

PUBLIC VERSION

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE
NORTH AMERICA FREE TRADE AGREEMENT
AND THE 197 UNCITRAL ARBITRATION RULES**

BETWEEN:

RESOLUTION FORE T PRODUCTS INC.

Claimant

AND:

GOVERNMENT OF CANADA

Respondent

PACEN .2016-

REJOINDER WITNESS STATEMENT OF JULIE TOWE

March , 20

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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 reviewed the Claimant’s Reply Memorial filed on December 6, 2019, and I provide this statement to correct certain factual inaccuracies contained in the pleadings of the Claimant. I also elaborate on certain points addressed in my first witness statement dated April 17, 2019. The fact that I have not addressed Claimant’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.

RESOLUTE’S STATEMENTS REGARDING THE FULA AND THE OUTREACH AGREEMENT

2. At paragraphs 309-310 of its Reply Memorial, Resolute alleges that the GNS “procures nothing” under either the Forest Utilization License Agreement (“FULA”) or the Sustainable Forest Management and Outreach Program Agreement (“Outreach Agreement”). This is an incorrect statement.

3. As I explained in my first witness statement, the FULA is intended to contractually bind PHP to act in a manner consistent with the Province’s Natural Resources Strategy.¹ With respect to the timber it needs for its mill, PHP pays for all stumpage harvested from Crown lands at the prices and quantities prescribed in the FULA.² Separate from this, PHP has an obligation to undertake specific silviculture activities for which it incurs expenses. These silviculture expenses are audited annually, and reimbursement is capped at [REDACTED]³ In this regard, the Province compensates PHP for taking care of Crown lands. Without PHP or another licensee conducting those silviculture activities, it would fall to the Crown to pay contractors to do so. Entering into such agreements with licensees to perform silviculture activities is commonplace in Nova Scotia and it is to the advantage of the Province as most of the activities will yield benefits for decades after they have been performed. In this regard, silviculture activities do not confer any benefit to the licensee that performs them.

¹ Witness Statement of Julie Towers, 17 April 2019 (“Towers First Statement”), ¶ 33.

² Towers First Statement, ¶ 36. See R-192, [REDACTED], ¶¶ 4-5.

³ See R-192, [REDACTED] ¶ 15.3.

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4. The following provisions of the FULA are particularly important in understanding what the Province obtains through that agreement when it comes to silviculture activities:⁴

- Paragraph 2.3 specifies that “For the initial ten (10) years of this Agreement the PHP shall at all times conduct its Forestry Activities in compliance with the policies and guidelines relating to forestry practices issued by the Province and in place at the Commencement Date of this Agreement, a list of which are currently applicable is attached hereto as Schedule ‘A’ and forming part of this Agreement.” Thus, the GNS circumscribed PHP to conduct silviculture activities conforming to established policies that the GNS specified. Indeed, paragraph 2.8 of the FULA requires that PHP “receive approval from the Province” for its Forest Management Plans, meaning the Province would only authorize silviculture which had value for the Province.
- The silviculture obligations are further delineated in paragraphs 15.2, 15.3, and 15.4 of the FULA, which set out in detail the type of silviculture activities on the FULA lands for which the Province will compensate PHP. Stated differently, the Province would not agree to compensate PHP for silviculture activities that did not have value for the Province or that exceeded the number of treatments the Province deemed necessary.

5. With respect to the Outreach Agreement, I explained in my first witness statement that the

[REDACTED]

6. [REDACTED]

[REDACTED]

[REDACTED]⁶ This is no different than other agreements that the Province has with other Registered Buyers in Nova

⁴ My first witness statement contains a description of other forestry-related aspects of the Natural Strategy that were incorporated into the FULA. See Towers First Statement, ¶ 33.

⁵ Towers First Statement, ¶ 38, citing C-206, [REDACTED]

⁶ [REDACTED]

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Scotia that perform approved silviculture activities beyond what is required by the Province’s Forest Sustainability Regulations. Because nearly 75% of the forested lands in the Province are privately owned, the GNS has initiatives for private parties to conduct silviculture on private lands that would likely not be performed, either because of their cost or because they do not directly benefit the harvest of timber from those lands. The Province values such silviculture activities because they support the Natural Resources Strategy.

7. Resolute states that the [REDACTED] [REDACTED] and that these elements do not constitute procurement.⁷ However, all of the expenses that are reimbursed by the GNS under the Outreach Agreement (the “eligible costs”) are related to services provided to, and approved by, the GNS.

8. With respect to the few examples cited by Resolute, the relevant provisions of the Outreach Agreement are as follows:

- [REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁷ Claimant’s Reply, ¶ 310.

[REDACTED]

9. Resolute claims that “Canada has refused to produce documents itemizing how much money was attributable to each different cost category in the Outreach Agreement [...]”.⁸ I am aware that Canada has produced a number of quarterly reports and independent auditor’s reports in the context of this arbitration. These quarterly reports are prepared by PHP and provide to the GNS detailed work reports and expenses for nine categories of work, such as “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, and “[REDACTED]”. These categories of work correspond with the eligible work in the Outreach Agreement, discussed above. Personnel in my Department review these reports quarterly and authorize disbursements. At the end of each calendar year, PHP also submits an independent auditor’s report, which reviews the schedule of work performed and payments received under the Outreach Agreement.

RESOLUTE’S STATEMENT REGARDING THE LAND PURCHASE AGREEMENT

10. As explained in my first witness statement, as part of its Natural Resources Strategy, the GNS bought land from the three paper mills in the province (Bowater Mersey, Northern Pulp and NPPH) as well as from various forestry landholders.⁹

11. Resolute is incorrect when it states that the GNS “[...] previously agreed to purchase similar (if not the same land) from NewPage-Port Hawkesbury for [REDACTED].”¹⁰ The lands offered by NewPage-Port Hawkesbury were different parcels than those offered by PWCC. This can be explained by the fact that our team at the Department of Natural Resources identified more

⁸ Claimant’s Reply, ¶ 310.

⁹ Towers First Statement, ¶¶ 22-30 and R-208, Nova Scotia, DNR Land Purchases, 2006-2015 (2006-2015).

¹⁰ Claimant’s Reply, ¶ 183.

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favourable lands that the Province wanted to acquire to advance its Natural Resources Strategy, which were of higher value. The amount paid for the land was thus higher (\$20 million).

I affirm that the foregoing is true and correct.

Dated: March 4, 2020



Julie Towers