

CA39471

Form 3
[am. B.C. Reg. 176/91, s. 15.]
[Paragraph 4 (1) (a) and subrule 5 (1)]

**NOTICE OF APPEAL
FOR LEAVE TO APPEAL
PRIVATE PROSECUTION AGAINST JUSTICE'S ORDER OF SUPREME COURT OF B.C.**
(Criminal proceedings)

Lower Court Registry Number: 37556
Lower Court Registry Location: Campbell River, BC

**VANCOUVER
NOV 09 2011
COURT OF APPEAL
REGISTRY**

COURT OF APPEAL

BETWEEN:
**Capt. E. G. da Costa Duarte
Sailmaster Glenn Lusk**
(Applicants)

And
**The Attorney General of British Columbia
Prothonotary Roger R. Lafreniere (Federal Court of Canada)
Campbell River Harbour Authority (CRHA)
The Board of Directors of the CRHA
Coast Bailiff & Collections
Shelley Chapelski
Phyllis Titus**
(Respondents)

PARTICULARS OF ORDER

1. Place of Order; Supreme Courts of British Columbia, Campbell River, B.C.
2. Name of Justice; Romilly
3. The Applicants rely on the following Sections of Criminal Code (Canada);
 - a. Section 8 of the Criminal Code - Flagrant Impropriety practiced by the Attorney General of B.C.
 - b. Obstructing Justice - Section 139 of the Criminal Code.
 - c. Fraud - Section 380 (1) (a) of the Criminal Code.
 - d. Public Mischief - Section 140 (1) (c) of the Criminal Code.
 - e. Perjury - Section 131 (1) of the Criminal Code.
 - f. Assault - Section 265 (1) (a) of the Criminal Code.
 - g. Mischief - Section 430 (1) (a) of the Criminal Code.
4. Orders sought at Trial. Two Applications and one Petition were produced and submitted to the Supreme Court of British Columbia. Only the Application for directions was given a court date, the other two were ignored and dismissed. The Orders Sought are outlined below;

NOTICE OF APPLICATION, heard on October 17, 2011:

- a. The Applicants seek directions and clarifications from the Supreme Court of British Columbia on the

applicability of the Criminal Rules of the Supreme Court of British Columbia pertaining to the use of Applications under Rule 2 – Notice of Application.

- b. The Applicants seek directions and clarifications from the Supreme Court of British Columbia on the applicability of the Criminal Law Practice Direction (consolidated), signed by Associate Chief Justice Dohm, on November 2, 1998, Part I - Applications in Criminal Proceedings. The said practice direction states; *(a) such applications must be made by Petition addressed to the Court supported by an affidavit verifying the facts upon which the application is based;*
- c. The Applicants seek a clear clarification involving the two preceding paragraphs, involving the use of a Notice of Application under the Criminal Rules of the Supreme Court of British Columbia vs. the use of a Petition under Rules 16-1 (2) and 21-5 (14) of the Supreme Court Civil Rules.
- d. The Applicants seek directions on the usage of Affidavits when the Criminal Rules of the Supreme Court of British Columbia under Rule 2 – Notice of Application – state the following; *(6) The judge hearing an application may receive **viva voce** evidence in addition to or **in lieu** of Affidavit evidence. Contrary, to Rule 16-1 - Petitions; (2) A person wishing to bring a proceeding referred to in Rule 2-1 (2) by filing a petition must file a petition in Form 66 and each affidavit in support. Specifically, how do Criminal Rules of the Supreme Court of British Columbia apply to the usage of Rules under the Supreme Court Civil Rules when they conflict?*
- e. The Applicants prepared ten (10) subpoenas relating to the below-named witnesses list. The said subpoenas require the signature of a Supreme Court Justice as per Criminal Code Section 699. (1). Therefore, the Applicants request a clear direction as to the correct process to obtain the said Justice signature prior to a trial date. The Applicants understand that a trial date must be set to issue subpoenas and only wish clarification that a Justice will sign the subpoenas *in chambers* prior to trial.
- f. The Applicants served the September 14, 2011 Notice of Application on Prothonotary Roger R. Lafreniere (Federal Court of Canada) and Shelley Chapelski on September 15, 2011 via email service as per pre-established agreements involving Federal Court File T-1003-10. Several documents were served via email involving Affidavits, Motion Records, Memorandum of Fact and Law, Counterclaim, etc..., prior to the said Notice of Application. Via reply email both above-mentioned parties refused service. Yet, by replying to the Applicant's emails they acknowledged receipt of the said Notice of Application. The Applicants request directions from a Supreme Court Justice in accordance with Criminal Rules of the Supreme Court of British Columbia, Rule 3 – Service, subsection; *(3) Where it appears to the court that it is impractical for any reason to effect prompt personal service of a notice of application, notice of appeal or any other document required to be served personally or by an alternative to personal service under these Rules, the court may make an order for substituted service or, where necessary in the interests of justice, may dispense with service.*

NOTICE OF APPLICATION/PETITION, not heard:

- a. The Petitioners seek an Order for Certiorari commanding that proceedings be removed from the Provincial Courts of Campbell River, involving Provincial Court Criminal File 37556, and heard before a Justice of the Supreme Courts of British Columbia for review of evidence and to issue process. The said order emerges from factual evidence showing Flagrant Impropriety of the Attorney General of British Columbia.
- b. The Petitioners seek an Order of Mandamus compelling the Supreme Court of British Columbia to hear evidence supporting a Prima Facie case and to issue process, involving Provincial Court Criminal File 37556, as per the performance of a statutory duty owed to the Applicant, specific to Section 508 of the Criminal Code.
- c. The Petitioners seek an Order of Mandamus compelling the Supreme Court of British Columbia to issue Subpoenas and hear evidence from the below-named witnesses, supporting a Prima Facie case and to issue process, involving Provincial Court Criminal File 37556 : Mr. Glenn Lusk - Mr. Ronald Griffin - Mr. Dave Ostler - Mr. Arthur Beaulieu - Ms. L. Isibido - Mr. Manfred Binger - RCMP Sgt. Craig Massey - Mr. Ted Thompson - Mr. Kent Moeller - Mr. Sean Foy.

- d. The Petitioners seek an Order of Mandamus compelling the Supreme Court of British Columbia to hear evidence supporting a Prima Facie case and to issue process on the charge of Obstructing Justice resulting from the Federal Court of Canada, Pre-Trial Conference Hearing of June 14, 2011, involving Shelley Chapelski, counsel for the CRHA Corporation, applicable to Section 139 of the Criminal Code.
- e. The Petitioners seek an Order of Mandamus compelling the Supreme Court of British Columbia to hear evidence supporting a Prima Facie case and to issue process on the charge of Obstructing Justice resulting from the Federal Court of Canada, Pre-Trial Conference Hearing of June 14, 2011, involving Prothonotary Roger R. Lafreniere, applicable to Section 139 of the Criminal Code.
- f. The Petitioners seek a clarification from the Supreme Court of British Columbia on whether private informants should conduct full trials in order to meet the Crown's desired level of evidence needed for conviction. By contrast, a failure of the Supreme Court of British Columbia to disallow the Petitioners/Informant to conduct a full trial in order to meet the Crown's desired level of evidence needed for a conviction, nullifies the fundamental purpose of the Supreme Court of British Columbia.
- g. The Petitioners seek an Order of Restitution for financial losses originating from a denial of Justice perpetrated by the Attorney General of British Columbia.
- h. The Petitioners seek an Order of Restitution for financial losses originating from a deprivation of their Democratic rights and the fraudulent practices of the CRHA Board of Directors and CRHA Staff.
- i. The Petitioners seek such further and other Order of financial restitution as this Honourable Court may deem just.
- j. The Petitioners seek to clarify pre-enquete procedures. The Petitioners's argument is outlined within Part 3, LEGAL BASIS, paragraphs 1 to 20. The issues follow;
 - a. Are pre-enquetes ex parte?
 - b. Are pre-enquetes in camera?
 - c. Is the Petitioners/informants limited to only presenting eye-witness evidence deriving from witnesses that show-up at the hearing on a voluntary basis? Are subpoenas not allowed?
 - d. Should pre-enquetes become full trials where all the evidence is presented to the Judge or Justice?

- 5. Length of trial; approximately 35 minutes.
- 6. Order Imposed;

"THIS COURT ORDERS THAT the Supreme Court of British Columbia declines jurisdiction on these matters until there has been an adjudication in the Provincial Court under s. 507.1 of the Criminal Code in respect of information No. 37556.

- 7. Date of Order; October 17, 2011.

TAKE NOTICE that the Applicants:

- (a) appeal against the Order of the Supreme Court of British Columbia declining jurisdiction on these matters (Court File 37556) until there has been an adjudication in the Provincial Court under s. 507.1 of the Criminal Code in respect of information No. 37556;
- (b) And, upon grounds involving Questions of Law and Constitutional Question.

The grounds for appeal are:

Descriptive words; **Petitioners and Informants** directly relate to Capt. E. G. da Costa Duarte and Sailmaster Glenn Lusk, the undersigned. **Informant** directly relate to Capt. E. G. da Costa Duarte.

- 1. Upon receiving the Court File No. 37556, on December 15, 2010 from the Campbell River Courts Registry, the Informant requested a court date from the Judicial Case Manager, Ms. Christine Ballman. Nearly three months later, the Informant was given a short notice for a hearing dated, March 2, 2011. The said hearing date was adjourned by the Informant for severe weather conditions occurring within Campbell River waterfront. Subsequently, a new date was set for the hearing, on March 23, 2011.

2. The March 23, 2011 hearing was adjourned. Two affidavits of witnesses and the Informants written submissions were removed from Court file 37556 and placed on a Supreme Court File dealing with a Campbell River Harbour Authority (CRHA) Winding-up application. These factual events took place without the knowledge of the Informant.
3. Nearly ten (10) months later, beginning December 15, 2010, no date is set for the hearing of evidence involving Criminal Court File 37556. Further, several subpoenas were presented to Provincial Court Judges for their signature, involving Court File 37556 and none signed; prejudicing the said court file.
4. The Applicants acknowledge the determination of the Attorney General of British Columbia to stall and eventually stop prosecutions against the Campbell River Harbour Authority (CRHA) its Board of Directors and Staff as per Form 2 – Information, Court File 37556. Specifically, the initial dates awarded to the Informant, directly related to the fact that the Crown was under the understanding that the Fraud allegations were based on Proactive information listed on Fisheries and Oceans (DFO) website involving the P.O. numbers awarded to the CRHA facility.
5. Subsequent to the acquisition of the Proactive disclosure of Contracts over \$10,000.00, the Informant, Capt. E. G. da Costa Duarte, initiated a new Freedom of Information (ATIP), requesting printout data of all the actual invoices awarded to the CRHA from DFO-Small Craft Harbours. The DFO-ABACUS accounting software program produced a spreadsheet of all the invoices, resulting in different financial numbers than those posted on the DFO website - disclosure of Contracts Over \$10,000.00 dollars.
6. Upon receipt of DFO - ABACUS Financial System - computer printout of all the actual invoices awarded to the CRHA, the Informant advised the Crown of such and soon after noticed a change in attitude, specifically that the Crown was not enthused with the idea that concrete evidence was available showing clearly the moneys awarded to the CRHA.
7. **Since the availability of the DFO - ABACUS Financial System - computer printout of all the actual invoices awarded to the CRHA the ability to obtain a Provincial Court date stopped.**
8. The DFO Proactive disclosure of Contracts over \$10,000.00 Dollars, downloaded from the DFO website, does not represent the monies given to the CRHA Corporation. The disclosure of contracts originating from P.O. contract numbers were never fully awarded to the CRHA Corporation, rather it differs from the actual 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 following statement listed on DFO website, is misleading; it represents P.O. numbers of contracts that were not fully awarded;
"The proactive Disclosure report provides the contract figures contained in our ABACUS Financial System and are current as of the posting date for the report. The most up to date contract values are contained in our contract files".
9. The total P.O. 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. Thus, 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 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. The preceding summarized statement is not easy to understand without a review of the relevant document exhibits available to Court File 37556.
10. The determined and malicious intent of the Attorney General of British Columbia to prevent Court File 37556 to proceed, is clearly evident, whether its missing documents from court file 37556, refusal to sign subpoenas or just plain no date for a hearing, the purpose of preventing the said criminal prosecution has only one

motive; the Attorney General of British Columbia is protecting fraudulent practices originating from DFO – Small Craft Harbours and the Campbell River Harbour Authority. No other reason exists preventing the evidence from being heard.

11. The above-mentioned malicious intent is further accentuated by an act of fraud, where the Attorney General of British Columbia is denying a service that the Applicants paid for via their tax payments. The right for an Informant to bring forth a private prosecution is assured by Parliamentary Act; the Criminal Code.
12. Augmenting and accentuating malicious intent, originating from the Attorney General of British Columbia, Lesley Ruzicka, Counsel for the Crown, initiated a lie before the Supreme Court of British Columbia on October 17, 2011. The outrageous lie follow;
“My understanding from the record of proceedings is that the matter was adjourned on that date at the request of Mr. Duarte. My understanding from speaking to April Darke who is the Judicial Case Manager of the Provincial Court in Campbell River, is that no further dates were scheduled for process hearing after March 23, 2011 and that Mr. Duarte has not made any attempts to fix a further date for a process hearing”.
13. As per paragraph 2, above-mentioned, the March 23, 2011 hearing was adjourned because information contained within Court File 37556 was missing, the Informant, Capt. E. G. da Costa Duarte had no choice but to re-schedule the said hearing. The request for a new date was initiated immediately after the March 23, 2011 hearing. Specifically, Capt. E. G. da Costa Duarte proceeded to the office of the Judicial Case Manager, Ms. Cristine Ballman and requested a hearing date.
14. From March 23, 2011 onwards, the Judicial Case Manager, Ms. Christine Ballman failed to arrange a hearing date upon repeated requests from Capt. E. G. da Costa Duarte for such. The months; April, May and June passed with no date given, a mannerism that prompted the Informant, Capt. E. G. da Costa Duarte to demand a date from Ms. Christine Ballman, otherwise the Informant intended on initiating an Application to the Supreme Court of British Columbia, based on Flagrant Impropriety of the Attorney General of British Columbia.
15. Ms. Christine Ballman, acknowledged such demand by stating that given the ongoing crisis within the Provincial Courts, it was difficult to obtain a court date. Moreover, Ms. Christine Ballman acknowledged the Informant’s predicament by stating that the Informant must choose what is best, given the totality of the circumstances. Moreover, accentuating the lack of available dates, Ms. Christine Ballman stated that at best, the earliest date available for a hearing involved January 2012, giving a clear message to the Applicant that a long wait for a Court date was in order.
16. The Informant’s recent conversation with Ms. April Darke, on November 1, 2011 changed the date availability to mid-Spring 2012.
17. Clearly, the malicious intent of initiating a lie before a Justice of the Supreme Court of British Columbia to pervert a judicial process in favour of the Attorney General of British Columbia brings forth Section 139 of the Criminal Code, Obstructing Justice. Lesley Ruzicka, Counsel for the Crown, maintains the Attorney General’s intent at preventing a hearing to issue process, whether before a Supreme Court Justice or Provincial Court Judge, Court File 37556.
18. The act of bringing forth Ms. April Darke fails reasoning and accentuates the malicious intent of the Attorney General of British Columbia. Obviously, the Informant never contacted the Case Manager Ms. April Darke for a date, the request was listed and awaiting a court date, where the Informant carried the matter to the Supreme Court of British Columbia seeking resolution.
19. Augmenting the fact that a court date was requested by the Informant and awaiting a date for the hearing, the Case Manager had no authority to stop her duty of provide such. The authority to stop the Case Manager from issuing a Court date is only available via the Court Registry, after the Informant submits a written Notice of

Discontinuance. The following quote originating from Ms. April Darke, during a conversation with Capt. E. G. da Costa Duarte that took place on November 1, 2011 explains the Case Manager's job;

"...you need to get into court we make sure you get into court"

- 20. While the Applicants get no Provincial Court dates, getting Supreme Court dates appears to be no problem. Yet, when before a Justice of the Supreme Court, no resolution occurs. Therefore, the determined process at blocking the Informant's Private Prosecution is intentional and governed by the Attorney General of British Columbia combined with an overlying mannerism that officials from Oceans and Fisheries Canada are negatively influencing a Judicial Resolution.
- 21. Further, nothing has prevented the Campbell River Crown to take over the criminal proceedings initiated by the Informant. Actually, Capt. E. G. da Costa Duarte, at the onset of the said proceedings requested Crown Counsel John Boccabella to carry out the prosecutions listed on Form 2 - Information, Court File 37556.
- 22. Justice Romilly, on October 17, 2011 hearing, outright failed to apply the provisions of the Supreme Court Act [RSBC 1996] CHAPTER 443, specific to Section 9, as follows;
 - "Jurisdiction and sittings"
 - "9 (1) The court continues to be a court of original jurisdiction and has jurisdiction in all cases, civil and criminal, arising in British Columbia".
- 23. Justice Romilly, on October 17, 2011 hearing, outright failed to apply relevant statutory provisions governing the make up of the Campbell River Harbour Authority, a Not-for-Profit Corporation. The below-listed Statutes are under the Jurisdiction of the Supreme Court of British Columbia;
 - a. Fishing and Recreational Harbours Act.
 - b. Fishing and Recreational Harbours Regulations.
 - c. Canada Corporations Act.
 - d. Canada Business Corporations Act.
 - e. Criminal Code of Canada

The relief sought is:


- a. The Applicants seek Orders consistent with the Orders sought in the Supreme Court of British Columbia before Justice Romilly, on October 17, 2011. The said Orders are outlined above; paragraph 4, Orders sought at Trial. The Applicants reiterate the following Orders;
- b. The Applicants seek a clarification from the Appeal Court of British Columbia on whether private informants should conduct full trials in order to meet the Crown's desired level of evidence needed for conviction. By contrast, a failure of the Appeal Court of British Columbia to disallow the Applicants to conduct a full trial in order to meet the Crown's desired level of evidence needed for a conviction, nullifies the fundamental purpose of the Rule of Law;
- c. The Applicants seek an Order of Restitution for financial losses originating from a denial of Justice perpetrated by the Attorney General of British Columbia;
- d. The Applicants seek an Order of Restitution for financial losses originating from a deprivation of their Democratic rights and the fraudulent practices of the CRHA Board of Directors and CRHA Staff;
- e. The Applicants seek such further and other Order of financial restitution as this Honourable Court may deem just.
- f. The Applicants seek an Order that it is wrong to allow the Crown to have sole authority to prosecute when democracy is at play.
- g. Alternatively, the Applicants understand that the Crown via the office of the Attorney General of British

Columbia is the representation of Her Majesty the Queen of Canada, a Monarch with sovereign powers. Therefore, is Canada a Monarchy or a Democracy? In practice, the two don't mix. Either the Applicants obey the Queen via the apparent dictatorial powers of the Crown or the Applicants practice Democracy as per the Rule of Law.

- h. The Applicants seek directions clarifying the powers of the Attorney General of British Columbia specific to the practice of Flagrant Impropriety allowing criminal behavior to take hold within the Community of Campbell River as per From 2 – Information, Court File 37556.

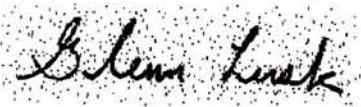
Dated at Campbell River, this 2nd. day of November, 2011

The Applicants signatures and addresses for service are;



Captain E. G. da Costa Duarte

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



Sailmaster Glenn Lusk

#14-1630 Croation Road,
Campbell River, BC,
V9W 3T5
Tel. (250) 202-3160
Email: glusk58@gmail.com

To the Registrar

CA 039548

Form 3
[am. B.C. Reg. 176/91, s. 15.] [Paragraph 4 (1) (a) and subrule 5 (1)]

**NOTICE OF APPEAL
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(Criminal proceedings)**

Lower Court Registry Number: 37556

Lower Court Registry Location: Campbell River, BC

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**VANCOUVER
DEC 12 2011
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REGISTRY**

BETWEEN:

**Capt. E. G. da Costa Duarte
(Applicants)**

And

**The Attorney General of Canada
Chief Justice of the Federal Court of Canada
Prothonotary Roger R. Lafreniere (Federal Court of Canada)
Justice Mandamin (Federal Court of Canada)
Madam Justice Tremblay-Lamer (Federal Court of Canada)
Madam Justice MacTavish (Federal Court of Canada)
(Respondents)**

PARTICULARS OF ORDER

1. Place of Order; Supreme Courts of British Columbia, Campbell River, B.C.
2. Name of Justice; Truscott
3. The Applicant relies on the following Sections of Criminal Code (Canada);
 - a. Obstructing Justice - Section 139 of the Criminal Code.
4. Orders sought at Trial. One Application was produced and submitted to the Supreme Court of British Columbia. The Orders Sought are outlined below;

NOTICE OF APPLICATION, heard on November 14, 2011:

- a. For an order declaring that the Federal Court of Canada has no jurisdiction in respect of the matters in the case of Court File No. T-1003-10, namely;

**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"**

CA 039548

Form 3
[am. B.C. Reg. 176/91, s. 15.] [Paragraph 4 (1) (a) and subrule 5 (1)]

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BETWEEN:

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(Applicants)**

And

**The Attorney General of Canada
Chief Justice of the Federal Court of Canada
Prothonotary Roger R. Lafreniere (Federal Court of Canada)
Justice Mandamin (Federal Court of Canada)
Madam Justice Tremblay-Lamer (Federal Court of Canada)
Madam Justice Mactavish (Federal Court of Canada)
(Respondents)**

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**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

Form 3

[am. B.C. Reg. 176/91, s. 15.] [Paragraph 4 (1) (a) and subrule 5 (1)]

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FOR LEAVE TO APPEAL
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(Criminal proceedings)**

Lower Court Registry Number: 37556

Lower Court Registry Location: Campbell River, BC

COURT OF APPEAL

BETWEEN:

Capt. E. G. da Costa Duarte

(Applicants)

And

The Attorney General of Canada

Chief Justice of the Federal Court of Canada

Prothonotary Roger R. Lafreniere (Federal Court of Canada)

Justice Mandamin (Federal Court of Canada)

Madam Justice Tremblay-Lamer (Federal Court of Canada)

Madam Justice Mactavish (Federal Court of Canada)

(Respondents)

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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

- b. For an order restraining and prohibiting the judges, clerks and other officers of the Federal Court of Canada from taking any further steps or making any further Orders in the above-mentioned case, Federal Court File No. T - 1003 -10.
 - c. For an Order quashing the Order of Madam Justice Tremblay-Lamer of the Federal Court of Canada, Court File T-1003-10, made on July 13, 2010.
 - d. For an Order quashing the Order of Mr. Justice Mandamin of the Federal Court of Canada, Court File T-1003-10, made on August 25, 2010.
 - e. For an Order quashing the Order of the Chief Justice, Allan Lufty of the Federal Court of Canada, Court File T-1003-10, made on September 7, 2010.
 - f. For an Order quashing the Order of Case Management Judge, Prothonotary Roger R. Lafreniere of the Federal Court of Canada, Court File T-1003-10, made on November 23, 2010.
 - g. For an Order quashing the Order of Case Management Judge, Prothonotary Roger R. Lafreniere of the Federal Court of Canada, Court File T-1003-10, made on July 20, 2011.
 - h. For an Order quashing the Order of Madam Justice Mactavish of the Federal Court of Canada, Court File T-1003-10, made on August 15, 2011.
5. Length of trial; approximately 40 minutes.
 6. Order Imposed;

“The application of Capt. E.G. da Costa Duarte, dated and filed on October 25, 2011 at the Campbell River Registry of the Supreme Court of British Columbia, is dismissed”.
 7. Date of Order; November 14, 2011.

TAKE NOTICE that the Applicant:

- (a) appeal against the Order of the Supreme Court of British Columbia dismissing the Application heard on November 14, 2011.
- (b) And, upon grounds involving Questions of Law and Constitutional Question.

The grounds for appeal are:

Descriptive words; **Informant** directly relates to Capt. E. G. da Costa Duarte.

1. Justice Truscott of the Supreme Court of British Columbia made several statements that fail justice and must be addressed by the Appeal Court of British Columbia to ascertain the role of the Supreme Courts of British Columbia. The following statements were obtained during the hearing that took place on November 14, 2011;

*“You (the Applicant) can not cross courts into this court, and so I say again; **if I had any discretion to entertain this application in this court, I decline to do so**”.*

“I think you are in the wrong court, you (the Applicant) should be and have to be in Federal Court”.

“Your remedies are in the Federal Court at the higher level”. ...either to the Court of Appeal in Federal Court of Appeal. If you are not satisfied with the Jurisdiction of the Judges of the Federal Court that issued those Orders or for the Prothonotary, it is to the Federal Court trial level pursuant to Rule 51 of the Federal Court Rules and to bring that to the attention of a Federal Court Judge”.

“If you are not successful there, at the trial level of the Federal Court to get someone to hear that you are right on the Jurisdiction issue, then you go to the Federal Court of Appeal. If you are not successful there, in the Federal Court of Appeal then you go to the Supreme Court of Canada. If you are not right there and your position is not accepted that is the final Court of the land. That is the procedure you have to follow”.

“Once you are in a Federal Court lawsuit and you dealt with Federal Court Judges, a decision made by them,

you have to follow their rules, ...you go up the ladder”.

“You can not cross Courts into this Court. I don’t want you to tell me how you read the case law; I want you to tell me if you discussed this with a lawyer that works in this Court or in the Federal Court”.

“Mr. Duarte, you can not possibly learn everything yourself – spending all your time in the case law and the text books – and back to Old English Law”.

“You can not. I can not make you go to a lawyer to get some guidance on this. But, I am sorry to say Sir, you are wrong. You are dead wrong”.

“We have no Jurisdiction in this Court to start interfering with the Federal Court, once the Federal Court has assumed Jurisdiction. So far, they have assumed Jurisdiction until they say they don’t have Jurisdiction and that’s for you pursue in that Court... you go up the ladder”.

2. Regarding the Applicant’s Memorandum of Fact and Law submitted to the Federal Court on June 28, 2011 addressing the lack of Federal Court Jurisdiction, Justice Truscott stated the following;

“I know Mr. Duarte, but your remedy there is to go under the rules to a Federal Court Judge and say to that Federal Court Judge, the Prothonotary did not listen to my argument on a lack of Jurisdiction and that was not accommodated at all just passed over”.

“Even if I have any discretion to exercise Jurisdiction over these matters that you brought out in this application, I refuse to exercise that Jurisdiction. But, I do not believe I have any Jurisdiction at all in this Court to do anything at all. On that basis your Application is denied”.

3. Moreover, Justice Truscott commented on available case law supporting the Applicant’s Application.

“The answer is; I have decided that this Court has no Jurisdiction. If you think there is case law out there that says that this Court has Jurisdiction, you are now required to go to the Court of Appeal on that”.

“Mr. Duarte, I am trying to help you out, has much as possible. You have said that you appeared before Federal Court Judges, who have not listened to you on issues of Jurisdiction – you have remedies in the Federal Court system – up the ladder to make those submissions. Don’t waste your time. That’s all the advice I am going to give you”.

4. Clarifying some of the issues above-mentioned Justice Ian Binnie on behalf of the Supreme Court of Canada, states the following together with relevant case law;

“A further bulwark of judicial independence is that judges enjoy immunity from civil liability for actions taken in the performance of their judicial duties. The source of this immunity is the common law, rather than the Constitution or legislation. (While several statutes pertaining to provincial court judges address immunity, the two federal statutes governing Supreme Court judges do not explicitly do so.) This common law immunity only applies to civil suits, not criminal charges. In all likelihood, a serious criminal charge would cause a judge to resign in order not to compromise the integrity of the court on which he or she sits”.

Morier and Boily v. Rivard, [1985] 2 S.C.R. 716;

McC v. Mullan, [1984] 3 All E.R. 908 (H.L.)- Magistrates’ Courts Act (Northern Ireland) 1964,

“No action shall succeed against any person by reason of any matter arising in the execution or purported execution of his office of resident magistrate or justice of the peace, unless the court before which the action is brought is satisfied that he acted without jurisdiction or in excess of jurisdiction”.

“In *McC*, as in the present case, the question was not a subtle one, but an irregularity that was at once obvious and serious. More important, in both cases the procedure was one required by the legislature as a prerequisite to the exercise of a power, in *McC* the detention of the accused, in the present case the imputing to respondent of conduct open to censure. In the particular context of *McC*, there were several earlier cases in which magistrates had been successfully sued for damages because they had failed to comply with the

specific requirements of the applicable legislation”.

*“By substituting the legislative provisions applicable in the present case for those referred to by Lord Bridge, it becomes obvious that the same considerations apply here. **In my opinion, a person who flagrantly acts in excess of his jurisdiction as already described does not act in the execution of his duty”.***

5. The Applicant commenced criminal proceedings against the Campbell River Harbour Authority (CRHA) the CRHA Board of Directors and CRHA Staff **on February 23, 2010** under Provincial Court File No. 36999-1.
6. Subsequently, several Provincial Court Files numbers were issued arising from new evidence that originated from Informants, the CRHA Corporation and Fisheries and Oceans Canada (DFO) ATIP. **The acquisition of all evidence involving past Provincial Court Files now rests within Provincial Court File 37556.**
7. 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, the Applicant requested RCMP involvement at keeping the peace between the Applicant and the CRHA Board of Directors and Staff. Specifically, addressing the aggressive nature of the CRHA Board of Directors and Staff.
8. On June 29, 2010 the RCMP confirmed to the Applicant that RCMP Sergeant Craig Massey, requested Phyllis Titus and CRHA Staff to refrain from engaging the Applicant. The following are quotes originate from RCMP Sergeant Craig Massey during a conversation with the Applicant;
"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".
9. RCMP 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".
10. On March 4, 2010, a letter signed by Tom Forge, CRHA President, addressing the Applicant’s written request for financial details, **submitted to the CRHA Corporation on February 18, 2010,** fails reasoning and meets all the underhanded practices of the CRHA Board of Directors.
"Even if you were a member, you would not be entitled to review the accounting records asked for..."
11. The above-mentioned 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;
"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”.
12. Augmenting the above paragraph, the CRHA Berthage Agreement states 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”.*
13. Moreover, the provisions of the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations, state that 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 of Canada specific to a **lack of Jurisdiction;**
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.**

14. On June 24, 2010 the CRHA filed a Statement of Claim to the Federal Court of Canada, Court File T-1003-10, as a collateral attempt by the Campbell River Harbour Authority (CRHA), the Board of Directors of the Campbell River Harbour Authority and the CRHA staff to undermine the capacity of the Applicant to continue his prosecution outlined in Form 2 – Information, of Case file 37556. **Specifically, the said Statement of Claim was filed in Federal Court four months (4) after the Applicant's commencement of criminal proceedings.**
15. The Federal Court has no Jurisdiction to resolve issues between the Campbell River Harbour Authority and the Applicant as per the Plaintiff's Court File Statement of Claim, T-1003-10.
16. The Federal Court has no Jurisdiction to resolve issues between a CRHA member/Harbour User (the Applicant) and the CRHA Board of Directors, involving a not-for-profit Corporation, its accountability to the membership and financial Fraud contrary to section 380 (1) (a) of the Criminal Code.
17. Contempt of Court, under Federal Court Rule 466 (c), involving Issue 1, described within the Defendant's June 28, 2011 Memorandum of Fact and Law; the statements of Shelley Chapelski, counsel for the CRHA Corporation, described within the Defendant's Memorandum of Fact and Law paragraphs, 90 to 95, are contrary to section 139 of the Criminal Code.
18. The Federal Court refusal to address the Applicant's requests to review *de novo* on the basis that the issues raised within the Applicant's Memorandum of Fact and Law are vital to the final issue in the case. The final issue of the case is governed by the provisions of the Fishing and Recreational Harbours Act, the Fishing and Recreational Harbours Regulations and the Canada Corporations Act. The Federal Court has no Jurisdiction to rule on the said issues, outlined within the said Applicant's Memorandum of Fact and Law, thus contributing interference to criminal prosecution, while the defendant awaits a never ending wait for Provincial court time, given the useless courts of British Columbia that are in a current state of disrepute.
19. The Applicant, Capt. E. G. da Costa Duarte suffered great hardship upon the removal of his vessel, the S/V Açor, from the premises of the Campbell River Harbour Authority, a Public facility understood by the RCMP to be a facility for Public use, as per the provisions of the Fishing and Recreational Harbours Act. The Federal

Court, on its great judicial wisdom, illegally (by Judge's rulings) changed the provisions of the Fishing and Recreational Harbours Act to suit the CRHA Board of Directors of wanting the Applicant removed from the CRHA facility, thus installing the idea that they are not required to provide accountability and transparency to anyone, especially to the Applicant, upon his written request, submitted on February 18, 2010, to review the CRHA financial details. See the CRHA Letters Patent submitted to the Federal Court via the Book of Authorities attached to the said Defendant's Memorandum of Fact and Law.

20. The failure of Prothonotary Roger R. Lafreniere to grasp the criminal on goings of the CRHA Corporation and Fisheries and Oceans Canada, involving misappropriations of funds, generates a negative image of the Federal Court and reflects an image that it is above the Rule of Law. Apparently, the Federal Court issues judgements with no regard for the victims it creates. The Applicant, along with Harbour users; Mr. Manfred Binger, Mr. Glenn Lusk and Mr. Ronald Griffin are victims of abuse, where the CRHA Corporation and the Federal Court are robbing them of their rights, specifically, the Federal Court via Prothonotary Roger R. Lafreniere and Justice Mandamin failed or better said; do not want to address the problems they are creating;
21. And, to add insult to injury, the Federal Court continues to award costs (\$2,000.00 Dollars) to Fraudsters - the CRHA Board of Directors - by robbing the victim of his money, when the Applicant (victim) is only trying to bring criminals to justice. An appalling judicial system that deliberately fails the society it is mandated to guard. The Applicant, further challenged the Federal Court (Prothonotary Roger R. Lafreniere) to show evidence that the Applicant is pursuing imaginary thoughts of fraud, hurled at the Campbell River Harbour Authority and the CRHA Board of Directors. To date no reply was received.
22. The current crisis involving the Provincial Courts is preventing the Applicant to further the criminal process against the CRHA Board of Directors and CRHA Staff, a crisis that the CRHA Corporation is fully aware and taking full advantage of, with the help of the Federal Court. Moreover, a court that failed to address criminal evidence, instead, pursues a civil case that is designed to intimidate the Applicant, Informant and Prosecutor, is a court in disrepute.
23. Federal Court failure to address the Applicant's WRITTEN REQUEST – SUBPOENA OF WITNESSES AND PRODUCTION OF DOCUMENTS - Federal Court Rule 41 (1) (4).
24. The below-mentioned statements originating from Justice Mandamin of the Federal Court are relevant to issues at hand, indicating contradictions that must be resolved with a determination to end Federal Court File. Secondly, the recommendation of mediation was purposely dismissed by Prothonotary Roger R. Lafreniere during his case management directions; Federal Court File T-1003-10. Defendant, Capt. E. G. da Costa Duarte, motion to the Court on Monday August 9, 2010, at 9:30 a.m. Justice Mandamin Quotes:

"Those issues that you (Capt. E. G. da Costa Duarte) raise, broadly speaking are the kind of issues that could be raised and challenged in the process of an action. This application is an application to remove the Federal Order issued previously, and in my view, we are not dealing with the broader questions in an action you filed your (Capt. E. G. da Costa Duarte's statement of defence) statement of defence and those issues you take to raise, those issues and the respondent seek to counter them in the action. Right now we are just dealing with the question of the Order".

"From listening to you (Capt. E. G. da Costa Duarte), I take that you are not having any conversation with the Harbour Authority about how to go forward on this. Are both of you locked into your positions?"

"It is clear that there is not a dialogue, if any going on between the harbour Authority and yourself Mr. Duarte, except via the courts, which is not a desirable situation".

"First of all, on the subject of irrefutable harm, clearly excluding Mr. Duarte from the Harbour, Mr. Duarte's vessel from the Harbour, has a substantial impact on him, that was not before Madam Justice Tremblay-Lamer, when she issued that order, but more importantly the Harbour authority, by interlocutory order, is achieving much of the result that is seeking in the action and that is not fundamentally the intention of interlocutory orders, that what you are seeking is his (Capt. E. G. da Costa Duarte) exclusion from the

Harbour and you are getting that by an interlocutory order that gives me cause for concern".

"It seems to me that you got an ongoing dispute here that the parties would be well advised to resolve in the form of mediation".

"I do encourage both of you to come to this agreement it would be one step toward sort of working out a way of reaching a settlement on the ultimate issue and I can assure you and Ms Chapelski can assure your clients (Campbell River Harbour Authority) that or you can advise your clients that in my view a settlement reached by the parties is generally more satisfactory to the parties than any adjudication by the court in litigation".

25. Sometime during the Pre-Trial Conference Prothonotary Roger R. Lafreniere stated to the Applicant; “**this is not your show**”. Certainly, such a ridiculous statement begs an answer; if the Applicant is not part of the show, then the Applicant must be a spectator of the Federal Court. Therefore, the Applicant’s continuing participation with Court File T-1003-10 is entirely dependent on whether the Applicant wishes to see the show or not. Bringing forth taxpayers money, the Applicant along with the rest of the Taxpayers, are paying for his show where the democratic process is nowhere to be seen.
26. On July 13, 2010 Madam Justice Tremblay-Lamer issued an Order for the removal of the Applicant’s vessel, the S/V Açor, from the CRHA facility, based on **non-existent law**, by-laws, rules and regulations that assign jurisdiction to the Federal Court to issue such order of removal.
27. The above-mentioned Order of Removal was issued by default. The Applicant was previously committed to a Provincial Court date set by the Campbell River Courts, therefore the Applicant was not able to be in two Courts at once (Federal Court of Canada and Provincial Court of British Columbia);
28. Clarifying that the above Federal Court Order issued by Madam Justice Tremblay-Lamer involved malicious intent, the Applicant produced two submitted written documents to the Federal Court of Canada fully addressing his argument and the impossible task of being in two places at once.
29. The above-mentioned written documents included; July 8, 2010 letter to Chief Justice of the Federal Court, Allan Lufty and Motion Record (rejected) faxed to the Registry on July 10, 2010. Both documents were sent to the Federal Court of Canada prior to the hearing set before Madam Justice Tremblay-Lamer on July 13, 2010;
30. The Federal Court of Canada was well informed of the Applicant’s predicament, yet it chose to adjudicate with intent to injure the Applicant then and continues to do so currently.

Attorney General of Canada

31. On February 26, 2010, 11:25:21 AM, the Applicant received email confirmation originating from the Attorney General’s Web Administrator (Webadmin@justice.gc.ca) confirming receipt of the Applicant’s email with two attached documents sent on February 24, 2010 at 12:59 PM. The preceding statement supported by copies of sent emails establishes that the Attorney General of Canada was informed of the criminal court files involving the Campbell River Harbour Authority **from the onset**. To date, not reply from the Attorney General of Canada reached the Applicant’s desk, outside of your Web Administrator’s reply above stated;

"Hello, The department of Justice Canada received your email and it was forwarded to the Minister's office on the same day".

32. Moreover, the Minister of Industry Canada (Tony Clement) via his underlings; Michel.Duchesneau@ic.gc.ca; Louise.Lemay@ic.gc.ca and Rosemarie.Farrell@ic.gc.ca, were also informed.
33. A quote originating from the Attorney General’s Web Pages involving a posted Policy Statement and Guidelines for Public Participation, Department of Justice, follows;

"The Department of Justice is responsible for ensuring that Canada is a just and law-abiding society with

an accessible, efficient and fair system of justice whose policies and programs that reaches deep into all communities. This unique responsibility to Canadian society and government is included in the elements of the Strategic Plan that address the building of the Department's policy development capacity and the role of public participation as a contributor to this process".

34. Certainly, the above quoted statement begs the question; when was the Attorney General of Canada last inside a Canadian Court? The above-mentioned court files introduced the Applicant to eleven (11) Judges and Justices of the Provincial Courts. Rather than receiving a positive contribution directed at resolving the issues at hand, the Applicant received an increase of problems originating from a Judiciary that is failing society.
35. At the Provincial Court level, some of problems were addressed by the Chief Judge for the Province of British Columbia. Yet one issue rises to the top, with a mannerism associated with all Judges to include the Federal Court. The Campbell River Harbour Authority (CRHA) is a Federal registered Not-for-Profit Corporation, governed by the provisions of the Canada Corporations Act and the Canada Business Corporations Act. In accordance with the said provisions, any director, member or staff of a Not-for-Profit Corporation is criminally liable when a breach of the said Parliament Acts occurs. Specifically, involving sections that dictate a Summary Conviction criminal charge with provisions under the Criminal Code leading to Indictment charges such as Fraud, Theft, etc... The following excerpt originates from the Winding-Up Act;

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.*

Costs of winding-up

(2) In any application to the court under subsection (1) the court shall determine whether the costs of the winding-up shall be borne by the company or personally by any or all of the directors of the company who participated or acquiesced in the carrying on of any business or the exercise or the professing of the exercise of any powers described in subsection (1). R.S., 1970, c. 10(1st Supp.), s. 3.

The relief sought is:

- a. For an order declaring that the Federal Court of Canada has no jurisdiction in respect of the matters in the case of Court File No. T-1003-10.
- b. The Applicant seeks Orders consistent with the Orders sought in the Supreme Court of British Columbia before Justice Truscott, on November 14, 2011. The said Orders are outlined above; paragraph 4, Orders sought at Trial.
- c. The Applicant seeks directions clarifying the provisions of THE CONSTITUTION ACT, 1867; section 91, Legislative Authority of Parliament of Canada and section 92, Subjects of exclusive Provincial Legislation.
- d. For an order restraining and prohibiting the judges, clerks and other officers of the Federal Court of Canada from taking any further steps or making any further Orders in the Federal Court File No. T - 1003 -10.
- e. The Applicant seeks directions clarifying the powers of the Attorney General of Canada specific to his failure to address CRHA Fraud and other criminal activity before the Federal Court of Canada.

- f. The Applicant seeks such further and other Orders that will clarify the role of the Federal Court of Canada when criminal issues need a judicial resolution within the Province of British Columbia.

Dated at Campbell River, this 9th. day of December, 2011

The Applicant's signature and address for service;

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.

Captain E. G. da Costa Duarte

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

To the Registrar

For return Fax service, use the following number; 1 (250) 287-2757