

**FEDERAL COURT
ACTION IN REM AGAINST THE S/V "AÇOR"
AND IN PERSONAM AGAINST
THE OWNER OF THE S/V "AÇOR"**

BETWEEN:

CAMPBELL RIVER HARBOUR AUTHORITY (CRHA)
PLAINTIFF/DEFENDANT BY COUNTERCLAIM

AND:

THE OWNERS AND ALL OTHERS INTERESTED
IN THE S/V "AÇOR", Captain E. G. da COSTA DUARTE
DEFENDANTS

AND:

CAPT. E. G. da COSTA DUARTE
PLAINTIFF BY COUNTERCLAIM

**DEFENDANT’S MEMORANDUM OF FACT AND LAW
IN RESPONSE TO PLAINTIFF’S MOTIONS OF JUNE 8, 2010**

The defendant relies on Federal Court Rule 365 (2) (d), specifically to Rule 366; **“for the determination of a question of law”**, and, Rule 70 governing the makeup of a Memorandum of fact and law. The Defendant further relies on Federal Court Rule 369 (2) and requests for oral hearing. The reasons follow;

- a) The determination of Federal Court Jurisdiction is a large topic together with confusing case law available. The Defendant fails to ascertain concretely the Jurisdiction of the Federal Court when the Canada Corporations Act, the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations contradict Federal Court Jurisdiction as applied to Federal Court File T-1003-10 and Admiralty Law.
- b) The presence of Criminal evidence supporting misappropriation of CRHA funds by the CRHA Board of Directors and CRHA Staff.
- c) The clear indications that Federal Court File T-1003-10 was purposely initiated to intimidate the Defendant; to seize and desist the ongoing counterclaim and criminal prosecution before the Provincial Courts.
- d) The failure of the Federal Court to admit that the CRHA facility is a Public Harbour, governed by the Fishing and Recreational Harbours Act, adding to the Defendant’s state of confusion.

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PART I – FACTS

Overview

1. Sometime, early May 2008, prior to the Defendant's arrival onboard his vessel, at the Campbell River Harbour (CRHA) facility, Mr. Arthur Beaulieu, owner of Pacific Cachalot Towing, advised Linda Franz, CRHA Manager that the Defendant was a live-a-board and requested berthage at the CRHA facility. No indication that tug work was involved or any other employment related task.
 - a) As per several interviews with Mr. Arthur Beaulieu, he confirmed that Linda Franz, CRHA Manager, permitted the Defendant's live-a-board status upon his arrival on the CRHA facility.
2. On May 16, 2008 the Defendant arrived on the CRHA facility.
3. On May 17, 2008 the Defendant made his first CRHA Moorage Payment; May - June \$ 186.73. The said payment was given to Dave Ostler, Assistant Harbour Attendant, following a confirmation that Linda Franz permitted the Defendant's live-a-board status. The Defendant obtained a receipt from Dave Ostler, showing the above-mentioned amount. A copy of the receipt was sent to the Plaintiff, as per the Defendant's AFFIDAVIT OF DOCUMENTS, Schedule 1, item 18.
4. On May 28, 2008 the Defendant signed the CRHA Berthage Agreement, following a brief conversation with Linda Franz, CRHA facility Manager, requesting an explanation for the live-a-board clause; CRHA Berthage Agreement, Appendix A, paragraph 4 (e). Linda Franz recommended that the Defendant initial the said paragraph and not worry about it, the statement was to deter undesirables. The Defendant initialled the live-a-board clause given his subsequent departure from the CRHA facility. See (TAB 11) Defendant's Berthage Agreement.
5. On June 1, 2008, the defendant departed from the CRHA facility.
6. On August 16, 2008 the Defendant returned to the CRHA facility and made his second CRHA Moorage Payment; 2008/2009 yearly payment \$1,149.12. The payment was based on a decision to return to the CRHA facility as the most convenient to store the Defendant's vessel and use the said vessel as a live-a-board while the Defendant was in Campbell River.
7. The registered length of the defendant's vessel, as per the vessel's ownership certificate, was shown to Dave Ostler, Assistant Harbour Attendant, after he stated that vessel payments originated from registered length similar to commercial fishing vessels. No indication was given to the Defendant that overall length was used, as per payment acceptance by Dave Ostler.
8. The Defendant's vessel length was established to be thirty eight feet (38') as per the registered length on the vessel's registry certificate. Dave Ostler accepted the Defendant's annual payment based on thirty eight feet as per the previous payment of \$186.73.
9. Soon after, Phyllis Titus complained that the Defendant cheated the CRHA and that pleasure boats were measured according to overall length, different from fishing vessels that were measured by registered length.
10. The Defendant complained about this abusive accusation to Linda Franz, CRHA Manager and was told that the payment stood, with no need to pay the difference. But, the following year the Defendant would pay per overall length. Unfortunately, the Defendant was not made aware of the involvement of Mr. Art Beaulieu until June 2010. Details follow;
 - a) Soon after June 15, 2010 the Defendant was served with an affidavit of Phyllis Titus attached to the Statement of Claim for Federal Court File T-1003-10. Paragraph 15 states the following, see (TAB 14) Affidavit of Phyllis Titus;

- b) **15. On 6 November 2008, the CRHA wrote to Mr. Duarte advising him of the recalculation and advising that there was a shortfall in his annual berthage payment of \$181.44. Mr. Duarte disputed that amount and refused to pay it. The amount was subsequently paid on Mr. Duarte's behalf by Art Beaulieu, the owner of a local tug boat company for whom, I believe, Mr. Duarte may have been doing some work. Now produced and shown to me and marked as Exhibit "F" to this my Affidavit is a copy of the CRHA letter of 6 November 2008 to Mr. Duarte.**
- c) Until receipt of the above-stated affidavit of Phyllis Titus, the Defendant was not aware that Mr. Art Beaulieu, owner of Pacific Cachalot Limited, paid \$181.44 dollars on behalf of the Defendant. The additional information adds to the numerous incompetent attitudes of the CRHA staff, reflecting that Linda Franz lied to the Defendant.
- d) Even though the Defendant is grateful to Mr. Art Beaulieu, the business mannerisms of the CRHA employees are appalling, even when dealing with small issues.
11. During the yearly period, 2008/2009, the Defendant, continued to use his office located at 800 Boyd Street, New Westminster, B.C. whenever business demands occurred. Again, while in Campbell River, **the Defendant lived onboard his vessel.**
12. A few days prior to October 30, 2008, Phyllis Titus, Assistant Harbour Attendant, on behalf of Linda Franz, **politely** asked the Defendant to produce and submit to the CRHA Board of Directors a request to live-a-board letter. Plaintiff's "Exhibit D" attached to the Statement of Claim T-1003-10 states the following, see (TAB 12) Plaintiff's Exhibits T-1003-10;
- a) *"Currently, my residency is located in New Westminster, BC as per the current address listed on file at the office. Should my residency change to the Campbell River area, the Harbour Authority will be notified, promptly".*
- b) *"While away from my residency, my vessel serves as a home away from home, satisfying my desire to use it rather than let sit in a Marina decaying away. This attitude serves two purposes; my vessel is kept at optimum running condition at all times and gives my wife and I a chance to be close to the natural beauty of our BC coast".*
- c) *"Since my arrival, I sailed most of the summer months away from Fisherman's Wharf, a trend I intend to maintain in the future. During the times my vessel stayed in moorage at the Fisherman's Wharf, several business demands placed me within my residency in New Westminster, BC".*
13. The above statements clearly indicate that the Defendant lived onboard his vessel, while in Campbell River, as per Linda Franz's knowledge of the Defendant's live-a-board status originally clarified by Mr. Arthur Beaulieu prior to the Defendant's arrival in Campbell River.
14. On November 3, 2008 the Defendant received a letter signed by Tom Forge authorizing live-a-board status. The said letter does not require renewal, rather it states; "may be subject for review of live board status at that time". Plaintiff's "Exhibit E" see (TAB 12) Plaintiff's Exhibits T-1003-10.
15. The issue of live-a-board renewal and live-a-board status brings forth contradictions originating from the CRHA Board of Directors and CRHA Staff. To the best of the Defendant's knowledge and various statements originating from Harbour users, no live-a-board "status letter", ever requested or received a renewal.
16. Live-a-board status is permitted on the CRHA facility.
17. From 2008 to the end of 2009 any verbal inquiry, originating from the Defendant, directed at CRHA staff and/or CRHA Board Members; as to the type of organization the Campbell River Harbour

Authority fell under, the answer was definitive, indicating that the CRHA facility was part of Small Craft Harbours under the control of Fisheries and Oceans Canada (DFO).

18. One calm morning, sometime during the spring of 2009, the Defendant noticed Ricardo, a CRHA Harbour User, leave his sailboat, docked three spaces down from the Defendant's vessel, carrying a 12 gauge flare gun.
19. Exiting his boat with the gun in hand, he soon placed it tucked inside his pants. While he did not notice the Defendant's presence, the Defendant remained several feet behind him, with enough curiosity to follow and determine the need for a flare gun away from his boat. To the Defendant's surprise Ricardo headed to the CRHA office.
20. As the series of events began to develop, at first, the Defendant did not quite grasp what was going on, other than two facts, Phyllis Titus was alone in the office and Ricardo had a flare gun tucked in his pants, headed for the office. Narrating the exact details of the events matter little, but clear enough to say, that the Defendant's intervention of following Ricardo to the office and calling Phyllis to come outside and attend to a fictitious dock problem, diffused the situation.
21. Soon after the police was called and Ricardo was arrested. At the conclusion of events, the Defendant began to pay more attention to Phyllis Titus and her mannerism towards members and Harbour users. Ricardo's interest to solve his problem with Phyllis Titus, using a flare gun, is not far from how harbour users feel about her attitude then and now.
22. At the conclusion of events, involving Ricardo, the Defendant was made aware of issues involving vessel insurance and how it is used to intimidate boater's to depart from the CRHA facility when their presence is contrary to the interests of the controlling CRHA Board of Directors; Tim Hobbs, Tom Forge, Bruce Kempling (retired from the Board in 2010), Hugh Silver and Dave Christian.
23. The Defendant's standing with the CRHA Board of Directors prior to his request to seek financial accountability, sometime towards the end of 2009, given the Defendant's professional relationship with CRHA commercial Harbour users, the Defendant was trusted to receive information about the methodology used to govern the CRHA facility.
24. Soon after the RCMP handcuffed Ricardo and removed him from the CRHA facility, above-mentioned, the Defendant met with Tim Hobbs, for a chat about what occurred, involving Phyllis Titus. During the informal chat and additional chats that followed while shopping at his marine supply store, named Redden Net, located adjacent to the CRHA facility, Tim Hobbs described in detail; vessel insurance and how it is used to intimidate undesirable harbour users to depart from the Harbour and the useless issue of demanding Liability insurance from vessel owners unable to purchase such, given the condition of their vessels; old, dilapidated, unseaworthy...etc.
25. In brief, the interest of demanding vessels to have liability insurance is mostly applied to users of private marinas as a means of additional protection for marina owners. While this mannerism is also feasible for Federal Property, it is not practical to implement. Therefore, DFO via its Lease Agreement (See section 24 (1) (2) (3) of the Lease Agreement, (TAB 9) DFO - CRHA Lease Agreement) with the CRHA, demands insurance coverage for the whole facility rather than demanding harbour users to provide liability coverage.
26. Obviously, if a demand for insurance was issued to all vessel owners, currently occupying the CRHA facility, the harbour would instantly become an empty harbour or nearly empty. Moreover, the condition of the average vessel, currently occupying the CRHA facility, makes it difficult to obtain insurance coverage.
27. Returning to Ricardo and how he fits into the insurance scenario, accentuating the unorthodox behaviour of Tim Hobbs; he told Ricardo, following his release from detention, that because he did

not have insurance he was ordered to depart the CRHA facility.

28. The demand to depart contradicted the RCMP issuing no demands for Ricardo to depart the CRHA facility, rather only to stay away from Phyllis Titus. So, in conclusion Tim Hobbs telephones the Harbour manager, located beside the Campbell River/Quadra Island Ferry dock and asks permission for Ricardo to dock his vessel there. Permission was given, regardless of whatever excuse Tim Hobbs gave and Ricardo sailed across Discovery Passage to the new DFO location. Obviously the insurance issue evaporated, where the Quadra Island DFO Harbour Authority also dismissed insurance issues.
29. On July 31, 2009 the defendant departed the CRHA facility onboard his vessel, after consulting with Dave Ostler as to the availability of moorage space, should the Defendant decide to return to the CRHA facility. Dave Ostler replied that "we will always find you a place".
30. Early 2009, exemplifying theft, the Defendant witnessed the removal of all new Fir wood planks nailed to new dock extensions (fingers 5,4, etc...) and its replacement with newer Cedar planks, sometime during the Summer of 2009. Dave Christian, CRHA Director, together with his daughter removed all the new Fir planks from the noted fingers and replaced them with newer Cedar planks.
31. The Defendant, along with several other CRHA Harbour users, saw Dave Christian load all the new Fir planks on his trailer and remove them from the CRHA premises. A conservative estimate of the cost for new treated Fir planks surpasses five thousand dollars. When the totality of Fir planks is considered, the missing Fir planks are theft.
32. The mannerism displayed by Dave Christian reflects a relaxed methodology of taking money from the CRHA Corporation with no CRHA membership participation, developed through the years by the determined and perpetual Board of Directors, namely; Tim Hobbs, Bruce Kempling and Hugh Silver.
33. The alarming clarity of taking money from the CRHA Corporation, without membership approval, again, opened the door to the Defendant for further investigation of the CRHA financial practices, resulting in fraud charges presented within Campbell River Criminal Court file 37556.
34. On September 4, 2009 the Defendant returned to CRHA facility.
35. On September 5, 2009 the Defendant made a payment to the CRHA for \$491.34 Dollars and on December 7, 2009 the Defendant made an additional two payments to the CRHA, totalling \$834.06 Dollars. **The payments covered berthage at the CRHA facility for six months where the CRHA office staff received the said payments under full understanding the Defendant live on board his vessel.**
36. From September 2009 to February 17, 2010 no indication was given to the Defendant that he was not allowed to live on board his vessel. Quite the contrary, the Defendant was available most mornings at the side of his vessel, greeting his live-a-board neighbours, Harbour Users and CRHA office staff while they performed their respective boat counts. **This mannerism included an occasional greeting to Phyllis Titus, while she witnessed the Defendant's comings and goings from and to his vessel on a daily basis; specific to live-a-board status.**
37. On February 17, 2010, shortly after 8:00 AM, the Defendant witnessed and acted upon his visual assessment of Ted Thompson's sunken skiff. The Defendant was not aware of the brief conversation that occurred between Ted Thompson and Phyllis Titus prior to his appearance on the scene. Rather, the Defendant was only told by his neighbours, Ted Thompson and his wife Crystal that Phyllis Titus informed them of their totally flooded and sinking skiff resting below the water, directly under the stern of their vessel, the "Triple E".
38. The Defendant's first observation, at the scene, involved Ted Thompson trying desperately to bail

the water from his skiff, using a five gallon bucket, in order to save the two outboards from sinking to the bottom, along with the skiff.

39. The Defendant's initial observation, prompted a simple and direct question, "did Phyllis go to the office and get the emergency big pump"?
40. The exact words originating from Ted Thompson, the Defendant does not remember, but the gist of the reply, basically said that Phyllis did not fetch the pump.
41. Today, the defendant is aware of Phyllis Titus attitude towards Ted Thompson, originating from an audio recorded statement of Ted Thompson; "she said, Ted your skiff sunk, well not quite sunk, the engines are not underwater, she rolled around and disappeared". The total content of Ted's statement is quite long for this affidavit and is available from the Defendant's exhibits sent to the Plaintiff via the discovery process.
42. The scenario involving Ted Thompson removal of a large quantity of water from his skiff, using a five gallon bucket, does not require a genius to understand his hardship, coupled with the fact that Ted Thompson is a seventy five year old man with a serious medical condition, hospitalized within the following few days. The skiff was in a state of a quick sink to the bottom; Phyllis Titus, demonstrated a common practice of refusing to help CRHA Harbour Users. Specifically, during emergencies.
43. Phyllis Titus mannerism prompted a reaction from the Defendant, demanding an emergency pump to prevent the total sinking of the skiff, the two outboards and an imminent heart attack on Ted Thompson as he struggled to bailout his skiff. Human hands are no match for the power of a pump. Further, the Defendant's involvement helping Ted Thompson was no comparison to a pump.
44. The CRHA has, at least two pumps in storage to assist Harbour users in need, certainly a course of action that when applied promptly, prevents the larger task of removing a sunken vessel from the bottom of the Harbour. In contrast, removing unseaworthy vessels from Federal property is not a mandate of the CRHA and/or DFO. Currently, the CRHA facility has several unseaworthy vessels occupying dock space.
45. Calling Phyllis Titus from the bottom of finger 4, to get the emergency pump to assist Ted Thompson, received a complete ignore, prompting the Defendant to run up finger 4 to her presence and demand that she perform her duties of a competent Harbour assistant. Certainly, the Defendant used a vulgar word, indicating a limited mannerism used to deal with crew members that fail to perform their assigned duties.
46. On February 18, 2010, the Defendant was informed by CRHA office staff that his moorage payment and membership card was cancelled. The CRHA office Staff would no longer receive payment for moorage of his vessel and the one dollar for membership fee. Subsequently, without legal authority and a mandate from the membership, the Defendant's moorage payments were increased to Transient Rates as per March 1, 2010 letter, signed by Tom Forge. See (TAB 12) Plaintiff's Exhibits T-1003-10.
47. At the onset of the CRHA 12th. Annual General Meeting, February 25, 2010, the Defendant was nominated for Directorship by a CRHA member and the Defendant's name placed on a display board along with other nominees. Prior to vote count Phyllis Titus announced to the membership present at the meeting, that the Defendant was no longer a member of the Campbell River Harbour Authority. This proclamation was stated before the CRHA Board of Directors with no objection from any single CRHA Director.
48. Sometime during the course of the CRHA 12th. Annual General Meeting, February 25, 2010, Manfred Binger, CRHA member, asked the Board of Directors the following question to ascertain

democratic process; “Are we a Corporation or are we a not-forprofit Corporation”? Tom Green a director of the Campbell River Harbour Authority proclaimed the answered to the membership present at the meeting, “**I don’t know and I don’t give a shit**”. The same question was asked to Tom Forge, President of the CRHA, during a coffee break, the answer; “**I don’t know I would have to look it up**”.

49. The well entrenched dictatorship of the Campbell River Harbour Authority is a democratic process gone drastically wrong. The Defendant had no recourse, but to place such a corruptive due process, on the hands of the Honourable courts to correct a wrong against Canadian Democracy.
50. RCMP case file 2010-2363 occurring on March 1, 2010 and a subsequent meeting on March 2, 2010 with RCMP Sergeant Craig Massey in his office, located at the RCMP Campbell River Detachment, where the Defendant requested RCMP involvement at keeping the peace. Mainly, keeping Tom Forge, Tim Hobbs and Phyllis Titus away from the Defendant and stop the threats against the Defendant’s vessel.
51. Specifically, on March 1, 2010 Tom Forge and Tim Hobbs with no legal authority approached the Defendant’s vessel, with a letter on hand, verbally threatening to remove his vessel from its assigned dock. The CRHA By-Laws, the Canada Corporations Act, Part II, the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations do not permit such action. See (TAB 1) Canada Corporations Act C-1.8, (TAB 2) Fishing and Recreational Harbours Act, (TAB 3) Fishing and Recreational Harbours Regulations, (TAB 8) CRHA By-Laws - Complete Document and (TAB 9) DFO - CRHA Lease Agreement.
52. On July 9, 2010, the Defendant had the unpleasant experience of passing Phyllis Titus on his way to the parking lot. Faced with an opportunity to exercise her wicked tongue, Phyllis Titus bellowed to the Defendant that he was “**trespassing on her property**”. The Defendant warned her of the RCMP request to refrain from engaging the Defendant and that she was “ignorant and stupid” about court files 36999-1 and 37034-1 as she denied their existence.
53. On June 29, 2010 to clarify that the RCMP requested Phyllis Titus refrain from engaging the Defendant. The following are quotes originate from Sergeant Craig Massey during a conversation with the Defendant;

“My direction to them, the people (Phyllis Titus and Dave Ostler) in the office (CRHA) was to keep the peace, I never said you were volatile”. “I went there at your (Capt. E. G. da Costa Duarte) request”.
54. Sergeant Craig Massey further stated to them (Phyllis Titus and Dave Ostler)

“that there is definitely some process that will work its way through the courts, meanwhile the Police is requesting to give you (Capt. E. G. da Costa Duarte) some space as it goes through the courts”.

Fraudulent Practices Involving the CRHA and the CRHA Board of Directors

55. For several years, Manfred Binger, a long term CRHA member, questioned the finances of the Campbell River Harbour Authority, at general meetings, at the CRHA office and anytime he met with a CRHA Board Member. And, given all these years (beginning in 1999) he was refused to exercise his right to see and examine the finances of the Corporation, to this day.
56. The rightful intrusion of Manfred Binger, CRHA member, questioning the financial practices of the CRHA Board of Directors resulted in the production of a warning letter, signed by Tom Forge. The said letter written on August 16, 2009 states the following;

“should you (Manfred Binger) wish to continue to berth your vessel in this harbour, the board

recommends that you work cooperatively with the management staff and continue to use general meetings, the visions meetings process and contact with individual directors to bring forward your concerns".

57. On the surface, the above-mentioned written statement appears reasonable yet, Manfred Binger alike the CRHA membership are refused access to review the CRHA Letters Patent, CRHA by-Laws and CRHA financial details; therefore, a letter with intent to prevent accountability and transparency to the membership.
58. The persistence of Manfred Binger to acquire as much information about the CRHA Corporation as he possibly could, sometime prior to 2009; Manfred Binger was given two pages of a thirteen page document showing vessel counts for 1996 to 2007.
59. The said document is titled "Campbell River Harbour Authority Berthing Statistics" and shows details of the three main types of vessels using the CRHA facility; Commercial Fishing Vessels (CFV), Commercial Vessels (CV) and Recreational Vessels (RV). The fourth type, Transient Vessels (TV) are purposely omitted.
60. The CRHA berthage fees (January 11, 1999 data) are as follows; CFV pay 6 cents a foot per day - CV pay 12 cents a foot per day - RV pay 16 cents a foot per day - TV 75 cents per foot per day
61. In other words, the Commercial Vessels pay double, (2 times) the Commercial Fishing Vessels, the Recreational Vessels pay 2.6 times the Commercial Vessels and Transient Vessels pay 12.5 times the CFV.
62. During his years of CRHA membership, Manfred Binger collected the Annual General Meeting pamphlets beginning in 1999; Unaudited CRHA Financial Statements and CRHA AGM minutes.
63. The totality of the CRHA declared revenue received from DFO grants, shows a lesser amount than Oceans and Fisheries Canada (DFO) grant money given to the CRHA Corporation.
64. From 2004 to 2011 the total CRHA declared DFO grants was \$1,917,000.00 CDN Dollars. Via DFO disclosure of Contracts Over \$10,000.00 Dollars downloaded from DFO webpages, the amount given to the CRHA Corporation from 2004 to 2011 was \$2,365,000.00 CDN Dollars; **resulting in \$447,192.00 Dollars missing.**
65. On January 12, 2011 the Defendant sent a request addressed to Ms. Marlene Fournier, Deputy Director, ATIP Operations, Fisheries and Oceans Canada, seeking assurance that the amounts listed on the disclosure of contracts over \$ 10,000.00 CND Dollars are correct. The reply was sent on February 13, 2011 stating the following;

"The proactive Disclosures report provides the contract figures contained in our ABACUS Financial System and are current as of the posting date of the report".
66. The missing amount of \$447,192.00 CDN Dollars represent a conservative dollar figure, the years 1997 to 2004 are missing. Yet, a further investigation, originating from the Defendant, produced a spreadsheet showing all the invoices paid to the CRHA, 1998 to 2010.
67. The DFO-ABACUS accounting software program produced the spreadsheet, above-mentioned, of all the invoices, resulting in different financial numbers than those posted on the DFO disclosure of Contracts Over \$10,000.00 dollars downloaded from DFO website.
68. The DFO disclosures of Contracts Over \$10,000.00 Dollars, downloaded from the DFO website, do not represent the monies given to the CRHA Corporation. The disclosure of contracts originating from PO contract numbers were never fully awarded to the CRHA Corporation, rather they differ from the invoices awarded to the CRHA Corporation. **Therefore, the proactive discloser of contracts policy implemented in 2004 by the Harper Government is simply a cover-up as to**

the reality of money spent. The statement originating from Ms. Marlene Fournier, above-mentioned, is misleading; it represents PO numbers of contracts that were not fully awarded.

69. The total PO numbers of contracts (2004- 2010) is \$2,365,000.00 Dollars. The total invoices (1998-2010) awarded to the CRHA is \$2,587,678.93. The bigger portion of invoices was paid to the CRHA from 2005 onwards.
70. The total of invoices awarded to the CRHA (1998-2010) is \$2,587,678.93, compared to CRHA declared DFO Grant monies; resulting in \$337,842.93 unreported. The preceding unreported dollar figure is, once again, misleading, indicating a larger amount of money missing, because the years 1999, 2000, 2003, 2006, 2007 and 2009 the reported CRHA dollar figures are higher than the DFO invoices awarded to the CRHA, a factual indication that the \$337,842.93 of unreported money represents a conservative low figure.
71. Given all the financial information (invoices) received from DFO-Freedom of Information, a series of analytical spreadsheets produced by the Defendant, show financial discrepancies originating from DFO-Small Craft Harbours, Pacific Region and the Campbell River Harbour Authority. Regardless of the type of analysis used, Public monies were purposely directed to outside parties. Additionally, other issues emerge that corroborate unreported monies mentioned on the preceding paragraphs, the issues are as follows;
- a) Contract work carried out at the CRHA facility does not match DFO monies awarded to the Campbell River Harbour Authority, specific to paid invoice.
 - b) The Island Coastal Economic Trust (ICE T) awarded \$120,000.00 dollars (2008-2009) to the Campbell River Harbour Authority to upgrade the same dock floats that DFO-Small Craft Harbours awarded \$250,000.00 dollars. Representing a larger amount of money than needed to complete the assigned work carried out at the CRHA facility.
 - c) Attached to the DFO-Small Craft Harbours invoice numbers awarded to the Campbell River Harbour Authority, shows a FAC number. The abbreviated FAC represents the word "facility" that in turn means the specific infrastructure area of the CRHA facility.
 - d) Alike the DFO-ABACUS spreadsheet of invoices received from DFO-Freedom of Information officials (ATIP) it took approximately one year to obtain the FAC Code definitions. Again, these code numbers do not reflect the work carried out at the CRHA facility, giving strong supporting evidence that DFO-Small Craft Harbours grant money was not spent to maintain or upgrade the CRHA facility.
 - e) The FAC Code number definitions received from DFO-Freedom of Information (ATIP) do not match the FAC Code numbers listed on the DFO-CRHA Lease Agreement, a strong indication that monies awarded to the CRHA were never meant to pay for project within the CRHA facility.
 - f) For example, the following invoice payments never materialized at the CRHA;

Fac 801 712946000 Campbell River 11-Mar-08	\$75,000.00
Fac 801 712946000 Campbell River 13-Sep-07	\$75,000.00
Fac 801 712946000 Campbell River CORR ALL 16-Jul-07	\$75,000.00
712817000 FAC 501 Campbell River Harbour 21-Jan-08	\$75,000.00
712817000 FAC 501 Campbell River Harbour 18-Feb-08	\$50,000.00
712817000 FAC 501 Campbell River Harbour 31-Mar-08	\$75,000.00

72. Bringing forth comparisons of CRHA General Revenue vs. Vessel Counts referring to the years 1999 to 2007, the comparisons show a large amount of unreported revenue to the CRHA membership. Between the years 1996 and 2007, the Commercial Fishing Vessels (CVF) counts decreased -57%, while the Commercial Vessels (CV) counts increased 212.91% and the Recreational Vessels (RV) counts increased 97.10%.
73. The unreported revenue stems from the fact that Commercial Vessels (CV) fees are double the Commercial Fishing Vessels (CFV) at 12 cents per foot/per day and the Recreational vessels (RV) are 2.66 times the Commercial Fishing Vessels (CFV) at 16 cents per foot/per day.
74. Within vessel counts, Transient Vessels account for revenues that are based on 75 cents per foot per day. The said Transient Vessels are purposely omitted from vessel counts. These vessels generated a relative high unreported revenue.
75. Both the Commercial Vessels (CV) and the Recreational Vessels (RV) that replaced the Commercial Fishing Vessels (CFV) were of a larger size, on average, thus generating more revenue than a bare increase in vessel numbers.
76. **The calculated unreported revenue deriving from vessel counts to the CRHA is estimated at approximately half a million dollars.** This high number only involves the years 1999 to 2007. An additional three years worth of revenue is not estimated, due to a lack of boat count data.
77. Other fraudulent methods of removing funds from the CRHA Corporation include;
 - b) the CRHA AGM MINUTES 1999-2008 mentions the financial surplus of the CRHA Corporation. First discussed at the February 26, 2004 CRHA Annual General Meeting (AGM). Subsequently, Tom Forge, CRHA Director/President, stated the following year, February 26, 2005 that a Rebate Program was available to qualifying resident boat owners. From February 26, 2004 and thereof, no financial statements exist stating the amount rebated and which CRHA members received a rebate. An indication that the financial statements presented at the CRHA Annual General Meetings fail transparency and accountability. Moreover, indicating that the CRHA Board of directors can withdraw money from the CRHA bank accounts with no acknowledgement to the CRHA membership.
 - c) No CRHA criteria exist as to the eligibility of a CRHA member to receive a rebate.
 - d) Since 2002 Bruce Kempling, Former CRHA Director/President, as per his intended goal at controlling the CRHA facility for his business gain, took control of one hundred feet of dock space belonging to the CRHA facility. The dock space was allocated to his company; Ocean Pacific Marine Supply LTD. No financial statements exist that Bruce Kempling paid for the usage of the above-mentioned dock space.
 - e) No financial statements exist that Tom Green, long term CRHA Director, paid for the space occupied by his South Harbour Marine Services, a floating repair shop moored at the CRHA Harbour facility.
 - f) No financial statements exist that Hugh Silver, a long term CRHA Director, paid for the space he occupies together with his own Yacht Club, on finger 1, CRHA South Harbour.
 - g) The above-mentioned financial lack of accountability, questions others that use the CRHA facility with strong ties to the CRHA Board of Directors, where no financial statements exist that they paid for usage of dock space and/or other services.
78. Since 2000, as per Tim Hobbs, CRHA Director/Treasurer motion to the CRHA membership; to retain Kent Moeller as accountants for financial review for year ending January 31, 2001. The motion was carried. From "Financial Review" to "Review Engagement" the determined effort to

keep CRHA financial details from the CRHA membership and Harbour users was evident then as it is today.

79. **The Campbell River Harbour Authority (CRHA) has never been audited**, as per instructions originating from Tim Hobbs to the CRHA membership, breaching CRHA By-Law 65. For the last thirteen years the efforts of Tim Hobbs worked, preventing knowledge of financial details to reach anyone outside the CRHA Board of Directors and CRHA Staff. See (TAB 10) CICA Handbook 8100-8600 for a detail description of a “review engagement”.
80. On April 20, 2010, under pressure to hide financial information from the Defendant, given his persistence to pursue fraud charges against the CRHA Board of Directors, a Mobile Paper Shredding Truck, R&R (250) 287-9880, was seen shredding a large number of document boxes originating from the CRHA office located at 705 Island Highway, Campbell River, B.C.
81. The witnessed event involved the office manager, Phyllis Titus standing at the back end of the shredding truck coordinating the loading and shredding of CRHA office document boxes. The boxes originated from the CRHA office and carried over the fence to the shredding truck parked on the parking lot located to the North of the CRHA office. Additional members of the CRHA staff also carried document boxes to the shredding truck.
82. Corroborating evidence originating from an audio recorded interview with Dave Ostler, CRHA Assistant Harbour Attendant, he stated that the CRHA; "no one keeps receipts as far as I know". Dave Ostler gives strong evidence that the CRHA Board of Directors, with intent to defraud, purposely destroy all receipts representing berthage fees paid to the CRHA Corporation. Therefore, a determined methodology of fraud exists, originating from the CRHA Board of Directors, preventing full accountability to the CRHA Membership and Harbour Users. CRHA Corporate funds are managed with no accountability to the CRHA Membership, Harbour Users and taxpayers.

Structure and Purpose of the Campbell River Harbour Authority;

83. The Minister of Industry Canada granted a charter by Letters Patent under the provisions of Part II of the Canada Corporations Act on July 8, 1997 to the Campbell River Harbour Authority (CRHA), a not-for-profit Corporation. Corporation #3390764 BN #878395995RC0001. A CORPORATION WITHOUT SHARE CAPITAL UNDER PART II OF THE CANADA CORPORATIONS ACT. See (TAB 8) CRHA By-Laws - Complete Document.
84. The Campbell River Harbour Authority (CRHA) is not the proprietor of the property located at 705 Island Highway Campbell River, B.C. V9W 2C2. The said property is owned by Her Majesty, The Queen in right of Canada, represented by the Minister of Fisheries and Oceans and acting through the Regional Director. Further, the said property is managed by the CRHA Board of Directors on behalf of its membership, as per the Letters Patent under the provisions of Part II of the Canada Corporations Act, signed on July 8, 1997.
85. The following excerpt originates from the Canada Corporations Act, Part II, (TAB 1) Canada Corporations Act C-1.8.

Application without objects of gain

154. (1) The Minister may by letters patent under his seal of office grant a charter to any number of persons, not being fewer than three, who apply there for, constituting the applicants and any other persons who thereafter become members of the corporation thereby created, a body corporate and politic, without share capital, for the purpose of carrying on, without pecuniary gain to its members, objects, to which the legislative authority of the Parliament of Canada extends, of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting

character, or the like objects.

Private Prosecution Before the Campbell River Courts, File 37556

86. On December 15, 2010 the Defendant initiated a private prosecution, see (TAB 7) Criminal Code - C-46;

CHARGES

Summary of Offence - Court File No. 37556

Form 2 – Information

CANADA:

PROVINCE OF BRITISH COLUMBIA

“BY INDICTMENT”

This is the information of Capt. E. G. da Costa Duarte, Naval Architect, Certified Marine Chemist, hereinafter called the informant, of Campbell River, British Columbia.

The informant says that the informant has reasonable and probable grounds to believe and does believe that,

Count 1

The Board of Directors of the Campbell River Harbour Authority (CRHA), located at 705 Island Highway, Campbell River, BC, V9W 2C2, between March 31, 1998 and March 4, 2010 did by deceit, falsehood or other fraudulent means defraud the Campbell River Harbour Authority (CRHA), Capt. E. G. da Costa Duarte; a CRHA member, the CRHA Membership and Harbour users of the CRHA facility, of monies, of a value in excess of \$5000 Canadian Dollars, by hiding CRHA Revenues vs. vessel counts that indicate obvious financial shortfalls. Further, the CRHA Board of Directors committed deliberate falsehoods which caused or gave rise to deprivation of services and by deprivation of crucial financial support prevented development of the CRHA facility as per the provisions to the CRHA Letters Patent, Object of the Corporation and CRHA Corporate By-Laws, contrary to Section 380 (1) (a) of the Criminal Code.

Count 2

Tom Forge, President of the Board of Directors of the Campbell River Harbour Authority (CRHA) located at 705 Island Highway, Campbell River, BC, V9W 2C2, on his written statement produced on February 18, 2010 at or near Campbell River, in the Province of British Columbia, did commit public mischief in that with intent to mislead he caused Constable Jacqueline Weiler and Constable Pickering both RCMP peace officers for the City of Campbell River, BC, to enter upon an investigation by reporting that an offence had been committed, when it had not been committed, contrary to Section 140 (1) (c) of the Criminal Code.

Count 3

Phyllis Titus, Manager of the Campbell River Harbour Authority (CRHA) located at 705 Island Highway, Campbell River, BC, V9W 2C2, on her written affidavit sworn before D'Arcy J. Frankland, a commissioner for taking affidavits for British Columbia on the 15th. day of June 2010, being specially permitted by law to make a statement by affidavit, did make several false statements, by stating that Capt. E. G. da Costa Duarte, the informant, is a volatile, aggressive and belligerent person and that the Campbell River Harbour Authority (CRHA) is to maintain berthage at Campbell River for commercial fishing vessels, purposely ignoring the Objects of the Campbell River Harbour Authority (CRHA), a Not-for-Profit Federal Corporation, under the provisions of the Canada Corporations Act, part II. Further, with intent to mislead the Federal Court of Canada, Phyllis Titus conjugated a series of false statements, relating to the informant, bearing no truth, contrary to

Section 131 (1), Perjury, of the Criminal Code.

Count 4

The Manager of the Campbell River Harbour Authority (CRHA), namely Phyllis Titus, located at 705 Island Highway, Campbell River, BC, V9W 2C2, on November 4, 2010 at approximately noon time, physically assaulted Capt. E. G. da Costa Duarte by striking him on the left side of his face causing a lesion. The unprovoked physical assault was intentional carried out to harm Capt. E. G. da Costa Duarte, where Phyllis Titus awaited his arrival by the side of his parked vehicle, located on the South parking lot of the Fisherman's wharf, City of Campbell River, B.C. The assault was intentional and without the consent of the informant, contrary to Section 265 (1) (a) of the Criminal Code.

Count 5

The Manager of the Campbell River Harbour Authority (CRHA), namely Phyllis Titus, located at 705 Island Highway, Campbell River, BC, V9W 2C2, on November 4, 2010, at approximately noon time, caused damage to the informant's vehicle, while the said vehicle was parked on the South parking lot of the Fisherman's wharf, City of Campbell River, B.C. Phyllis Titus hit the left side door below the window, causing paint and metal damage to the door. The tool used to damage the door is unknown, but suspected to be a rock. Subsequently, while the Informant, Capt. E. G. da Costa Duarte tried to enter his vehicle and close the left side door, Phyllis Titus, unsuccessfully, tried to break the vehicle window by hitting the said window with her fists and right arm. Phyllis Titus willfully committed mischief by destroying and damaging the property (vehicle door) of the informant, contrary to Section 430 (1) (a) of the Criminal Code.

Note: The above-stated counts were sworn on December 15, 2010 at Campbell River, British Columbia. Form 2 (original) is available from Court File 37556.

Winding-up Application before the Supreme Courts of British Columbia

87. On October 25, 2010 the Defendant submitted an application to the Supreme Court of British Columbia for an Order for Winding-up of the Campbell River Harbour Authority, see (TAB 1) Canada Corporations Act C-1.8.
88. SUPREME COURT OF BRITISH COLUMBIA Files 36999-1, 37034-1: CRHA Winding-Up Application.

PART II – STATEMENT OF POINTS IN ISSUE

89. In its statement of points in issue, the Plaintiff lists the following points which it states are in issue;
 1. Should parts of the Counterclaim making allegations against non-parties be struck?
 2. Should parts of the Counterclaim making allegations which fall outside of this Court's Jurisdiction be struck?
 3. Should parts of the Counterclaim making allegations that are scandalous, frivolous or vexatious, or disclose no reasonable cause of action be struck?
 4. Are the Defendants required to provide more responsive answers to the Questions?
 5. Are the Defendants' refusal to produce requested documents justified and are the Defendants required to produce a further and better Affidavit of Documents?
 6. Is the Affidavit of Documents inaccurate or deficient?

PART III – STATEMENT OF SUBMISSIONS

Issue 1 – Plaintiff’s Settlement Offer

90. During the Pre-Trial Conference Hearing before Prothonotary Judge, Roger R. Lafreniere, it was clearly heard the Plaintiff’s offer. Accentuating the Plaintiff’s offer, Tim Hobbs CRHA Director/Treasurer and Phyllis Titus, CRHA Manager, were both available to affirm such.
91. To the best of the Defendant’s note taking, during the said Hearing, Ms. Chapelski, counsel for the Plaintiff, stated the following;
- “What we offer was... that if the counterclaim was abandoned we would recommend to the Campbell River Harbour Authority that it waive its claim for outstanding moorage and damages, in exchange for drop of the counterclaim and an agreement not to return to the Harbour without prior written permission from the Harbour Authority”.*
- “And, agree to stay away from the Harbour...Now subsequently as you point out, Mr. Duarte, if you continue to engage the criminal courts to get charges laid against the Board of Directors”.*
- “Subsequent to that offer being made which was we would drop our claim and waive our costs in exchange for you staying away from the Harbour and drop your counterclaim. My understanding, you continue to engage the criminal court to have charges laid against members of the Campbell River Harbour Authority either employees or directors and that you tried to use the criminal courts to have them winding-up as a corporate entity”.*
92. Prothonotary Roger R. Lafreniere clarifies the Plaintiff’s offer;
- “My understanding from Ms. Chapelski is that their settlement offer was contingent upon your resolution of the dispute between the parties. And, if I understand correctly, Ms. Chapelski is suggesting that your continued use of the court process against individuals with the Plaintiff’s is causing some difficulties and is impacting their offer. So, they want a release from you from all of these claims, and they want you to seize and desist from continuing these actions, so Mr. Duarte, are you going to seize and desist or not”?*
93. The above-mentioned quotes, clarify the intent of the Federal Court File T-1003-10 to be of an intimidating nature with a sole purpose of getting the Defendant to seize and desist criminal prosecution. An issue that brings into question the purpose of the Federal Court upon witnessing such blunt statements of intimidation.
94. Does the Federal Court of Canada sanction a prosecutor to drop criminal charges because he or she is intimidated by a Federal Court Process initiated for such sole purpose?
95. Further, the Federal Court of Canada witnessed an officer of the Court, Ms. Chapelski, counsel for the Plaintiff, issue such offer when a criminal process is involved. Strong indications that she believes her clients are immune to criminal prosecution regardless of available evidence.
96. The Defendant finds both attitudes; the Federal Court of Canada and the plaintiff’s counsel, to be scandalous, outrageous and an insult to honourable citizens that abide by the rule of law.
97. The Law Society of British Columbia publishes the Professional Conduct Handbook. The following are excerpts governing the conduct of lawyers;
- “A lawyer is a minister of justice, an officer of the courts, a client’s advocate, and a member of an ancient, honourable and learned profession”.*
- “In these several capacities it is a **lawyer’s duty to promote the interests of the state**, serve the cause of justice, maintain the authority and dignity of the courts, be faithful to clients, be candid and courteous in relations with other lawyers and **demonstrate personal integrity**”.*

CHAPTER 8 - THE LAWYER AS ADVOCATE

Prohibited conduct

1. A lawyer must not:

(a) abuse the process of a court or tribunal by instituting or prosecuting proceedings that, **although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring another party,**

(b) knowingly assist the client to do anything or acquiesce in the client doing anything dishonest or dishonourable,

(c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that may reasonably be perceived to affect the officer's impartiality,

(d) attempt or acquiesce in anyone else attempting, directly or indirectly, to influence the decision or actions of a court or tribunal or any of its officials by any means except open persuasion as an advocate,

(e) knowingly assert something for which there is no reasonable basis in evidence, or the admissibility of which must first be established,

(e.1) make suggestions to a witness recklessly or that the lawyer knows to be false, 1

(f) deliberately refrain from informing the court or tribunal of any pertinent authority directly on point that has not been mentioned by an opponent,

(g) dissuade a material witness from giving evidence, or advise such a witness to be absent,

(h) knowingly permit a party or a witness to be presented in a false way, or to impersonate another person, or

(i) appear before a court or tribunal while impaired by alcohol or a drug.

98. The above-mentioned excerpts originating from the Law Society of British Columbia clarify the role of Ms. Chapelski and Ms. Mckinnon to be of Prohibited conduct.
99. **Ms. Chapelski and Ms. Mckinnon are paid from funds or from insurance coverage funds that originate from Berthage fees. The CRHA membership and CRHA Harbour Users are financially supporting a civil lawsuit designed to intimidate a CRHA member/Harbour User, the Defendant, that questions the misappropriation of a large amount of CRHA funds evident from official boat counts and Fisheries and Oceans Canada (DFO) invoices paid to the Campbell River Harbour Authority (CRHA).**
100. When all the issues are put together, involving the CRHA Board of Directors and CRHA Staff, what role does the Federal Court play? Better said, does the Federal Court simply ignore criminal activity and rule on frivolous accusation hurled at the Defendant?
101. It is also a fact that three other CRHA Harbour Users are currently facing the same intimidating tactics for questioning the misappropriation of CRHA funds; Mr. Glenn Lusk, Mr. Manfred Binger and Mr. Ronald Griffin.
102. The financial issues herein described that are before the Provincial Criminal Courts are not yet made public. The Defendant has exercised caution when evidence was not clear, originating from DFO individuals that delayed the release of Public information (invoice data). Currently, these issues no longer apply. The Defendant is currently under continuous requests to release all the evidence to the Public, and he must do so. With certainty we (Canadians) have an embarrassing situation at hand, no accountability and/or transparency from the not-for-profit CRHA Corporation

and the Federal Government.

Issue 2 – Canada Corporations Act;

103. The Canada Corporations Acts, Part II, governs the makeup of the Campbell River Harbour Authority, a Not-for-Profit Corporation.
104. The Campbell River Harbour Authority is a **Public Harbour; 1335**. Campbell River, page 36, Fishing and Recreational Harbours Regulations. See (TAB 3) Fishing and Recreational Harbours Regulations.
105. The Campbell River Harbour Authority is a **Public Corporation**, according to the provisions of the Canada Corporations Act, Part II. See (TAB 1) Canada Corporations Act C-1.8.
106. The excerpts below-mentioned, originating from the Canada Corporations Act, Part II, explain the governance of the Campbell River Harbour Authority and bring forth issues that are before the Provincial courts and outside the Federal Court Jurisdiction;
107. **The Defendant is a shareholder of the CRHA Corporation, yet it is an issue for the Supreme Court of British Columbia to decide whether the CRHA Board of Directors carried out their duties in accordance with the Canada Corporations Act when they sold one dollar membership cards to Harbour Users with no consequence to CRHA membership liability applied to membership. Example, the lack of CRHA annual Audits.**
108. Any Berthage fees paid to the CRHA are governed by section 154 (1) of the Canada Corporations Act with a specific purpose of carrying out the objects of the Corporation's Letters Patent. The presence of the Canada Corporations Act governing the fee structure of CRHA facility dismisses the involvement of Admiralty Law, See (TAB 1) Canada Corporations Act C-1.8.

"**shareholder**" means a member of such corporation;

Application without objects of gain

154. (1) The Minister may by letters patent under his seal of office grant a charter to any number of persons, not being fewer than three, who apply there for, constituting the applicants and any other persons who thereafter become members of the corporation thereby created, a body corporate and politic, without share capital, for the purpose of carrying on, without pecuniary gain to its members, objects, to which the legislative authority of the Parliament of Canada extends, of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, or the like objects.

Application to be filed

155. (1) The applicants for such letters patent, who shall be of the full age of eighteen years and have power under law to contract, shall file in the Department an application signed by each of the applicants and setting forth the following particulars:

(a) the proposed name of the corporation;

(b) the purposes for which its incorporation is sought;

(c) the place within Canada where the head office of the corporation is to be situated;

(d) the names in full and the address and calling of each of the applicants; and

(e) the names of the applicants, not less than three, who are to be the first directors of the corporation.

By-laws to accompany application

(2) The application shall be accompanied by the by-laws, in duplicate, of the proposed corporation, which by-laws shall include provisions upon the following matters:

- (a) conditions of membership, including societies or companies becoming members of the corporation;*
- (b) mode of holding meetings, provision for quorum, rights of voting and of enacting by-laws;*
- (c) mode of repealing or amending by-laws with special provision that the repeal or amendment of by-laws not embodied in the letters patent shall not be enforced or acted upon until the approval of the Minister has been obtained;*
- (d) appointment and removal of directors, trustees, committees and officers, and their respective powers and remuneration;*
- (e) audit of accounts and appointment of auditors;*
- (f) whether or how members may withdraw from the corporation; and*
- (g) custody of the corporate seal and certifying of documents issued by the corporation. By-laws may be embodied in letters patent*

(3) The applicants may ask to have embodied in the letters patent any provision which could under this Part be contained in any by-law of the corporation. R.S., 1970, c. C-32, s. 155; 1985, c. 26, s. 87.

"private company"

"private company" means a company as to which by letters patent or supplementary letters patent

- (a) the right to transfer its shares is restricted,*
- (b) the number of its shareholders is limited to fifty, not including persons who are in the employment of the company and persons, who, having been formerly in the employment of the company, were, while in that employment, and have continued after the termination of that employment to be shareholders of the company, two or more persons holding one or more shares jointly being counted as a single shareholder, and*
- (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited;*

"public company"

"public company" means a company that is not a private company;

Grounds for winding-up company

5.6 (1) Where a company

- (a) carries on a business that is not within the scope of the objects set forth in its letters patent or supplementary letters patent,*
- (b) exercises or professes to exercise any powers that are not truly ancillary or reasonably incidental to the objects set forth in its letters patent or supplementary letters patent,*
- (c) exercises or professes to exercise any powers expressly excluded by its letters patent or supplementary letters patent, the company is liable to be wound up and dissolved under the Winding-up Act upon the application of the Attorney General of Canada to a court of competent jurisdiction for an order that the company be wound up under the Act, which application may be made upon receipt by the Attorney General of Canada of a certificate of the Minister setting forth his opinion that any of the circumstances described in paragraphs (a) to (c) apply to that company.*

List of shareholders

111.1 (1) Any person, upon payment of the costs thereof and upon filing with the company or its transfer agent such declaration as may be prescribed by regulation, is entitled to obtain from a company, other than a private company, or its transfer agent within ten days from the filing of such declaration a list setting out the names of all persons who are shareholders of the company, the number of shares owned by each such person and the address of each such person as shown on the books of the company made up to a date not more than ten days prior to the date of filing the declaration.

Neglect to keep books

113. Every company that neglects to keep any book or books required by this Part to be kept by the company, is guilty of an offence and liable on summary conviction to a penalty not exceeding twenty dollars for each day that such neglect continues. R.S., 1952, c. 53, s. 111.

Appointment of auditor at first general meeting

130. (1) The shareholders of a company at their first general meeting shall appoint one or more auditors to hold office until the close of the next annual meeting, and, if the shareholders fail to do so, the directors shall forthwith make such appointment or appointments.

Annual appointment of auditor

(2) The shareholders of a company at each annual meeting shall appoint one or more auditors to hold office until the close of the next annual meeting, and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

109. The letter dated March 4, 2010, signed by Tom Forge, CRHA President, addressing the defendant's written request for financial details fails reasoning and meets all the underhanded practices of the CRHA Board of Directors. The last paragraph of the letter states the following, see (TAB 12) Plaintiff's Exhibits T-1003-10;

"Even if you were a member, you would not be entitled to review the accounting records asked for..."

110. This statement alone and in a "nut shell" breaches the Canada Corporations Act and the CRHA Letters Patent, specific to the objects of the CRHA Corporation that state the following, see (TAB 8) CRHA By-Laws - Complete Document;

"g) To govern the activities and operations of the Campbell River Harbour in a way that is fully accountable to harbour users and members of the Campbell River Harbour Authority".

111. The following is a list of CRHA By-Law breaches originating from the dictatorial CRHA Board of Directors, specific to the following individuals; Bruce kempling, Tim Hobbs, Tom Forge, Hugh Silver, Dave Christian, Gail Davies and Tom Green.

The objects of the Corporation are:

a) To control and operate effectively the Harbour Facilities in the Port of Campbell River formerly operated by the Small Craft Harbours Branch of the Department of Fisheries and Oceans.

b) To provide all users of the Campbell River Harbour with safe, effective and environmentally sound harbour facilities including; but not limited to, wharves, seaplane floats, marine docking and cribs, storage and vehicle parking areas and commercial marine business support.

c) To regulate harbour use in a safe and fair manner, providing for the effective sharing of harbour resources among all user groups such as commercial fishers, recreational boaters, fishing guide operators, marine and foreshore businesses and visiting vessels.

- d) *To maintain existing facilities and services for users groups.*
- e) *To promote the development and long term growth of the Campbell River Harbour, its facilities and the services it offers in a manner for the betterment of its users.*
- t) *To operate the Campbell River Harbour in a fiscally responsible and cost effective manner consistent with the leasing of facilities from the Small Crafts Harbours Branch of the Department of Fisheries and Oceans.*
- g) **To govern the activities and operations of the Campbell River Harbour in a way that is fully accountable to harbour users and members of the Campbell River Harbour Authority.**

The by-laws of the Corporation shall be those filed with the application for letters patent until repealed, amended, altered or added to.

The Corporation is to carry on its operations with pecuniary gain to its members and any profits or other accretions to the Corporation are to be used in promoting its objects.

Conditions of Membership

2. *Membership in the Campbell River Harbour Authority (the "Corporation") shall be limited to those persons interested in furthering the objects of the Corporation and shall consist of any one whose application for admission as a member has received the approval of the Board of Directors of the Corporation, whose approval shall not be withheld unreasonably.*

3. *At the time of commencing membership, each member of the Corporation shall identify themselves as belonging to one of the following representative sectors:*

(a) commercial fishing vessel owners and operators;

(b) owners and operators of other vessels, including recreational boaters, yachters and fishing guides;

(c) foreshore or water lot licensees within the jurisdiction of the Corporation; or

(d) marine and foreshore support business operators and owners.

For greater certainty, members of the Corporation shall generally, at the commencement of membership, berth vessels within Campbell River Harbour, be licensees of foreshore or water lots within Campbell River Harbour or operate marine related businesses within 25 nautical miles of Campbell River.

4. *If there is any question as to which sector a member shall belong, such question shall be determined conclusively by the Board of Directors.*

5. *There shall be no membership fees or dues unless otherwise directed by the Board of Directors. The Board of Directors may establish a membership fee, to be ratified by simple majority vote of all members at an annual meeting, for the membership in the Corporation.*

6. *Membership in the Corporation shall not be transferable.*

7. *Any member may withdraw from the Corporation by delivering to the Corporation's Head Office a written resignation and lodging a copy of the same with the Secretary of the Corporation.*

8. *Any member may be required to resign from the Corporation by a vote exceeding three quarters (3/4) of the members present at a general meeting.*

Minutes of the Board of Directors

40. *The minutes of the Board of Directors shall be available to the Board of Directors, each of whom shall receive a copy of such minutes. The minutes of the Board of Directors shall also be*

kept in the Head Office of the Corporation, for review upon reasonable notice by members of the Corporation.

46. The Treasurer shall have the custody of the funds and securities of the Corporation and shall keep full and accurate accounts of all assets, liabilities, receipts and disbursements of the Corporation in the books belonging to the Corporation and shall deposit all monies, securities and other valuable effects in the name and credit to the Corporation in such chartered bank, trust company or credit union, or, in the case of securities, in such registered dealer in securities as may be designated by the Board of Directors from time to time. He or she shall disburse the funds of the Corporation as may be directed by proper authority taking proper vouchers for such disbursements, and shall render to the President and Directors at regular meetings of the Board of directors, or whenever they may require it, an accounting of all the transactions and a statement of the financial position, of the Corporation. The Treasurer shall also perform such other duties as may from time to time be directed by the Board of Directors.

Meetings of Members of the Corporation

51. At every annual meeting, in addition to other business that may be transacted, the report of the Directors, the Corporation's financial statement and the report of the auditors shall be presented and auditors appointed for the ensuing year. The members may consider and transact any business, either special or general, at any meeting of the members.

Voting of Members

57. At all meetings of members of the Corporation, every question shall be determined by a majority of votes unless otherwise specifically provided by statute or these by-laws.

Amendment of By-Laws

64. The by-laws of the Corporation not embodied in the letters patent may be repealed or amended by by-law enacted by a majority of the Directors at a meeting of the Board of Directors and sanctioned by an affirmative vote of at least two-thirds (2/3) of the members at a meeting duly called for the purpose of considering the said by-law, provided that repeal or amendment of such by-laws shall not be enforced or acted upon until the approval of the Minister of Industry has been obtained.

Auditors

65. The members shall, at each annual meeting, appoint an auditor who shall audit the accounts of the Corporation for report to the members of the Corporation at the next annual meeting. The auditor shall hold office until the next annual meeting provided that the Directors may fill any casual vacancy in the office of the auditor. The remuneration of the auditor shall be fixed by the Board of Directors.

Books and Records

66. The Directors shall see that all necessary books and records of the Corporation required by the by-laws of the corporation or by any applicable statute or law are regularly and properly kept.

Rules and Regulations

67. **The Board of Directors may prescribe such rules and regulations not inconsistent with these by-laws** relating to the management and operation of the Corporation as they deem expedient, provided that such rules and regulations shall have force and effect only until the next annual meeting of the members of the corporation when they shall be confirmed, and failing such confirmation at such annual meeting of members, shall at and from that time cease to have any force and effect.

Issue 3 – Fishing and Recreational Harbours Act;

112. The CRHA Berthage Agreement under section 4 (a) "to abide by all applicable statutes, regulations, by-laws, and rules, including the Fishing and Recreational Harbours Act, the Government Property Traffic Act and the Authority's By-laws and Directives". See (TAB 11)

Defendant's Berthage Agreement.

113. According to the provisions of the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations, the enforcement of rules and removal of vessels from a public facility must adhere to the Act and Regulations. The following excerpts are specific and nullify the involvement of the Federal Court, see (TAB 2) Fishing and Recreational Harbours Act and (TAB 3) Fishing and Recreational Harbours Regulations;

8. *The Minister (DFO) may, **subject to the regulations,***

(a) lease any scheduled harbour or any part thereof to any person;

(b) grant a licence to any person for the use of any scheduled harbour or any part thereof; and

(c) enter into an agreement with the government of any province or any agency thereof for the occupancy and use of any scheduled harbour or any part thereof.

10. (1) *For the purposes of enforcing this Act and the regulations, the Minister may designate as an enforcement officer any person who is, in the opinion of the Minister, qualified to be so designated and furnish that person with a certificate of his designation.*

(2) In carrying out the duties and functions of an enforcement officer under this Act, an enforcement officer shall, if so requested, produce the certificate of designation of the enforcement officer as such to the person appearing to be in charge of any vessel, vehicle, premises or goods in respect of which the officer is acting.

11. *Where an enforcement officer believes on reasonable grounds that a provision of this Act or the regulations is not being complied with, the officer may*

(a) with a warrant issued under section 11.1, board any vessel or enter any vehicle or premises where or in respect of which the officer believes on reasonable grounds there may be evidence of the non-compliance and make any inspection the officer deems necessary;

(b) require the person appearing to be in charge of the vessel, vehicle or premises to produce for inspection, or for the purpose of making copies or extracts there from, any log book, document or paper that may, in the officer's opinion, provide evidence of that noncompliance;

(c) require any person found on board any vessel or in any vehicle or premises to give all reasonable assistance to enable the officer to carry out his duties and functions under this Act; and

(d) prohibit the use of any scheduled harbour by any person, vessel or vehicle that the officer believes on reasonable grounds to be involved in that non-compliance and direct the removal of that person, vessel or vehicle from the harbour.

114. The order issued by the Honourable Madam Justice Tremblay-Lamer for the removal of the defendant's vessel, the S/V Açor, is based on non-existent law, by-laws, rules and regulations that assign jurisdiction to the Federal Court to issue such order of removal.

115. Further, the Legislation Conferring Jurisdiction on the Federal Court of Appeal and the Federal Court as per the statutes listed on the web pages of the Federal Court, do not indicate jurisdiction involving the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations.

Issue 4 - Admiralty Law;

116. Two specific cases governing Admiralty Law and Pleasure Craft define the Defendant's vessel while at the CRHA facility. See (TAB 13) Isen v. Simms, [2006] 2 S.C.R. 349, 2006 SCC 41 and (TAB 15) Salt Spring Island Local Trust Committee v. B & B Ganges Marina Ltd.

117. As per the provisions of the CRHA Berthage Agreement the Defendant used the CRHA facility to store his vessel while the said vessel was used as a residence. Therefore the requirements of Admiralty Law "Navigation and Shipping" were not met. Further the Defendant's vessel is less than 300 Tons and a recreational vessel.
118. Additionally, the Berthage fees were paid to a Not-for-profit Corporation in which the Defendant was or is a member in good faith, regardless of membership, the Defendant was a CRHA Harbour User as per the provisions of the CRHA Objects of the Corporation. A Public Harbour as per the provisions of the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations. The existence of the previously mentioned Act relates to the lack of Federal Court Jurisdiction, see (TAB 4) Federal Courts Act;

a) *JURISDICTION OF FEDERAL COURT*

17. (1) *Except as otherwise provided in this Act or any other Act of Parliament, the Federal Court has concurrent original jurisdiction in all cases in which relief is claimed against the Crown.*

(6) If an Act of Parliament confers jurisdiction in respect of a matter on a court constituted or established by or under a law of a province, the Federal Court has no jurisdiction to entertain any proceeding in respect of the same matter unless the Act expressly confers that jurisdiction on that court.

22. (1) *The Federal Court has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under or by virtue of Canadian maritime law or any other law of Canada relating to any matter coming within the class of subject of navigation and shipping, **except to the extent that jurisdiction has been otherwise specially assigned.***

(2) *Without limiting the generality of subsection (1), for greater certainty, the Federal Court has jurisdiction with respect to all of the following:*

(s) *any claim for dock charges, harbour dues or canal tolls including, without restricting the generality of the foregoing, charges for the use of facilities supplied in connection therewith.*

119. The only exception to paragraph (s) above-mentioned where the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations would allow the jurisdiction of the Federal Court on a claim for dock charges concern the provisions of the follows section, see (TAB 3) Fishing and Recreational Harbours Regulations;

CHARGES - Debt due to Her Majesty

13. (1) *All charges prescribed by regulations made under this Act for the use of any scheduled harbour constitute a debt due to Her Majesty in right of Canada jointly and severally by the owner and any other person in charge of the vessel or goods in respect of which the charges are payable.*

Other remedies available

(2) *Nothing in this Act prevents a debt payable under this Act from being recovered, together with all costs, from the debtor in any court of competent jurisdiction or the exercise against the debtor of any other right or remedy available at law.*

120. The Defendant never refused to pay the prescribed fees to the CRHA Corporation. Specifically, the defendant never breached any CRHA By-Laws and never refused berthage payments as per the \$3.12 per foot per month enjoyed by other styled vessels.

121. The Defendant has no debt due to Her Majesty.

122. Prior to the Order of Justice Mandamin, Federal Court of Canada File T-1003-10, the RCMP

imposed peace between the parties while the criminal process initiated by the Defendant took its course.

123. The Order of Justice Mandamin confused the RCMP where they agreed with the Defendant to leave the CRHA facility as per the Federal Court Interlocutory Order. Yet, the RCMP were not going to enforce the Order should the Defendant choose to stay. The Federal Court Interlocutory Order was fully discussed with RCMP Sgt. Mallard with questions as to the attitude taken by the Federal Court. Specifically, questioning the worth of a Federal Court Order that dismissed work carried out by the Defendant to safeguard the public interest.
124. Therefore, the lack of interest to collect the Defendant's fees never originated from the Defendant; rather it was always available to the CRHA Staff to collect the fees. Yet, they stubbornly refused and without a mandate from a legal authority increased the fees to daily transient fees of 75 cents per foot per day. See (TAB 8) CRHA By-Laws - Complete Document.
125. The following excerpts from case law (TAB 13) *Isen v. Simms*, [2006] 2 S.C.R. 349, 2006 SCC 41, govern the lack of Federal Court Jurisdiction over Pleasure Craft;
- "In reality, the ambit of Canadian maritime law is limited only by the constitutional division of powers in the Constitution Act, 1867. I am aware in arriving at this conclusion that a court, in determining whether or not any particular case involves a maritime or admiralty matter, must avoid encroachment on what is in "pith and substance" a matter of local concern involving property and civil rights or any other matter which is in essence within exclusive provincial jurisdiction under s. 92 of the Constitution Act, 1867. It is important, therefore, to establish that the subject-matter under consideration in any case is so integrally connected to maritime matters as to be legitimate Canadian maritime law within federal legislative competence".*
- "Parliament does not have jurisdiction over pleasure craft per se".*
126. The fact that the Defendant's vessel was used as a residence, the fees paid by the Defendant to the Not-for-Profit CRHA Corporation were used to the betterment of his own leased Public facility via his membership in the CRHA Corporation. The previously mentioned fact is not an Admiralty law matter, that is, in "pith and substance" subject to provincial law under the Canada Corporations Act and the Provincial Courts under the provisions of the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations.
127. The case law (TAB 15) *Salt Spring Island Local Trust Committee v. B & B Ganges Marina Ltd.* Defines the Defendant's vessel usage while at the CRHA facility. At the onset of his arrival in Campbell River, the Defendant used his vessel as a residence. Moreover, the Defendant subsequently moved out of his New Westminster address, 800 Boyd Street, and permanently resided and continues to reside on his vessel.
128. The CRHA Board of Directors and Staff were and are fully aware of the Defendants residence status. At all times since his arrival in Campbell River the Defendant made it clear to everyone; including Government officials, Court Officials, friends, and anyone that asked; his vessel is his residence.
129. While at the CRHA facility the Defendant's vessel was fully connected to the City's utilities; hydro, water and wi-fi internet. And, extra fees applied to the consumption of the said utilities.
130. Specific to case law (TAB 15) *Salt Spring Island Local Trust Committee v. B & B Ganges Marina Ltd*; **if an object is being used as a ship, that use may engage the federal power over navigation. If an object is not being used as a ship, the federal power over navigation is not engaged.**

Issue 5 – Affidavit of Phyllis Titus;

131. Seeing the persistence of the Informant to review the CRHA finances, on June 24, 2010 Phyllis Titus, CRHA Manager, initiated a civil lawsuit in Federal Court (T-1003-10) against the Informant and his vessel for unpaid berthage fees and seeking an interlocutory order for the removal of the Informant's vessel from the Harbour. Phyllis Titus, sworn affidavit containing 39 paragraphs dated June 15, 2010 exhibits a variety of false statements. See (TAB 14) Affidavit of Phyllis Titus.
132. Phyllis Titus affidavit of June 15, 2010, paragraph 2 is a false statement with intent to mislead the Federal Court of Canada;
- "The CRHA is a non-profit federal incorporation with a volunteer elected Board of Directors consisting of fisherman and community representatives and 3 paid staff members which operates the former Federal government small craft harbour at Campbell River, BC (the "Harbour") pursuant to a head lease with the Ministry of Fisheries. The purpose of the organization is to maintain berthage at Campbell River for commercial fishing vessels. Pleasure craft may be allowed to berth in the Harbour, but only as a supplement to the commercial fishing fleet".*
133. Phyllis Titus affidavit of June 15, 2010, paragraph 3 is a false statement with intent to mislead the Federal Court of Canada;
- "In May 2008 Mr. E.G. da Costa Duarte berthed his pleasure craft, a sailing vessel, the "Acor", at one of the CRHA docks. Mr. Duarte advised me that he was in Campbell River to help a friend work on the friend's tug and asked to pay berthage calculated at our pleasure craft monthly rate".*
134. Phyllis Titus affidavit of June 15, 2010, paragraph 6 is a false statement with intent to mislead the Federal Court of Canada;
- "The address, 800 Boyd Street, New Westminster, BC provided by Mr. Duarte, is not, I now understand, in fact, a residence but the address of Queensborough Mini Storage, a warehouse facility. The Berthage Agreement has a notation on it "Queensborough Mini Storage" which I handwrote on the document in approximately September 2008 when I became aware that Mr. Duarte was living on his vessel and checked the address which he had provided".*
135. The Defendant's residency address as per his B.C. driver's licence shows the address; 800 Boyd Street, New Westminster, B.C. The defendant's current driver's was issued on April 4, 2008 and expires on April 9, 2013. The stated address was changed to the current address; 3945 Discovery Drive, Campbell River, B.C. on March 16, 2009. The driver's license previously issued to the Defendant also showed the 800 Boyd Street address.
136. Phyllis Titus affidavit of June 15, 2010, paragraph 21 is a false statement with intent to mislead the Federal Court of Canada;
- "In the letter of 11 September 2009, Mr. Duarte was asked to provide a current residence address as the addresses he had previously provided was not valid".*
137. The address; 3945 Discovery Drive, Campbell River, B.C. was given to the CRHA office staff shortly after the Defendant's return to Campbell River, B.C. and changing his address on March 16, 2009 from 800 Boyd Street, New Westminster, B.C.
138. Phyllis Titus affidavit of June 15, 2010, paragraph 25 is a false statement with intent to mislead the Federal Court of Canada;
- "On 17 February 2010 I was undertaking our routine daily vessel count when I noticed that a skiff from one of the vessels moored in the Harbour was partially sunken and I notified the owner of the skiff. I was continuing with the vessel count when I was approached by Mr. Duarte demanding a pump and swearing at me and calling me names. He was so aggressive that I, along with Tom*

Thompson to whom I was speaking when Mr. Duarte approached, both thought that he was going strike me. Now produced and shown to me and marked as Exhibit "H" to this my Affidavit is the CRHA Incident / Occurrence Report which I completed following my encounter with Mr. Duarte".

139. Phyllis Titus affidavit of June 15, 2010, paragraph 26 is a false statement with intent to mislead the Federal Court of Canada;

"As a result of the incident on 17 February 2010 and his failure to provide proof of liability insurance, on 18 February 2010 Tom Forge, the CRHA president, sent Mr. Duarte a letter advising that he would have to make alternate berthing arrangements for his vessel by 28 February 2010. Now produced and shown to me and marked Exhibit "I" to this my Affidavit is a copy of Mr. Forge's letter dated 18 February 2010";

140. The Defendant is a veteran professional of the Marine Industry with expert experience as to what qualifies a vessel to obtain liability insurance. The CRHA Board of Directors do not demand marine liability insurance from vessels docked at the CRHA facility. Further, the majority of vessels using the CRHA facility are not able to obtain marine insurance because of their age, dilapidated hull condition and unseaworthy condition.

141. Phyllis Titus affidavit of June 15, 2010, paragraph 32 is a false statement with intent to mislead the Federal Court of Canada;

"Because of Mr. Duarte's volatility the RCMP requested that the CRHA not deliver any further correspondence to Mr. Duarte on the "Acor".

142. Phyllis Titus affidavit of June 15, 2010, paragraph 37 is a false statement with intent to mislead the Federal Court of Canada;

"In my dealings with Mr. Duarte, I found him to be generally aggressive and belligerent, but it was not until he confronted me on 17 February 2010 that I felt physically threatened. Since that date, and as requested by the RCMP, I have been going about my daily business trying to avoid any interaction with Mr. Duarte which makes doing my job, which involves attending regularly on the docks, difficult".

143. The above-mentioned false statements originating from the Affidavit of Phyllis Titus are currently before the criminal Courts of Campbell River under Court File 37556. See Section 131 (1), Perjury, of the Criminal Code, (TAB 7) Criminal Code - C-46.

Issue 6 – Discrimination;

144. Three issues of discrimination occurred that bring forth the provisions of the Canadian Charter of Rights and Freedoms namely Section 15. See (TAB 6) THE CONSTITUTION ACT, 1867 and 1982.

145. The Campbell River Harbour Authority is a Scheduled Harbour. The Campbell River Harbour Authority is a Public Harbour; 1335. Campbell River, page 36, Fishing and Recreational Harbours Regulations. See (TAB 3) Fishing and Recreational Harbours Regulations.

146. The three issues above-mentioned consist of; live-a-board status, Liability Insurance and CRHA membership status. Section 15 of the CONSTITUTION ACT, 1982, PART I, CANADIAN CHARTER OF RIGHTS AND FREEDOMS, states the following;

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

147. The Campbell River Harbour Authority manages a Public facility, and to supplement the provisions

of the Canadian Charter of Rights and Freedoms, it is specifically stated on the CRHA Letters Patent, Objects of the Corporation, paragraph c, see (TAB 8) CRHA By-Laws - Complete Document.

c) To regulate harbour use in a safe and fair manner, providing for the effective sharing of harbour resources among all user groups such as commercial fishers, recreational boaters, fishing guide operators, marine and foreshore businesses and visiting vessels.

148. Moreover, the DFO-CRHA Lease Agreement, to supplement the provisions of the Canadian Charter of Rights and Freedoms, states under paragraph 7 the following, (TAB 9) DFO - CRHA Lease Agreement.

Public Access

*7. (1) The Harbour Authority **shall, at all times,** ensure access by the public to the Harbour without any discrimination against any person, in any manner.*

149. The following series of quotes are obtained from the Canadian Charter of Rights Decisions Digest;

“In general terms, the purpose of s. 15(1) is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration: Law v. Canada (Minister of Employment and Immigration), 1999 CanLII 675 (S.C.C.), 1999 CanLII 675 (S.C.C.), 1999 CanLII 675 (S.C.C.), [1999] 1 S.C.R. 497”.

“A person asking for equal treatment necessarily does so by reference to other people with whom he or she can legitimately invite comparison. Claims of discrimination under s. 15(1) can only be evaluated by comparison with the condition of others in the social and political setting in which the question arises. A s. 15(1) claim will likely fail unless it can be demonstrated that the comparison, thus invited, is to a "comparator group" with whom the claimant shares the characteristics relevant to qualification for the benefit or burden in question apart from the personal characteristic that is said to be the ground of the wrongful discrimination: Hodge v. Canada (Minister of Human Resources Development), 2004 SCC 65 (CanLII), 2004 SCC 65 (CanLII), 2004 SCC 65 (CanLII), [2004] 3 S.C.R. 357, 2004 SCC 65”.

150. The Defendant was singled out by the governing body of the CRHA Corporation, involving three separate issues that were created to intimidate the Defendant to depart from the CRHA facility. The involvement of the three issues; live-a-board status, Liability Insurance and CRHA membership status, **did not compared equally to the "comparator group" with whom the Defendant shared characteristics.**
151. The Federal Court of Canada exercises jurisdiction over the Canadian Charter of Rights and Freedoms. Therefore, available evidence originating from Federal Court File T-1003-10 demands a ruling.

Issue 7 – Defendant’s Counterclaim;

152. Justice Mandamin Order dated August 25, 2010 states the Following;

- 1. The Time for filing the Defendants’ Counterclaim until August 20, 2010 is confirmed.*
- 2. The Defendants’ Counterclaim is to be filed as presented.*
- 3. This matter shall be continued as a specially managed proceeding.*

153. Clearly, justice Mandamin accepted the Defendant’s Counterclaim “as presented” giving the Defendant an indication that the Counterclaim was understood.

154. Currently, Prothonotary Judge Roger R. Lafreniere, request from the Defendant a clarification of the Defendant's counterclaim. Perhaps, the Defendant's understanding of the court process requires a better knowledge of an institution that is separate from the society it represents. Therefore, the Defendant begins the clarification exercise by identifying the topics of the Counterclaim.
1. Discrimination based on singling out the Defendant from his peers with intent to intimidate the Defendant to seize and desist from continuing criminal prosecution against the CRHA Corporation, the CRHA Board of Director and CRHA Staff.
 2. The Defendant, has suffered great hardship and embarrassment upon the removal of his vessel, the S/V Açor, from the premises of the Campbell River Harbour Authority.
 3. The Defendant's rights and privileges as a member of the CRHA Corporation were illegally removed; the right to vote, the right to review the CRHA finances, the right to address issues of concern before the membership seeking a resolution, the right to enjoy a facility paid by Taxpayers for the usage of taxpayers.
 4. Misappropriation of CRHA funds originating from Taxpayer's money and Harbour User's fees.

Revised Witnesses List

155. The revised list of witnesses follows;

Capt. E. G. da Costa Duarte - Mr. Manfred Binger – Mr. Ronald Griffin – Mr. Glen Lusk – Mr. Sean Foy – Mr. Arthur Beaulieu – RCMP Sgt. Craig Massey – Mr. Kent Moeller – Mr. Ted Thompson.

156. The above listed witnesses are directly involved with Federal Court File T-1003-10. The Defendant requests the attendance of the above-listed witnesses at trial. Federal Court Rule 41 (1), see (TAB 5) Federal Courts Rules.

Subpoena for witness

41. (1) Subject to subsection (4), on receipt of a written request, the Administrator shall issue, in Form 41, a subpoena for the attendance of a witness or the production of a document or other material in a proceeding.

Conclusion

157. Augmenting the Defendant's Memorandum of Fact and Law, the Defendant relies on the following documents submitted to the Federal Court File T-1003-10;
- (a). July 8, 2010, Letter to the Chief Justice Part I.
 - (b). July 10, 2010, Motion Record.
 - (c). March 26, 2010, Letter to DFO Minister, Gail Shea.
 - (d). June 14, 2010, Letter to DFO Minister, Gail Shea.
 - (e). July 10, 2010, Motion Record submitted via email to Federal Court File T-1003-10,
 - (f). Appendix A, by Mr. Glenn Lusk, Mr. Ronald Griffin, Mr. Manfred Binger and Mr. Sean Foy.
 - (g). July 19, 2010, sworn affidavit of Capt. E. G. da Costa Duarte.
 - (h). November 18, 2010 Request for Directions.
 - (i). March 17, 2011 Request for Directions.
 - (j). March 22, 2011 Request for Directions.
158. Reflecting societal values, Canadian law recognizes the historical value of persons connect with the sea. The fundamental principle that such persons are entitled to have reasonable moorage for their vessels is intrinsic worth and dignity validated through facilities of a Public nature. As such, a government marine facility acknowledges that persons connected with the sea are *prima facie*

- entitled to have no obstacles to their waterborne mobility and a place to secure their vessels.
159. Persons connected with the sea do not create an undue hardship on society. Rather, they promote a livelihood conducive with a healthy environment and exploration that in turn promotes the wellness of society.
 160. Federal Court File T-1003-10 depicts a Public facility, the Campbell River Harbour Authority (CRHA), where the governance decided to rob mariners of their hard work, contributed through years of tax deductions to a government that is mandated to provide and facilitate their lives with undue hardship.
 161. Despite being presented with full opportunities to demonstrate accountability and transparency, involving a facility that is owned by the Public, the Campbell River Harbour Authority, Board of Directors and Staff chose to abscond every single bit of information that rightfully belongs to all Canadians.
 162. Being able, yet unwilling to produce financial information that support large sums of revenue awarded to the CRHA Corporation, the CRHA Board of Directors and Staff pretend fraud and theft is not applicable to their misappropriation of funds status. Instead they dwell with sayings that it is all alleged and that their secret financial doings are immune from the Rule of Law. They pin their hopes on impressionistic evidence hurled at the good name of the Defendant and others that question their corruptive practices.
 163. Only because of the Defendant's tactical decision to question and investigate the CRHA Corporation, and embark upon an assessment of voluminous evidence, the Board of Directors of the CRHA are trapped in a *cu de sac* that dictates; the only escape is to "spills the beans" and let us all know where the money went.
 164. In this motion, initiated by the Plaintiff. Rather, by lawyers disguising themselves as corporate vanguards where their real intention is to divert attention away from the fraudulent practices of the CRHA Board of Directors and Staff. Perhaps, better said, divert attention from a bigger culprit, currently unknown to the Defendant. Yet, rumours abound that it is all connected with our Federal Government. The scandalous part of the Defendant's preceding statement, remains that the rumours are from reliable sources. Unfortunately, they refuse to go public. The defendant imagines it is the loss of their pensions that they worry about.
 165. The Plaintiff failed to show any arguable case, thus far. The Plaintiff's evidence is based on wild accusation, mainly from a person that calls herself a "bitch" and from evidence that fails legal authority. Yet, the Defendant is paying the price; removed from a Public facility where the RCMP fails to understand where the Federal Court is coming from and where it is going.
 166. Presently, when all CRHA related court files are analysed with a determined interest to ascertain worthiness of our Courts, the Defendant questions the nation's judicial future. The Defendant appeared before ten Judges with quite an interesting volume of stories about a judicial system that is not working and in dire need of fixing, certainly, not by those that currently manage it.
 167. The question remains; are the Court capable of correcting the wrong that is taking place within the CRHA facility. Because, the symptoms of the CRHA are showing up at other Federal Government institutions.

PART IV – ORDER SOUGHT

168. The respondents seek the following relief:
 1. A declaration that section 15 of the Canadian Charter of Rights and Freedoms apply to the Defendant's Counterclaim.

2. An Order dismissing the Plaintiff's motions.
3. An Order for Contempt of Court, under Federal Court Rule 466 (c), involving Issue 1 above-mentioned.
4. An order that the Plaintiff pay the Defendant's costs of these motions.
5. Such further and other order as this Honourable Court may deem just.
6. An Order compelling witnesses to attend the forth coming trial date under Rule 41 (1).

Dated: June 28, 2011

A handwritten signature in blue ink that reads "E. G. da Costa Duarte". The signature is written in a cursive style with a horizontal line underneath the name.

Capt. E. G. da Costa Duarte
Defendant

Address: 3945 Discovery Drive, Campbell River, BC, V9W 4X5
Tel. 1 (250) 202-1518 Email: egduarte@live.ca

To: Shelley A. Chapelski
Bull, Housser & Tupper LLP
Barristers & Solicitors
3000 - 1055 West Georgia Street
Vancouver, British Columbia V6E 3R3
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Facsimile: (604) 641-4949

Appendix A

1. The current list of exhibits follow, also showing additional exhibits under review.
2. The exhibits marked with an * were submitted to the Plaintiff during the discovery process. The remaining exhibits are part of the ongoing criminal process, Criminal Court File 37556.
3. The Defendant seeks directions from the Federal Court as to the relevance of the exhibits that relate to the criminal process with the Federal Court process.

List of Exhibits relating to Criminal Court File 37556;

- *Exhibit A Capt Duarte Request for Financial Review
- *Exhibit B Tom Forge Letters
- *Exhibit C Incident Report
- *Exhibit C Incident Report Submitted to Federal Court
- *Exhibit D CRHA Letters Patent By-Laws
- *Exhibit E CRHA Lease Agreement
- *Exhibit F Berthage Agreement
- Exhibit F01.1 DFO Invoice Spreadsheet of Grants ATIP
- Exhibit F01.2 DFO Webpage PO Documents - Over 10 000 Dollars
- Exhibit F01.3 ICE Annual Report 2008-2009
- Exhibit F01.4 CRHA Treasures Report 2008-2009
- Exhibit F01.5 FAC Code Definitions - DFO
- Exhibit F01.6 Excel Spreadsheet of DFO PO Documents - Over 10 000 Dollars
- Exhibit F01.7 Excel Spreadsheet of DFO Invoices vs. CRHA declared ATIP
- Exhibit F01.8 FAC CODES Posted on DFO Invoice Spreadsheet
- Exhibit F02.1 CRHA Berthage Fees 1999
- Exhibit F02.2 Percentage Calculations
- Exhibit F02.3 Excel Graphs of CRHA Revenue vs Boat Counts
- Exhibit F02.4 CRHA Revenue Increases by Percentage
- *Exhibit G CRHA Membership Card and Receipt
- *Exhibit H Live Aboard Request
- *Exhibit I Tom Forge Letter to CRHA Members
- *Exhibit J CRHA Financial Statements 1999-2007
- *Exhibit K Part I CRHA AGM Minutes 1999-2008
- *Exhibit K Part II CRHA AGM Minutes 1999-2008
- +Exhibit L CRHA Boat Counts
- *Exhibit M Moorage Receipts
- *Exhibit N AGM 2010
- *Exhibit O Affidavit Titus

List of Audio Recorded Exhibits relating to Criminal Court File 37556;

- Exhibit W Phyllis Assault November 4 2010 at 12Noon
- *Exhibit P January 2010 Manfred Bindger-TimHobbs
- *Exhibit Q01 December 2 2010 320 PM Max-Tim Hobbs
- *Exhibit Q02 April 15 2011 202 PM Manfred Binger-Tim Hobbs
- Exhibit R TomTimLetter01
- Exhibit R TomTimLetter02
- Exhibit R TomTimLetter03
- *Exhibit S July 5 2010 200 PM Tape 2-Phyllis Titus-Glenn

- *Exhibit S July 6 2010 318PM Tape 3-Phyllis Titus-Glenn
- *Exhibit S July 27 2010 331 PM Tape 5-Glenn-Phyllis
- *Exhibit S July 27 2010 830 AM Tape 4-Glenn-Phyllis
- *Exhibit T July 5 2010 800 AM EGdCD-Kent Moeller
- *Exhibit T October 4 2010 2 PM EGdCD-Kent Moeller
- *Exhibit U November 12 2010 230 PM EGdCD-Sgt Massey
- *Exhibit V July 1 2010 EGdCD-Ted Thompson
- *Exhibit X April 4 2010 Shredding Truck IMG_0017 (2)
- *Exhibit X April 4 2010 Shredding Truck IMG_0018 (2)
- *Exhibit Y February 13 2010 130 PM Dave Ostler

List of Audio Recorded Exhibits, Currently Under Review;

- April 14 2011 459 PM Manfred Binger-PhyllisTitus
- April 15 2011 202 PM Manfred Binger-Tim Hobbs
- April 20 2011 704 PM Manfred Binger-Revocation Meeting
- August 23 2010 400 PM Phyllis Titus - Max
- August 23 2010 549 PM Manfred-Phyllis
- February 12 2011 Noon EGdCD-Art Beaulieu
- February 24 2011 CRHA Annual General Meeting - Max Recording
- February 2 2011 CRHA Special Meeting - Max Recording
- April 16 2011 CRHA Large Oil Spill - Glenn Lusk Video
- March 30 2011 CRHA Letter to Glenn Lusk