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Speak No Evil: Defamation and Unlawful Interference with Economic Relations

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The tort of unlawful interference with economic relations is surprisingly slippery, especially when pleaded alongside defamation. Earlier this year, the Supreme Court of Canada in *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12 referred to the tort's scope as "unsettled" before departing from several recent appellate decisions on the topic. In *Resolute Forest Products Inc. et al. v. 2471256 Canada Inc.*, 2014 ONSC 3996 the Divisional Court grappled with these developments and discussed the tort's relationship with a concurrent pleading of defamation in Ontario.

The tort of unlawful interference requires:

1. An intent to injure and cause loss to the Plaintiff;
2. Interference with the Plaintiff's business or livelihood by illegal or unlawful means;
3. That the unlawful means were directed at a third party who has an actionable claim or an actionable claim but for the absence of having suffered a loss; and
4. That the Plaintiff suffered economic loss as a result of the unlawful means.

In *Resolute Forest*, a pulp and paper manufacturer alleged that the Defendant (doing business as Greenpeace) had secretly and maliciously targeted Resolute's customers and defamed the company. The alleged defamation included the dissemination of a report that was critical of Resolute's business practices.

Greenpeace sought to strike Resolute's pleading, in part, because defamation was the only "unlawful means" articulated in the statement of claim. That conduct was not actionable by a third party, and therefore could not satisfy the test for unlawful interference. The Ontario Court of Appeal had previously found that defamation cannot constitute "unlawful means" for the purposes of unlawful interference.

Prior to the Divisional Court hearing, Resolute amended its

pleading to claim that Greenpeace had "(h)arassed, intimidated and otherwise exerted pressure on Resolute's customers and investors as a means of damaging Resolute." In essence, Resolute added an additional cause of action (the tort of intimidation) that arose from the same facts as the defamation.

The Divisional Court found that the revised pleading described conduct that would be actionable by a third party, and which therefore satisfied the unlawful interference test. This is notable because it clarifies that defamation can ground a claim of unlawful interference, but only if it is part of a larger course of unlawful conduct—i.e. intimidation, extortion—that is aimed at a third party. If it is not, an essential element of the unlawful interference tort is missing and the claim should fail.