



Resolute Forest Products: A new script for corporate SLAPPs

Resolute Forest Products has aggressively used Strategic Lawsuits Against Public Participation (SLAPPs) to deter critics.

Problem Analysis

This case is an example of how corporations are increasingly attempting to use legal means to criminalise and shut down protest and advocacy groups defending environmental and human rights.

Canada's great northern forest is an ancient forest, shaped by forces of nature and stewarded by Indigenous Peoples since time immemorial. Also known as Canada's boreal forest, it has some of the last large expanses of undisturbed natural forest, is home to threatened species, and is one of the world's largest terrestrial stores of carbon. Resolute Forest Products, one of the largest logging companies in North America, is destroying key areas of this magnificent forest and has abandoned relevant sustainable forestry efforts. In the face of criticism and attempts to hold it accountable for its controversial environmental record, Resolute has used Strategic Lawsuits Against Public Participation (SLAPPs). SLAPPs are increasingly being recognised as a growing threat to advocacy groups.¹ This trend has been particularly pronounced in the United States and Canada, due to high legal fees and fewer procedural safeguards. A lack of applicable anti-SLAPP laws in some Canadian provinces and U.S. states gives corporations a greater ability to advance SLAPP tactics.

Company

Main company (and local subsidiary): Resolute Forest Products²

Head office: Montreal, Canada

Company background

President and CEO of company : Richard Garneau³ (total compensation 2016: US\$ 3,813,432. Of this total \$1,017,686 was received as a salary, \$1,804,600 was received as a bonus, \$0 was received in stock options, \$790,000 was awarded as stock and \$201,146 came from other types of compensation)⁴

Annual gross profit 2016: US\$ 829 million⁵

Annual turnover 2016: US\$ 3,545 million⁶

Presence: some 40 facilities in the United States and Canada⁷

Number of employees: 8,445 (2016)⁸

Company activity

Company activity: Logging and the production of pulp, newsprint, lumber, paper (end products) books, magazines, tissue papers, catalogues and flyers.

Country and location in which the violation occurred

United States

Canada, Boreal Forest

Summary of the case

In their criticism of Resolute, NGOs and journalists have cited independent third-party social and environmental audits from the Forest Stewardship Council (FSC)⁹ that recorded major non-conformities in regards to woodland caribou habitat protection, the maintenance of old-growth areas and high conservation value forests¹⁰, and disputes with Indigenous Peoples.¹¹

Resolute's approach to criticism has been to respond forcefully enough to deter any future attempts to hold the company to account. As part of its belligerent tactics, Resolute has used both public relations campaigns and legal intimidation to respond to critics. The company has used blogs and tweets to vilify organisations such as WWF¹², NRDC¹³, Canadian Parks and Wilderness Society¹⁴, the FSC certification system¹⁵ and media outlets like InsideClimate News.¹⁶ In 2013, Resolute filed a CA \$7 million lawsuit in Ontario against Greenpeace Canada and two staff members, for defamation and economic interference, in an attempt to shut down their advocacy work.^{17,18} In 2014, Resolute also filed a lawsuit against Rainforest Alliance, an independent auditor that was about to publish an audit that found some of the company's operations noncompliant with the leading forest certification scheme, the Forest Stewardship Council's (FSC), standards.¹⁹ One legal expert noted that,

rather than participate in a formal dispute resolution process set up within FSC, Resolute's "strategy appears to be ... to suppress these facts."²⁰ Resolute took out an injunction in court, sealing the audit and preventing it from being publicly released.²¹ Once again, Resolute's lawsuit was notable for naming an individual auditor as a defendant.

In August 2016, the Ontario Superior Court ruled that a portion Resolute's allegations against Greenpeace Canada in the ongoing 2013 defamation lawsuit were 'scandalous and vexatious' after Resolute tried to broaden the scope of inquiries into the 45-year history of the organization and its international campaigns.²² The same year, Resolute filed a CAD\$300 million defamation and racketeering lawsuit in Georgia, against Greenpeace International, Greenpeace U.S. entities, STAND.earth (formerly Forestethics), and five individual staff members from these organizations, calling Greenpeace a 'global fraud'. By claiming violations of the Racketeering Influenced and Corrupt Organizations Act (RICO), Resolute attempted to target the entire Greenpeace network by claiming it constituted the same "criminal enterprise". The company attempted to expand the scope of RICO, a law intended for use against the Mafia, by telling the court that 'RICO is to be read broadly' and 'liberally construed to effectuate its remedial purposes'.²³

Dismissing any meritless lawsuit can be very expensive and time consuming. In some jurisdictions, "anti-SLAPP" laws have been introduced to enable early dismissal of meritless claims and to provide a deterrent in the form of attorney fees and legal costs.²⁴ Resolute, however, filed its SLAPP lawsuits in states/provinces that at the time had not passed anti-SLAPP legislation (Ontario) or whose anti-SLAPP law was limited to statements to government bodies or related to official proceedings (Georgia).²⁵ When Ontario subsequently tried to pass an anti-SLAPP law similar to Quebec's, Resolute went to extraordinary lengths to lobby against the bill.^{26,27} Resolute's CEO, Richard Garneau, in an e-mail, appeared to admit that the Ontario government's proposed anti-SLAPP legislation passed as originally written, "would put [Resolute's case against Greenpeace Canada] in grave peril."²⁸

Endnotes

1 See, amongst others, for articles that put the lawsuits in the context of the wider SLAPP trend:

Katie Redford, "The New Corporate Playbook, Or What To Do When Environmentalists Stand In Your Way," Huffington Post, 29 June 2016 at http://www.huffingtonpost.com/katie-redford/the-new-corporate-playboo_b_10599544.html (accessed at 4-12-2017)

2 See Resolute Forest Products company website at <http://www.pfresolu.com/en/?langtype=4105> (accessed at 4-12-2017)

3 See Resolute Forest Products company website at http://www.pfresolu.com/About_Us/Executive_Team (accessed at 4-12-2017)

4 Salary.com at <https://www1.salary.com/Richard-Garneau-Salary-Bonus-Stock-Options-for-RESOLUTE-FOREST-PRODUCTS-INC.html> (accessed at 4-12-2017)

5 Annual Report 2016, p13 at http://www.resolutefp.com/Investors/Financial_Reports (accessed at 4-12-2017)

6 Ibid. p.13

7 Ibid. p.4

8 "Key Performance Indicators," Resolute Forest Products company website at http://www.resolutefp.com/Sustainability/Human_Resources/Key_Performance_Indicators (accessed at 4-12-2017)

9 The Forest Stewardship Council is an independent nonprofit organization established to promote the responsible management of the world's forests. The FSC is a voluntary, multi-stakeholder system, established more than 20 years ago, that certifies forestry operations according to key social and environmental criteria. In March 2017, there were over 1400 certifications in more than 80 countries. See "Forest Stewardship Council (2017): Facts and Figures" at <https://ic.fsc.org/en/facts-and-figures> (accessed at 4-12-2017)

To acquire and maintain FSC certification, companies must demonstrate on-the-ground compliance with FSC standards, which is monitored by independent bodies. Some of the key requirements that companies operating in the Canadian boreal forest must pay special attention to include: the rights of Indigenous Peoples, adequate protection for species at risk (such as Woodland Caribou and their habitat), conserving and/or enhancing High Conservation Value Forests (which now explicitly includes Intact Forest Landscapes), and maintaining old-growth forests in proportions comparable to natural levels. See "National Boreal Standard Accredited by FSC," Forest Stewardship Council Canada Working Group, 6 August 2004 at <https://ca.fsc.org/preview.national-boreal-standard.a-822.pdf> (accessed at 4-12-2017)

Failure to meet these requirements can lead auditors to issue major and minor non-conformances. Where the certificate holder fails or is unwilling to adjust operations within the timeframe set by the FSC and auditors, certificate suspensions and terminations will result. See "General requirements for FSC@ accredited certification bodies Revision Crosswalk," Forest Stewardship Council (FSC), 15 December 2015 at <https://ic.fsc.org/file-download.crosswalk-fsc-std-20-001-v4-0-en.a-563.pdf>

10 "Public Summary Report for Forest Management 2013 Annual Audit Report for Produits forestiers Résolu (Lac St-Jean)," Rainforest Alliance, 9 July 2013 at <https://info.fsc.org/details.php?id=a0240000083G9GAU&type=certificate>; "Public Summary Report for Forest Management 2013 Annual Audit Report for PF Résolu Canada Inc. (Mistassini-Péribonka)," Rainforest Alliance, 11 December 2013 at <https://info.fsc.org/details.php?id=a0240000005sRJGAA2&type=certificate>; "Public Summary Report for Forest Management 2013 Annual Audit Report for: Resolute FP Canada Inc. (Black Spruce & Dog River-Matawin Forests, ON, Canada)," Rainforest Alliance, 25 July 2013 at <https://info.fsc.org/details.php?id=a0240000007ThhUAAS&type=certificate>

11 "Public Summary Report for Forest Management 2013 Annual Audit Report for PF Résolu Canada Inc. (Mistassini-Péribonka)," Rainforest Alliance, 11 December 2013, p. 25 at <https://info.fsc.org/details.php?id=a0240000005sRJGAA2&type=certificate>; "Public Summary Report for Forest Management 2013 Annual Audit Report for: Resolute FP Canada Inc. (Black Spruce & Dog River-Matawin Forests, ON, Canada) Forest Management 2013 Annual Audit for Resolute FP (Caribou Forest, Ontario)," Rainforest Alliance, 25 July 2013, p. 22-23 at <https://info.fsc.org/details.php?id=a0240000007ThhUAAS&type=certificate>; "Public Summary Report for Forest Management 2013 Annual Audit Report for Produits forestiers Résolu (Lac St-Jean)," Rainforest Alliance, 9 July 2013, p. 13-14 at <https://info.fsc.org/details.php?id=a0240000083G9GAU&type=certificate>

12 "Resolute responds to WWF's press release calling for engagement with FSC," Resolute Forest Products, 18 December 2015 <http://blog.resolutefp.com/2015/12/resolute-responds-to-wwfs-press-release-calling-for-engagement-with-fsc> (accessed at 30-3-2017).

- 13 "Exposing Misinformation from NRDC," Resolute Forest Products, 4 November 2016 at <http://blog.resolutefp.com/2016/11/exposing-misinformation-from-nrdc> (accessed at 4-12-2017)
- 14 "Resolute Responds to a Flawed Report by CPAWS," Resolute Forest Products, 1 February 2016 at <http://blog.resolutefp.com/2016/02/resolute-responds-to-a-flawed-report-by-cpaws> (accessed at 4-12-2017)
- 15 "We continue to receive worrying messages about attempts from Resolute Forest Products to spread negative stories about FSC.," Kim Carstensen FSC Director General, in a letter to Richard Garneau, CEO of Resolute Forest Products. See: Kim Carstensen, "FSC Questions Resolute Forest Products' Good Faith," 27 November 2015 at <https://ca.fsc.org/en-ca/newsroom/id/498> (accessed at 30 March 2017)
- 16 "Questionable Journalism Methods at InsideClimate," Resolute at <http://www.resolutevgreenpeace.com/blog/2017/8/28/questionable-journalism-methods-at-insideclimate> (accessed at 4-12-2017)
- 17 Resolute v Greenpeace, Ontario Superior Court of Justice, Statement of Claim: http://www.greenpeace.org/canada/Global/canada/report/2016/10/Resolute_Statement_of_Claim_May_23-13.pdf
- 18 "Clearcutting Free Speech: How Resolute Forest Products is going to extremes to silence critics of its controversial logging practices," Greenpeace US, May 2017 at <http://www.greenpeace.org/usa/forests/boreal/clearcutting-free-speech> (accessed at 4-12-2017)
- 19 Resolute Forest Products v. Rainforest Alliance, Inc., et al. 2014
- 20 Paul Delean, "Resolute Forest alleges bias against Rainforest Alliance before release of negative audit," Montreal Gazette, 20 May 2014 at <http://montrealgazette.com/business/resolute-forest-alleges-bias-against-rainforest-alliance-before-release-of-negative-audit> (accessed at 30-03-2017)
- 21 "Statement on Resolute Forest Products," Rainforest Alliance, 21 May 2014 at <https://www.rainforest-alliance.org/statements/resolute-forest-products> (accessed at 4-12-2017)
- 22 Resolute Forest Products Inc. v Greenpeace, 2016 Ontario Superior Court of Justice (ONSC) 5398, Decision, 26 August 2016, at <http://www.greenpeace.org/canada/Global/canada/report/2016/10/DecisionCorbettJreDivCourtAppeal-ResoluteForestProductsvGreenpeace.pdf> (accessed at 4-12-2017)
- 23 Resolute Opposition Memorandum to Motion to Dismiss, p. 47 at http://www.greenpeace.org/canada/Global/canada/report/2016/10/Resolute_Opposition_Memorandum_on_MTD.pdf. (accessed at 4-12-2017)
- See also for an overview of the lawsuits, amongst others: Adria Vasil, "Greenpeace's battle royal over the boreal," Now Toronto, 31 May 2017, Only accessible through searching the title on Now Toronto's website <https://nowtoronto.com/news/ecoholic/battle/>; or through this link: <https://good-nonprofit.com/non-profit-organizations/greenpeace/greenpeaces-battle-royal-over-the-boreal/4075>
- 24 For more information on anti-SLAPP laws see the Reporters Committee website: <https://www.rcfp.org/browse-media-law-resources/digital-journalists-legal-guide/anti-slap-law-0> (accessed at 4-12-2017)
- 25 "Anti-SLAPP Law in Georgia," Digital Media Law Project at <http://www.dmlp.org/legal-guide/anti-slap-law-georgia> (accessed at 4-12-2017)
- 26 Sean Craig, "Wynne Waters Down own Bill, Benefiting own Libel Suit," Canada Land Show, 24 March 2015 at <http://www.canadalandshow.com/wynne-waters-down-own-bill-benefiting-own-libel-suit> (accessed at 4-12-2017)
- 27 Legal documents concerning the Resolute v Greenpeace RICO case (accessed at 4-12-2017):
- Ontario Superior Court of Justice, 20 August 2014, Statement of Defence of Defendants at http://www.greenpeace.org/canada/Global/canada/report/2016/10/Statement_of_Defence.pdf
 - United States District Court Southern District of Georgia, 31 May 2016, Complaint, p 59 at <http://www.kasowitz.com/files/Uploads/Documents/Resolute%20v%20Greenpeace%20Complaint.pdf>
 - United States District Court Southern District of Georgia, 22 November 2016, Plaintiff's response in opposition to defendants' motions to strike, dismiss, and transfer forum at http://www.greenpeace.org/canada/Global/canada/report/2016/10/Resolute_Opposition_Memorandum_on_MTD.pdf
 - United States District 16 May 2017, Court for the Southern District of Georgia, Order: The Court grants defendants' request to transfer this case to the Northern District of California at <http://www.greenpeace.org/canada/Global/canada/file/2017/06/ORDER-051617.pdf>
 - United States District Court the Northern District of California, 25 August 2017, Greenpeace Defendants' reply in support of supplemental brief in support of rule 12(B)(6) motion to dismiss and motion to strike at <http://www.greenpeace.org/canada/Global/canada/file/2017/09/20170825%20PACER%200162%20GP%20Defs%20Reply%20ISO%20of%20Supp%20Br%20ISO%20of%20MTD%20and%20Mtn%20to%20Strike.pdf>
- 28 "Resolute CEO admits anti-SLAPP legislation would put case against Greenpeace "in grave peril";" Greenpeace Canada, 20 September 2017 at <http://www.greenpeace.org/canada/en/Press-Center/2017/Resolute-CEO-admits-anti-SLAPP-legislation--would-put-case-against-Greenpeace-in-grave-peril> (accessed at 4-12-2017)
- 29 "Greenpeace Prevails Over Canadian Logging Company Resolute RICO Lawsuit Dismissed by Federal Court," NRDC, 16 October 2017 at <https://www.nrdc.org/media/2017/171016-0> (accessed at 4-12-2017)
- 30 Annalisa Ciampi, Special Rapporteur on the rights to freedom of peaceful assembly and of association, "Info note: Strategic Lawsuit Against Public Participation (SLAPPs) and freedom of peaceful assembly and of association rights," United Nations High Commissioner for Human Rights (OHCHR), undated at <http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx> (accessed at 4-12-2017)