, there is no legislative guidance to distinguish "the" owner from all the other potential owners. A tenure holder cannot know with certainty whether it is lawfully "the" owner of a multiple-employer workplace and, therefore, the default "prime contractor" and a "stump-to-dump" logging contractor cannot know with certainty that it is not "the" owner and, therefore, not the default prime-contractor.

WorkSafeBC also has no obligation to accept a particular state of affairs that

various actors may have agreed upon with respect to prime contractor liability for a multiple-employer workplace. Parties to a market logging agreement may acknowledge in their agreement that the purchaser (rather than the holder of the Crown tenure) is "the owner" of any multiple-employer workplace that may exist in relation to their agreement since the purchaser under a market logging arrangement is, at law, a licensee as the holder of a sublicense. The purchaser, as "the owner," may then enter a written agreement with its logging contractor whereby the logging contractor assumes the role of "prime contractor" from the purchaser. While this type of arrangement commonly arises and makes sense, there is nothing in the legislation that compels WorkSafeBC to lawfully recognize the arrangement if, in WorkSafeBC's view, the holder of the underlying tenure was still "the owner" of any multiple-employer workplace regardless of what the parties had otherwise agreed upon.

The problem of multiple owners in relation to prime contractor liability has existed since 1999 when Bill 14 was brought into force and Part 3 of the Act came into existence. It is nothing new. Yet, neither government nor WorkSafeBC appear motivated to bring in legislative certainty as to who, exactly, is "the" owner for purposes of prime contractor liability under the Act. One might think that clear rules with respect to who is responsible for coordinating occupational health and safety at multiple-employer workplaces is both good for safety and good for business. But, instead, we are left to rely upon policy statements and other guidance from WorkSafeBC that are not lawfully binding and, therefore, do not provide much in terms of legal certainty.

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