

HOW TO SELL TIMBER AND KEEP CONTROL OF THE CUT



By taking advantage of the timber marking and marketing services provided by *Lands & Forests Consulting*, you have made several very important and significant steps towards ensuring that you will receive the best possible price for your timber and that your wood lot will be properly logged.

These initial steps are:

1. You have now identified, defined and quantified exactly what it is that you are selling. The trees to be sold are marked with paint and you have a written timber summary in your possession. Without this information, you would not know what and how much timber you were selling and therefore could not possibly make a sale on a sound financial basis.
2. If you have contacted us for guidance on determining product values, you now have a reasonable idea of what that marked timber is worth. Without knowing what a reasonable expected value is for your marked trees, you would not be able to ascertain whether or not a timber buyer's bid is fair. If you haven't already sought guidance on values, you should do so now. After all, you wouldn't think of selling any other property or farm commodity without first getting a feel for the current fair market value, would you?
3. If you're having your timber advertised through *Lands & Forests Consulting*, you are assured that all prospective timber buyers are made aware of your intention to sell. This service helps ensure that there will be competition in the market place for your timber. This competition factor, plus knowing what you are selling and its approximate market value, all helps to ensure you that you will get the best possible price for your product. In the end, however, it is the market forces and your skills at negotiating with the buyers that determines the final value of your timber and not the estimate of *Lands & Forests Consulting*.

Some Tips on Negotiating a Selling Price

Unlike other farm products, there is no "fixed" price for standing timber. Rather, it is your skill as a bargainer that will play a major role in the determination of the final sale price. Therefore, you should carefully plan your bargaining strategy in advance. The following are some tips that may help you in your price negotiations.

1. The first thing that you should do with respect to price is to determine approximately what your marked timber is worth. This will give you a yardstick to help evaluate bids from buyers.
2. Normally, it is unwise to accept that first bid. It is often best to be patient and wait for several bids before making a final decision. It is a good idea to take down names, addresses, phone numbers and bid prices when they call, as memory often fails. If you need time to think, tell them you'll get back to them. It is perfectly reasonable for a prospective buyer to want to see the wood lot before he makes an offer.
3. A Timber buyer will often want to see the wood lot to ascertain such things as access, logging conditions and timber quality. All these factors will affect his bid price. To give him a better idea of timber quality, it may be advantageous to have a few sample trees felled and bucked so that any prospective buyer can see the interior log quality at the time of the visit. By removing some of the uncertainty over log quality in the mind of the buyer, he would be more confident in offering an initial high bid.

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4. A buyer's first offer, even though he may claim that it's his top price, is often below what he's actually prepared to pay. It's simply sound business procedure on his part to try to get wood as cheaply as he can, so you must expect this. Similarly, it is in your best interests to get as much as you can for your wood. Often, of course, there is a difference between the two expectations. Therefore the best way to get the best price is to ask for written quotes on a specific day.
5. Don't reveal the BASE sale price that you had determined in consultation with *Lands & Forests Consulting*. If you tell a buyer that your timber is worth 'x' amount of dollars and that you're not prepared to take less, you have in fact placed a ceiling on the price he might otherwise be prepared to offer. If you play your cards closer to your chest, you may well get an offer higher than anticipated. It is quite common and normal for the final selling price to be different from what was expected because of changing market conditions and the competition factor, or the lack of it, etc.
6. The buyer will often try to get you to reveal your asking price. If you do give him an anticipated figure, don't inflate the value too much. The buyer may label you as being totally unreasonable and break off further negotiations. Be fair and reasonable just as you expect the buyer to be fair and reasonable. If you want to negotiate with buyers be cautious do not turn the negotiations into an auction. Some buyers' first offer is their best offer. You may chase away some buyers by going back and asking for more too often. Again the best way to get the best price is to ask for written quotes on a specific date.
7. Don't feel pressured into selling too quickly and don't give the buyer the impression that you're anxious to sell, even if you are. Most bad decisions are made in haste and if the buyer senses that you may be in a distress sale situation, he might offer you less than he otherwise would. Let the buyer know that you expect a fair price and that if you don't get it now you're prepared to wait and re-advertise at some later date. If you have other offers or callers for your timber, it also does not hurt to mention that fact to the buyers. That might put some pressure back on the buyer if he's really interested in your wood.
8. After considering all the bids you might feel that they are all too low to sell at this time. Timber prices fluctuate with supply and demand as other commodities do. Thus, if you are selling at a low in the price cycle, you may elect to forego a sale now and re-advertise the timber at a later date

HOW TO SEAL AN AGREEMENT OF SALE

Handshake and verbal agreements are **TROUBLE**. You can avoid a great deal of trouble by signing a legal and binding sale contract with the buyer. Make sure, with the help of your lawyer, that the sale agreement protects your property and that it clearly sets out the terms and conditions of the sale.

A sample sale agreement can be obtained from *Lands & Forests Consulting*. It can be a very useful guide to you. It is not meant to be all encompassing as you may have special circumstances or concerns surrounding your particular sale. Therefore, we strongly recommend that you discuss your particular situation with your lawyer. Make sure your interests are protected as you can be assured that the timber buyers own standard sale contract has been designed to protect his, often times with no regard to the seller's. A good sale agreement is one that protects the interests of both parties. Do not sign any agreement until you have read and completely understand it.

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Some Factors to Consider When Formulating or Reviewing a Sale Agreement

1. **Get Paid In Advance** - It is not unreasonable to insist upon payment in full before the first tree is cut. This is often accomplished by accepting a down payment at the time an agreement is signed with the balance paid in full before any cutting starts. Remember that, “He who holds the gold holds the power”. In addition, when you get the money in advance (EG. Certified cheque), you have absolutely no future worries over payment.
2. **Define What Trees Are to be Cut** - Make sure that the agreement clearly states that only those trees marked in the designated colour and area are to be cut. If this is not clearly stated, then the buyer may be legally able to harvest any and all trees in your wood lot and not just the marked ones.
3. **Define What Product You Are Selling** - Now that fuel wood is back in demand, you may wish to consider including a clause in the timber sale agreement that clearly specifies that you are selling the saw logs only and not the whole tree. In other words, you may wish to clearly state that the tops and other logging debris remain in your possession and are not included in the sale. This will allow you to remove the tops and other logging debris for your own use after the logging is completed or to sell the logging residue to a commercial fuel wood buyer. If you do include the whole tree in the timber sale agreement, make sure you include the added value of the firewood in the selling price.
4. **Put a Time Limit on the Logging** - It is prudent to include a time limit clause in the agreement stating a completion date for the logging. Don't leave the time period open-ended in the agreement as you may not have the logging done for years or you may find that for a small down payment, a buyer has secured your timber rights indefinitely. Negotiate a reasonable time period with the buyer. Normally, a period of six months to one year is more than adequate time for the logging to be completed.
5. **Indicate When You Want the Logging Done** - When you're negotiating the time period of the contract, you should consider when during that time period that you'd prefer the cutting operation to be done. For the sake of your wood lot, fields, lane ways, tiles, etc., the least amount of damage from the logging operation will occur when the ground is frozen and the trees are dormant. The worst time for such an operation is during spring break up.

To discourage any buyer from causing excessive damage to residual trees or from cutting unmarked trees (theft), include a sufficiently high deterrent clause on a per tree basis, regardless of species, volume or quality, to deter abuse. If the deterrent is too low, he may decide to cut extra trees and simply pay the fine as an extra stumpage cost. This is not to suggest that all timber buyers are dishonest, but tree theft has occurred in the past.



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TWO DANGEROUS TRAPS TO AVOID



Sell only those trees marked by *Lands & Forests Consulting* and only sell the timber standing on the stump, in a lump sum based on *Lands & Forests Consulting* estimate. Here's why:

Why Sell Only on the Basis of *Lands & Forests Consulting* Volume Estimate?

While it's impossible for any timber volume estimate to be foolproof or completely accurate, you can be assured that *Lands & Forests Consulting* estimate is both fair, honest, and is widely accepted in the logging trade. It is also a standard upon which all potential buyers can base their bids. If you decide to disregard the estimate and sell on the basis of the buyer's scale and grade, the buyer is in complete control and you can no longer compare bids. You will also lose control of price, time of payment, and volume cut, even though you may think you haven't, or are told by a buyer that both methods are the same. The following is a list of some of the serious problems and pitfalls brought upon the wood lot owner who decides to sell timber based on the buyer's scale and grade.

1. You don't get paid in advance. Thus, you are at risk because you must wait for the buyer's scale and grade before you can get paid. In fact, there is no real guarantee that you will ever be paid as the firm could declare bankruptcy, or just disappear.
2. How accurate is the buyer's scale and how accurate is his grade? Is it possible to check or audit his grading and scaling? Remember that under this dubious system of selling timber he is paying you on the basis of his scale and his grade and not on an independent third party's assessment. The temptation is very strong, therefore, for a buyer to underestimate his scale and lower his grade because the lower they are, the less he has to pay you and you would never know the difference because you have no way of confirming it.
3. Log waste could increase dramatically because he is paying you only for what he decides to remove. Under this system, there is a strong temptation for the buyer to maximize his profits (while minimizing yours), by only extracting the very best trees and the very best part of those trees, leaving the rest behind to rot or, in the case of inferior standing trees, leaving them behind to interfere with the growth of better trees.
4. There is a substantial difference in the volume of timber scaled in various logs using different log scales. The Doyle log rule is the one most commonly used by logging operators. For example, an 8-foot log measuring 14" at the small end (ib) measures 50 board Doyle and 61 board feet Ontario Log Rule. *Lands & Forests Consulting* uses the Ontario Log Rule. The Ontario Log Rule was derived by actually milling logs of various sizes and measuring the lumber recovery, whereas, the Doyle Log rule is a simple mathematical formula determination with several inadequacies.
5. Disputes between yourself and the buyer are much more likely to occur as you might begin to question his scale, his grade, his payment procedures and his log utilization practices. If you sell standing timber on a lump sum basis, with payment in full before the first tree is cut, and based strictly on *Lands & Forests Consulting* volume estimate, you avoid all these problems.

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WHY INSIST THAT YOU'LL ONLY SELL THOSE TREES MARKED

Lands & Forests Consulting has carefully evaluated almost every tree in your wood lot in the marking process. Each tree was either marked or left for one or more good reasons, which may or may not be readily apparent to you. In any given wood lot, it is quite possible that some trees that were not marked could have been or visa versa. However, you can be assured that you have obtained the best mark available by an independent third party, and that the best interests of you, the landowner, have been taken into account in the marking process.

The silviculturally based mark was provided to best ensure the profitability of your wood lot, both now and in the long term. Log buyers, however, and quite naturally, are primarily interested in their short-term profitability and not necessarily your present or future profits or the future quality of your wood lot. For that reason, some buyers will attempt to get permission from you to deviate from the mark. These buyers will use various techniques to secure this permission. They may talk of “legal” diameter limits, unmarked “mature” or “merchantable” trees, or simply “missed” trees. In the latter case, the buyer might point out some borderline trees as examples to lend weight to his accusations. He also may make attractive sounding financial incentives to obtain your permission. His intention is to get you to verbally or otherwise grant him permission to violate the mark and so have a free hand in the logging.

You must realize, however, that once you take the bait and give him permission to cut even one extra tree, you have immediately lost control over the entire cutting operation in your wood lot and turned it over to the logger. You can no longer control the number of trees cut, the volume cut or the quality cut. Once you give him permission to take extra trees, he is then free to cut virtually what he wants and because these trees are not estimated by *Lands & Forests Consulting*, you can only be paid on the basis of his volume and his grade after they have been cut.

If a buyer propositions you in this manner, be extremely cautious. If you are the least bit unsure of what to do, please give *Lands & Forests Consulting* a call and give us the opportunity to explain the mark to you at your woodlot. We strongly recommend that the mark be changed by *Lands & Forests Consulting* only and not by the logger. The timber should also be re-advertised to give all potential buyers an equal chance at bidding on the new volume estimate.

Once again, sticking to the mark and selling lump sum, regardless of how convincing, attractive, or reasonable a proposal may sound can simply avoid many pitfalls.



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WHAT SHOULD YOU DO ONCE LOGGING BEGINS

If you have followed the tips provided so far and have signed a good sale agreement, you have a much better chance of having your wood lot properly logged than if you had made a very loose sale arrangement. However, if you wish to ensure that the logger does the job as expected and with the minimum amount of damage, you must personally check the logging operation periodically.

If you demonstrate little or no interest in the logging operation by not checking on the cutting while it is in progress, the operators will quite naturally be less careful because they would feel, “Why should I care if the owner obviously doesn’t?” It is particularly important that you are present on the first day of cutting to ensure that it starts off on the right track. If you feel you need some help in auditing the cutting, you may call *Lands & Forests Consulting* for assistance and we would be pleased to accompany you on an inspection.

The following is a list of some of the items to watch for while inspecting the cutting:

1. Are the conditions of sale agreement being adhered to?
2. Are only marked trees being cut?
3. Are the trees being felled in such a way as to minimize damage to remaining trees and advance juvenile growth?
4. Are the stumps being cut as low as possible? High stumps are wasteful and will impede the access of a tractor and wagon if you plan on cleaning up the debris as firewood after the cut.
5. Is the skidder operator exercising reasonable care? Is he avoiding areas of advance growth as much as possible? Is he wincing logs out of tight corners rather than driving to the stump? Is there excessive damage being caused to remaining trees due to the brushing of skidder wheels or logs up against them? Remember that it is not the skidder that causes the damage; it is the operator.

Please take special note of the following article from the November/December issue of the “Ontario forest Products Marketing Bulletin” concerning Workplace Safety & Insurance Board (WSIB).



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FOREST PRODUCTS

So you're thinking of using independent operators
in your logging business...

Here's what you must know

Hiring subcontractors and/or owner-operators is a common practice in the logging industry. While at first glance the advantages of hiring a subcontractor or owner-operator may be appealing, the reality is there are many financial repercussions that could significantly impact your business.

A subcontractor or owner-operator may be a worker or an independent operator for WSIB purposes. Workers are automatically covered in the logging industry and the principal is required to pay premiums for this coverage. On the other hand, WSIB coverage for independent operators is not mandatory.

Here are some things you should know before you hire an independent operator.



poses. The key to remember is that the test is a complete examination of the work relationship between an individual and the firm who uses his/her services. Factors considered in the organizational test are the degree of control that the individual is subject to doing the work, the opportunity for profit or loss, and other applicable criteria that characterize the work relationship.

Sample questions used in the WSIB's organizational test include:

- Does the individual agree to complete a specific job and is he/she responsible for its satisfactory completion or subject to legal penalties for breach of contract?
- Does the person own, rent or lease the equipment necessary to work in woodland operations?
- What control and supervision are exercised over the work performed?

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GLOSSARY

Workers

Workers are entitled to benefits provided by the Act and their employers must pay premiums to the Workplace Safety & Insurance Board (WSIB).

Independent Operators

Independent Operator may elect to be considered and covered as a worker under the Act.

If they want insurance, they must pay their own premiums.

Principal

Principal means the company that hires the individual to cut or prepare logs.

dent operator carries on a business, separate from the employer. Typically, an independent operator in the logging industry will have the following characteristics:

- The individual can sell logs to other purchasers for the best price possible.
- The individual reports to the government as a self employed business (Revenue Canada/GST).
- The individual owns and operates his/her own equipment.

The WSIB uses an organizational test to determine if a subcontractor is an independent operator or a worker.

What is the organizational test?

The WSIB's organizational test uses specific criteria to determine if a person is an independent operator or a worker, for WSIB pur-

What is an independent operator?

An independent operator is different from a regular employee or worker. An indepen-

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What are an employer's obligations and responsibilities when using independent operators?

Until you obtain a decision from the WSIB for a person's status, the company hiring is required to pay premiums to the WSIB based on the individual's earnings.

Both parties (the individual offering services and the firm thinking of hiring the person) are strongly encouraged to complete the organizational test prior to beginning a work relationship so that everyone is clear about each other's responsibilities and obligations under the Workplace Safety and Insurance Act.

The test will determine if:

- the person is an **independent operator** under the Act, and therefore not automatically covered for WSIB purposes. He or she has the option of opening an account with the WSIB and taking out voluntary coverage; OR
- the person is a **worker** under the Act and the company using his or her service is considered an employer and therefore responsible for the person's WSIB coverage.

You have hired an independent operator and you assume you're off the hook.

Not so because...

- An independent operator who employs his or her own workers/helpers is an employer and must be registered with the WSIB.
- If you hire an independent operator who hires his/her own workers/helpers but does not register with the WSIB, you as the principal may be held responsible for the operator's premiums and the cost of any injury.
- If the independent operator registers with the WSIB but does not pay his/her premiums, you as the principal may be held directly responsible for the independent operator's premiums.

In other words, it is the duty of the principal to ensure that the contractors working for you who are required to be registered with the WSIB are registered and remain in good standing with the WSIB. To ensure the contractor is in good standing, you must ask the contractor for a WSIB clearance certificate. A clearance certificate is a confirmation that an employer is registered and has met his/her reporting and payment obligations.

**Still confused?
This is a real life situation.
It could be YOU!**

In the event of a work related accident, a principal can be held responsible for independent operators who do not have coverage with the WSIB. The following examples illustrate why ensuring your independent operators have WSIB coverage is very important.

Company ABC Logging Inc. uses the services of John Davidson to manage the cutting of trees in an area covered by their forestry license. John Davidson subcontracts the cutting to Tim Oakley. John Davidson did not request a WSIB clearance certificate from Tim. While cutting trees, Tim is seriously injured.

NOTE: A clearance certificate is NOT proof that a person has WSIB optional insurance for him/herself. An independent operator who does not obtain optional insurance with the WSIB may sue the principal and any other person or company for negligence.

Example #1

The WSIB is notified of the injury. The WSIB applies the organizational test and Tim Oakley is considered an independent operator. As an independent operator without WSIB coverage, Tim sues John Davidson for negligence and is successful. John Davidson is unable to pay the award imposed by the courts and goes bankrupt.

Example #2

The WSIB is notified of the accident and

applies the organizational test. Tim is considered a worker by the WSIB and, therefore automatically entitled to WSIB benefits. As John Davidson hired and paid Tim, he is responsible for the WSIB premiums. However, John Davidson did not register with the WSIB prior to Tim's accident. As a result, John is fined by the WSIB.

Furthermore... Company ABC Logging Inc. did not ask John Davidson for the WSIB clearance certificate to confirm that he was registered with the WSIB and was in good standing. Now, John cannot pay his WSIB bill. The WSIB has the authority to move the responsibility "up the chain" and collect from the principal (Company ABC Logging Inc.) who initially hired John to manage the cutting.

Hiring independent operators means taking the time to understand the different ways it could affect your business. This includes your WSIB obligations. Be careful, make you're covered - it makes good business sense!

Company ABC Logging Inc. failed to receive a clearance certificate from John Davidson. Company ABC Logging Inc. can therefore be held responsible for any money John may owe the WSIB. Section 141 of the Workplace Safety and Insurance Act addresses a principal's liabilities regarding a subcontractor's responsibilities and provides the capability for the WSIB to deem the principal to be the employer.

If you don't receive a clearance certificate, you may be held liable for other people's WSIB bills!

For further information, please call (807) 343-1710 or toll free 1-800-465-3934 and ask to speak to Lyane Quessy, WSIB Customer Service Representative or visit their web site at www.wsib.on.ca. This article was reprinted with permission from WSIB.