CITATION: Resolute Forest Products Inc. v. Greenpeace, 2016 ONSC 5398
COURT FILE NO.: DC-15-009
DATE: 20160826

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	
RESOLUTE FOREST PRODUCTS INC., RESOLUTE FP US INC., FIBREK GENERAL PARTNERSHIP, FIBREK US INC., FIBREK INTERNATIONAL INC., and RESOLUTE FP CANADA INC.	*Arthur Hamilton and Colin Pendrith*, for the Plaintiffs/Respondents
Plaintiffs/Respondents	
- and -	
2471256 CANADA INC. dba GREENPEACE CANADA, RICHARD BROOKS and SHANE MOFFATT	*Jordan Goldblatt*, for the Defendants/ Appellants
Defendants/Appellants	

DECISION

D.L. Corbett J.:

[1] This is an appeal from a judge's decision on a pleadings motion.[1] The plaintiffs, affiliated paper companies (collectively "Resolute"), sue the defendants, Greenpeace Canada and two of its employees (collectively "Greenpeace"), over "activist" strategies employed by Greenpeace in respect to Resolute's alleged activities in Canada's boreal forests. Central to the claim are allegations that Greenpeace has been deliberately, persistently and aggressively untruthful in its characterization of Resolute's conduct, all for the purpose of coercing Resolute and its customers.

[2] Greenpeace, for its part, says that these proceedings are a so-called "SLAPP suit"[2] designed to hobble Greenpeace financially, not as a result of any judgment that may be obtained,

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[1] *Resolute Forest Products Inc.* v. *2471256 Canada Inc. dba Greenpeace Canada*, 2015 ONSC 3863 per F.B. Fitzpatrick J.; *Resolute Forest Products Inc.* v. *2471256 Canada Inc. dba Greenpeace Canada*, 2015 ONSC 2751, per F.B. Fitzpatrick J.
[2] "Strategic Litigation Against Public Participation".

but by the litigation process itself, and thus to deter Greenpeace and other public advocacy groups from pursuing their activities against well-financed opponents.

The Pleadings: Overview

[3] In the statement of claim, Resolute asserts claims of defamation, intentional interference with economic relations, and related claims. Resolute alleges that statements made about its conduct were not true, and that Greenpeace persisted in making these false claims after their falsity was brought to Greenpeace's attention and even after Greenpeace acknowledged that the claims were false.

[4] Greenpeace pleads defences of justification, fair comment, qualified privilege and responsible communication in respect to the allegedly defamatory words, and also pleads that the impugned words were published honestly, in good faith, and without malice.

[5] As part of the defence of qualified privilege, Greenpeace alleges that it had duties to investigate and publish its findings respecting Resolute's conduct in Canada's boreal forests. It pleads that this duty arises from Greenpeace's long history of environmental advocacy, a central mission of the network of advocacy groups that operate globally under the name "Greenpeace".

[6] In its reply, Resolute pleads that Greenpeace organizations around the world have systematically defied the law and acted illegitimately in pursuit of environmental goals. Resolute argues that these allegations respond to Greenpeace's allegations that it acted honestly and in good faith in accordance with duties it has to advance environmental advocacy.

[7] Resolute's reply specifically impugns the conduct of Greenpeace groups that are not parties to this proceeding, conduct by those groups that is not related to Canada's boreal forests or the words published about Resolute by Greenpeace in respect to these topics. These reply allegations appear to span the entire global Greenpeace movement over a period of decades.

[8] Greenpeace moved to strike those portions of the reply that make allegations respecting persons other than the parties to this proceeding, and events unrelated to Canada's boreal forests or Greenpeace's publications about Resolute. Resolute moved to amend its reply to add additional allegations, a request opposed by Greenpeace on the same basis that it sought to strike portions of the reply.

[9] The motions judge described the reply as "expansive" but concluded that there was a foundation for such sweeping allegations in reply, since Greenpeace had pleaded and relied on its membership in a global movement of Greenpeace organizations as an element of its pleading of good faith and absence of malice. On this basis the case management motions judge dismissed the motion. Greenpeace appeals this decision to this court with leave granted by H.M. Pierce J.[3]

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[3] *Resolute Forest Products Inc.* v. *2471256 Canada Inc. dba Greenpeace Canada*, 2015 ONSC 6043.

Summary and Disposition

[10] The motion judge erred in principle in permitting the impugned pleadings to stand. They expand the proceedings into an inquiry into the entire Greenpeace movement, and are not restricted to the conflict between Greenpeace Canada and Resolute. This cannot be justified on the basis of background, generally expansive pleadings, or the pleading that Greenpeace Canada has a duty that gives rise to qualified privilege attaching to statements it makes.

[11] For the reasons that follow the decision of the motions judge is set aside, the impugned portions of the reply are struck out, without leave to amend, and Resolute's motion to amend its reply is dismissed, all with costs to Greenpeace throughout.

1. Jurisdiction and Standard of Review

(a) Jurisdiction

[12] The order of the motions judge is interlocutory. An appeal lies to this court with leave.[4]

(b) Standard of Review

[13] The motions judge decided the motion pursuant to Rules 25.08 and 25.11.[5] There is considerable discretion on a pleadings motion under Rule 25.11. An appeal court should intervene only if the motions judge errs in principle, misapprehends or fails to take account of material evidence, or reaches an unreasonable conclusion.[6] Here, the motions judge is also the case management judge, and is entitled to deference on appeal in respect to his procedural orders.[7]

2. Applicable Rules of Civil Procedure

(a) Limited Requirement to Deliver a Reply

[14] Rule 25.08(3) provides that "[a] party shall not deliver a reply except where required to do so by subrule (1) or (2)." Rule 25.08(1) and (2) prescribe the circumstances in which a reply is required:

> (1) A party who intends to prove a version of the facts different from that pleaded in the opposite party's defence shall deliver a reply setting out the different version, unless it has already been pleaded in the claim.

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[4] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s.19(1)(b).
[5] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as am. (the "Rules").
[6] *Young* v. *Tyco International of Canada Ltd.* (2008), 92 O.R. (3d) 161 (C.A.), para. 27, per Laskin J.A. See also *Bercovitch* v. *Resnick*, 2011 ONSC 5082, para. 5.
[7] *Khan* v. *Metroland Printing, Publishing & Distributing Ltd.*, [2003] O.J. No. 4261 (Div. Ct.), para. 5.

(2) A party who intends to reply in response to a defence on any matter that might, if not specifically pleaded, take the opposite party by surprise or raise an issue that has not been raised by a previous pleading shall deliver a reply setting out that matter, subject to subrule 25.06(5) (inconsistent claims or new claims).

[15] Subrule 25.08(4) provides that a "party who does not deliver a reply within the prescribed time shall be deemed to deny the allegations of fact made in the defense of the opposite party."

(b) Striking All or Part of a Reply

[16] Rule 25.08 sets out what is permissible in a reply. The case law establishes that impermissible reply is scandalous or vexatious and/or an abuse of process. Thus a motion to strike is brought under Rule 25.11, which provides:

> The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or document,
>
> (a) may prejudice or delay the fair trial of the action;
>
> (b) is scandalous, frivolous or vexatious; or
>
> (c) is an abuse of the process of the court.

[17] The test for a motion to strike under Rule 25.11 is the same "plain and obvious" test as is used under Rule 21.[8]

3. Framing the Issues: Statement of Claim, Particulars and Statement of Defence

(a) Statement of Claim

(i) The Claim

[18] In the statement of claim, the plaintiffs seek $5 million in damages and $2 million in punitive, exemplary and aggravated damages, injunctive and related relief, all for defamation, malicious falsehood and intentional interference with economic relations.[9]

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[8] *Miguna* v. *Toronto Police Services Board*, 2008 ONCA 799. The motions judge relied on an earlier Superior Court of Justice decision stating that the test is "the same or higher" as the test under R.21: *Freeman-Malor* v. *Marsden*, [2005] O.J. No. 1730 (S.C.J.). In my view the language of this lower authority is a loose formulation of the correct test, and was understood by the motions judge to mean, and applied by the motions judge as "the same as".

[9] Statement of Claim, para. 1.

(ii) The Parties

[19] The plaintiff Resolute Forest Products Inc. is the parent company of the other plaintiffs (collectively, "Resolute"). Resolute is engaged in the forest products industry and carries on business in Canada (among other places).[10]

[20] The corporate defendant carries on business as "Greenpeace Canada". The individual defendants are employed by or are associated with Greenpeace, the defendant Brooks as its "Forest Campaign Coordinator" and the defendant Moffatt as a "Forest Campaigner".[11]

(iii) The Initial Allegedly Defamatory Publications

[21] Resolute alleges that, starting in early December 2012, Greenpeace published statements, images and videos on its web site which contained false and defamatory statements about Resolute.[12] Resolute pleads the specific words, images and videos complained of, all of which concern statements by Greenpeace that Resolute broke an environmental agreement (the "Canadian Boreal Forestry Agreement" or the "CBFA") by building logging roads in areas of boreal forest, including Quebec's Montagnes Blanches region, northern parts of the Saguenay Lac St-Jean region, and other locales in Quebec. Greenpeace is alleged to have published that "[w]hen the biggest logging company in the Boreal Forest goes back on its word to stay out of critical habitat, it signals the Agreement has broken down…"[13]

[22] Resolute pleads that Greenpeace's alleged publications meant and were understood to mean that Resolute is dishonest, cannot be trusted, has breached the Canadian Boreal Forest Agreement, has acted in bad faith, and has or will ignore its legal obligations.[14]

[23] Resolute alleges that it wrote to Greenpeace on December 12, 2012 and advised that the roads about which Greenpeace complained were:

(a) authorized by the Canadian Boreal Forestry Agreement;

(b) built by the Quebec Ministry of Natural Resources; or

(c) built by another forestry company.[15]

[24] Resolute alleges that Greenpeace did not retract its statements and instead republished them to, among others, customers of Resolute and signatories to the Canadian Boreal Forest Agreement.[16]

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[10] Statement of Claim, paras. 2-3.
[11] Statement of Claim, paras. 4-6.
[12] Statement of Claim, para. 7.
[13] Statement of Claim, paras. 8-15.
[14] Statement of Claim, para. 16.
[15] Statement of Claim, para. 20.

[25] Resolute alleges that Greenpeace broadened its campaign against Resolute in respect to the logging roads by initiating a petition published to the general public in support of which Greenpeace made a further publication of statements about Resolute similar to those complained of in the original publications.[17] Resolute further alleges that Greenpeace continued to publish statements to the same or similar effect in January 2013. Resolute pleads that the meaning of these subsequent publications was the same as the initial publications, and in addition meant and were understood to mean that Resolute was harvesting trees in the Broadback Valley Forest.[18]

(iv) The Retraction and Apology

[26] Resolute wrote again to Greenpeace in February 2013, correcting the allegedly defamatory publications and requesting redress. This time, Greenpeace responded substantively. It removed many of the impugned publications from the internet and on March 19, 2013, it published a retraction and apology on its website. Greenpeace published, among other things, the following statements:

> Greenpeace has learned that the above-mentioned statements are incorrect and has removed any reference to the statements from all its materials. Greenpeace sincerely regrets its error.
>
> Greenpeace has a 40 year history of campaigns based on the best available science and research and takes this issue very seriously.
>
> Greenpeace will continue to campaign for the protection of the Boreal Forest and advocate for solutions that benefit the forest, communities and workers.[19]

[27] Resolute then provided Greenpeace with a letter stating (among other things):

> In light of Greenpeace's retraction, Resolute agrees not to commence legal proceedings… in respect of the Allegations, provided the Allegations are not published or republished in any form whatsoever by Greenpeace from this point forward.[20]

(v) Subsequent Publication

[28] Resolute alleges that Greenpeace published an article on its web site in May 2013 that repeated the statements previously published and retracted by Greenpeace. The article describes Resolute as "one of the most destructive logging companies in Canada, responsible for

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[16] Statement of Claim, paras. 24-25.
[17] Statement of Claim, para. 27.
[18] Statement of Claim, paras. 26-34.
[19] Statement of Claim, paras. 35-37.
[20] Statement of Claim, para. 38.

destroying critical caribou habitat in endangered forest areas." It claims that Resolute "has been clearcutting, authorizing and building roads into previously intact wilderness for years…."[21]

[29] Resolute alleges that this article, in its natural and ordinary meaning, alleges that Resolute is harvesting in the Broadback Valley Forest in violation of a moratorium requested by the Cree. Resolute alleges that a moratorium was proposed by the Cree in 2009 and adopted by Resolute in 2010. Resolute alleges that it has "fully respected and supported the moratorium" since it was agreed in 2010, and that Greenpeace was "fully aware of these facts."

[30] Resolute alleges that Greenpeace published a report entitled "Resolute's False Promises: The [un]sustainability report 2013" on the internet and in print.[22] Resolute alleges that this report contains defamatory statements about it in four topical categories:

(a) allegations that Resolute is harvesting in the Broadback;

(b) allegations concerning Resolute's pensions programs;

(c) allegations concerning Resolute's "Align" family of paper products; and

(d) allegations concerning Resolute's use of recycled content in its products.[23]

[31] Each of these allegations is then particularized in the statement of claim.[24]

(vi) Alleged Publication to Resolute Shareholders and Customers

[32] Resolute alleges that Greenpeace:

(i) published the report to Resolute shareholders at Resolute's 2013 annual general meeting;[25]

(ii) published the report and other defamatory communications to Resolute customers "widely in Canada, the United States and Europe;[26] and

(iii) published the report and other defamatory publications to "Resolute's stakeholders" including signatories to the Canadian Boreal Forest Agreement.[27]

[33] Resolute alleges that Greenpeace has "secretly disseminated" the report and other defamatory statements to Resolute's customers and "in addition" has intentionally interfered

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[21] Statement of Claim, para. 41.
[22] Statement of Claim, para. 44.
[23] Statement of Claim, para. 45.
[24] Statement of Claim, paras. 46-72.
[25] Statement of Claim, paras. 73-74.
[26] Statement of Claim, paras. 77-78.
[27] Statement of Claim, para. 78.

with Resolute's economic interests "by threatening and intimidating Resolute's customers."[28] Resolute alleges that Greenpeace's "threats and intimidation" have been "surreptitious" and by the "unlawful means" of "threatening and intimidating Resolute's customers".[29]

(b) Resolute's Response to Greenpeace's Demand for Particulars

[34] Greenpeace served a demand for particulars in respect to the statement of claim. Greenpeace's final response to this demand for particulars is its "amended amended response to demand for particulars," which is deemed by the Rules of Civil Procedure to be part of the pleadings.[30]

[35] Paragraphs 17-18 of the amended amended response to demand for particulars state:

> … Greenpeace and its authorized agents are approaching Resolute's customers without notice to Resolute and directing those customers to the various materials particularized in the statement of claim. The defendants' threats and intimidation are not limited to the dissemination of the defamatory materials. The defendants' threats and intimidation constitute a distinct wrong that is actionable by Resolute's customers. In multiple instances, the defendants have approached and threatened Resolute's customers with reference to previous marketing campaigns conducted by the defendant Greenpeace and other ENGOs, in order to cause those customers to remove Resolute as a supplier in their supply chain. The precise nature and content of those threats and intimidation are known to the defendants, but not to Resolute. Full particulars will be provided following the completion of the examination for discovery of the defendants, and in advance of trial. The defendants' conduct is directed at Resolute's customers, who become the vehicle through which harm is caused to Resolute.
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> The defendants' conduct commenced in or around December 2012 and has continued unabated thereafter. This conduct is typified by recent letters to… Verson Paper Corp. and… to Flambeau River Papers…. In these letters and other similar correspondence, Greenpeace demands meetings with Resolute's customers in order to carry out threats and intimidate those customers. With reference to prior campaigns, Greenpeace and its agents… threaten and intimidate Resolute's customers by intimating that customers will be the target of various unlawful activity if they do not accede to Greenpeace's demands. The unlawful activity includes trespass, unlawful picketing, defamation and other unlawful activities engaged in by Greenpeace and other radical ENGOs in previous campaigns. The threatened conduct serves notice upon Resolute's customers that if they do not accede to the demands to remove Resolute from their supply chain, they will be the target of unlawful activity, which is intended to cause the customers harm. In conjunction

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[28] Statement of Claim, para. 80.
[29] Statement of Claim, para. 81.
[30] Rules 25.06, 25.10, 48.03(1)(e).

> with its threats and intimidation, Greenpeace and its agents continue to refer customers to various defamatory marketing materials to illustrate the damages that they can inflict on the customer if their demands are not met. In addition to the defamatory materials particularized in the statement of claim, Greenpeace and its agent[s] have directed customers to further defamatory materials....[31] As a result of Greenpeace's threats and intimidation, Resolute's customers have reduced or eliminated purchases of Resolute's forest products, causing economic and reputational harm to Resolute....

(c) Summary of Resolute's Claims

[36] Resolute's claims fall into two broad but linked categories:

(a) defamation claims about alleged publications made by Greenpeace about Resolute; and

(b) threats and intimidation alleged to have been made by Greenpeace to customers and others connected with Resolute.

[37] The defamation claims are largely in connection with Resolute's activities as a paper products company in Canada's boreal forests roughly in the past ten years. These claims are said to arise from a distinct series of publications commencing in October 2012 and continuing to the time of the amended amended response to demand for particulars in February 2014.

[38] The claims of threatening and intimidating customers are less particularized than the claims in defamation. They include referring customers to the impugned allegedly defamatory publications, demanding that the customers cease doing business with Resolute, and indicating that Greenpeace would engage in "illegal activities" against the customers if the demands were not met. The alleged threatened illegal actions are pleaded to include trespass, illegal picketing, defamation, and "other unlawful activities". Two particular communications were identified that are alleged to be part of the narrative leading to the alleged threats and intimidation: one to Verso Paper Corp., and the other to Flambeau River Papers, both allegedly sent in January 2014.[32]

[39] The pleadings in respect to these communications are ambiguous. They allege that Greenpeace demanded meetings with two Resolute customers. They allege that the purpose of these demands was to threaten or intimidate these customers. A reasonable reading of these allegations is that "threats and intimidation" were tactics Greenpeace intended to use at the meetings, not that the meetings took place and these tactics were used at those meetings. There are no particularized threats or acts of unlawful intimidation attributed to Greenpeace.

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[31] Twelve publications are then particularized over about 1.5 pages of the response.

[32] The precise content of these letters is not pleaded. It is alleged that the letters "demand meetings... in order to carry out threats and intimidate... customers" [Amended amended response to demand for particulars, para. 18].

(c) Statement of Defence

[40] Greenpeace pleads the following defences to the defamation claims:

(i) "fair comment based on true facts concerning important matters of public interest;"[33]

(ii) the impugned publications are not defamatory;[34]

(iii) the impugned publications were published in good faith and without malice;[35]

(iv) justification (the impugned words "are substantially true in substance and fact");[36]

(v) qualified privilege; and[37]

(vi) responsible communication.[38]

[41] Greenpeace pleads, in detail, its version of matters related to the Canadian Boreal Forest Agreement.[39] It acknowledges that it erroneously stated in 2012 that Resolute engaged in secret road-building contrary to the CBFA. It pleads that its retraction concerned activities in the Montagnes Blanches forest and that it has not repeated the allegations it made in error.[40]

[42] Greenpeace pleads, in detail, different meanings attributed to the phrase "Broadback Valley Forest" to make the allegation that Resolute is conflating meanings of this phrase in its statement of claim. The import of this pleading requires a detailed analysis of various impugned statements; in summary it is this: Greenpeace has not alleged that Resolute breached a moratorium that it agreed with the Cree, and Greenpeace's allegations about Resolute's conduct in the Broadback Valley do not imply otherwise.[41]

[43] Greenpeace denies that it did "threaten or intimidate Resolute… customers, investors, stakeholders, or anyone else, nor did it engage in any unlawful conduct in communicating with them….[42]

[44] Greenpeace alleges that its criticisms of Resolute "are consistent with those expressed by independent auditors and First Nations….[43] Greenpeace pleads particulars of these other criticisms from the Forest Stewardship Council[44] and First Nations.[45]

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[33] Statement of Defence, paras. 2, 22.
[34] Statement of Defence, para. 20.
[35] Statement of Defence, para. 20, 24-33.
[36] Statement of Defence, para. 20.
[37] Statement of Defence, paras. 34-35, 41.
[38] Statement of Defence, para. 36.
[39] Statement of Defence, paras. 39-48.
[40] Statement of Defence, paras. 43-48.
[41] Statement of Defence, paras. 57-58.
[42] Statement of Defence, para. 67.

[45] Finally, Greenpeace alleges that Resolute's claim "meets the classic profile of a SLAPP suit… because it lacks merit, and was commenced to suppress criticism of [Resolute's] conduct concerning matters of high public interest…."[46] Greenpeace pleads that this characterization "explains why" Resolute lobbied against legislation in Ontario designed to respond to SLAPP suits.[47] Greenpeace also pleads that Resolute has a "penchant for litigation to silence its critics" and alleges that this characterization also applies to a suit by Resolute against its rainforest auditor, Rainforest Alliance.[48]

[46] As reflected in this summary, the statement of defence, on its face, responds directly to Resolute's claims, and broadens the litigation in respect to the allegations that:

(i) other persons have made similar allegations to those made by Greenpeace in the impugned publications;

(ii) the entire lawsuit is a SLAPP suit;

(iii) Resolute has a pattern of using SLAPP suits to silence its critics.

[47] To this judicial reader, the topics itemized in the previous paragraph are not proper pleadings.[49] They are either not responsive to Resolute's claims (criticism of Resolute's litigation strategy), or are allegations of presumptively inadmissible similar fact evidence (what others have said about Resolute). However, Resolute has not moved to strike these portions of the statement of defence.

(e) The Impugned Reply

[48] As reflected in the general statements of legal principle set out at the outset of my analysis, the propriety of a reply is measured against the other pleadings in the case.

[49] The motion concerned the propriety of paragraphs 19, 20, 21, 22, 31, 32, 33 and 34 of the reply delivered by Resolute, and the propriety of a proposed new paragraph Resolute sought to add to its reply.[50]

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[43] Statement of Defence, para. 70.
[44] Statement of Defence, paras. 71-79.
[45] Statement of Defence, paras. 80-83.
[46] Statement of Defence, para. 84.
[47] Statement of Defence, paras. 84-89.
[48] Statement of Defence, paras. 90-92.
[49] It appears to me that most of the reply is susceptible to similar criticisms. However, the propriety of portions of the reply that were not challenged before the motions judge is not before this court and is not relevant to deciding the appeal.
[50] Reasons for Judgment, 2015 ONSC 3863 ("Reasons"), para. 1.

[50] Paragraphs 19-22 of the reply read as follows:

> 19. During its 40-year history, Greenpeace has learned that collaborative and constructive work with the private sector does not appeal to its donor base and does not produce donations to the same extent as radical actions and sensationalized distortions of events. Accordingly, Greenpeace, and its affiliate chapters across the world, have strategically decided to spread sensationalized misinformation and to engage in radical, often illegal, activity for the purpose of generating publicity and generating increased donations.
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> 20. There are numerous occasions on which Greenpeace and its affiliates have been caught or admitted to sensationalizing or misrepresenting the truth:
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> (a) In 1995, Greenpeace and its affiliates launched an international public relations campaign against Shell Oil, claiming the company was planning to dump over 5,500 tons of oil and toxic waste in the ocean by sinking its Brent Spar platform as an artificial reef. Months later, Greenpeace admitted its claim that Spar contained 5,500 tonnes of oil was inaccurate and apologized to Shell;
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> (b) In 2003, the executive director of Greenpeace USA explained that "There are many organizations out there that value credibility, but I want Greenpeace first and foremost to be a credible threat";
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> (c) In 2006, Greenpeace USA mistakenly issued a press release stating "In the twenty years since the Chernobyl tragedy, the world's worst nuclear accident, there have been nearly [FILL IN ALARMIST AND ARMAGEDDONIST FACTOID HERE]";
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> (d) In 2008, as part of a fundraising email, Greenpeace USA disseminated an inaccurate report based on selective facts and demonstrably inaccurate assertions about the Alaskan Pollock fishery. Despite claiming that the fishery was on the "verge of collapse", Greenpeace later admitted that the sustainability of fishing was actually unknown and that "there is still a great deal of information missing, which increases uncertainty for decision makers";
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> (e) In 2009, Gerald Leipold, former leader of Greenpeace International, admitted that recent claims by the organization that Arctic ice will disappear by 2030 was "a mistake", but defended the sensationalist claims by asserting that Greenpeace, as a pressure group, has "to emotionalize issues and we're not ashamed of emotionalizing issues";
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> (f) In 2011, as part of its campaign against Asia Pulp & Paper, Greenpeace claimed that "forensic testing shows that packaging used by leading toy brands regularly contains Indonesian rainforest fibre." The forensic company that conducted the testing revealed: "We have not, and are unable to identify country of origin of the samples. This type of assertion would need to be based on data outside our findings. Therefore we are unable to comment on the credibility of the statements Greenpeace has made regarding country of origin"; and

(g) In 2014, Greenpeace India made sensational statements concerning trace elements of pesticides in tea. These statements were rebutted by the Tea Board of India, which explained "to imply, by the sensational use of wording, that a mix of PPFs implies there is a synergetic effect of the residues of multiple PPFs... is contrary to the established science." Crop Care Federation of India has since filed a defamation lawsuit against Greenpeace. The status of the lawsuit is pending.

21. Greenpeace's strategy of eschewing collaboration and disseminating alarmist and sensational misinformation, has allowed it to grow into a significant brand for radical activity that, along with its international affiliates, generates over $300,000,000 in donations on an annual basis. According to Greenpeace Canada's most recent audited financial statements, the organization had total revenue of $11,494,934 in 2012, the majority of which is from donor contributions.

22. Further, Greenpeace's most recent audited financial statements indicate that in 2012, the organization spent more money on fundraising than on any one of its campaigns, including its "forests" campaign.

On their face, these allegations have nothing to do with the allegations of defamation and threatening Resolute customers in respect to Resolute's conduct in Canada's boreal forests, Resolute's conduct in respect to the pensions of its former employees, or the content of Resolute's paper products.

[51] Paragraphs 31-34 of the reply and proposed new paragraph 35 read as follows (under the heading "History of illegal and tortious conduct"):

31. In addition to spreading alarmist and sensational misinformation, Greenpeace's 40-year history of campaigns involves a litany of illegal and tortious conduct. In particular, over the past 15 years:

(a) In December 2001, a group of Greenpeace protesters penetrated the area inside the perimeter fence surrounding the Lucas Heights nuclear plant in Australia. These members of Greenpeace were arrested for trespass;

(b) In 2008, two Greenpeace Japan activists, dubbed the "Tokyo Two" were charged and ultimately convicted of theft and trespass;

(c) In July, 2008, Greenpeace protesters gained access to Syncrude's Aurora mine site in Alberta and attempted to block two pipes. The protesters were charged with trespass;

(d) In September 2009, Greenpeace protesters broke into Shell's Muskeg River mine site north of Fort McMurray, Alberta;

(e) In October 2009, Greenpeace protesters vandalized the French oil company Total SA's billboard in Edmonton;

(f) In November 2009, Greenpeace hosted and promoted an activists' boot camp at Evans Lake, British Columbia that provided civil disobedience training to protesters;

(g) In December 2009, 19 Greenpeace protesters were charged with mischief after scaling the Canadian Parliament buildings;

(h) In April 2010, the Greenpeace India "Climate Rescue" blog posted threats and advocated illegal activity;

(i) In August 2010, four Greenpeace protesters were arrested after rappelling down the Calgary Tower and hanging a banner protesting Alberta's oil sands;

(j) In September 2010, four protesters from Greenpeace USA, Germany, Poland and Finland were arrested after they boarded and halted drilling on a Cairn Energy oil exploration rig off the coast of Greenland. A Greenpeace spokesman stated "We take full responsibility for what we're doing. We certainly wouldn't expect to up anchor and high tail it out."

(k) In May 2011 Greenpeace International protesters again scaled an oil rig off Greenland to interfere with drilling. Two protesters, including Greenpeace International executive director Kumi Naidoo, were arrested;

(l) In Jul 2011, four Greenpeace Australia protesters scaled a fence at an experimental CSIRO farm in Ginninderra, Australia wearing full-body Hazmat protective clothing and destroyed an entire crop of genetically modified wheat;

(m) In September 2011, Greenpeace hosted a civil disobedience workshop in Vancouver, British Columbia teaching protesters to place U-locks around their necks to attach themselves to objects, erect blockades of linked human bodies and go limp when arrested;

(n) In December 2011, Kumi Naidoo, executive director of Greenpeace International, publically promoted civil disobedience at the UN climate conference in Durban, South Africa;

(o) In June 2012, Kumi Naidoo stated that Greenpeace was moving to a "war footing" after becoming dissatisfied with negotiations at the RIO+20 sustainable development conference. Naidoo proceeded to publically (sic) promote civil disobedience and stated that Greenpeace was willing to break an injunction served by Shell;

(p) In July 2012, Greenpeace U.K. protesters shut down 74 Shell stations in England and Scotland by using an emergency shut-off switch to stop the flow of petrol, and removing a fuse to delay the switch from being turned on. At least 24 protesters were arrested;

(q) In July 2012, an RCMP report was released stating "Criminal activity by Greenpeace activists typically consists of trespassing, mischief, and vandalism, and often requires a law enforcement response." The report further stated that "Tactics employed by activist groups are intended to intimidate and have the potential to escalate to violence."

(r) In May 2013, Kumi Naidoo blogged that "Civil disobedience and direct action are at the heart of what we do here at Greenpeace, part of our heritage and history, our destiny and mission."

(s) In September 2013, 28 Greenpeace protesters were arrested for piracy and hooliganism after boarding the Prirazlomnaya oil rig in the Arctic;

(t) In March 2014, 57 Greenpeace France protesters were arrested in France after using a truck to ram their way into the Fessenheim nuclear power plant;

(u) In March 2014, 9 Greenpeace USA protesters were arrested and face charges of burglary and vandalism for breaking into Proctor and Gamble's offices; and

(v) In March 2014, Greenpeace protesters scaled the Mount Royal Cross in Montreal, Quebec, draping banners disparaging Resolute.

32. Joanna Kerr, the recently appointed Executive Director of Greenpeace Canada, has made clear that she supports and subscribes to the view that Greenpeace break laws to achieve its goals. In June 2014, Ms Kerr stated "If the executive director of Greenpeace getting arrested in a certain place on a certain issue is going to help bring awareness and/or a certain level of urgency towards an issue, of course I would." Ms Kerr further stated "I have no fear of radicalism. If calling myself a radical helps the cause, go for it."

33. Greenpeace has and continues to use its history of illegal and tortious conduct to threaten and intimidate Resolute's customers. By referencing its history of campaigns, Greenpeace serves notice to Resolute's customers that. if they do not accede to Greenpeace's demands and remove Resolute as a supplier in their supply chain, they will be the victims of such illegal and tortious conduct.

34. Greenpeace's illegal and tortious conduct is used to generate donations as part of its fundraising campaigns. Through its conduct, Greenpeace attracts media attention that drives its fundraising efforts. As detailed in the statement of claim herein, Greenpeace's false allegations about Resolute are specifically designed to attract media attention and solicit donations.

35. As admitted in paragraph 1 of the statement of defence, "Greenpeace Canada was founded in Vancouver on September 15, 1971 and is now one of the national and international Greenpeace entities that constitute the world's largest independent environmental organization." When referencing its "40-year history" as part of its threats and intimidation of Resolute's customers, the defendant, Greenpeace Canada, references campaigns and tortious conduct undertaken both by itself and by affiliated

> Greenpeace offices (a term that Greenpeace itself uses to describe its organization). In doing so, the defendant, Greenpeace Canada, adopts, invokes and approves of actions and campaigns that were undertaken as part of the broader Greenpeace movement or under the Greenpeace banner or brand, whether or not those actions and campaigns were carried out by Greenpeace Canada itself.

On its face, these pleadings have almost nothing to do with the central allegations of the claims and defences. Two ties are suggested between these impugned pleadings and the issues in the case: Greenpeace has pleaded its "40-year history" and relationship with other Greenpeace organizations around the world, and Greenpeace is alleged to have relied upon a long history of misconduct in threatening and intimidating customers of Resolute.

Decision of the Motions Judge

[52] The motions judge summarized the issues in the case[51] and quoted relevant Rules of Civil Procedure.[52] The motions judge then set out the position of the parties on the motion.[53] The motions judge stated that Resolute defends the impugned portions of the reply on the basis that:

- Greenpeace pleaded its 40-year history and relationship with other Greenpeace organizations, thus putting that history and those relationships in issue (Statement of Defence, para. 1); and
- Greenpeace pleads that it acted in the public interest or out of a social or moral duty (Statement of Defence, paras. 3, 8, 9, 22(c), 23, 25, 35, 36, 37, 41, 68, 86 and 87).

Resolute argued that the impugned allegations in the reply are the "other side of the story" to these allegations by Greenpeace.[54]

[53] The motions judge found that "Greenpeace has clearly put in issue by its defence, its motivation, methodology, and justification for its actions and words by pleading at more than one place its "moral and social duty and public interest reasons" for doing what it did to Resolute."[55] The motions judge then found that "[i]t does not seem fair that Resolute should be restricted from testing those aspects of the defence despite the fact it may increase the parameters of the litigation."[56]

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[51] Decision, paras. 3-11.
[52] Decision, paras. 12-15.
[53] Decision, paras. 16-19.
[54] Decision, paras. 18-19.
[55] Decision, para. 22.
[56] Decision, para. 22.

[54] The motions judge recognized that this analysis could lead to a substantial expansion of the issues for litigation, but he concluded as follows:

> I agree that while the Reply appears at first blush to be expansive, it is necessarily so because of the manner Greenpeace has characterized its actions. While Greenpeace complains it will be required to lead evidence or respond to evidence in regard to seven other campaigns alleged to be sensational and twenty two other campaigns where tortious or illegal conduct is alleged, I expect proof of Greenpeace's allegation of its "moral or social duty" upon which it relies in its defence will require reference to particular matters that arise outside of the particular matters complained of by Resolute. This may require the entire litigation to take on a very broad area of inquiry. However, Greenpeace has pleaded its case in that particular fashion.[57]

[55] The motions judge then commented that he could not make findings about the extent to which the litigation would be widened because "[u]nfortunately, Greenpeace did not choose to file any evidence from which I could actually find that the scope of the litigation will be so unnecessarily widened that the matters in the Reply will actually prejudice or unfairly delay the trial."[58]

[56] The motions judge also found:

> The lack of any evidence on this motion also makes it difficult to accept a bald assertion that the entities referred to in the Reply are not actually parties to the action when Greenpeace refers to itself in paragraph 1 of the defence as "one of the national and international Greenpeace entities that constitute the world's largest environmental organization." "Organization" is used in the singular. A plain reading of the defence indicates that Greenpeace is made up of national and international entities that constitute one entity.[59]

From this logic the motions judge concludes that it is not plain and obvious that "Greenpeace USA", "Greenpeace India". "Greenpeace Australia", "Greenpeace International" are not one and the same entity as the defendant Greenpeace in the action. From this the motions judge concludes "I do not find that Greenpeace will be prejudiced by having to deal with the matters raised in the Impugned Paragraphs."

[57] The motions judge concluded that the impugned paragraphs are not "irrelevant, scandalous, frivolous or vexatious" because they are relevant to Greenpeace's allegations that it has "a moral and social duty" which is "a defence for their actions at issue in this matter" which,

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[57] Decision, para. 23.
[58] Decision, para. 24.
[59] Decision, para. 25.

in the motion judge's view, "can be tested in litigation by an opposing party who takes issue with this characterization."[60]

Errors in Principle in the Motions Judge's Decision

[58] The motions judge made the following errors in principle:

(a) Conflating background with issues in the case;

(b) Misapplying the test for qualified privilege in defamation law;

(c) Permitting Resolute to plead presumptively inadmissible similar fact evidence;

(d) Permitting Resolute to plead allegations in reply that should have been pleaded (if at all) in the statement of claim;

(e) Permitting Resolute to plead irrelevant allegations respecting Greenpeace's character;

(f) Failing to find that the impugned pleadings are prejudicial to the proportional resolution of Resolute's claims on their merits;

(g) Failing to balance the obvious prejudicial effect of the impugned pleadings with their potential probative value.

[59] In addition the motions judge made an overriding error in principle: he exercised his discretion in a manner inconsistent with the orderly and proportionate management of complex litigation. It does not require affidavit evidence from the defendants to conclude that adding two dozen factual issues, unrelated to the principal issues in the case, involving numerous ill-identified parties, many apparently outside Canada, would render the case unwieldy for both the parties and the court. The principle of proportionality in the Supreme Court of Canada's decision in *Hryniak* v. *Maulden* applies at all stages of litigation, and not just to motions for summary judgment.[61] This principle was not followed in this case.

(a) Greenpeace did not place the history of the Greenpeace movement in issue by pleading its membership in the international Greenpeace organization

[60] This case is about what Greenpeace published and then did starting in late 2012. The things Greenpeace said and did related to activities of Resolute in Canada's boreal forests in roughly the past ten years.

[61] Resolute is a forest products company. It has so pleaded and this pleading is relevant to the claims. Resolute, in pleading that it is a forest products company, has not thereby placed the entire history of forest products companies into issue. Nor has it placed its own entire history, or

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[60] Decision, para. 28.

[61] *Hryniak* v. *Maulden*, [2014[1 SCR 87.

even its entire environmental record as a forest products company, in issue. This case is about what Greenpeace published and then did starting in late 2012. The things Greenpeace said and did related to certain activities of Resolute in Canada's boreal forests in roughly the past ten years. That is what the case is about. The fact that Resolute is a forest products company is a relevant particular. It is not a foundation for an inquiry into everything Resolute has ever done that may affect the environment.

[62] Greenpeace is an environmental advocacy group. Resolute seems to take issue with this characterization in some places in its reply, suggesting that Greenpeace's *raison d'etre* is to raise money and not to advocate in respect to environmental or social causes in which it believes. The pleading is a *non sequitur*. It is not inconsistent for an environmental advocacy group to seek to raise funds for its operating costs and to support its campaigns. So the pleading that Greenpeace seeks to raise funds is not a theory of the case inconsistent with Greenpeace being an environmental advocacy group.

[63] Greenpeace is a Canadian company.[62] Greenpeace alleges that it is "one of the national and international entities that constitute the world's largest independent environmental organization." The words "entity" and "organization" are legally ambiguous, deprived of context. They do not have clear legal significance in the way that words like "person" and "corporation" have legally significant meanings. From the context, Greenpeace, a Canadian corporation, is an "entity". As an "entity" it is one of the constituent parts of the "world's largest, independent environmental organization". Neither party pleads the legal structure of this "organization" or of its other constituent parts. Although this pleading is somewhat imprecise about the legal relationships, it is simply background; if the ambiguity is of concern it could be explored briefly in oral examinations or be the subject of a demand for particulars. However, the case is not about the "international organization" or the relationship between the Canadian corporation and the "international organization". It is about what the Canadian corporation and two of its employees were alleged to have done, in Canada, to Resolute.

[64] The motions judge reasoned that since Greenpeace has pleaded and relied upon its relationship with the international organization, Resolute is entitled to test that allegation. I agree. If Resolute disputes that Greenpeace is one of the "entities" that "constitute" the international Greenpeace "organization", it is entitled to investigate and challenge that allegation. But it is not open to Resolute to investigate activities of other "entities" in the international Greenpeace organization in matters unrelated to Resolute on this basis. This is a pleading of background information. It identifies the parties. Aside from questions of whether the parties are properly identified, this pleading does not open the door for more, and certainly does not open the door to a broad-based inquiry into Greenpeace or the international "organization" of which it is a part.

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[62] This allegation is pleaded by both Resolute and Greenpeace: Statement of Claim, para. 4; Statement of Defence, para. 1.

(b) Greenpeace did not place its own history or that of the international Greenpeace organization in issue by pleading that it had a social or moral duty to publish the impugned publications

[65] Greenpeace pleaded that it enjoyed qualified privilege when it published the impugned publications. In so doing it pleaded that it had a "social or moral duty" to publish the impugned publications. This is a standard, and in this case a necessary, pleading of the defence of qualified privilege.[63]

[66] The rules of pleading in defamation cases are notoriously complex. As this court has noted, there are good reasons for this complexity: the law of defamation is technical and nuanced in order to balance the many competing interests at stake. Qualified privilege in the law of defamation has a precise test and a precise application of that test. As Professor Brown puts it in his textbook:

> The occasion of publication is privileged if the publisher has an interest or duty, legal, social, moral or personal, to publish the information in issue to the person to whom it is published, and the person to whom it is published has a corresponding interest or duty to receive it.[64]
>
> Qualified privilege attaches to the occasion upon which the communication is made, and not the communication itself or the person publishing it, because of the importance of the particular factual context as the justification for the privilege.[65]
>
> The decision whether an occasion of publication was privileged is made on an objective standard. The court seeks to determine whether the requisite duty or interest existed with reference to the 'perspective of ordinary intelligence and moral principles.[66]

[67] It is wrong to conclude, as the motions judge did, that in pleading qualified privilege on the basis of a "social or moral duty", Greenpeace has broadened the scope of the litigation to include inquiry into its own moral stature or that of the organization of which it is a constituent part or other entities within that organization.

[68] Resolute argues that Greenpeace, in its defence, pleads that it is "collaborative, benevolent, science-based, educative, and guided by the public interest." Greenpeace makes no such allegations. If it did, those allegations would be improper: Greenpeace's general character is not an element of any of its defences. It is true that Greenpeace quotes from pieces of

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[63] Necessary in that Greenpeace does not allege to have either a "personal" or a "legal" duty giving rise to qualified privilege.
[64] *Brown on Defamation*, 2nd ed., HDE-101.
[65] *Brown on Defamation*, 2nd ed., HDE-102.
[66] *Brown on Defamation*, 2nd ed., HDE-102.

evidence that say these things, but that does not make these quotations (pleaded for a different purpose) allegations of Greenpeace's moral character.

(c) Pleading Similar Fact Evidence is Improper

[69] Resolute alleges in the Reply that Greenpeace has a strategy of distorting the truth and "sensationalizing" the evidence in order to appeal to its donor base. There is not a single example pleaded of the defendant Greenpeace doing such a thing. As an allegation of past bad conduct, this is a pleading of presumptively inadmissible similar fact evidence. As an allegation of malice, it is so devoid of particularity as to be scandalous and vexatious.

(d) Pleading related to threats and intimidation is not proper reply

[70] Resolute developed this argument in some detail in oral argument. It submitted that Greenpeace's conduct in respect to Resolute's customers impliedly referenced the history of "illegal and tortious" conduct of the international Greenpeace organization and its constituent entities. This issue does not arise from the defence. Greenpeace has alleged, generally, that it did not make threats or intimidate Resolute customers. It did not plead over to specific allegations respecting the content of its communications with Resolute customers. Since it does not respond to something in the statement of defence, this is not proper reply.

(e) Pleadings Respecting Civil Disobedience Are Irrelevant

[71] Resolute pleads, in several places, that the international Greenpeace organization, its constituent entities, and the defendant Greenpeace, endorse and use civil disobedience in their advocacy efforts. Assuming this allegation to be true, it has nothing to do with whether Greenpeace published the impugned statements, whether the impugned statements are defamatory, and whether Greenpeace has a defence for publishing them. These pleadings seem to suggest that because Greenpeace has been, at times, prepared to break the law, it is somehow not entitled to the benefit of the law in this proceeding. If that is the thrust of these allegations then they are utterly without merit.

(f) The Motions Judge Erred In Failing to Balance Prejudice from the Impugned Pleadings Against the Probative Value of the Pleadings

[72] In my view this issue does not arise because the impugned pleadings ought to have been struck for being impermissible for the reasons I have given. However, there are two tenuous lines of argument that could lead to a conclusion that there could be a scintilla of probative value to some of the impugned allegations:

(a) If the impugned pleadings were in the statement of claim, rather than the reply, and in a properly particularized way alleged that Greenpeace referred to its past conduct and that of the international organization and its constituent entities, then some of the pleadings could conceivably have probative value;

(b) If the impugned pleadings were directed at the issue of malice (which they are not) then some of them could conceivably have probative value.

[73] The motions judge found that he could not find that the impugned pleadings would actually prejudice or unfairly delay the trial. As a result of this conclusion, the motions judge did not find it necessary to go on to balance prejudice against probative value, the essence of the test under subrule 25.11(a). Pepall J., as she then was, reviewed a similar situation in a case involving alleged fraud against an investment dealer. One of the allegations was that the allegedly fraudulent employee was not supervised properly by its employer. The plaintiff pleaded other frauds committed by the employee to show a pattern of neglectful supervision by the employer. The allegations about fraud against others were not technically irrelevant, but Pepall J. nonetheless struck them on the basis that the allegations would "greatly expand the breadth, complexity and expense of the litigation in circumstances where corresponding probative value is minimal."[67]

[74] Pepall J. specifically invoked principles of proportionality in exercising her discretion under s.25.11(a):

> Significantly, in my view, rule 1.04(1.1) must also be considered. It provides that "In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved in the proceeding.
>
> ...
>
> I have no hesitation in concluding that on a rule 25.11 motion, the principle of proportionality should inform the balancing of the added complexity and potential prejudice against the potential probative value of the alleged facts.... The language of rule 1.04(1.1) is clear as to the court's obligation in this regard and its language is not limited in any way. In addition, in my view, it is unnecessarily cumbersome, inefficient and expensive to leave the issue of proportionality to the discovery phase of the litigation as submitted by counsel for the plaintiff.

I agree with these statements and they apply with full force to this case.

[75] Pepall J. also found that that evidence is not required to establish prejudice and delay:

> Examination of other customers' accounts and the massive fraud issues would be a distraction from the main issues in the litigation.... These are the issues truly engaged by this litigation and narrowing the scope serves all of the parties' interests in obtaining a timely resolution to their dispute. As to evidence of increased complexity and prejudicial effect, it is obvious to me that the scope of the litigation would be expanded greatly were the pleading to stand and evidence of that fact is unnecessary.

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[67] *Javitz* v. *BMO Nesbitt Burns Inc.*, 2011 ONSC 1332, para. 25. See also *Brodie* v. *Thomson Kernaghan & Co.*, [2002] O.J. No. 1850, para. 33.

[76] With respect, it is just as obvious in this case that the impugned pleadings will greatly expand the scope of the proceeding. The motions judge said as much himself in his reasons. And, indeed, this is self-evident on the face of the impugned pleading. I list only ten examples of the more than thirty apparent on the face of the pleading (and there could well be a great many more on the basis of the generalized allegations in the impugned reply): documentary discovery and oral examinations for discovery would be required for the following allegations (none of which relate to the defendant Greenpeace and its dealings with Resolute):

(1) July 2011: 4 protesters from Greenpeace Australia scaling a fence at an experimental farm in Australia and destroying an entire crop of genetically modified wheat;

(2) July 2012: Greenpeace UK protesters shut down 74 Shell gas stations in England and Scotland;

(3) September 2010: four protesters (from Greenpeace USA, Germany, Poland and Finland) boarded and halted drilling on an oil rig off the coast of Greenland;

(4) December 2001: Greenpeace Australia protesters penetrated the perimeter fence at a nuclear plant in Australia;

(5) September 2009: Greenpeace protestors broke into Shell's Muskeg River mine in Fort McMurray, Alberta;

(6) September 2008: two Greenpeace Japan activists were charged and later convicted of theft and trespass (particulars of their crimes are not pleaded);

(7) July 2008: Greenpeace protesters gained access to Syncrude's Aurora mine site in Alberta and attempted to block two pipes;

(8) March 2014: 57 Greenpeace activists were arrested for ramming a truck into the premises of a nuclear power plant in Europe;

(9) September 2013: 28 Greenpeace protesters were arrested for boarding an oil rig in the Arctic;

(10) In 2014, Greenpeace India made "sensational statements" about pesticides in tea.

[77] None of these allegations is related to Resolute's activities in Canada's boreal forests. Each would serve to expand greatly the scope of this litigation.

[78] It is plain and obvious that the impugned pleading would greatly expand the scope of the litigation and transform the trial into an inquiry into Greenpeace rather than into the allegations of defamation, threats and intimidation that lie at the heart of the claim. The motions judge erred in failing to so conclude, and erred in finding that he needed evidence in order to do so.

[79] In addition, it is plain and obvious that the prejudicial effect and delay that will arise if the impugned pleadings are permitted to stand would grossly outweigh the probative value in respect to the "issues truly engaged by this litigation".

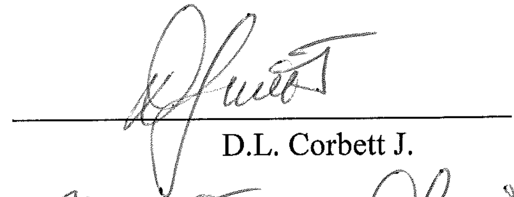
Subordinate Issue: The Proper Scope of the Appeal

[80] Resolute argued that Greenpeace only appealed the dismissal of its motion, and did not appeal the decision permitting Greenpeace to amend its reply. It argued that as a result the propriety of Resolute's amendment is not before this court. I do not agree. It is clear from the notice of appeal that Greenpeace challenges the entirety of the motions judge's pleadings decision. If it had been thought necessary, I would have permitted Resolute to amend its notice of appeal to address this argument.

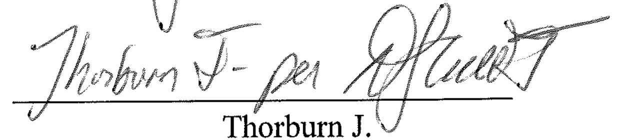
[81] The issues on Greenpeace's motion to strike and Resolute's motion to amend were based on the same legal principles and the same factual matrix. Resolute argued fully the merits of the entire appeal and clearly was not prejudiced by the form of the notice of appeal.

Conclusion and Order

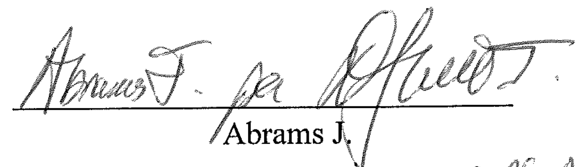
[82] The appeal is allowed. The decision of the motions judge is set aside. In its place we order that the impugned portions of the reply be struck and that the proposed amendment to the reply not be permitted. Greenpeace shall have its costs of the motion and the appeal to be agreed between the parties by October 7, 2016, failing which Greenpeace shall deliver brief written costs submissions by October 14, 2016 and Resolute shall deliver brief written responding costs submissions by October 28, 2016. There shall be no reply costs submissions unless we subsequently direct otherwise.



D.L. Corbett J.



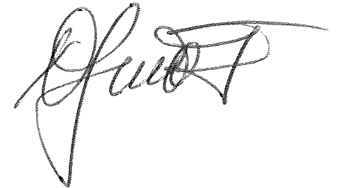
Thorburn J.



Abrams J.

I have authority to sign on behalf of Thorburn and Abrams JJ.

Released: August 26, 2016



CITATION: Resolute Forest Products Inc. v. Greenpeace, 2016 ONSC 5398
COURT FILE NO.: DC-15-009
DATE: 20160826

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. Corbett, Thorburn and Abrams JJ.

BETWEEN:

RESOLUTE FOREST PRODUCTS INC., et al.

Plaintiffs/Respondents

- and -

GREENPEACE CANADA, et al.

Defendants/Appellants

DECISION

D.L. Corbett J.

Released: August 26, 2016