

**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

MOTION RECORD

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NOTICE OF MOTION

Motion for an appeal of an Order of a Prothonotary under Rule 51 (1) (2).

TAKE NOTICE THAT the defendant, Capt. E. G. da Costa Duarte, will make a motion to the Court on Monday, September 12, 2011 at 9:30 AM or as soon thereafter as the motion can be heard. **See attached Doctor's Letter, Page 12.**

- a. The Defendant estimates a minimum of **one day** for this motion to be heard. The defendant will participate in person in Campbell River, British Columbia, upon an order from the Court that the said hearing take place in whole in Campbell River, B. C., alternatively, the Defendant will accept the motion hearing to take place at 3rd Floor, 701 West Georgia Street, Vancouver, British Columbia; the defendant will participate by telephone from Campbell River, British Columbia, upon an order from the Court that the said hearing be conducted in whole or in part by means of a telephone conference call.
- b. The Defendant requests that witnesses and the production of CRHA financial documents attend and documents be made available to the said Motion Hearing as per Rule 41 (1); subject to subsection (4), on receipt of a written request - herein submitted - the Administrator shall issue, in Form 41, a subpoena for the attendance of witnesses or the production of a document or other material in a proceeding. The defendant requests that the language for the said hearing to be English.

THE MOTION IS FOR:

1. An order;
 - a) That the Federal Court has no Jurisdiction to resolve issues between the Campbell River Harbour Authority and the defendant as per the Plaintiff's Court File Statement of Claim, T-1003-10.
 - b) That the Federal Court has no Jurisdiction to resolve issues between a CRHA member/Harbour User 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.
 - c) That Admiralty Law does not apply to Court File T-1003-10 nor to criminal issues.
 - d) That no further proceedings be instituted in this Court by the CRHA Corporation based on falsehoods, distortions of documented fact and laws, initiated by Phyllis Titus, now except by leave of the Court, and;

- e) That the proceedings previously instituted by the CRHA Corporation, namely Court File T-1003-10 not be continued, except by leave of the Court.
- f) Such further and other order as this Honourable Court may deem just.
- g) An Order for 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, described within the Defendant's Memorandum of Fact and Law paragraphs, 90 to 95, are contrary to section 139 of the Criminal Code.
- h) An order that the Plaintiff pay the Defendant's costs of these motions.
- i) Costs.

THE GROUNDS FOR THE MOTION ARE:

2. To address Defendant's confusion arising from the July 20, 2011, Order of Prothonotary Roger R. Lafreniere upon his review of the Defendant's Memorandum of Fact and Law submitted to the Court on June 28, 2011.
3. The July 20, 2011, Order of Prothonotary Roger R. Lafreniere is without justification and on its entirety do not address the Defendant's Memorandum of Fact and Law submitted to the Court on June 28, 2011.
4. The said Orders are clearly wrong with no regard for the basic principles of justice and society's morals. Specifically, the Orders encourage the continuing fraudulent practices of the CRHA Board of Directors.
5. The exercise of discretion by Prothonotary Roger R. Lafreniere was based upon the wrong principle of justice; that the Campbell River Harbour Authority is free to make deals with the defendant based on criminal activity. Exemplified by;
 - a. Dismissing Fraudulent Practices Involving the CRHA and the CRHA Board of Directors, where Prothonotary Roger R. Lafreniere has offered **no evidence** dismissing the CRHA Board of Directors from criminal wrongdoing.
 - b. Plaintiff's Settlement Offer to be of an intimidating nature with a sole purpose of getting the Defendant to seize and desist criminal prosecution in Provincial Courts. The statements of Shelley Chapelski, described within the Defendant's Memorandum of Fact and Law paragraphs; 90 to 95 are contrary to section 139 of the Criminal Code. The said offer was repeated by Prothonotary Roger R. Lafreniere.
 - c. The Campbell River Harbour Authority is a Public Harbour; 1335; Campbell River, page 36, as per the provisions of the Fishing and Recreational Harbours Regulations, for the enjoyment of the Public. Instead, it is a front for misappropriation of Taxpayers Money; no evidence to the contrary exists.
6. The Defendant requests a review *de novo* on the basis that the issues raised within the Defendant'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 Defendant'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.**
7. The defendant, 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 Defendant removed from the CRHA facility, thus installing the idea that they are not required to provide **accountability**

and transparency to anyone, especially to the Defendant, 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.

8. 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 law. Apparently, the Federal Court issues judgements with no regard for the victims it creates. The Defendant, 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 us of our 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;
9. 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 Defendant (victim) is only trying to bring criminals to justice. An appalling judicial system that deliberately fails the society it is mandated to guard. **The Defendant, further challenges the Federal Court (Prothonotary Roger R. Lafreniere) to show evidence that the Defendant is pursuing imaginary thoughts of fraud, hurled at the Campbell River Harbour Authority and the CRHA Board of Directors.**
10. The defendant, again, presents the need to maintain his vessel in the Campbell River area to deal with legal issues before the Provincial Courts and the Supreme Court of British Columbia involving the CRHA, he does not dismiss the great injustice originating from the Federal Court of removing a vessel from a safe and public Harbour to protect illegal activity.
11. Certainly, this should be the number one concern of the Federal Court; otherwise the Federal Court is in disrepute. And, let's not be naive about this subject. The defendant is aware of how honourable members of the RCMP, that helped the defendant solve past criminal activity involving marine matters, feel about the courts; the criminal usually gets away with a "slap on the wrist". And, taking it a step further, the defendant's court room experience involves judges that beg a code of ethics review with an attitude for dismissal.
12. The current crisis involving the Provincial Courts is preventing the Defendant to further the criminal process against the CRHA Board of Directors and CRHA Staff, a crisis that the **Plaintiff** is fully aware and taking full advantage of, with the help of the Federal Court. Moreover, **a court that fails to address criminal evidence, and instead, pursues a civil case that is designed to intimidate the Informant/Prosecutor, is a court in disrepute.**



Dated: July 28, 2011

Capt. E. G. da Costa Duarte
Defendant

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PLAINTIFF BY COUNTERCLAIM

WRITTEN REPRESENTATIONS

1. The defendant relies on the following two documents and the Book of Authorities. The Defendant also relies on his notes taken during the July 14, 2011 Pre-Trial Conference;
 - a. May 20, 2011 Pre-Trial Conference Memorandum of the Defendant/Plaintiff by Counterclaim, Capt. E. G. da Costa Duarte.
 - b. June 28, 2011 Memorandum of Fact and Law.
 - c. Book of Authorities submitted together with the June 28, 2011 Memorandum of Fact and Law.
2. At the onset of the written representations, it is important for the Federal Court to understand that the Defendant commenced criminal proceedings against the CRHA Board of Directors and Staff several months before the commencement of Federal Court File T-1003-10.
3. Any insinuation, accusation or defamatory statement that is based on false information, originating from the Plaintiff and/or from Prothonotary Roger R. Lafreniere stating that the Defendant is using the Federal Court as ***“a ploy to distract focus on the real issues”***, demonstrates a flagrant mannerism that is inexcusable and must be dealt by separate court actions against the accusers. Also, **the Judges of the Federal Court are not above the Rule of Law** and neither are the Plaintiff’s counsels. The excerpt below derives from July 20, 2011 Order of Prothonotary Roger R. Lafreniere.

*“The factual matrix of each case must be considered broadly, employing a common sense approach. The Court's challenge is to look beyond how a claim is legally framed in order to determine its essential character: see Garten v Canada 358 FTR 118, 2009 FC 1233 (CanLII) at par 66. In my view, the Counterclaim as a whole lacks rationality and is fundamentally vexatious. **The pleading contains bald, gratuitous, and inflammatory attacks on the integrity and character of various individuals. In the end, it is nothing more than a ploy to distract focus on the real issues and to delay the orderly disposition of the main proceeding”.***
4. The following quote originating Prothonotary Roger R. Lafreniere during the June 14, 2011 Pre-Trial Conference, refers to my counterclaim accepted by Justice Mandamin “as presented” giving the Defendant a clear indication that his counterclaim was understood and accepted;

*“The counterclaim is in fact used as a sword, not as a shield and therefore you are advancing a claim, presumably you are advancing a claim in this court and the claim is being advanced based on what you are ascertaining as a course jurisdiction to adjudicate those claims. Either the court has jurisdiction to adjudicate your claims, add you brought your action validly or if you saying that the court has no jurisdiction. **Then what basis did you bring a counterclaim in this court”?***

5. Justice Mandamin Order dated August 25, 2010 stated 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.*
6. Prothonotary Roger R. Lafreniere perplexes the Defendant’s understanding of a claim. The Defendant’s counterclaim was never designed to be used as a sword or as a shield. Rather, it was filed to recoup financial losses and to resolve additional issues listed below;
 1. *Discrimination based on singling the Defendant out 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 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.*
7. Prothonotary Roger R. Lafreniere addresses sanctions against the Defendant, when the issues that he refers follow Federal Court Rule 183, establishing the right to bring forth subsequent pleadings – the Defendant’s Pre-Trial Memorandum and the Defendant’s Memorandum of Fact and Law are pleadings. A pleading by definition; ***(law) a statement in legal and logical form stating something on behalf of a party to a legal proceeding.***
8. The Defendant submitted all the available information involving the CRHA Corporation and the CRHA Board of Directors and Staff. If the Defendant misunderstood Rule 183 it stands to reason that Prothonotary Roger R. Lafreniere intervenes and address such unintentional misunderstanding, if any, of Rule 183. Thus far, Prothonotary Roger R. Lafreniere failed to do so, therefore, threatening to impose sanctions without performing his duties of a Case Management Judge is flagrant on its very nature, specific to the democratic rights of a self-representing litigant that is unfamiliar with lawyer style rhetoric. The following excerpts originate from Federal Court Rules, Federal Court Practice and from the Order of Prothonotary Roger R. Lafreniere;

Excerpt from Federal Court Rule 183;

183. In a defence or subsequent pleading, a party shall

- (a) admit every allegation of material fact in the pleadings of every adverse party that is not disputed;*
- (b) where it is intended to prove a version of facts that differs from that relied on by an adverse party, plead that version of the facts; and*
- (c) plead any matter or fact that*
 - (i) might defeat a claim or defence of an adverse party, or*

(ii) might take an adverse party by surprise if it were not pleaded.

Excerpt from “Federal Court Practice” (Saunders, Rennie, Garton);

“Rule 183 contains three requirements which are of particular importance to defendants. It requires a party in a statement of defence, or in a subsequent pleading, to admit all undisputed allegations of fact in a previous pleading; to plead any new version of the facts; and to plead any matter of fact that might defeat a claim or defence or take an adverse party by surprise”.

Excerpt from July 20, 2011 Order of Prothonotary Roger R. Lafreniere;

“The Defendants have adopted a cavalier and dismissive approach towards their discovery obligations and have thwarted the Plaintiffs reasonable attempts to conduct and complete discovery in an expeditious, least expensive and efficient manner. In the circumstances, I agree that serious sanctions should be imposed in the event the Defendants continue to frustrate the discovery process”.

9. The excerpt below derives from July 20, 2011 Order of Prothonotary Roger R. Lafreniere and creates an additional state of confusion for the Defendant. What “side of the fence” is Prothonotary Roger R. Lafreniere on, the statement below clearly indicates that the Plaintiff agrees with the Defendant that **“the Department of Fisheries and Oceans (DFO) owed a duty of good faith and breached the duty by failing to address corruption by the CHRA Board of Directors and its staff”.**

*“A number of claims are made against the Plaintiff, Campbell River Harbour Authority (CHRA), its Board of Directors and its staff, including allegations of corruption, abuse of process, defamation, deceit, and breaches of various federal statutes. **The Plaintiff also alleges that representatives of the Department of Fisheries and Oceans (DFO) owed a duty of good faith and breached the duty by failing to address corruption by the CHRA Board of Directors and its staff”.***

10. The excerpt below derives from July 20, 2011 Order of Prothonotary Roger R. Lafreniere insinuating that the Defendant failed the discovery process. The Defendant has written a complete book on the subject with clear details of all the issues facing the CRHA. Yet, this is not enough, for example the Plaintiff wants an inside picture of the Defendant’s Office/residency while the defendant leased the premises at 800 Boyd Street, New Westminster. Must the Defendant accompany the Plaintiff into the absurdity?

“Turning to the second motion, the Plaintiff seeks an order compelling better answers and further documents from the Plaintiff arising from written examination for discovery questions. The Defendants have provided no rational basis for refusing to answer or properly respond to the reasonable requests for relevant information. The questions posed by the Plaintiff, set out in Schedule A to the Plaintiffs Notice of Motion, are relevant to matters at issue in the main action for the reasons set out at paragraph 22 of the Plaintiffs written representations, which I adopt and make mine. The Defendants have refused to provide proper and complete answers or provided incomplete and non-responsive answers. Moreover, the Defendants have clearly failed to provide a complete affidavit of documents and produce relevant documents, including a number of documents referred to in the Defendants' pre-trial conference memorandum (presumably relevant documents from the Defendants' perspective)”.

11. The excerpt below derives from July 20, 2011 Order of Prothonotary Roger R. Lafreniere and is a clear indication that Prothonotary Roger R. Lafreniere twists issues at his discretion with no regard for the Defendant’s rights. The Defendant voiced is strong interest to have an oral hearing during the June 14, 2011 Pre-Trial Conference, instead it was all changed to; **“He (Defendant) also did not voice any objection to the motions being disposed of in writing”**, this is an outright false statement. The dialogue that took place at the June 14, 2011 Pre-Trial Conference also follows, with a clear request presented within the June 28, 2011 Memorandum of Fact and Law, where the Defendant requested an oral hearing.

Capt. E. G. da Costa Duarte; *There still be a hearing to deal with the two motions that were brought forward by the Plaintiff’s, correct?*

Prothonotary Roger R. Lafreniere; *Proceedings in writing Mr. Duarte.*

Capt. E. G. da Costa Duarte; *Oh, so there won't be a hearing? I just respond in writing? And then there will be a decision?*

Prothonotary Roger R. Lafreniere; *Yes, but you can always, as is provided for in rule 369, you can always ask for an oral hearing if you feel that the issues cannot properly disposed of in writing. But the court reserves the right to, of course make that decision based on the materials that it supports.*

Capt. E. G. da Costa Duarte; *Can I have that number?*

Prothonotary Roger R. Lafreniere; 369

*"The Defendants' request for declaratory and other relief will not be entertained by the Court as the proper procedure has not been followed. As for the request for an oral hearing, it must be denied for the following reasons. First, Capt. Duarte had been served with the Plaintiffs motion records and was aware of the nature of the relief requested by the Plaintiff prior to the pre-trial conference. He was consulted regarding deadlines for the service and filing of written materials and consented to the timetable fixed by the Court. **He also did not voice any objection to the motions being disposed of in writing.** Secondly, **the Defendants have not established that an oral hearing is required.** The case is not particularly complex; there is no issue of credibility of witnesses, and there is no indication that the Defendants could not adequately present their legal argument in writing".*

12. The following quote originating Prothonotary Roger R. Lafreniere during the June 14, 2011 Pre-Trial Conference, indicates an attitude of puzzlement for the Defendant where the Federal Court brings forth a Case Management Judge that adds ridicule rather than manage with an attitude to eliminate confusion and justly resolve the issues at hand;

"You may think that your memorandum was clear, Mr. Duarte, I read it very, very carefully. It really was an extraordinary confusing document which goes off into tangents or irrelevancies, it's going to cause major difficulties if these matters are not narrowed and clearly defined and from my perspective you have not defined your issues".

13. Addressing the above-mentioned quote, the Defendant begins with the definition of the word Tangent. Basically, a straight line or plane that touches a curve or curved surface at a point but does not intersect it at that point or the Ratio of the opposite to the adjacent side of a right-angled triangle. Further, given the Defendant's Naval Architect professional standing, with expertise within the field of ship stability, involving a large range of vessel sizes, exemplified by clientele such as the S/S Norway (ex-S/S France), numerous large tankers, bulk carriers, large and small tugs and new buildings, the Defendant must also define the word Tangent where it is applied to practical naval usage.
14. Whenever a Naval Architect inclines a vessel to ascertain seaworthiness in relation to stability, he measures the Angle of Inclination θ , specifically, each time an inclining weight (W) is shifted a distance (x), the vessel will settle to some equilibrium heel angle, θ . In order to accurately measure this angle (θ), pendulums are used; the two sides of the triangle defined by the pendulum are measured. Y is the length and Z is the distance the wire deflects from the reference position at the point along the pendulum length where transverse deflections are measured. **Tangent** θ is then calculated by using the equation; **Tangent** $\theta = Z/Y$.
15. By plotting all of the readings for each of the pendulums, three pendulums are usually used, during the inclining experiment aids in the discovery of bad readings. Since (W) (X)/tan θ should be constant, the plotted line should be straight. Deviations from a straight line are an indication that there were other moments acting on the vessel during the inclining. Additional explanations involving the Tangent θ fails the Defendant's intended purpose of bringing forth the word **Tangent**. And, the Defendant ends definitions by stating that the word "**tangent**" comes from the Latin tangens, meaning "touching".
16. Allowing for the usage of the term tangents or irrelevancies brought forth by Prothonotary Roger R. Lafreniere and guessing at his definition of the said terms, the Defendant will set out the following paragraphs using Tangents points;

17. **Tangent Point 1** - Sometime during the Pre-Trial Conference Prothonotary Roger R. Lafreniere reprimanded the Defendant's inability to keep his mouth shut whenever he spoke. Perhaps, the Defendant spoke out of turn once, yet on that specific occasion the Defendant is not sure if he was the culprit, instead this Tangent Point arises from his statement; **"This is not your show"**. Certainly, such a ridiculous statement begs an answer; if the Defendant is not part of the show, then the Defendant must be a spectator. Therefore, the Defendant's continued participation with Court File T-1003-10 is entirely dependent on whether the Defendant wishes to see the show or not. Bringing forth taxpayers money, the Defendant along with the rest of the Taxpayers, are paying for his show where the democratic process is nowhere to be seen.
18. **Tangent Point 2** – The Defendant's June 28, 2011 Memorandum of Fact and Law was produced to address Prothonotary Roger R. Lafreniere verbal statement during the Pre-Trial Conference, shown below, involving the Court's Jurisdiction, therefore why was the said Memorandum completely dismissed when Prothonotary Roger R. Lafreniere created the Order of July 20, 2011? The Court's Jurisdiction must be established; otherwise the Defendant is wasting his time entertaining a Court in disrepute.
- "That is exactly the point I was trying to make, there some allegations of Fraud, some allegations of Harassment of various issues that are presently before the court that presumably would be issues **for trial if these matters turn out to be within the court's jurisdiction.** Or if the court decides if the matter needs to go to trial".*
19. **Tangent Point 3** – The Defendant's June 28, 2011 Memorandum of Fact and Law was produced to address Prothonotary Roger R. Lafreniere verbal statement, during the Pre-Trial Conference, shown below, addressing the number of documents and acts. Thus, the Book of Authorities attached to the Defendant's June 28, 2011 Memorandum of Fact and Law. Why, the need to speak to Ms. Chapelski, **"to put those in"**?
- "The number of documents and acts etc... **can be the subject of a book of documents that can be prepared ahead of time if you want to speak to Ms. Chapelski to put those in.** To the extent that they are relevant and I don't think they will be substantial amount of time upon those issues. I think three days for trial would be sufficient".*
20. **Tangent Point 4** – During the June 14, 2011 Pre-Trial Conference, referring to the issue of Filing by Email, Prothonotary Roger R. Lafreniere granted leave to the Defendant to file by email, further stating that he **"recognize the technical problems that you (the Defendants) are experiencing"**. This attitude of granting the filling by email and not granting is causing problems for the Defendant that resides on a vessel and uses a digital fax system via the internet, a system that is not reliable; moreover fax systems are obsolete.



Dated: July 28, 2011

Capt. E. G. da Costa Duarte
Defendant

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PLAINTIFF BY COUNTERCLAIM

**WRITTEN REQUEST – SUBPOENA OF WITNESSES AND PRODUCTION OF
DOCUMENTS**

Federal Court Rule 41 (1) (4)

The Defendant requests the Federal Court to subpoena the following individuals for the Motion Hearing herein submitted;

1. *Mr. Manfred Binger*
2. *Mr. Ronald Griffin*
3. *Mr. Glen Lusk*
4. *Mr. Sean Foy*
5. *Mr. Arthur Beaulieu*
6. *RCMP Sgt. Craig Massey*
7. *Mr. Kent Moeller*
8. *Mr. Ted Thompson*
9. *Dave Ostler*

The Defendant requests the Federal Court to subpoena the production of the following CRHA financial records;

1. *Minutes of all members' and directors' meetings.*
2. *Financial statements, receipts...etc., required to perform a complete investigation of the corporation's financial activities.*
3. *All bank statements reflective of deposits and withdraws.*
4. *Detailed financial statements for completed financial periods, the report of the auditor, and any other documents required to be disclosed at the annual meetings.*

Rule 41 governs the summoning of witnesses and the production of documents at a hearing. The Defendant cannot adequately present a motion that is governed by unsubstantiated accusations and the threat of sanctions by the Federal Court when the totality of evidence is not yet available to the Court. The refusal to address the totality of issues involving the CRHA fails judicial reasoning and demonstrates that the Federal Court is purposely dismissing alleged criminal activity based on documentary evidence acquired from DFO-ATIP, CRHA financial Statements and assessments of projects that were not carried out as per DFO invoices awarded to the CRHA.

Further, Prothonotary Roger R. Lafreniere, stated that the Defendant's allegations against DFO representatives; "**are immaterial and vexatious**", with no offer of evidence to support such, as per the excerpt taken from his July 20, 2011 Order, shown below;

*"The Defendants have adopted a cavalier and dismissive approach towards their discovery obligations and have thwarted the Plaintiffs reasonable attempts to conduct and complete discovery in an expeditious, least expensive and efficient manner. **In the circumstances, I agree that serious sanctions should be imposed in the event the Defendants continue to frustrate the discovery process**".*

*"I conclude that the allegations against non-parties, whether specifically named or not in the body of the pleading, cannot stand. Even if the allegations against the directors and staff could be imputed to the CHRA, Capt. Duarte would have had to plead that the wrongful conduct was directed at him on behalf of the CHRA with the intention to harm him, as well as a causal connection between the damages claimed and the alleged wrongful conduct. **He has failed to do so. As for the allegations against DFO representatives, they are immaterial and vexatious**".*



Dated: July 28, 2011

Capt. E. G. da Costa Duarte
Defendant

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