

**IN THE ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH AMERICAN
FREE TRADE AGREEMENT (“NAFTA”) AND THE 1976 UNCITRAL ARBITRATION
RULES BETWEEN**

Resolute Forest Products,

Claimant/Investor,

-and-

Government of Canada,

Respondent/Party.

PCA Case No. 2016-13

WITNESS STATEMENT OF

M. RICHARD GARNEAU

1. I am Richard Garneau, former President and Chief Executive Officer of Resolute Forest Products (“Resolute”, formerly “Abitibi Bowater”) from 2011 to 2017. [REDACTED]
2. I make this witness statement in support of the Claimant’s Reply Memorial, knowing that it will be tendered into evidence.
3. Save where I explain otherwise, the facts and matters set out in this statement are based on my first-hand knowledge of the matters in question.
4. I have been asked to describe for this proceeding the events and conversations surrounding Resolute’s 2012 decision to close permanently all its Nova Scotia operations, in particular the newsprint joint venture with *The Washington Post*, referred to as “Bowater Mersey.” Also, I have been asked to describe Resolute’s decision not to bid for the New Page Port Hawkesbury mill. I further note my expectation that Nova Scotia’s investments in the Port Hawkesbury mill would cause a countervailing duty investigation by the United States.
5. This statement has been prepared with the assistance of counsel for the Claimant. I have reviewed the text and confirm that this statement accurately reflects my testimony.

Bowater Mersey

6. Resolute concluded, in the spring of 2011, that its Bowater Mersey newsprint operations were no longer financially feasible. Resolute advised the Government of Nova Scotia (“GNS”) in August of its intention to close on August 26, 2011, when I met with Duff Montgomerie and Paul Black of GNS. Bill Harvey, Resolute’s CFO at the time, was present with me.
7. During the meeting, I explained that operational costs – especially fibre, labour, and electricity – were too high for the Bowater Mersey mill to be competitive. The challenges the mill was facing in respect of costs had previously been shared with GNS, beginning in late 2010 or early 2011. At the August 26, 2011 meeting, Messrs. Montgomerie and Black answered by asking us to give the province time and opportunity to “see what it could do.” I agreed.
8. Although Resolute was losing money at the mill, we agreed to stay open while the province tried to address the three costs I had identified.
9. By the end of September 2011, Resolute senior management was convinced that the province had no serious plan to reduce costs at Bowater Mersey. [REDACTED]
[REDACTED]
[REDACTED] produced as C-119, [REDACTED]
[REDACTED] at RFP0011526. [REDACTED]
[REDACTED] A few months later, in December 2011 [REDACTED]
[REDACTED]
[REDACTED] are found at C-119, [REDACTED]
[REDACTED] at RFP0011529. The reason I held this belief was that a few months earlier, GNS had done nothing during NSUARB proceedings to meet Resolute’s and NewPage-Port Hawkesbury’s request for a lower electricity rate for Bowater Mersey.
10. Nonetheless, provincial officials pleaded for still more time and Resolute acquiesced.
11. We entered a written agreement with the province in December 2011 for a Pulp and Paper and Energy program and Financing (the “December Agreement”). The December Agreement is identified as Exhibit R-149 in the documentary record. The December Agreement held the possibility of continuing operations for five years. I remained skeptical that this deal, even with a new power rate and a new labour agreement, would yield the needed cost reductions.

12. Resolute senior management concluded quickly that the substance of the offer would not reverse the fortunes of the mill and in or around April 2012 we thanked the province but advised that we would close definitively. Resolute was unable to reduce the mill's costs enough, senior management did not foresee further meaningful cost reductions as possible, and the worldwide currency market fluctuations ensured that the Bowater Mersey mill could no longer compete with foreign producers in export markets outside North America.

Port Hawkesbury

13. At around the same time that management initially advised the province of Resolute's intention to close Bowater Mersey (in August 2011), the province, through a bankruptcy monitor, was trying to sell Port Hawkesbury as a going concern for newsprint and supercalendered paper.
14. [REDACTED] is reflected in C-109, Resolute at RFP0004989.
15. At the request of the province, Resolute senior management examined the possibility [REDACTED] of buying the Port Hawkesbury mill. [REDACTED] studied options, including closure of newsprint production and the continuation of only one machine, dedicated to producing supercalendered paper.
16. Resolute's senior management concluded that there was no commercial way to make the Port Hawkesbury facility financially viable. Although blessed with relatively new equipment of very high quality for the production of supercalendered paper, the mill was afflicted with many of the same problems as Bowater Mersey, including costly electricity, labour and fibre. Projected EBITDA indicated massive losses.
17. The Port Hawkesbury mill was very far away from markets, resulting in high transportation costs. We continued to produce high quality supercalendered paper in Québec for the North American market, managing costs to remain competitive. Resolute's senior management did not think Port Hawkesbury could return to the market as a competitive private enterprise.
18. 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 operator in North America, and then the province seems to have given PWCC everything it asked for. In my forty years of experience in the forestry industry, I've never seen anything like it. Based on our experience with the province asking Bowater Mersey not to close and looking for ways to make it viable, Resolute

management never imagined the kind of government intervention and assistance we now know Nova Scotia gave for Port Hawkesbury.

19. The Government of Nova Scotia never offered to Resolute assistance comparable to the assistance it gave to PWCC. In particular:
 - a. The Government of Nova Scotia did not offer assistance negotiating electricity rates with NSPI or assistance with obtaining NSUARB approval of such rates;
 - b. The Government of Nova Scotia did not make a statement in support of an electricity rate, hire a consultant, present an expert witness, introduce evidence, answer information requests, make representations to the NSUARB regarding Government action, or enact legislation to ensure passage of a Load Retention Rate;
 - c. 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.
20. Nor was comparable assistance, to the best of my knowledge, offered to NewPage, the preceding owner and operator of the mill. Based on my experience in the industry, I do not believe Port Hawkesbury could have become competitive in North America without the support, in scale and kind, given by the Government of Nova Scotia.

U.S. Countervailing Duty Action

21. Resolute produces softwood lumber as well as many paper products and market pulps (kraft and fluff). From our experience with exporting softwood lumber to the United States and the continual allegations of subsidies producing countervailing duties, we feared Nova Scotia's assistance to Port Hawkesbury could bring similar allegations from U.S. producers against supercalendered paper from all the producers in Canada. When we started learning more about what the province was doing for Port Hawkesbury, Resolute approached the Government of Canada with our concerns.
22. The Government of Canada seemed to pay no attention to our warnings that a countervailing duty action was likely to be filed against supercalendered paper from Canada and that it would impact all Canadian producers, not just Port Hawkesbury, because the trade law affects imports from countries, not individual producers.
23. All producers of supercalendered paper in Canada paid a high price for the support given Port Hawkesbury, in the form of a countervailing duty case brought by the United States just as we had predicted. Resolute would not have wanted assistance on such a scale as to bring about a case against all Canadian exports

to the United States and, in any event, no such assistance was ever offered to Resolute.

24. Resolute management concluded, [REDACTED]
[REDACTED]
[REDACTED] as reflected in C-119, [REDACTED]
[REDACTED], that but for the support from the Government of Nova Scotia, Port Hawkesbury would never have reopened as a producer of supercalendered paper because it could not have been financially sound and commercially competitive. But for the reopening, there never would have been a countervailing duty case brought against all Canadian producers of supercalendered paper, including Resolute, because government assistance would not have been a material factor in the sales prices at which any Canadian producers were selling supercalendered paper in the United States.

I affirm that the foregoing is true and correct.

December 6, 2019



Richard Garneau
[REDACTED], Québec, Canada