

**PUBLIC VERSION**

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE  
NORTH AMERICAN FREE TRADE AGREEMENT  
AND THE 1976 UNCITRAL ARBITRATION RULES**

**BETWEEN:**

**RESOLUTE FOREST PRODUCTS INC.**

**Claimant**

**AND:**

**GOVERNMENT OF CANADA**

**Respondent**

**PCA CASE No. 2016-13**

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**REJOINDER WITNESS STATEMENT OF DUFF MONTGOMERIE**

**March 4, 2020**

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I, Duff Montgomerie, of 1505 Barrington Street, the City of Halifax, in the Province of Nova Scotia, hereby AFFIRM as follows:

1. I provide this rejoinder witness statement to respond to certain statements made in Resolute's December 6, 2019 Reply Memorial and in the witness statement of Mr. Richard Garneau filed on the same date. I also elaborate further on certain points described in my first witness statement dated April 17, 2019. The fact that I have not addressed all of Resolute's characterizations of facts and events other than those I discuss in this witness statement should not be taken to mean that I agree with them.

### **BOWATER MERSEY**

2. Mr. Garneau recalls informing the Government of Nova Scotia (GNS) in late August 2011 that Resolute planned to close the Bowater Mersey newsprint mill because of high operational costs but agreed to give the government some time to consider options on how it could assist Resolute.<sup>1</sup> I concur with Mr. Garneau's recollection in this respect.

3. In the redacted version of Mr. Garneau's witness statement I was provided, he stated that "By the end of September 2011, Resolute senior management was convinced that the province had no serious plan to reduce costs at Bowater Mersey."<sup>2</sup> While I cannot speculate as to what Resolute senior management was thinking at the end of September 2011, I believe Mr. Garneau's statement requires some context. At that point, only one month had passed since Resolute had informed the GNS that it planned to shut down Bowater Mersey. As a result, discussions on a potential financial assistance package for Resolute were only nascent and Nova Scotia had only just started to gather information about the potential future of the newsprint market that would inform the Province as to what might be a prudent level of support, if any.<sup>3</sup> However, the GNS had an expectation that it would work together with Resolute to try and

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<sup>1</sup> Witness Statement of Richard Garneau, 6 December 2019 ("Garneau Statement"), ¶¶ 6-7.

<sup>2</sup> Garneau Statement, ¶ 9. Mr. Garneau also states at ¶ 9 of his statement that "GNS had done nothing during NSUARB proceedings to meet Resolute's and NewPage-Pork Hawkesbury's request for a lower electricity rate for Bowater Mersey." I will defer to my former colleague Murray Coolican, former Deputy Minister of Energy, to respond to this statement.

<sup>3</sup> See e.g., R-146, [REDACTED]

reduce costs at Bowater Mersey. By early November 2011, discussions had accelerated and Resolute bargained hard for financial assistance that it told Nova Scotia could help to lower its costs to a competitive level. By December 1, 2011, Resolute and Nova Scotia had agreed to a \$50.25 million financing package.<sup>4</sup> That financial assistance complemented other cost-saving efforts made by Resolute, including the new labour agreement Resolute had negotiated with its workers, a reduction in property taxes and the new electricity rate approved by the Utility and Review Board.

4. Mr. Garneau states at paragraph 19 of his witness statement that “the assistance the Government of Nova Scotia offered to Resolute was intended to ensure the orderly closure of the Bowater Mersey mill, not to make it the lowest cost producer of newsprint for an extended life.” I believe this statement confuses two different time periods and two different agreements. It is true that when Resolute announced Bowater Mersey’s permanent closure in June 2012, we worked with Mr. Garneau and local management to mitigate the damage to the local economy and came to an agreement in December 2012 to purchase the company’s assets and assume its liabilities.<sup>5</sup>

5. However, the original \$50.25 million financial assistance package given to Resolute in December 2011 was intended to help make Bowater Mersey a low-cost newsprint producer “for a period of [REDACTED].” Both sides knew this would be very challenging given the status of the newsprint market, but the GNS would not have committed the financial assistance it did or enshrined that commitment in legislation if the parties did not believe that the “[REDACTED]” time frame set out in the December 2011 agreement was achievable.<sup>6</sup> Unfortunately, no one predicted the collapse of foreign currencies in early 2012 that led to Resolute’s decision in June 2012 to shut down the mill permanently.

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<sup>4</sup> R-149, [REDACTED].

<sup>5</sup> R-155, Nova Scotia Premier's Office, “Province Takes Crucial Step to Build Forestry of Future” (Dec. 10, 2012).

<sup>6</sup> R-149, [REDACTED], p. 2; R-151, *Bowater Mersey Pulp and Paper Investment (2011) Act*, SNS 2011, c. 32

**PORT HAWKESBURY**

6. With respect to Mr. Garneau’s statements regarding Port Hawkesbury, I would like to provide the following comments.

7. Mr. Garneau states that “the province, through a bankruptcy monitor, was trying to sell Port Hawkesbury as a going concern for newsprint and supercalendered paper.”<sup>7</sup> To clarify, it was NewPage, the mill’s owner, which had decided to enter creditor protection under the *Companies’ Creditors Arrangement Act* (CCAA) in early September 2011 in order to sell the mill as a going-concern. NewPage hired Sanabe Associates to market the mill. The Monitor (Ernst & Young) was appointed by the Nova Scotia Supreme Court and was responsible for the supervision of the sales process, not the GNS.

8. Second, Mr. Garneau confirms that the GNS encouraged Resolute to consider buying the Port Hawkesbury mill.<sup>8</sup> I do not know whether Resolute submitted a bid by the September 29, 2011 deadline set by the Monitor, but I can confirm that Resolute never sought out financial assistance from the GNS in order to purchase and operate Port Hawkesbury as a going concern. We had hoped that Resolute would reach out to us to express an interest in Port Hawkesbury, but it never did. As I explained in my first witness statement, had Resolute been one of the going concern bidders selected by the Monitor, Nova Scotia would have been open to discussing its reasonable requests for financial assistance.<sup>9</sup>

9. Third, Mr. Garneau states that “the Government of Nova Scotia seems to have invited PWCC to define exactly what it thought it needed from the province to make it the lowest cost operating in North America, and then the province seems to have given PWCC everything it asked for.” I believe this statement is incorrect. As the person tasked with coordinating the Province’s response to the crisis before us, I never received direction to agree to any terms that PWCC demanded and we did not do so. For example, as I noted in my first witness statement, after PWCC’s application to the Canada Revenue Agency for an advance tax ruling was denied

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<sup>7</sup> Garneau Statement, ¶ 13.

<sup>8</sup> Garneau Statement, ¶ 15. See Witness Statement of Duff Montgomerie, 17 April 2019 (“Montgomerie First Statement”), ¶ 20.

<sup>9</sup> Montgomerie First Statement, ¶¶ 24, 32.

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in September 2012, Nova Scotia remained firm that it would not offer PWCC any additional financial assistance.<sup>10</sup>

10. Finally, I would like to address the allegations Resolute makes in its Reply Memorial regarding [REDACTED]<sup>1</sup> As I noted in my first witness statement, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] We hoped the mill could be successful without market disruption but we had to balance those uncertainties and risks against all the other implications facing the Province if Port Hawkesbury were to shut down permanently. We also had to take into account the impending deadline in the CCAA proceedings for NewPage to conclude its plan of arrangement with PWCC. As I said in my first witness statement, we were also cognizant of the fact that PWCC had been chosen by the Monitor through a fair, open and competitive bidding process and had presented a viable business plan to continue operating the most modern SC paper machine in North America.<sup>13</sup> The decision to proceed with the financial support to PWCC was not an easy one, but one I believe was done in good faith, in the public interest and reasonable in light of all the circumstances.

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I affirm that the foregoing is true and correct.

Dated: March 4, 2020

  
Duff Montgomerie

<sup>10</sup> Montgomerie First Statement, ¶ 31.

<sup>11</sup> R-161, [REDACTED]

<sup>12</sup> Montgomerie First Statement, ¶¶ 19, 30; R-146, [REDACTED]

<sup>13</sup> Montgomerie First Statement ¶ 28.