

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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**WITNESS STATEMENT OF JULIE TOWERS**  
**April 17, 2019**

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I, Julie Towers, of 1701 Hollis Street, the City of Halifax, in the Province of Nova Scotia, hereby AFFIRM as follows:

1. I am the Deputy Minister of the Nova Scotia Department of Lands and Forestry, which was renamed from the Department of Natural Resources (DNR) in 2018. I was appointed to my current position in November 2016.

2. From February 2010 – February 2014, I was the Executive Director in the Renewable Resources Branch of DNR at the Government of Nova Scotia (GNS). The Renewable Resources Branch provides coordination and leadership on policy, planning and program development, including management and conservation of the province’s forests, parks, and wildlife. My primary responsibilities in this role included advancing the GNS Natural Resources Strategy, as well as dealing with the forestry-related aspects of the transactions that the GNS executed with Bowater Mersey, NewPage Port Hawkesbury (NPPH), and Pacific West Commercial Corporation (PWCC). One of my overriding objectives was to ensure that the GNS’ forestry policy and environmental concerns were stewarded regardless of whether the mills stayed open or shut down.

3. This witness statement responds to certain statements that Resolute Forest Products (Resolute) made in its December 28, 2018 Memorial regarding the following three agreements between the GNS and PWCC in connection with the Port Hawkesbury mill: the Land Purchase Agreement,<sup>1</sup> the Forest Utilization License Agreement (“FULA”),<sup>2</sup> and the Outreach Agreement.<sup>3</sup> My intention with this witness statement is to put these agreements in their broader context, which involved important forest management policies for the Province of Nova Scotia, and to clarify what I believe to be inaccuracies in Resolute’s allegations. I make this statement from my personal knowledge and from my review of contemporaneous documents.

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<sup>1</sup> C-209, [REDACTED]

<sup>2</sup> R-192, [REDACTED]

<sup>3</sup> C-206, [REDACTED]

4. The fact that I have not responded to every allegation made in Resolute’s Memorial should not be taken to mean that I agree with Resolute’s characterizations or statements.

### **THE DEVELOPMENT OF A MODERN NOVA SCOTIA FORESTRY STRATEGY**

5. To understand the Land Purchase Agreement, the FULA, and the Outreach Agreement, it is important to understand the broader policy context in which the GNS was operating.

6. In the early-to-mid-2000s, the Nova Scotia forest sector was in flux. There had been a significant decline in the number of sawmills and forestry contractors in the province, which raised sector-wide employment concerns. Further, there were concerns with sustainability and forestry practices not just within the DNR, but clearcutting and forest habitat alteration were attracting increasing public concern.<sup>4</sup> Lastly, there were concerns with the management of natural resources in light of the rights of the Mi’kmaq First Nations (Mi’kmaq). At the DNR, we knew that our natural resources policies had to adapt in order to address social, environmental, and economic concerns.

7. A policy shift in Nova Scotia natural resources management began in 2007 with the passage of the Environmental Goals and Sustainable Prosperity Act (EGSPA).<sup>5</sup> The EGSPA set 19 long-term environmental and economic goals for the province, including to legally protect 12% of Nova Scotia’s land mass by 2015.<sup>6</sup> That goal was satisfied when the GNS designated 90 new wilderness areas, nature reserves and provincial park sites, bringing the total to 12.26 per cent in 2015. In 2017, the province designated 15 more sites, bringing the total to about 685,000 hectares or 12.39%.<sup>7</sup> As I discuss below, land purchase agreements with Resolute and NPPH /PWCC played an important part in achieving that goal.

8. Another element of the EGSPA was the development of a new provincial Natural Resources Strategy, which was announced in May 2007.<sup>8</sup> This was a key initiative during my

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<sup>4</sup> **R-193**, Natural Resources Citizen Engagement Committee, “Our Common Ground: The Future of Nova Scotia’s Natural Resources”, Final Report (March 2009), pp. 10, 36-37.

<sup>5</sup> **R-194**, *Environmental Goals and Sustainable Prosperity Act*, SNS 2007, c 7, as amended by SNS 2012, c 42.

<sup>6</sup> **R-195**, Nova Scotia Legislature, “*Environmental Goals and Sustainable Prosperity Act - Bill 146*” s. 4(2)(a); **R-194**, *Environmental Goals and Sustainable Prosperity Act*, SNS 2007, c 7, as amended by SNS 2012, c 42, s. 2(v).

<sup>7</sup> **R-196**, Nova Scotia, “*Environmental Goals and Sustainable Prosperity Act, 2015-2017 Progress Report*”, p. 3.

<sup>8</sup> **R-194**, *Environmental Goals and Sustainable Prosperity Act*, SNS 2007, c 7, as amended by SNS 2012, c 42,

time as Executive Director, and it had a major impact on how the GNS addressed the challenges with the pulp and paper mills in the Province.

9. The Natural Resources Strategy developed in phases. Phase One was a year-long citizen engagement process involving written submissions and community meetings, culminating in a March 2009 report.<sup>9</sup> Nova Scotians stressed the importance of ensuring sustainability of natural resources, and that rural jobs should be based on sound ecological principles.<sup>10</sup> The DNR then gave the results of Phase One to expert panels outside of the DNR to make further recommendations.<sup>11</sup>

10. In Phase Two, four independent panels with expertise in biodiversity, parks, minerals and forests, respectively, reported to a steering committee comprised of the former Chief Justice of Nova Scotia, the Executive Director of the Union of Nova Scotia Indians, and a representative from industry. In April 2010, the steering committee issued its report and accompanying recommendations, which, with respect to forestry, included more collaboration, coordination, and co-operation between stakeholders and all levels of government with respect to forest management.<sup>12</sup>

11. In response to Phases One and Two, on August 16, 2011, the GNS released *A Natural Resources Strategy for Nova Scotia 2011-2020*, a ten-year plan to move the province towards an ecosystem approach to forest management.<sup>13</sup> In an ecosystem-based approach, economic, social, and ecological goals are balanced so that biodiversity is conserved, ecosystem functions are

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s.4(2)(y); **R-193**, Natural Resources Citizen Engagement Committee, “Our Common Ground: The Future of Nova Scotia’s Natural Resources”, Final Report (March 2009), p. 5; *see also* **R-195**, Nova Scotia Legislature, “*Environmental Goals and Sustainable Prosperity Act - Bill 146*”, s. 4(2)(u).

<sup>9</sup> **R-193**, Natural Resources Citizen Engagement Committee, “Our Common Ground: The Future of Nova Scotia’s Natural Resources”, Final Report (March 2009), pp. 5-6.

<sup>10</sup> **R-193**, Natural Resources Citizen Engagement Committee, “Our Common Ground: The Future of Nova Scotia’s Natural Resources”, Final Report (March 2009), pp. 3, 8, 10, 37-38.

<sup>11</sup> **R-197**, Nova Scotia Lands and Forestry, “How did we get here? The three phases of strategy development”; **R-198**, Nova Scotia Lands and Forestry, “Natural Resources Strategy – What happened during Phase 1? Citizen Engagement”; **R-199**, Nova Scotia Lands and Forestry, “Natural Resources Strategy – What happened during Phase 2? Sector/Technical Advice”; **R-200**, Nova Scotia Lands and Forestry, “Natural Resources Strategy – What happened during Phase 3? Strategy development”.

<sup>12</sup> **R-201**, Report of the Steering Panel Phase II, Natural Resource Strategy, “A Natural Balance: Working Toward Nova Scotia’s Natural Resources Strategy” (April 2010), pp. 22-23.

<sup>13</sup> **R-202**, Nova Scotia, “The Path We Share: A Natural Resources Strategy for Nova Scotia 2011-2020”, pp. 34-36.

maintained, and all areas and uses of the landscape are considered.<sup>14</sup> Key objectives included revising the way forest resources on provincial Crown land are allocated and managed; making changes to forest harvesting practices, and in particular reducing clearcutting to 50% of all harvests and establishing a harvest tracking system; establishing rules for whole-tree harvesting and incorporating these rules into the Code of Forest Practice.<sup>15</sup> Accompanying the release of the Natural Resources Strategy was a document entitled *From Strategy to Action*, which sets out 32 specific deadlines for implementation in the first 24 months of the 10-year strategy.<sup>16</sup>

12. Nova Scotia's particular geography presented a challenge to implementing the Natural Resources Strategy. Nova Scotia is the second smallest Canadian province in terms of area, and forests dominate over 75% of the landscape.<sup>17</sup> However, among the Canadian provinces, Nova Scotia also has one of the lowest percentage of Crown ownership of land – the vast majority is privately owned.<sup>18</sup> This hampered the GNS' ability to deal with land-related issues, including Mi'kmaq issues related to hunting, fishing and logging, as well as forestry management generally and other elements of habitat conservation.

13. As a result, an important initial step in implementing the Natural Resources Strategy under my directorship was to increase Crown ownership of land. The objective of this was twofold: the GNS could meet its 12% EGSPA target and the GNS could ensure that lands (and in turn access to wood supply on Crown land) were sustainably managed in line with its ecosystem-based forestry practice.

14. In order to meet the 12% goal of land protection under the EGSPA and further the Natural Resources Strategy, the DNR and the Department of Environment worked together to identify lands that could be acquired and ultimately protected as Crown lands. There were two programs through which this was done: the Large Land Purchase Program and the Forestry Transition

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<sup>14</sup> **R-203**, Nova Scotia Natural Resources, "Code of Forest Practice: A Framework for the Implementation of Sustainable Forest Management", Guidelines for Crown Land Working Paper FOR 2008-1, p. 3.

<sup>15</sup> **R-202**, Nova Scotia, "The Path We Share: A Natural Resources Strategy for Nova Scotia 2011-2020", pp.34-44.

<sup>16</sup> **R-204**, Nova Scotia, "From Strategy to Action: An Action Plan for The Path We Share: A Natural Resources Strategy for Nova Scotia", p. 3.

<sup>17</sup> **R-205**, Forest Nova Scotia, The Nature of our Business is Growing, "About," from a study from Gardner Pinfold Consultants (2016).

<sup>18</sup> **R-205**, Forest Nova Scotia, The Nature of our Business is Growing, "About," from a study from Gardner Pinfold Consultants (2016).

Land Acquisition Program. Under the former, the DNR had \$75 million to procure land to support departmental programs and priorities, including forestry, parks, wildlife, and the preservation of coastal and biodiversity values.<sup>19</sup> Under the Forestry Transition Land Acquisition program, companies operating in Nova Scotia had an opportunity to sell some of their land assets to the DNR at fair market value. The DNR had earmarked \$20 million to be spent over five years (from 2008-2013) for these land acquisitions.<sup>20</sup>

15. Another key consideration for the province in developing its Natural Resources Strategy was its relationship with the Mi'kmaq, including negotiations with respect to land use and access to land-based resources. The relationship between the GNS and the Mi'kmaq evolved steadily over the past two decades, with increasing formalization of their mutual commitments. In 2010, the GNS and thirteen Mi'kmaq First Nations signed an historic agreement that sets out a consultation process for the parties to follow when governments are making decisions that have the potential to adversely impact asserted Mi'kmaq aboriginal and treaty rights under Section 35 of the Canadian Constitution. As a result, Mi'kmaq title and treaty rights were a key consideration for the Province as it faced the potential closure of the Bowater Mersey and NPPH mills and faced questions on what to do with respect to the significant landholdings both of those entities possessed.

16. These considerations were front of mind in August and September 2011 when Resolute told the GNS that it was shutting the Bowater Mersey mill and when NewPage's Port Hawkesbury mill went into creditor protection.<sup>21</sup>

### **SECTORAL CONTEXT: IMPORTANCE OF BOWATER, NPPH AND NORTHERN PULP MILLS TO THE NOVA SCOTIA FOREST SECTOR**

17. The pulp and paper mills in Nova Scotia – which in 2010-2011, comprised of NPPH, Resolute/Bowater, and Northern Pulp – were inexorably tied to the commercial forestry system more broadly. Each mill was located in a different part of the Province with NPPH in the east, Resolute/Bowater in the west, and Northern Pulp in the center. This geographic spread meant

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<sup>19</sup> **R-206**, Nova Scotia Natural Resources, “March 2010 Land Purchase” (March 2010).

<sup>20</sup> **R-207**, Nova Scotia Natural Resources, “Forestry Transition Land Acquisition Program: Guidelines of Applicants” (April 2008), p. 1.

<sup>21</sup> **R-202**, Nova Scotia, “The Path We Share: A Natural Resources Strategy for Nova Scotia 2011-2020”, p. 9.

that the economic impact of each mill was likewise spread throughout the Province with the discrete supply chains supporting each mill affected by the economic health of the mills.

18. The forest sector is highly integrated. When trees are harvested, the highest value logs (called sawlogs) are sent to sawmills, where they are used for making lumber and other high-end wood products. After producing high-end wood products, sawmills often sell their by-products (such as wood chips) to pulp and paper mills, which is an important source of revenue for these sawmills. Lower-quality logs (called pulp logs) are sent directly to pulp and paper mills to be turned into pulp. This pulp is then used to make market pulp or paper products. As the forest sector is a highly integrated sector, if one of the sawmills or pulp and paper mills was to cease operations, it could affect the entire supply chain.

19. The three Nova Scotia pulp and paper mills were also responsible for significant employment in the province. In 2011, NPPH was directly employing 1,000 people (650 employees at the mill, and 350 employees of independent contractors in dedicated forestry operations) and hundreds more were employed supporting mill operations.<sup>22</sup> Resolute/Bowater and Northern Pulp were also significant employers in their parts of the Province.

20. These three mills were also among the largest landholders in the province, with the NPPH mill owning 50,000 acres of timberland and managing another 1.5 million acres of licensed Crown timberland at the time it went into creditor protection.<sup>23</sup> Resolute/Bowater privately held 550,000 acres, and in 2011 Northern Pulp held 500,000 acres of land. Annex A to this statement contains a map generated in 2009 by DNR and the Department of Environment demonstrating the freehold lands owned by the mills, as well as protected and unprotected Crown lands.

21. Within three weeks of the Province releasing its Natural Resources Strategy, two of the three mills in the province announced closures. On August 22, 2011 NPPH announced it was idling the Port Hawkesbury mill and then went into creditor protection on September 6, 2011.<sup>24</sup>

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<sup>22</sup> **R-024**, *Re NewPage Port Hawkesbury Corp.*, Affidavit of Tor E. Suther (Sep. 6, 2011) (SCNS), ¶ 45; **C-158**, p. CAN000087\_0002.

<sup>23</sup> **R-046**, *Re NewPage Port Hawkesbury Corp.*, Report of the Proposed Monitor (September 7, 2011) (SCNS), ¶ 10.

<sup>24</sup> **R-024**, *Re NewPage Port Hawkesbury Corp.*, Affidavit of Tor E. Suther (Sep. 6, 2011) (SCNS), ¶ 7-8, *Resolute Forest Products Inc. v. Government of Canada* (UNCITRAL) Canada's Counter-Memorial, 17 April 2019 ("Canada's Counter-Memorial"), ¶ 26.

A few days later, the GNS learned that Resolute intended to close its Bowater Mersey mill as well. In light of the impact that these two developments could have on the Province's Natural Resources Strategy, I was asked to participate in devising GNS' response.

### **GNS PURCHASES OF LAND FROM PULP AND PAPER MILLS**

22. Given that the three pulp and paper mills were some of the largest landholders in the province, the GNS sought to ensure that regardless of whether they remained operational, we could position ourselves to ensure that our Natural Resources Strategy would be advanced.

23. As I noted above, increasing the Province's landholding was an important part of our Natural Resources Strategy. We had already started land acquisitions from the mills in February 2010, when GNS bought 55,000 acres from Northern Pulp and had made other large land purchases from various forestry landholders.<sup>25</sup>

24. In December 2011, the GNS bought 25,000 acres of land for \$23.75 million from Bowater.<sup>26</sup> This was part of a larger financing deal to help Resolute keep its Bowater Mersey mill operating.<sup>27</sup>

25. Darrell Dexter, then-Premier of GNS, noted that this purchase served the dual goal of advancing Nova Scotia's forest strategy as well as providing financial assistance to Resolute:

There is a commitment to the province that was made by all of the Parties in this House to get to the 12 per cent protected threshold for land in Nova Scotia, to bring that into government ownership to ensure that we protect it for future generations.

As I understand it, we're somewhere in the 9.5 per cent range right now, 9.3, something like that, so we still have quite a way to go in terms of the acquisition of land to get us to the 12 per cent threshold. Some of the highest conservation value land in the province is owned by Bowater Mersey, which means that what we were able to do with this is to put in place an arrangement where we could pick up a sum of that very valuable property in

<sup>25</sup> **R-208**, Nova Scotia, DNR Land Purchases, 2006-2015.

<sup>26</sup> **R-149**, [REDACTED], pp. 4-5; **R-151**, *Bowater Mersey Pulp and Paper Investment (2011) Act*, SNS 2011, c. 32, s. 6(1); **R-210**, Nova Scotia Department of Natural Resources, "Legislation to Enact Pulp and Paper Mill Agreement Introduced" (Dec. 6, 2011); **R-211**, Nova Scotia House of Assembly Debates and Proceedings, No. 11-62 (Dec. 8, 2011) ("Hansard (Dec. 8, 2011)"), p. 5052.

<sup>27</sup> **R-149**, [REDACTED], p. 2; **R-151**, *Bowater Mersey Pulp and Paper Investment (2011) Act*, SNS 2011, c. 32, s. 3.



this process and benefit both the company, from a cash flow perspective, and the province, by getting some of the available high conservation value property.<sup>28</sup>

26. The agreement between the GNS and Bowater also gave the Province a five-year, [REDACTED] [REDACTED] to purchase an additional 50,000 acres of land from Bowater Mersey.<sup>29</sup> Premier Dexter explained that it was “the opportunity for [the GNS] to be able to purchase highly valuable property from Bowater should we decide to do so.”<sup>30</sup>

27. Unfortunately, Resolute decided in June 2012 to shut down its Bowater Mersey mill entirely. But in closing, the Province was able to acquire 555,000 acres of former Bowater lands to help offset the pension and environmental liabilities left by Resolute when it exited the province.<sup>31</sup> At that time, Bowater Mersey was the largest landowner of any forestry company in Nova Scotia, and their lands included important habitats such as the Mersey river ecosystem, a well-known salmon river.

28. In 2010, the GNS purchased 8,710 acres of land from NPPH for \$5 million.<sup>32</sup> When the company went into creditor protection in September 2011, there was a risk that NPPH may separately sell off all or part of its land to another private owner or a creditor of its parent company (such as a hedge fund) with no interest in advancing the GNS Natural Resources Strategy.<sup>33</sup> As a result, [REDACTED]

[REDACTED].<sup>34</sup> [REDACTED]

<sup>28</sup> **R-212**, Nova Scotia House of Assembly Debates and Proceedings, No. 11-64 (Dec. 12, 2011), p. 5221.

<sup>29</sup> **R-149**, [REDACTED], p. 5. **R-150**, Premier’s Office, “Province Acts to Protect Rural Jobs” (Dec. 2, 2011).

<sup>30</sup> **R-211**, Nova Scotia House of Assembly Debates and Proceedings, No. 11-62 (Dec. 8, 2011), p. 5014. See also **R-213**, Nova Scotia House of Assembly Debates and Proceedings, No. 11-60 (Dec. 6, 2011), p. 4880 (“What this does is it allows us an option to purchase what we know is high-quality, high-conservation-value land from Bowater.”).

<sup>31</sup> **R-214**, Nova Scotia Department of Lands and Forestry, “Bowater Land Purchase - Announced December 2012” (Dec. 10, 2012).

<sup>32</sup> **R-208**, Nova Scotia, DNR Land Purchases, 2006-2015.

<sup>33</sup> **R-215**, Nova Scotia Environment, Colin Stewart Forest Forum Final Report (Nov. 2009), pp. 27-28 (Crown acquisitions of industrial woodlands “can prevent additional strain on provincial wood supply by ensuring that those lands are not acquired by new owners who would stop investing in forest management. That trend, already common in New England, has emerged in Nova Scotia in recent years. It is important that the Province pursue the acquisition of key industrial timberlands quickly and vigorously. These are ‘once in a generation’ opportunities to secure large tracts of land for public benefit, including complementary objectives of protected areas and wood supply. Such opportunities are time-limited and may not reoccur, or be reduced to bits and pieces of what is currently available, and at a steeper price.”).

<sup>34</sup> **R-216**, [REDACTED]

██████████ the GNS executed the ██████████ in which the GNS acquired 51,500 acres of land for \$20 million from PHP.<sup>35</sup>

29. Resolute's Memorial does not include any of the context necessary to properly understand the policy imperatives connected with these land purchases. It is important to remember that at the time of these land purchases, the conservation elements of the Natural Resources Strategy were not mandatory for private landowners as they were not put into any law or regulation. In contrast with other provinces in Canada, Nova Scotia's forest lands are owned predominantly by private woodlot owners. While woodlot owners work with harvesters of timber to address silviculture obligations imposed by Nova Scotia's Forest Sustainability Regulations,<sup>36</sup> the regulations are limited in what they can achieve (for example, private parties often do not conduct the type of silviculture that the government considers appropriate for environmental and conservation outcomes). This is why it was important for the government to acquire land in order to properly advance its broader forest stewardship goals.

30. In summary, land purchases from Resolute and NewPage/PHP were part of a broader conservation and environmental policy whereby the companies received fair market value for their land assets and could use the proceeds for their ongoing operations while the GNS received property that it could use to advance its Natural Resources Strategy.

### **FOREST UTILIZATION LICENSE AGREEMENT**

31. Another hurdle for the GNS in implementing its Natural Resources Strategy was that much of the land in the province was governed by decades-old legislation and private agreements that gave the GNS little control over how Crown and private lands were managed. For example, the access to timber on Crown land by Northern Pulp was governed by the 1965 *Scott Maritimes Limited Agreement Act*,<sup>37</sup> and the Bowater Mersey lands were privately owned and controlled.

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<sup>35</sup> **R-208**, Nova Scotia, DNR Land Purchases, 2006-2015. *See also*, **C-209**, ██████████

<sup>36</sup> **R-217**, *Forest Sustainability Regulations*, RSNS 1989, c 179.

<sup>37</sup> **R-218**, *Scott Maritimes Limited Agreement (1965) Act*, RSNS 1989, c 415.

32. For decades, forestry management on the Port Hawkesbury mill lands had been governed by legacy legislation, the 1969 *Stora Forest Industries Limited Agreement Act (Stora Act)*.<sup>38</sup> The *Stora Act* was an area-based licensing agreement for the initial owner of the mill located at Port Hawkesbury to access timber on Crown lands. The Act provided for a 50-year term in which the GNS would allow the company to access the land and the company could use the timber for its operations. The *Stora Act* gave the owner of the Port Hawkesbury mill *de facto* control of Crown lands and greatly limited what the government was able to do on large parts of its own territory.<sup>39</sup>

33. With the NPPH going into creditor protection and trying to sell the Port Hawkesbury mill, there was an opportunity for the GNS to implement a revised licensing regime that reflected modern forestry practices and environmental policies. Accordingly, the *Stora Act* was repealed and the GNS signed a forest utilization license agreement (FULA) with PHP on September 27, 2012.<sup>40</sup> The objective of the FULA was to move away from legislated rights under the *Stora Act* to a modernized license and regulatory regime that provided flexibility for the GNS to tailor terms and conditions relating to forest management. For example, the following forestry-related aspects of the Natural Resources Strategy were incorporated into the FULA:

- Diversification of Wood Supply: PHP was required to purchase and consume a minimum of 200,000 GMT/year (effectively, 1/3 of its annual supply) of pulpwood groundwood per year from private suppliers.<sup>41</sup> The FULA places a cap on Crown supply and requires PHP to purchase and consume timber from private land. The rationale was to ensure that private wood supply – rather than Crown wood supply – was driving the timber

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<sup>38</sup> **R-219**, *Stora Forest Industries Limited Agreement Act*, RSNS 1989, c 446.

<sup>39</sup> For example, GNS faced a lack of opportunity to create other uses for the resources; an inability to allow other industries to harvest timber from Crown lands; difficulties getting consent and approval from the mill to issue a lease on the land for any other purpose; and any land used for other purposes had to be replaced in the licensed area with other unencumbered Crown land containing equal wood volume and growth rate.

<sup>40</sup> **R-219**, *Stora Forest Industries Limited Agreement Act*, RSNS 1989, c 446; **R-158**, Nova Scotia, Natural Resources, “Forestry Law Changes Meet Strategy Goal,” (May 9, 2012); **R-192**, [REDACTED]

<sup>41</sup> **R-192**, [REDACTED] ¶ 4.1.

market, which comported with the fundamental purpose of the Natural Resources Strategy;<sup>42</sup>

- Withdrawals from/Adjustments to Crown Lands Supplying Wood: This gives the GNS discretion to restrict or expand the boundaries of the lands that may be harvested by PHP.<sup>43</sup> This was to preserve policy flexibility for the GNS;
- Fuel Biomass Harvesting Limits: PHP could harvest biomass fuel to help supply its biomass project up to a maximum of 175,000 tonnes per year.<sup>44</sup> The rationale was to ensure that biomass could be harvested to further the GNS' renewable energy goals, but the amount of the harvest was capped to ensure sustainable management of forestry resources;
- Commitments vis-à-vis the Mi'kmaq: PHP affirmed that it would continue to respect the rights of the Mi'kmaq to continued access to Agreement lands, and to respect Mi'kmaq culturally important sites.<sup>45</sup> Community engagement with the Mi'kmaq and the general public in forestry management practices was a key component of Nova Scotia policy;
- Sustainability Certification: In order to have continued access to the lands, PHP was required to maintain its Forest Stewardship Council certification.<sup>46</sup> In the course of public consultations for Phase One of the Natural Resources Strategy, the GNS had pressure from environmental groups to ensure that mill operators had this certification, which ensures sustainable forest management practices throughout the supply chain.<sup>47</sup>

<sup>42</sup> R-202, Nova Scotia, "The Path We Share: A Natural Resources Strategy for Nova Scotia 2011-2020", p. 40.

<sup>43</sup> R-192, [REDACTED] ¶¶ 3.1(a), 10.1

<sup>44</sup> R-192, [REDACTED] ¶ 5.1.

<sup>45</sup> R-192, [REDACTED] ¶ 9.1.

<sup>46</sup> R-192, [REDACTED] ¶ 14.1. See R-221, Forest Stewardship Council Canada, "Who We Are".

<sup>47</sup> R-193, Natural Resources Citizen Engagement Committee, "Our Common Ground: The Future of Nova Scotia's Natural Resources", Final Report (March 2009), p. 40.

- Road Ownership and Access: Unlike the *Stora Act*, under the FULA all roads on PHP lands are property of the GNS to facilitate access for GNS employees, as well as to give the public access to the lands, another key element of the Natural Resources Strategy.<sup>48</sup>
- Silviculture Requirements: Under the FULA, PHP is responsible for conducting silviculture treatments on Crown lands in accordance with approved forest plans.<sup>49</sup> A key component of the Natural Resources Strategy was to review and redesign silviculture programs so that the value of the land would be increased, thereby increasing their potential to generate high-value jobs and other economic benefits.<sup>50</sup> The Province would deposit money at regular intervals into a fund that would be used to pay PHP’s silviculture claims.<sup>51</sup>

34. In summary, the FULA was a flexible modern licensing regime that replaced the outdated *Stora Act*. It is not a “benefit” to PWCC as Resolute suggests.<sup>52</sup> Rather, it is a comprehensive forest management license that protects the Province’s natural resources, benefits the Mi’kmaq, and imposes responsibilities on the licensee while allowing the company to access sufficient and sustainable fibre for its operations.

35. Resolute incorrectly states how the terms of the FULA work. The references in the definitions section of the FULA to \$3/cubic meter and \$0.60/cubic meter identify the “silviculture fee” applicable to primary forest products harvested under the FULA.<sup>53</sup> Those references reflect the *Forest Sustainability Regulations*, which state that all wood purchasers of a certain size must either pay this fee to an account held by the GNS, or undertake the silviculture

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<sup>48</sup> **R-193**, Natural Resources Citizen Engagement Committee, “Our Common Ground: The Future of Nova Scotia’s Natural Resources”, Final Report (March 2009), p. 39.

<sup>49</sup> **R-192**, [REDACTED] ¶ 15.1.

<sup>50</sup> **R-202**, Nova Scotia, “The Path We Share: A Natural Resources Strategy for Nova Scotia 2011-2020, pp. 41- 42.

<sup>51</sup> **R-192**, [REDACTED] ¶¶ 15.2, 15.6.

<sup>52</sup> Claimant’s Memorial on Merits and Damages, December 28, 2019 (“Claimant’s Memorial”), ¶¶ 219, 253.

<sup>53</sup> **R-192**, [REDACTED] “Silviculture Fee”.

activities themselves for timber harvested from private lands in amounts specified by the regulations based on the amount and type of wood harvested.<sup>54</sup>

36. Resolute ignores both the terms of the FULA itself, as well as the broader provincial legal framework. PHP pays for all stumpage harvested at the prices prescribed in the FULA. It also has an obligation to undertake specific, required silviculture activities – for which it incurs expenses separate and apart from stumpage fee expenses. These silviculture expenses are audited annually, and [REDACTED]

[REDACTED].<sup>55</sup>

37. I note that Resolute’s Memorial states that [REDACTED], and cites to Exhibit C-156.<sup>56</sup> [REDACTED].

### OUTREACH AGREEMENT

38. [REDACTED].<sup>57</sup> For example, the FULA requires that PHP receive Forest Stewardship Council certification in order to harvest timber from Crown land, which in turns severely restricts chemical herbicides and requires more expensive manual weeding. [REDACTED].<sup>58</sup>

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<sup>54</sup> R-217, *Forest Sustainability Regulations*, RSNS 1989, c 179.

<sup>55</sup> R-192, [REDACTED] ¶ 15.3.

<sup>56</sup> Claimant’s Memorial, ¶ 68, footnote 90.

<sup>57</sup> [REDACTED] See R-222, [REDACTED], p.1. R-223, Nova Scotia, Woodbridge Supply Scenarios: Clearcut Harvest Policy Analysis (May 9, 2011).

<sup>58</sup> C-206, [REDACTED], ¶¶ 5.1, 5.4, 5.5.

[REDACTED],<sup>59</sup> [REDACTED]  
[REDACTED].<sup>61</sup>

39. [REDACTED]  
[REDACTED]  
[REDACTED].<sup>62</sup> [REDACTED].

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I affirm that the foregoing is true and correct.

Dated: April 17, 2019



Julie Towers

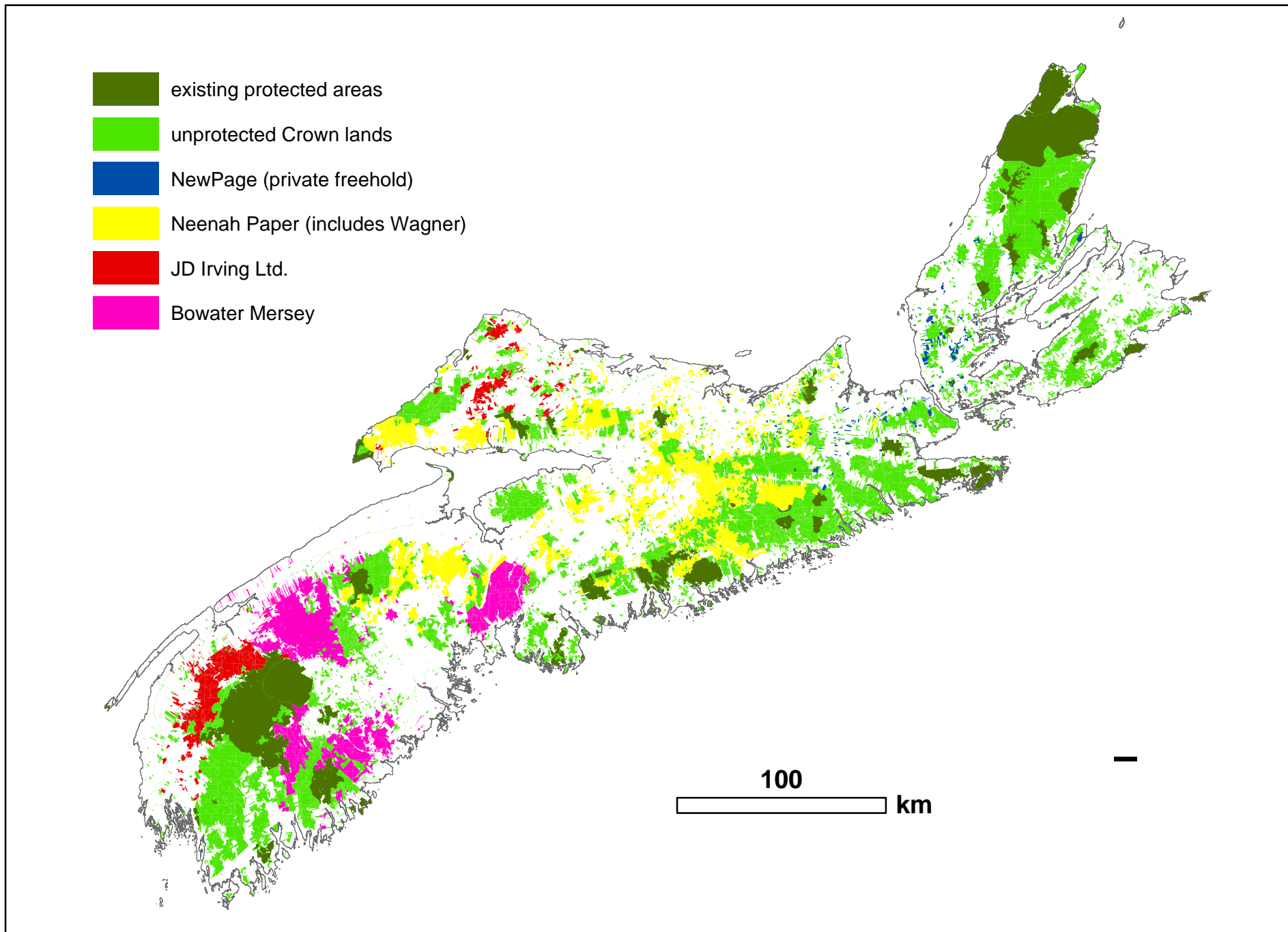
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<sup>59</sup> C-206, [REDACTED], ¶ 7.1.

<sup>60</sup> C-206, [REDACTED], ¶¶ 3.1-3.3.

<sup>61</sup> C-206, [REDACTED], ¶¶ 6.1-6.6.

<sup>62</sup> C-206, [REDACTED], ¶ 3.1.



(map from p.10 of [https://novascotia.ca/nse/protectedareas/docs/CSFF\\_finalreport\\_sign.pdf](https://novascotia.ca/nse/protectedareas/docs/CSFF_finalreport_sign.pdf))