



Form 66
(Rules 16-1 (2) and 21-5 (14))

SUPREME COURT OF BRITISH COLUMBIA

(CAMPBELL RIVER - Criminal Proceedings)

THE MATTER OF THE JUDICIAL REVIEW PROCEDURE ACT, R.S.B.C. 1996, C. 241

BETWEEN:

Capt. E. G. da Costa Duarte
Sailmaster Glenn Lusk
(Petitioners)

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)

PETITION TO THE COURT

ON NOTICE TO:

Attorney General of British Columbia

Honourable Shirley Bond
PO Box 9053 Stn Prov Govt
Victoria BC V8W 9E2

Prothonotary Roger R. Lafreniere

Federal Court of Canada
Pacific Centre
701 West Georgia Street
Vancouver, B.C.

Campbell River Harbour Authority (CRHA)

705 Island Highway,
Campbell River, BC, V9W 2C2

The Board of Directors of the CRHA

705 Island Highway,
Campbell River, BC, V9W 2C2

Coast Bailiff & Collections

399-1434 Ironwood Road Highway,
Campbell River, BC
Canada V9W 5T5

Shelley Chapelski

3000 Royal Centre, PO Box 11130
1055 West Georgia Street,
Vancouver, BC V6E 3R3

Phyllis Titus

705 Island Highway,
Campbell River, BC, V9W 2C2

This proceeding has been started by the Petitioners for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must;

- a. file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- b. serve on the Petitioners
 - I. 2 copies of the filed response to petition, and
 - II. 2 copies of each filed affidavit on which you intend to rely at the hearing. Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the Petitioners,

- a. if you were served with the petition anywhere in Canada, within 21 days after that service,
- b. if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- c. if you were served with the petition anywhere else, within 49 days after that service, or
- d. if the time for response has been set by order of the court, within that time.

The address of the registry is:

500 - 13th. Avenue,
Campbell River, B.C. V9W 6P1

The ADDRESS FOR SERVICE of the Petitioners is:

#14-1630 Croation Road,
Campbell River, BC,
V9W 3T5

Email: egduarte@live.ca or glusk58@gmail.com

Claim of the Petitioners

Part 1: ORDERS SOUGHT

1. 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.
2. 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.
3. 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. Manfred Binger
Mr. Ronald Griffin	RCMP Sgt. Craig Massey
Mr. Dave Ostler	Mr. Ted Thompson
Mr. Arthur Beaulieu	Mr. Kent Moeller
Ms. L. Isibido	Mr. Sean Foy

4. 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.
5. 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.
6. 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.
7. The Petitioners seek an Order of Restitution for financial losses originating from a denial of Justice perpetrated by the Attorney General of British Columbia.
8. 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.
9. The Petitioners seek such further and other Order of financial restitution as this Honourable Court may deem just.

10. 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?

Part 2: FACTUAL BASIS

1. Form 2 outlining criminal counts, shown below; sworn by the Informant, Capt. E. G. da Costa Duarte, on December 15, 2010 at Campbell River, British Columbia, commenced criminal proceedings against the Board of Directors of the Campbell River Harbour Authority, Tom Forge and Phyllis Titus. At the onset of a factual narrative, the Summary of Offence - Court File No. 37556 – follows;

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**. **Defendant** directly relate to Capt. E. G. da Costa Duarte involving Federal Court File T-1003-10.

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.

Named Suspects – Criminal Court File 37556

2. **Bruce Kempling** is the owner of Ocean Pacific Marine Supply LTD., located in Discovery Harbour, Campbell River, B.C. Bruce Kempling is a long term Director/President of the CRHA Corporation serving on the CRHA Board of Directors since the Corporation's beginning (1997) and retiring from the said board in 2010. Bruce Kempling maintains his silence when questioned about CRHA financial details, By-Laws, Letters Patent, DFO-CRHA Lease Agreement. Bruce Kempling is a fraud suspect; suspected of defrauding the public, the CRHA Harbour Users and CRHA membership of monies and services in excess of \$5000.00 Dollars. Moreover, Bruce Kempling is suspected of diverting CRHA funds to supplement his business; Ocean Pacific Marine Supply LTD.
3. **Timothy Charles Danby Hobbs** is the Partner owner of Redden Net Marine Supplies, Located on 690 Island Highway, adjacent to the CRHA facility, Campbell River B.C. Better known as Tim Hobbs, the long term Director/Treasurer of the CRHA Corporation, maintaining the same Corporate position since the Corporation's beginning (1997). Tim Hobbs maintains his silence when questioned about CRHA financial details, By-Laws, Letters Patent, DFO-CRHA Lease Agreement. Tim Hobbs, when interviewed about CRHA Corporate issues, provided false statements as to the corporate make-up of the CRHA facility, with intent at preventing anyone

from knowing the Corporation's facts. Tim Hobbs is the landlord/owner of the building located on 690 Island Highway, Campbell River, B.C. Tim Hobbs is a fraud suspect; suspected of defrauding the public, the CRHA Harbour Users and CRHA membership of monies and services in excess of \$5000.00 Dollars.

4. **Hugh Silver** is a retired Mill Engineer and long term CRHA Director. As a long term Director, since the Corporation's beginning (1997), Hugh Silver has taken control of the best area of the CRHA facility to create his vessel's berthage space, where only single rafted vessels are allowed, contrary to any other berthage space within the CRHA facility. When questioned about CRHA financial details, By-Laws, Letters Patent, DFO-CRHA Lease Agreement. Hugh Silver replied to the Informant that "he was digging himself a hole and would never be allowed in the CRHA facility". Hugh Silver is a fraud suspect; suspected of defrauding the public, the CRHA Harbour Users and CRHA membership of monies and services in excess of \$5000.00 Dollars. Ocean Pacific Marine Supply LTD
5. **Tom Green** is a welder and a marine "jack of all trades", owner of a floating marine repair facility under the name; South Harbour Marine Services. His floating repair facility is located within the CRHA facility. Tom Green is a CRHA Director since 2006. When questioned about CRHA Corporate status, Tom Green is known for his abusive outbursts and defamatory statements hurled at Capt. E. G. da Costa Duarte and Manfred Binger, before the CRHA membership at the AGM's. When asked about the CRHA Corporation (AGM 2010) he stated, before the CRHA membership that; "I don't know and I don't give a shit". Tom Green is a fraud suspect; suspected of defrauding the public, the CRHA Harbour Users and CRHA membership of monies and services in excess of \$5000.00 Dollars. Moreover, Tom Green is suspected of diverting CRHA funds to supplement his business; South Harbour Marine Services.
6. **Tom Forge** is the current CRHA Director/President. Tom Forge produced the letters available from Exhibit B. The letters breached the provisions of the Canada Corporations Act and were originally produced to intimidate the informant to depart from the CRHA facility and stop the Informant's CRHA financial investigation. The said letters breach the provisions of the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations. Tom Forge is a fraud suspect; suspected of defrauding the public, the CRHA Harbour Users and CRHA membership of monies and services in excess of \$5000.00 Dollars.
7. **Dave Christian** current director of the CRHA Corporation. Served on the Board of Directors for five years. Dave Christian was seen removing new Fir planks from the CRHA facility and installing newer Cedar planks on several new docks with no accountability to the membership. No financial information exists as to the awarding of a contract to install the planks. Removing new Fir planks from the CRHA facility with no accountability to the membership is theft over \$ 5,000.00 Dollars.
8. **Mike Bouchard** current director of the CRHA Corporation. He was elected in 2010, by the tightly controlled CRHA membership that show up at the AGMs, where no verification of membership is allowed. Mike Bouchard is a convicted criminal for maintaining a marijuana grow-opp. (Campbell River Courts).
9. **Linda Franz** was the CRHA facility Manager since the Corporation's beginning (1997). Due to illness Linda Franz retired sometime in 2010. Linda Franz retirement details are denied to the CRHA membership, therefore date accuracy is not assured by the Informant. Linda Franz is a fraud suspect; suspected of defrauding the public, the CRHA Harbour Users and CRHA membership of monies and services in excess of \$5000.00 Dollars.
10. **Phyllis Titus** is the current CRHA facility Manager and self declared "Bitch", stating to Glenn Lusk, CRHA Harbour User, during her working hours at the CRHA office that; "I can be a bigger bitch than you ever thought of being an asshole", evidence obtained from an audio recorded interview on July 27, 2010 at 3:31 PM;
 - a. On behalf of the CRHA Corporation, Phyllis Titus initiated a CRHA civil lawsuit in Federal Court,

against the Informant. The said lawsuit is based on an affidavit (Exhibit O) produced by Phyllis Titus and sworn under oath, with numerous false statements about the Informant. The intent of the affidavit was to intimidate the informant; thus preventing an investigation of the CRHA finances and is based on a false description the events that took place on February 17, 2010 sinking of Ted Thompson's skiff.

- b. Phyllis Titus was promoted to CRHA Manager by the Board of Directors with no competing applicants. Evidence obtained from an audio recorded interview on July 6, 2010 at 3:18 PM (Tape 3, 22:46 minutes), between the Petitioner, Sailmaster Glenn Lusk, CRHA Harbour User and Phyllis Titus, CRHA Manager; she stated that the CRHA accounts were part of her duties for the past two years. Phyllis Titus is a fraud suspect; suspected of defrauding the public, the CRHA Harbour Users and CRHA membership of monies and services in excess of \$5000.00 Dollars.

11. **Dave Ostler** is the CRHA assistant Harbour Attendant. Phyllis Titus lives in a common-law relationship with his brother. Dave Ostler was hired by the CRHA Board of Directors under Phyllis Titus recommendation indicating a strong conflict of interest. The events involving the hiring of Dave Ostler and Phyllis Titus happened while Linda Franz was the CRHA facility Manager;

- a. During a recorded interview with the Informant, on February 13, 2010 at 1:30 PM, Dave Ostler provided specific information involving the mannerism of Phyllis Titus and financial practices of the CRHA Corporation, namely that **"no one keeps receipts as far as I know"** and that Phyllis Titus; **"she is definitely a forceful person and - I can't say that I agree with everything she does - but - I mean I, she's just an employee. You know"**.
- b. Dave Ostler is a fraud suspect; suspected of defrauding the public, the CRHA Harbour Users and CRHA membership of monies and services in excess of \$5000.00 Dollars.

12. **Shelley Chapelsky and Kaitlin McKinnon** are lawyers with Bull, Housser & Tupper LLP, Vancouver, B.C. Both lawyers represent the CRHA Corporation on the Federal Court civil lawsuit T-1003-10, against the Informant, Capt. E. G. da Costa Duarte. The said civil suit is based on an affidavit provide by Phyllis Titus, CRHA facility Manager. The affidavit forms part of the evidence for the perjury charge (Exhibit O). The said Federal Court Lawsuit (T-1003-10) claims loss of revenue to the CRHA Corporation when the Informant's berthage fees were illegally increased to nearly ten times the fees applicable to vessels of the same type. The CRHA Board of Directors and Staff refused the Informant's existing payments by submitting exaggerated invoices to intimidate the Informant to depart from the CRHA facility;

- a. The relationship of the two lawyers, Ms. Chapelski and Ms. Mckinnon acting on behalf of the CRHA, the Harbour Authority Association of B.C. (HAABC) and Robin Richardson, Manager, DFO-Small Craft Harbours, Pacific Region, brings forth suspicion of a conflict of interest to control the assets of the CRHA corporation for their gain;
- b. On June 14, 2011 Shelley Chapelski initiated a bribe directed at the Informant, Capt. E. G. da Costa Duarte, requesting the Informant to stop criminal prosecutions involving Criminal Court File 37556. Shelley Chapelski's Settlement Offer before Prothonotary Roger R. Lafreniere of the Federal Court of Canada that took place on June 14, 2011 was intimidating to the Petitioners with a sole purpose of getting the Petitioners to seize and desist criminal prosecution in Provincial Courts. The statements of Shelley Chapelski, described within Federal Court File T-1003-10, showing 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 of the Federal Court of Canada.
- c. Robin Richardson is listed on the HAABC website and the two lawyer's are listed as legal advisers to the HAABC. The involvement of a DFO official with an Association (HAABC) that receives grants from

DFO and represents the CRHA Corporation in Ottawa, before the Small Craft Harbours, Director, Micheline Leduc, fails reasoning and questions their purpose, bringing forth questions of conflict of interest and a possible conspiracy to defraud the CRHA Corporation and the public;

- d. The relationship between the following parties; CRHA Corporation, Robin Richardson, Ms. Chapelski, Ms. Mckinnon, the Board of Directors of the CRHA and the CRHA staff, questions the involvement of DFO-Small Craft Harbours management with suspicion to defrauding the public, the CRHA Harbour Users and CRHA membership, **of monies and services in excess of One Million Dollars.**
13. **Prothonotary Roger R. Lafreniere**, insults the judicial purpose of the Federal Court of Canada by repeating the settlement offer initiated by Shelley Chapelski on June 14, 2011 and failing to initiate an Order for Contempt of Court, under Federal Court Rule 466 (c). The Defendant's June 28, 2011 Memorandum of Fact and Law submitted to the Federal Court of Canada, statements described within paragraphs, 90 to 95, are contrary to section 139 of the Criminal Code. The said statements of Shelley Chapelski and Prothonotary Roger R. Lafreniere are described further below under Factual Narrative.
14. Bill Fitzgerald past director of the CRHA Corporation. Served on the Board of Directors for eight years.
15. Rick Frey past director of the CRHA Corporation. Served on the Board of Directors for two years.
16. Hugh Watson past director of the CRHA Corporation. Served on the Board of Directors for two years.
17. Ernie Wouters past director of the CRHA Corporation. Served on the Board of Directors for one year.
18. Brain Assu past director of the CRHA Corporation. Served on the Board of Directors for one year.
19. John Parkyn current director of the CRHA Corporation. Served on the Board of Directors for twelve years.
20. Al Fredheim past director of the CRHA Corporation. Served on the Board of Directors for two years.
21. Steve Ordano past director of the CRHA Corporation. Served on the Board of Directors for seven years.
22. Art Cheshire past director of the CRHA Corporation. Served on the Board of Directors for eight years.
23. Ron Haugan past director of the CRHA Corporation. Served on the Board of Directors for two years.
24. John Anderson past director of the CRHA Corporation. Served on the Board of Directors for two years.
25. Gail Davis current director of the CRHA Corporation. Served on the Board of Directors for eight years.
- Named RCMP Officers – Court File 37556**
26. **RCMP Inspector Lyle Gelinis** is the commander of the local Police, Campbell River Detachment.
27. **RCMP Sgt. Craig Massey** is the commander of the local uniform Police, Campbell River Detachment. Sgt. Massey instructed the CRHA staff (Phyllis Titus and Dave Ostler) to maintain peace by staying away from the informant during the ongoing criminal process.
28. **RCMP Const. William Pickering** - 275 South Dogwood Street, Campbell River, B.C., V9W 8C8 - 1 (250) 286-6221. Investigating officer dealing with Phyllis Titus assault on the Informant.
29. **RCMP Const. Wallace** - 275 South Dogwood Street, Campbell River, B.C., V9W 8C8 - 1 (250) 286-6221. Investigating officer.
30. **RCMP Const. Clow** - 275 South Dogwood Street, Campbell River, B.C., V9W 8C8 - 1 (250) 286-6221. Investigating officer.
31. **RCMP Const Dormuth** - 275 South Dogwood Street, Campbell River, B.C., V9W 8C8 - 1 (250) 286-6221.

Businesses Named During Investigation – Court File 37556

32. **The Campbell River Harbour Authority (CRHA)** is a Federal registered Not-for-Profit Corporation located at 705 Island Highway, Campbell River, B.C. V9W 2C2. Specifically, the Minister of Industry 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; Corporation #3390764 BN #878395995RC0001.
33. **Ocean Pacific Marine Supply LTD.** is a marine repair yard and a marine supply store located in Discovery Harbour, Campbell River, B.C. Bruce Kempling is the owner.
34. **Redden Net Marine Supply** is a marine supply store located adjacent to the CRHA office, 690 Island Highway, Campbell River, B.C. Tim Hobbs is a partner owner. Tim Hobbs is the owner of the building located on 690 Island Highway, Campbell River, B.C.
35. **South Harbour Marine Services** is a floating repair shop located within the CRHA facility. Tom Green is the owner.
36. **Moeller & Company**, Chartered Accountants located at 590 Eleventh Avenue, Campbell River, B.C. V9W 4G4. Kent Moeller is the owner.
37. **Housser & Tupper LLP**, Vancouver, B.C. is a law firm representing the CRHA Corporation on a civil lawsuit against the Informant. The said lawsuit is before the Federal Courts under the provisions of Admiralty Law. Shelley Chapelsky is a partner in the Law Firm.

Factual Narrative

38. Upon receiving the Court File No. 37556, on December 15, 2010 from the Campbell River Courts Registry the Petitioners/Informants requested a court date from the Judicial Case Manager, Ms. Christine Ballman. Nearly three months later, the Petitioners/Informants were given a short notice for a hearing dated, March 2, 2011. The said hearing date was adjourned by the Petitioners/Informants for severe weather conditions occurring within the Campbell River area. Subsequently, a new date was set for the hearing, on March 23, 2011.
39. The March 23, 2011 hearing was adjourned. Two affidavits of witnesses and the Petitioners/Informant written submissions were removed from Court file 37556 and placed on a Supreme Court File dealing with a CRHA Winding-up application. These factual events took place without the Petitioners' knowledge.
40. 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.
41. 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 a Fraud. No other reason exists preventing the evidence from being heard.
42. 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 Petitioners 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.

The Campbell River Harbour Authority Corporation (CRHA) – Details;

43. The Campbell River Harbour Authority Corporation (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 a Lease Agreement with Fisheries and Oceans Canada and its Letters Patent, under the provisions of Part II of the Canada Corporations Act, signed on July 8, 1997. Corporation #3390764 BN #878395995RC0001. The Campbell River Harbour Authority leases the said property from Fisheries and Oceans Canada as follows;

44. The HARBOUR AUTHORITY LEASE (Exhibit E) BETWEEN:

HER MAJESTY THE QUEEN, in right of Canada as represented by the Minister of Fisheries and Oceans and acting through the Regional Director (the "Lessor")

AND

Campbell River Harbour Authority incorporated as a corporation without share capital under Part II of the Canada Corporations Act, carrying on business at 705 Island Highway Campbell River, B.C. V9W 2C2 (the "Harbour Authority")

The objects of the CRHA Corporation are as follows (Exhibit D);

- 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.*
- f. *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.

DATED at the DISTRICT OF CAMPBELL RIVER in the PROVINCE OF BRITISH COLUMBIA, this 5th day of JUNE, 1997.

45. Since the onset of the CRHA Letters Patent (1997), the Campbell River Harbour Authority is under the authoritarian control of the following directors; Timothy Charles Danby Hobbs, Bruce William Kempling and Hugh Silver. On a secondary capacity, following on the wishes of the preceding Directors, involves CRHA manager Linda Franz, serving the CRHA facility from 1997 to 2009. Since 2009, Linda Franz retired due to

illness and Bruce Kempling retired from the Board of Directors in 2010 by not seeking re-election from the tightly controlled CRHA members that show up at every Annual General Meetings.

46. The Board of Directors of the Campbell River Harbour Authority (CRHA), specifically the controlling directors above-mentioned, use the following methods to control the CRHA Corporation for the betterment of themselves;
- a. The CRHA Letters Patent, CRHA Corporation By-Laws, DFO Lease Agreement, and Financial details, are never shown to anyone, regardless of the style of request.
 - b. Any request directed at CRHA staff and/or Board of Directors, to identify the type of Corporation, the answer arrives with firmness that it is a Harbour Authority under the control of DFO, Small Craft Harbours Branch.
 - c. Any request for a membership list to ascertain membership voting rights, the request is strictly denied. Whenever a general meeting of the membership takes place, Phyllis Titus prevents inspection of the membership signing-in-sheet, at the onset of the meeting; thus, preventing the identification of voting members, allowing for anyone, friendly to the fraudulent cause, to dominate the meeting, **an outright denial of democratic rights.**
 - d. Regardless of numerous motions presented to the tightly controlled CRHA members at Annual General Meetings, not a single motion carried was ever incorporated on the CRHA by-Laws and/or Rules and Regulations; an indication that no repealed or amended CRHA by-laws were meant to seek approval from the Minister of Industry as per CRHA By-Law 64.
 - e. CRHA By-Law 64 states;
“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”.
 - f. The Campbell River Harbour Authority **has never been audited**, as per instructions originating from Tim Hobbs during every Annual General Meeting since the Corporation's beginning (1997).
 - g. CRHA By-Law 65 states;
*“**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”.*
 - h. Further, Industry Canada Policy Statement 13.2, states the following; **It is important to be aware of the fact that the Canada Corporations Act does not permit a waiver of audit.**
 - i. The Campbell River Harbour Authority, Board of Directors, never presented a CRHA membership List to any CRHA member. Therefore, nullifying any voting practice witnessed during Annual General Meetings, 1997 to present day. There is no indication that the CRHA Annual General Meeting participants are voting members.

The Campbell River Harbour Authority Facility - Oil Spills - Summarized Details;

47. Soon after the Informant, Capt. E. G. da Costa Duarte, arrival (early Spring of 2008), onboard his vessel and

docking at the CRHA facility, his vessel developed an oil slick around the hull originating from the numerous oil spills occurring at the CRHA facility. The Informant brought this fact to the attention of the CRHA staff and Tom Forge Director/President of the CRHA Corporation, however, the pollution continued. The oil polluters known to the Informant and the CRHA Board of Directors and CRHA Staff continued with the blessing of the Campbell River Harbour Authority staff and the Board of Directors.

48. Commercial operators known to the Informant, Capt. E. G. da Costa Duarte, indicated that a CRHA staff member, namely Phyllis Titus, assistant harbour attendant, began a campaign to discredit the Informant before the general population of Harbour users rather than issuing demands for the pollution to stop.
49. No complaints brought forward by the Informant were addressed. To this date, not a single action originating from any member of the CRHA staff or CRHA Board of Directors occurred; involving the control of oil pollution. On a voluntary basis some commercial vessel owner reduced oil dumping within the CRHA Harbour facility.
50. Reflective of the Informant's absence from the CRHA facility, oil pollution is a normal occurrence. Several images and video recordings are available upon request, from the Informants, showing evidence of the said oil pollution events. The first oil spill images were collected on October 13, 2008.
51. On September 18, 2011, a large oil spill occurred within the CRHA facility. Capt. E. G. da Costa Duarte and Sailmaster Glenn Lusk reported the oil spill to Environment Canada and a sample of the oil was collected. The Campbell River Fire Department and the RCMP were dispatched to the scene.
52. The Fire Chief, called Phyllis Titus, CRHA facility Manager and upon her arrival at the scene, she proceeded to discredit both Informants and attempted to destroy the oil sample collected by the Informants. **Witnessed by several firemen, Phyllis Titus kicked the oil sample bottle with her foot, sending the said bottled sample rolling across the pier head planks. Miraculously, the said bottle did not break and it is, currently, under the Informant's care.**
53. The Informants requested the RCMP presence and via a call initiated by the Fire Chief, RCMP Cst. Dormuth initiated File No. 2011-10601 upon his arrival at the scene. **Alike numerous large oil spills occurring within the CRHA facility, no oil spill containment took place initiated by the CRHA facility Staff.**

Court File 37556 - Count 1

54. Exemplifying theft, the informants witnessed the removal of all new Fir wood planks nailed to new dock extensions (fingers 5, 4, etc...), early 2009, and its replacement with newer Cedar planks, sometime during the summer of 2009. CRHA Director Dave Christian together with his daughter removed all the new Fir planks from the noted fingers and replaced them with newer Cedar planks.
55. The informants, 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. **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.**
56. The alarming clarity of taking money from the CRHA Corporation, without membership approval, opened the door to the Informants for further investigation of the CRHA financial practices, resulting in fraud charges presented within file 37556.
57. 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 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. 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 (Exhibit B).

58. The said letter written on August 16, 2009 states that "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". On the surface, the above-mentioned written statement appears reasonable yet, Manfred Binger like the CRHA membership were 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.
59. Via 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 (Exhibit L). 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.

Warning; the following summarized financial information is confusing, without a thorough knowledge of the Exhibits. The Court must allow for a detailed inspection and understanding of the said Exhibits.

60. The 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. 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.
61. During his years of CRHA membership, Manfred Binger collected the Annual General Meeting pamphlets from 1999. The pamphlets are displayed within Exhibits J and K; Unaudited CRHA Financial Statements and CRHA AGM minutes.
62. The totality of the CRHA declared revenue DFO grants, displayed on Exhibit J, indicate a lesser amount than Oceans and Fisheries Canada (DFO) grant money given to the CRHA Corporation.
63. 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 displayed within Exhibit F01, 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.
64. On January 12, 2011 the Informant, Capt. E. G. da Costa Duarte, 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 (Exhibit F01). The reply was sent on February 13, 2011 stating that "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". See Exhibit F01 for a copy of the said emails.
65. The missing amount of \$447,192.00 CDN Dollars, represents a conservative dollar figure, the years 1997 to 2004 are currently under investigation. Fisheries and Oceans Canada has not released the amounts paid to the CRHA Corporation.
66. Subsequent, to the acquisition of the 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 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 disclosure of Contracts Over \$10,000.00 dollars posted on the DFO website.

67. The DFO 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 PO contract numbers were never fully awarded to the CRHA Corporation, rather it differs 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 following statement is misleading; it represents PO 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".

68. 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. 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.

69. Exhibit F01 displays scenarios where the results indicate 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 the unreported monies mentioned on the preceding paragraphs;

- a. Contract work carried out at the CRHA facility, does not match the DFO monies awarded to the Campbell River Harbour Authority.
- 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 large 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.

70. Exhibit F02, brings forth comparisons of CRHA General Revenue vs. Vessel Counts (Exhibit L) for the years 1999 to 2007. The comparison results 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%.

71. 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.

72. Within the 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 the vessel counts. These vessels produce a high unreported revenue.
73. 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, in itself. Exhibit F02 shows two charts; CRHA Yearly Percentage Change 1999 to 2007 and chart CRHA - CFV/CV/RV Total Yearly Percentage Change 1996 to 2007.
74. The first chart clearly shows the time period when unreported revenue began. From 1999 to 2003 the graph indicates spikes due to a decrease in vessels counts, yet revenue rises; a correct move, because Commercial Fishing Vessels decreased while the Commercial Vessels and the Recreational Vessels increased; **a conservative dollar amount of unreported revenue; half a million dollars.**
75. The said correct vessel move stops in 2004 and both graph indicators parallel each other, dismissing continual increase in both Commercial and Recreational vessels. Therefore, unreported financial gains began in 2004. A visual review of Exhibit F02 facilitates an understanding of unreported revenue via percentages.
76. Other fraudulent methods of removing funds from the CRHA Corporation include;
 - a. Exhibit K, 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;
 - b. From February 26, 2004 and thereof, no financial statements exist stating the amount rebated and which CRHA members received a rebate; an indication that 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. No CRHA criteria exist as to the eligibility of a CRHA member to receive a rebate.
 - c. 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;
 - d. 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.
77. 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 motion to the CRHA membership to retain Kent Moeller as accountants for financial review for the 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. The Campbell River Harbour Authority 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.

79. On April 20, 2010, under pressure to hide financial information from the Informants, given their 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.;
80. 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.

Court File 37556 – Count 2

81. On February 18, 2010, Tom Forge, CRHA Director/President, hand delivered a letter to the Informant, Capt. E. G. da Costa Duarte, requesting the Informant's vessel, the S/V Açor, removal from the CRHA Harbour facility. The last paragraph of the letter stated that **"Failure to comply with these directives will result in the serving of a Notice of Removal by the RCMP"**.
82. The weeks that followed Tom Forge's letter, of February 18, 2010, requesting the Informant's vessel exit from Harbour, the Informant, Capt. E. G. da Costa Duarte, failed to understand the RCMP lack of interest and involvement at protecting the Informant's right to use a Public Facility owned by Canadians for Canadians as per the mandate of the Canada Corporations Act and the Fishing and Recreational Harbours Act.
83. Interviews conducted on March 1, 2010 with RCMP Constable Clow, RCMP Constable Pickering and RCMP Constable Wallace, revealed that Tom Forge was able to convince the RCMP that the Informant's legal authority for berthage on the CRHA Harbour facility was under a tenancy agreement, allowing Tom Forge to command the RCMP to force the Informant to exit from safe Harbour.
84. The above-mentioned series of events were augmented by the fact that Tom Forge willfully lied about the reason for the Informant's removal from the CRHA Harbour facility. The augmentation, with intent to mislead the RCMP, was supported by an incident/occurrence report, produced by Phyllis Titus, current CRHA facility Manager.
85. Tom Forge's written statement;
- "In regards to the abuse on staff, made by you, that occurred on Finger 2 in the south basin of the Campbell River Harbour Authority on the morning of February 17, 2010. CRHA is requesting that you make alternate arrangements for the berthing of the vessel Acor as per the CRHA berthage agreement that you signed on May 28, 2008: Section 4, item B: (b) to berth and operate the Vessel and to maintain the Vessel and berth area in a seamanlike manner and not to do or permit anything to be done by the crew which in the opinion of the Authority may be, or become, a nuisance or disturbance"*
86. The false written statement, with intent to mislead the RCMP, above-mentioned, originating from Phyllis Titus produced on February 17, 2010 (Exhibit C) and used by Tom Forge to convince the RCMP that the Informant, Capt. E. G. da Costa Duarte was a "nuisance or disturbance" caused the RCMP to launch an investigation.
87. Subsequently, via the extra efforts of the Informant, the investigation halted, following the Informant's face-to-face meeting with RCMP Sergeant Craig Massey on March 2, 2010. The said meeting involved a clarification based on facts, dealing with the exact events that occurred on February 17, 2010 and the facts governing the CRHA Letters Patent, CRHA By-Laws and the DFO-CRHA Lease Agreement.

Court File 37556 – Count 3

88. Exhibit C, shows the February 17, 2010, Incident/Occurrence Report, signed by Phyllis Titus, CRHA Manager, augmenting the efforts of Tom Forge and Tim Hobbs to pressure the Informant to depart the CRHA facility;
89. Exhibit C, also shows a modified version of the February 17, 2010, Incident/Occurrence Report, signed by Phyllis Titus that was given to the Federal Court on June 24, 2010 without the Informant's knowledge;
90. The said modified version involves additional false statements with intent to discredit the Informant and influence the Federal Court of Canada into issuing an interlocutory order to remove the Informant's vessel from the CRHA Harbour facility. Yet, past mannerisms of Phyllis Titus and her predecessor Linda Franz give rise to questions of defrauding the CRHA membership. Their determined attitude and effort at preventing information specific to finances, by-laws, Letters Patent, DFO-CRHA Lease Agreement, etc... from reaching the CRHA membership, is alerting.
91. 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. The above-mentioned, modified version of the February 17, 2010 Incident/Occurrence Report, was submitted together with the statement of claim, wilfully intended to influence the Federal Court into believing that the Informant; *"Mr Duarte has been a problem since arriving In the harbour in May, 2008"*.
92. Phyllis Titus, sworn affidavit containing 39 paragraphs (Exhibit O) dated June 15, 2010 exhibits a variety of false statements. The said affidavit is attached to the statement of claim, Federal Court File T-1003-10.
93. 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"*.
94. 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"*.
95. 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"*.
96. 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".

97. 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".

98. 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".

99. The Informant 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 does not demand marine liability insurance from the 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.

100. 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".

101. 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".

Court File 37556 – Count 4

102. On November 4, 2010 at approximately noon time, Phyllis Titus, physically assaulted the Informant, Capt. E. G. da Costa Duarte by **striking him on the left side of his face causing a lesion.**

103. The unprovoked physical assault was intentional, carried out to harm the Informant, where Phyllis Titus awaited the Informant's 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.

104. The assault was intentional and without the consent of the informant, given that the Informant was at the CRHA facility to photograph an unseaworthy vessel that sunk, Phyllis Titus assault was recorded via the Informant's Digital Camera, both image and video formats were used to record the said assault. The said images include a side view of the Informant's face showing the bloody lesion.

105. A nearby vessel owner and CRHA member, Informant Glenn Lusk, witnessed the assault. A sworn affidavit originating from Glenn Lusk is available for review. Phyllis Titus assault upon the Informant, Capt. E. G. da Costa Duarte was reported to RCMP Constable Pickering of the Campbell River, B. C., RCMP Detachment. Constable Pickering photographed the Informant's face showing his bloody lesion.

Court File 37556 – Count 5

106. On November 4, 2010, at approximately noon time, Phyllis Titus, 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. The damage was caused while the Informant was inside his vehicle, thus the Informant did not identify the exact weapon used to strike the said left side door.

107. Subsequently, while the Informant, Capt. E. G. da Costa Duarte tried to enter his vehicle, for the second time and close the left side door, Phyllis Titus, unsuccessfully, tried to break the vehicle's window by hitting the said window with her fists and right arm. Phyllis Titus damage to the Informant's vehicle was reported to RCMP Constable Pickering of the Campbell River, B. C., RCMP Detachment. Constable Pickering photographed the said damage.

Federal Court File T-1003-10 Details of Settlement Offer

108. During the Pre-Trial Conference Hearing before Prothonotary Judge, Roger R. Lafreniere, it was clearly heard the Plaintiff's (CRHA) offer. Accentuating the Plaintiff's offer, Tim Hobbs CRHA Director/Treasurer and Phyllis Titus, CRHA Manager, were both available to affirm such.

109. To the best of Capt. E. G. da Costa Duarte'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”.

110. 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”?

111. 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 Petitioners to seize and desist criminal prosecution; Court File 37556.

112. Does the Federal Court of Canada sanction prosecutors, the Petitioners, to drop criminal charges because he or

she is intimidated by a Federal Court Process initiated for such sole purpose? Further, the Federal Court of Canada witnessed an officer of the Court, Ms. Chapelski, counsel for the Plaintiff, the CRHA Corporation to issue such offer when a criminal process is involved. Strong indications that Ms. Chapelski believes her clients are immune to criminal prosecution regardless of available evidence.

113. The Petitioners finds both attitudes; Prothonotary Roger R. Lafreniere and the plaintiff's counsel, Ms. Chapelski, to be contrary to section 139 of the Criminal Code.

114. Moreover, 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, 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,
- f. make suggestions to a witness recklessly or that the lawyer knows to be false, 1
- g. deliberately refrain from informing the court or tribunal of any pertinent authority directly on point that has not been mentioned by an opponent,
- h. dissuade a material witness from giving evidence, or advise such a witness to be absent,
- i. knowingly permit a party or a witness to be presented in a false way, or to impersonate another person, or
- j. appear before a court or tribunal while impaired by alcohol or a drug.

115. 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.

116. 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 Petitioners 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).

Notice of Seizure – Warehouse Lien Act – Contrary to the Fisheries and Recreational Harbours Act

117. On September 19, 2011, Petitioner, Glenn Lusk received a letter originating from Coast Bailiff & Collections on behalf of their client, the Campbell River Harbour Authority requesting moorage payments. On the same date the Petitioner's vessel was chained and padlocked to the CRHA facility, contrary to the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations. The said vessel, S/V Pearl, is currently in an unsafe condition contrary Section 78.1 (1) (2) of the Criminal Code. An excerpt follows;

78.1 (1) Every one who seizes or exercises control over a ship or fixed platform by force or threat of force or by any other form of intimidation is guilty of an indictable offence and liable to imprisonment for life.

(2) Every one who

(a) commits an act of violence against a person on board a ship or fixed platform,

(b) destroys or causes damage to a ship or its cargo or to a fixed platform,

(c) destroys or causes serious damage to **or interferes with the operation of any maritime navigational facility,**
or

(d) places or causes to be placed on board a ship or fixed platform anything that is likely to cause damage to the ship or its cargo or to the fixed platform, **where that act is likely to endanger the safe navigation of a ship or the safety of a fixed platform, is guilty of an indictable offence and liable to imprisonment for life.**

(3) Every one who communicates information that endangers the safe navigation of a ship, knowing the information to be false, is guilty of an indictable offence and liable to imprisonment for life.

“ship” means every description of vessel not permanently attached to the seabed, other than a warship, a ship being used as a naval auxiliary or for customs or police purposes or a ship that has been withdrawn from navigation or is laid up.

115. Statutory Authorities such as the Department of Fisheries and Oceans under the Fishing and Recreational Harbours Act, Section 29 of the regulations provides that a vessel may not be removed until all charges have been paid. Further, the *Warehouse Lien Act* is subject to a constitutional challenge especially in the case of vessels that are moored in the water. Payments originating from the Petitioner, Sailmaster Glenn Lusk are paid to the CRHA Corporation for the development and Maintenance of the CRHA facility. Further, the said payments are governed by the provisions of the Canada Corporations Act, Part II.

116. The issue of berthage payments, involving the Petitioner, Sailmaster Glenn Lusk and his vessel, S/V Pearl, relating to the provisions of the Canada Corporations Act, Part II, are financially supporting the fraudulent practices of the CRHA Board of Directors and Phyllis Titus, CRHA facility Manager. Repeatedly, the Petitioners requested to inspect the CRHA finances and were strictly denied access.

117. The Canada Corporations Acts, Part II, governs the makeup of the Campbell River Harbour Authority; a Not-for-Profit Corporation and a Public Corporation. Additionally, the Campbell River Harbour Authority facility is a Public Harbour 1335; see Campbell River, page 36, Fishing and Recreational Harbours Regulations.

118. When considering the CRHA Berthage Agreement, the Board of Directors and Staff of the CRHA Corporation, consistently breached the provisions of several authorities that govern the management of the CRHA facility. Moreover, with intent to defraud the CRHA membership and Harbour Users, the Board of Directors and Staff, purposely distorted various authorities that dictate accountability and transparency to CRHA membership and Harbour Users.

119. The Petitioner, Glenn Lusk owner of the vessel S/V Pearl and Harbour User of the Campbell River Harbour

Authority (CRHA) facility, as per the provisions of the CRHA Letters Patent, By-laws, Fishing and Recreational Harbours Act, Fishing and Recreational Harbours Regulations and the Fisheries and Oceans Canada-CRHA Lease Agreement, conclude that available evidence governing the finances of the CRHA Corporation substantiate, without a doubt, misappropriation of CRHA funds. Therefore, the berthage fees were withheld, instead place on a bank account created to hold the said fees. The Petitioner's berthage fees will be released to the CRHA Corporation pending a Judge's order referencing the outcome of court file 37556, specific to Fraud charges.

120. Under the provisions of the Fishing and Recreational Harbours Act, it states;

5. (1) *The Minister may undertake projects for the acquisition, development, construction, improvement or repair of any scheduled harbour or any fishing or recreational harbour to which this Act applies.*

(2) *The Minister may, **subject to the regulations**, enter into an agreement with any province to provide for...*

21. *Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.*

Part 3: LEGAL BASIS

1. Legal facts involving Part 1, paragraph 7;

"The Ontario Appeals Court on May 17, 2010 in the case of R. v. McHale, 2010 ONCA 361 (CanLII) ruled against the Crown but also ruled that a person is an accused at the moment an information is sworn out";

"[86] ... It seems to logically follow from the decisions mentioned that laying an information falls within "proceedings in relation to an accused". The same could be said of a pre-enquete, a proceeding to determine whether process should issue".

2. The above-mentioned decision reverses a 1990 ruling by Ontario Court of Appeal in Southam Inc. v. Coulter a person who the information is filed against is still labelled a person however, he becomes the accused if process is issued.

"[para. 8] There is no "accused" until a Justice of the Peace decides that a warrant or summons should be issued".

3. The Supreme court in 1987 in R. v. Kalanj [1989] 1 S.C.R. 1594 stated:

"I would therefore hold that a person is "charged with an offence" within the meaning of s. 11 of the Charter when an information is sworn alleging an offence against him, or where a direct indictment is laid against him when no information is sworn".

4. **The said rulings raise serious questions regarding the procedures of pre-enquetes.**

5. **Are pre-enquetes ex parte?**

6. Section 507(1)(a) (Public Prosecutions) states the justice shall 'hear and consider, ex parte,.'. The phrase 'ex parte' does not appear in s. 507.1 for private prosecutions.

7. In 2002 Parliament added s. 507.1 and removed the 'ex parte' phrase from the proceedings requirements.

8. Since then it appears courts have continued the 'ex parte' requirement out of habit and not because of statute.

9. **Are pre-enquetes in camera?**

10. Section 486(1) states;

“Any proceedings against an accused shall be held in open court,..”

11. Now with the ruling from the Ontario Appeals Court that a pre-enquete is a proceedings against an accused, it now appears pre-enquetes should not be in camera.

12. Is the informant limited to only presenting eye-witness evidence deriving from witnesses that show-up at the hearing on a voluntary basis? Are subpoena witnesses not allowed?

13. In the case of R. v. Edge, 2004 ABPC 55, it states;

“Where proof of the prima facie case depends on witnesses other than the informant, those witnesses need to testify in the same manner. The absence of witnesses to prove a prima facie case will mean that no process will be issued. Of course, the judge may, in appropriate circumstances, afford the informant the right to an adjournment to obtain further evidence. If no process is issued, the informant still has an alternative to reapply within six months if there is new evidence”.

14. This ruling or observation by Judge Allen (R. v. Edge), raises the question whether any evidence outside of eye witness evidence is permissible during pre-enquetes including the following;

- a. Video and photo evidence
- b. Affidavits from witnesses
- c. RCMP Occurrence reports etc.
- d. Exhibits from other Court cases related to Court File 37556. Example; Federal Court File T-1003-10
- e. Witnesses by subpoena

15. Should pre-enquetes become full trials where all the evidence is presented to the Judge or Justice?

16. Considering the following apparent facts;

- a. All evidence must be provided through witnesses, and;
- b. The Crown's authority to stay informations prior to issuing of a charge, and;
- c. The Crown's position that only informations where there is enough evidence to get a conviction should proceed,
- d. Is the Informant now required to conduct a full trial to ensure not a prima facie case but a case beyond reasonable doubt?

17. The Crown may have the authority to stay information, but does the view by the Crown that private informants must provide during the pre-enquete evidence beyond a reasonable doubt void the *prima facie* requirement both of statute and of common law?

18. Is the local administration of justice served in accordance with the will of Parliament by the Crown compelling average citizens to do what organized investigators (police) cannot do which is to have all the evidence necessary for a conviction prepared properly at the pre-enquete?

19. We should be reminded of the words of Judge Allen in the Edge case;

“Many private informants have little knowledge of the type of proof necessary to prove the guilt of an accused, or the laws of evidence. Moreover, in many cases no investigation has been done, and the informant has done little to preserve the evidence”.

20. **In short, must the informant conduct a full trial which may include numerous days of evidence by several witnesses in order for process to issue? The Applicant affirms the need for such.**
21. The preceding arguments and questions requested from the Supreme Court are outlined as per Court procedures involving Private Prosecution. Yet, when a common sense analysis is carried out, the underlying motive for a confusing and ridiculous process involving the practice of Private Prosecution comes to the surface with a demanding question; why such practice, when it serves no practical purpose? Moreover, it deters the Private Prosecutor from reaching the trial stage;
22. Firstly, the protection of an accused brought to Court via a Private Prosecution must be addressed. There are no laws preventing a citizen that initiates a Private Prosecution from making all allegations public. Allegations against an accused are assertions of fact, therefore immune from Canadian defamation laws.
23. Secondly, the purpose of a Crown Prosecution or a Private Prosecution is to bring criminal evidence before the Court. When Crown initiates a Prosecution based on false evidence, alike an Informant that does the same, they are both liable and must face the Rule of Law that dictates punishment for false accusations. Again the need to have a locked Court to preserve the evidence of a Private Prosecution should process not issue, has no rationale. How many times the Crown files charges against someone only to find that the evidence does not support a crime? Subsequently, dropping the charges before the case reaches the trial stage; the resulting evidence is not sealed in a court file, rather the Crown makes sure everyone knows, making it public from the onset of laying charges.
24. Augmenting the above paragraph, New Westminster Court file 67140 involved a false charge of Forgery against the Applicant's good name. The Crown, from the start, made sure the whole world new that the Applicant was charged with falsifying a ship's document, even when the Crown, Irene Platt, stated to Judge Angelomatis that she did not understand the evidence. In the end, court file 67140 did not reach trial, a senior crown stay the charge and the Applicant received a letter of thank you from the United States Coast Guard and Homeland Security for his attempts at preventing an unseaworthy vessel from departing Canada endangering the lives of its crew. Shouldn't Court File 67140, alike others that the Crown "screws up", deserve the protection of a pre-enquete, allowing for a *prima facie* requirement before the public is made aware of the charge?
25. There is no protection for an accused when the evidence is factual, thus bringing forth the question; should an accused receive protection from allegations of wrong doing?
26. Fundamentally it is wrong to allow the Crown to have sole authority to prosecute when democracy is at play. Yet, the Crown is the representation of Her Majesty the Queen of Canada, a monarch with sovereign powers. Therefore, is Canada Monarchy or a Democracy? In practice, the two don't mix. Either we, Canadians, obey the Queen or we practice Democracy.
27. In conclusion, the Board of Directors of the CRHA Corporation and Phyllis Titus should relax, no prosecution of Fraud and other crimes that they committed, involving the CRHA Corporation will reach a conviction. Why? The answer is simple; the players that setup the whole Harbour Authority operations are well hidden within our Federal Government. No evidence originating from the Federal Government exists, proving otherwise.

Fraud – Section 380

28. **Section 380 (1) (a) of the Criminal Code;**
29. There are three cases in the Supreme Court of Canada which considered at length, and established, what the fundamental principles of fraud are. The cases follow; **R. v. Olan, Hudson and Hartnett (1978), 41 C.C.C. (2d) 145 - R. v. Theroux (1993), 79 C.C.C. (3d) 449 - R. v. Zlatic (1993), 79 C.C.C. (3d) 466.** The following excerpts derive from the mentioned case law;

*“Courts, for good reason, have been loath to attempt anything in the nature of an exhaustive definition of ‘defraud’ but one may safely say, upon the authorities, that two elements are essential, **‘dishonesty’ and ‘deprivation’**. To succeed, the Crown must establish dishonest deprivation....*

“The element of deprivation is satisfied on proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim. It is not essential that there be actual economic loss as the outcome of the fraud...”

“... proof of deceit is not essential to support a conviction under s. 338(1) [now s. 380(1)]. Where it is alleged that a corporation has been defrauded by its directors, deception of the corporation is not an essential element of the offence. The words ‘other fraudulent means’ in s. 338(1) include means which are not in the nature of a falsehood or a deceit; they rather encompass all other means which can properly be stigmatized as dishonest.”

“Olan marked a broadening of the law of fraud in two respects. First, it overruled previous authority which suggested that deceit was an essential element of the offence. Instead, it posited the general concept of dishonesty, which might manifest itself in deceit, falsehood or some other form of dishonesty. Just as what constitutes a lie or a deceitful act for the purpose of the actus reus is judged on the objective facts, so the ‘other fraudulent means’ in the third category is determined objectively, by reference to what a reasonable person would consider to be a dishonest act. Secondly, Olan made it clear that economic loss was not essential to the offence; the imperilling of an economic interest is sufficient even though no actual loss has been suffered. By adopting an expansive interpretation of the offence, the court established fraud as an offence of general scope capable of encompassing a wide range of dishonest commercial dealings.”

“... In a number of subsequent cases, courts have defined the sort of conduct which may fall under this third category of ‘other fraudulent means’ to include the use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized arrogation of funds or property. ... where it is alleged that the actus reus of a particular fraud is ‘other fraudulent means’, the existence of such means will be determined by what reasonable people consider to be dishonest dealing. In instances of fraud by deceit or falsehood, it will not be necessary to undertake such an inquiry; all that need be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality it was not. A further question, whether it was necessary for the accused to have profited by the fraud, has been uniformly answered in the negative ...”

“... What is essential is not the formalities of profit or actual pecuniary loss, but that dishonest commercial practices which subject the pecuniary interest of others to deprivation or the risk of deprivation be visited with the criminal sanction. It follows that the fact that the defrauder may have legal title to the property affords no defence; it is not his title, but how he has obtained it and what he does with it that is important.”

“... Dishonesty is, of course, difficult to define with precision. It does, however, connote an underhanded design which has the effect, or which engenders the risk, of depriving others of what is theirs. ... The dishonesty of ‘other fraudulent means’ has, at its heart, the wrongful use of something in which another person has an interest, in such a manner that this other’s interest is extinguished or put at risk. A use is ‘wrongful’ in this context if it constitutes conduct which reasonable decent persons would consider dishonest and unscrupulous.”

30. Having thus described the *actus reus* of fraud, the Supreme Court of Canada in Olan, Theroux and Zlatic, described the *mens rea* of that offence. The doctrinal considerations in the concept of *mens rea* follow;

“... What is the guilty mind of fraud? At this point, certain confusions inherent in the concept of mens rea itself become apparent. It is useful initially to distinguish between the mental element or elements of a crime and the mens rea. The term mens rea, properly understood, does not encompass all of the mental elements of a crime. The actus reus has its own mental element; the act must be the voluntary act of the accused for the actus reus to exist. Mens rea, on the other hand, refers to the guilty mind, the wrongful intention, of the accused. Its function

in criminal law is to prevent the conviction of the morally innocent - those who do not understand or intend the consequences of their acts. Typically, mens rea is concerned with the consequences of the prohibited actus reus”.

“This brings me to the question of whether the test for mens rea is subjective or objective. Most scholars and jurists agree that, leaving aside offences where the actus reus is negligence or inadvertence and offences of absolute liability, the test for mens rea is subjective. The test is not whether a reasonable person would have foreseen the consequences of the prohibited act, but whether the accused subjectively appreciated those consequences at least as a possibility. In applying the subjective test, the court looks to the accused’s intention and the facts as the accused believed them to be”:

“Two collateral points must be made at this juncture. First ... this inquiry has nothing to do with the accused’s system of values. **A person is not safe from conviction because he or she believes there is nothing wrong with what he or she is doing.** The question is whether the accused subjectively appreciated that certain consequences would follow from his or her acts, not whether the accused believed the acts or their consequences to be moral. **Just as the pathological killer would not be acquitted on the mere ground that he failed to see his act as morally reprehensible, so the defrauder will not be acquitted because he believed that what he was doing was honest**”.

“The second collateral point is the oft-made observation that the Crown need not, in every case, show precisely what thought was in the accused’s mind at the time of the criminal act. In certain cases, subjective awareness of the consequences can be inferred from the act itself, barring some explanation casting doubt on such inference. The fact that such an inference is made does not detract from the subjectivity of the test”.

“... **The prohibited act is deceit, falsehood, or some other dishonest act.** The prohibited consequence is depriving another of what is or should be his, which may, as we have seen, consist in merely placing another’s property at risk. The mens rea would then consist in the subjective awareness that one was undertaking a prohibited act (the deceit, falsehood or other dishonest act) which could cause deprivation in the sense of depriving another of property or putting that property at risk. If this is shown, the crime is complete. **The fact that the accused may have hoped the deprivation would not take place, or may have felt there was nothing wrong with what he or she was doing, provides no defence.** To put it another way, following the traditional criminal law principle that the mental state necessary to the offence must be determined by reference to the external acts which constitute the actus of the offence, ... the proper focus in determining the mens rea of fraud is to ask whether the accused intentionally committed the prohibited acts (deceit, falsehood, or other dishonest act) knowing or desiring the consequences proscribed by the offence (deprivation, including the risk of deprivation). The personal feeling of the accused about the morality or honesty of the act or its consequences is no more relevant to the analysis than is the accused’s awareness that the particular acts undertaken constitute a criminal offence. This applies as much to the third head of fraud, ‘other fraudulent means’, as to lies and acts of deceit. Although other fraudulent means have been broadly defined as means which are ‘dishonest’, it is not necessary that an accused personally consider these means to be dishonest in order that he or she be convicted of fraud for having undertaking them. ... it need only be determined that an accused knowingly undertook the acts in question, aware that deprivation, or risk of deprivation, could follow as a likely consequence”.

“... There appears to be no reason, however, why recklessness as to consequences might not also attract criminal responsibility. Recklessness presupposes knowledge of the likelihood of the prohibited consequences. It is established when it is shown that the accused, with such knowledge, commits acts which may bring about these prohibited consequences, while being reckless as to whether or not they ensue.”

4. Section 140 (1) (c) of the Criminal Code;

5. Section 140 imposes criminal liability for causing a peace officer to enter on or continue an investigation by conveying certain false information with an intent to mislead the officer.

6. Section 131 (1) of the Criminal Code;

“Farris v. R. (1965) – Even though an answer may be literally true if the question is understood in a certain sense, if D (Phyllis Titus) knew that another sense was intended by the question, and that the answer in that context was false, then the result is perjury”.

“R. v. Regnier (1955) – To constitute perjury, it is not necessary that the false statement actually mislead the court, but only that D intended it to mislead the court”.

7. Under Section 131 (1), the false statement must be made before someone who is authorized by law to receive it. The statement does not have to be made in a judicial proceedings, but it must be made under **oath or solemn affirmation, by affidavit, solemn declaration or deposition, or orally.**

8. Section 265 (1) (a) of the Criminal Code;

“R. v. Burden (1981) – A touching of V (victim) may constitute an intentional application of force. The strength of the force is immaterial”.

“R. v. Byrne (1968) – Although physical violence is not necessary, there must be a threatening act or gesture. Mere words cannot amount to an assault”.

“R. v. Horncastle (1972) – Assault is committed when a threat is intentionally made to apply force to the person of another, and there is the present ability to carry out that threat. Neither the degree of alarm felt by the person threatened, nor the intent of D to carry out the threat are involved in the determination”.

“R. v. M. (M.L.) (1994) – There is no requirement that V must offer some minimal word or gesture of objection in order to demonstrate non-consent. Lack of resistance is not equivalent to consent”.

“R. v. Doherty (2000) – Consent is not available as a defense where the force used is intended to cause and causes serious bodily harm”.

9. Section 430 (1) (a) of the Criminal Code;

“The external circumstances of the mischief offence of Section 430 (1), mischief in relation to property, are described in sections 430 (1) (a) – (d). The mental element requires proof that D acted “wilfully”, but no ulterior intent need be proven”.

“R. v. Toma (2000) – The mental element in mischief requires proof that D intentionally or recklessly caused the prohibited act”.

10. Section 139 of the Criminal Code;

11. Section 139 describes and punishes the offence of obstructing justice, a crime complete upon proof of an attempt without the necessity of success or actual completion. The offence may be committed in a number of ways;

- a. The offence of Section 139 (1) involves conduct of or in relation to a surety. The external circumstances require that Ms. Chapelski counsel for the CRHA, attempt in any manner to obstruct, pervert or defeat the course of justice in a judicial proceeding. As a donor or offeror, Ms. Chapelski, must indemnify or agree to indemnify a surety in any way and, in whole or in part.
- b. The mental element requires proof of an intention to cause the external circumstances of the offence, including the specific purpose of obstructing justice, by such conduct.

*“R. v. Wijesinha (1995) – The course of justice in section 139 (2) includes the **investigatory stage**. The investigation is an essential first step in any judicial or quasi-judicial proceeding that may result in a prosecution. To knowingly mislead during the first step of the investigation perverts the course of justice as much as would bribing a witness to change testimony at trial”.*

“The course of justice applies to disciplinary proceedings of the Law Society and is not limited to judicial proceedings described in section 139 (1) and (3). It includes all judicial proceedings defined in Code section 118”.

“The course of justice includes any decision-making body that,

- I. Judges;*
- II. Derives its authority to judge from a statute; and*
- III. Is required, by statute, to act in a judicial manner.*

“R. v. Spezzano (1977) – The expression - the course of justice – includes judicial proceedings existing or proposed but is not limited to such proceedings. The offence also includes attempts by a person to obstruct, pervert or defeat a prosecution which he contemplates may take place, even if no decision to prosecute has been made”.

*“R. v. Hearn (1989) – **It is irrelevant that the willful attempt to obstruct justice is unsuccessful**, or that the intention could not be satisfied by the act undertaken by D”.*

R. v. Rousseau (1988) – To be found guilty, D must perform an act amounting to an attempt to obtain the desired results”.

R. v. Guess (2000) – Willfully means that the offence cannot be proven on the basis of accidental or unknowing conduct. D must know that what s/he does obstructs or perverts the trial process”.

R. v. Vermette (1987) – The common law offence of contempt is preserved. A court is not precluded from relying on its power to punish for contempt merely because P may have proceeded under this section”.

“Section 139 (2) is sufficiently broad in its scope to include all acts of contempt at common law not specifically covered in other Code offences”.

12. Regardless of how a case for obstructing justice is presented the Applicant received an offer of settlement from Ms. Chapelski, counsel for the CRHA Corporation before Prothonotary Judge, Roger R. Lafreniere of the Federal Court of Canada, requesting a *“release from you from all of these (Criminal) claims, and they want you to seize and desist from continuing these actions (in Provincial Courts), so Mr. Duarte, are you going to seize and desist or not”?*
13. In other words, the fact that criminal allegations are ongoing before the Provincial Courts against the Board of Directors of the CRHA Corporation and Phyllis Titus is enough reason to offer a bribe of settlement to the Applicant, a definitive method of preventing criminal investigation and subsequently criminal prosecution of the said individuals. Two different courts are at play, the Federal Court of Canada with no jurisdiction to prosecute crimes outlined within Form 2 – Court File 37556 – above-mentioned and the Provincial Courts having criminal jurisdiction. The usage of Federal Court File T-1003-10 to intimidate the Applicant into dropping any criminal process against the CRHA Corporation is clearly evident.
14. The participation of Prothonotary Judge, Roger R. Lafreniere aiding and abetting Ms. Chapelski is judicially appalling with demands from the Applicant to stop this abuse of process.
15. The Supreme Court of Canada had this to say about abuse of process:

“The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel”.

16. As can be seen from the above passage, the focus of the abuse of process doctrine is on the integrity of the judicial process and not on the motive, however dishonorable, or status of the parties. The Moral soundness of the Federal Court was place in question by the actions of Prothonotary Judge, Roger R. Lafreniere.

Part 4: MATERIAL TO BE RELIED ON

<p>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 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 Exhibit F01.7 Excel Spreadsheet of DFO Invoices (ATIP) Exhibit F01.8 FAC CODES Exhibit F02.1 CRHA Berthage Fees 1999 Exhibit F02.2 Percentage Calculations Exhibit F02.3 Excel Graphs 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 March 30 2011 CRHA Letter to Glenn Lusk</p>	<p>Images and Audio Recorded Exhibits Exhibit W Phyllis Assault November 4 2010 Exhibit P January 2010 Manfred Bindger-TimHobbs Exhibit Q01 December 2 2010 Max-Tim Hobbs Exhibit Q02 April 15 2011 Max-Tim Hobbs Exhibit R TomTimLetter01 Exhibit R TomTimLetter02 Exhibit R TomTimLetter03 Exhibit S July 5 2010 Tape 2-Phyllis Titus-Glenn Exhibit S July 6 2010 Tape 3-Phyllis Titus-Glenn Exhibit S July 27 2010 PM Tape 5-Glenn-Phyllis Exhibit S July 27 2010 Tape 4-Glenn-Phyllis Exhibit T July 5 2010 EGdCD-Kent Moeller Exhibit T October 4 2010 EGdCD-Kent Moeller Exhibit U November 12 2010 EGdCD-Sgt Massey Exhibit V July 1 2010 EGdCD-Ted Thompson Exhibit X April 4 2010 Shredding Truck (1) Exhibit X April 4 2010 Shredding Truck (2) Exhibit Y February 13 2010 130 PM Dave Ostler April 14 2011 459 PM Max-PhyllisTitus April 15 2011 202 PM Max-Tim Hobbs April 20 2011 704 PM Max-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 AGM - Max Recording February 2 2011 CRHA S. Meeting - Max Recording April 16 2011 CRHA Oil Spill - Glenn Lusk Video September 18 2011 – Oil spill Sample</p>
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The Petitioners estimates that the hearing of the petition will take three days (3).

Dated at Campbell River, this 22th. day of September, 2011



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



Form 1
(Subrule 2 (1))

SUPREME COURT OF BRITISH COLUMBIA
NOTICE OF APPLICATION
(CAMPBELL RIVER - Criminal Proceedings)

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)

TAKE NOTICE that an application will be made by Capt. E. G. da Costa Duarte and Sailmaster Glenn Lusk, the applicants, to the court at 9:45 a.m./p.m. on the 17 day of OCTOBER 2010, at Courtroom no. 001, at Campbell River, for an order granting;

RELIEF SOUGHT

1. 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.
2. 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;*
3. 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.
4. 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?

5. 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.

Mr. Glenn Lusk	Mr. Manfred Binger
Mr. Ronald Griffin	RCMP Sgt. Craig Massey
Mr. Dave Ostler	Mr. Ted Thompson
Mr. Arthur Beaulieu	Mr. Kent Moeller
Ms. L. Isibido	Mr. Sean Foy

6. 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.*

The Applicants estimates that the hearing of the Application will take 1 hour.

Dated at Campbell River, this 30th. day of September, 2011



Captain E. G. da Costa Duarte

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

A handwritten signature in blue ink that reads "Glenn Lusk". The signature is written in a cursive style with a horizontal line underneath it.

Sailmaster Glenn Lusk

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



Form 1
(Subrule 2 (1))

SUPREME COURT OF BRITISH COLUMBIA
NOTICE OF APPLICATION
(CAMPBELL RIVER - Criminal Proceedings)

BETWEEN:

Capt. E. G. da Costa Duarte
(Applicant)

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)

TAKE NOTICE that an application will be made by Capt. E. G. da Costa Duarte, the applicant, to the court at 9:45 a.m./p.m. on the 14 day of NOVEMBER 2010, at Courtroom no. 001, at Campbell River, for an order granting;

Part 1: RELIEF SOUGHT

1. 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", Captain E. G. da COSTA DUARTE

Defendants:

And:

CAPT. E. G. da COSTA DUARTE

PLAINTIFF BY COUNTERCLAIM

2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.

Part 2:

IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES UPON THE FOLLOWING EVIDENCE:

1. The Applicant relies on “Rule 2 (6) The judge hearing an application may receive viva voce evidence in addition to or in lieu of affidavit evidence”. The Applicant chooses to provide viva voce evidence in lieu of affidavit evidence via subpoena of person’s above-stated, Part 1 paragraph 3.
2. Form 2 outlining criminal counts, shown below, sworn by the Applicant/Informant on December 15, 2010 at Campbell River, British Columbia, commenced criminal proceedings against the Board of Directors of the Campbell River Harbour Authority (CRHA), Tom Forge and Phyllis Titus. At the onset of a factual narrative, the Summary of Offence - Court File No. 37556 – follows;

Descriptive words; Applicant and Informant directly relate to Capt. E. G. da Costa Duarte, the undersigned.

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.

3. The Applicant relies on the **Defendant's Memorandum of Fact and Law**, IN RESPONSE TO PLAINTIFF'S MOTIONS OF JUNE 8, 2010, submitted to Federal Court of Canada, Court File T-1003-10 on June 28, 2011.
4. The Applicant 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 reasons follow;

- a. The determination of Federal Court Jurisdiction is a large topic together with confusing case law available. **The Applicant ascertains concretely that the Federal Court of Canada has no Jurisdiction 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 FRAUD 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 Applicant; to seize and desist the ongoing Federal Court counterclaim and criminal prosecution before the Provincial Courts of British Columbia.
- d. The failure of the Federal Court to admit that the Campbell River Harbour Authority (CRHA) facility is a Public Harbour, governed by the Fishing and Recreational Harbours Act, adding to the Applicant’s state of Federal Court confusion originating from determined methodologies masterminded by presiding Judges of the Federal Court of Canada involving Federal Court File T-1003-10.

Part 3: LEGAL BASIS

1. The Federal Court does not have any jurisdiction to hear the matters referred to in the Statement of Claim submitted on June 24, 2010 to the Federal Court of Canada, Court File T-1003-10; by reasons of the fact that those matters do not involve matters that fall within the jurisdiction of the Federal Court of Canada.
2. The above-mentioned Statement of Claim, submitted on June 24, 2010 to the Federal Court of Canada, Court File T-1003-10 is 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 in this proceeding and is an abuse of the process and jurisdiction of this Honourable court.**
3. Two specific cases governing Admiralty Law and Pleasure Craft define the Applicant’s vessel while at the CRHA facility. See *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.*
4. As per the provisions of the CRHA Berthage Agreement the Applicant used the CRHA facility to berth 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 Applicant’s vessel is less than 300 Tons and a recreational vessel.
5. Additionally, the Berthage fees were paid to a Not-for-profit Corporation in which the Applicant was or is a member in good faith, regardless of membership, the Applicant 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 **NO** Federal Court Jurisdiction, see Federal Courts Act.
6. 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 Court File No. T-1003-10 Applicant’s Berthage Agreement.
7. 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. See Fishing and Recreational Harbours Act and Fishing and Recreational Harbours

Regulations.

8. The Canada Corporations Acts, Part II, governs the makeup of the Campbell River Harbour Authority, a Not-for-Profit Corporation.
9. The Campbell River Harbour Authority is a Public Harbour; 1335. Campbell River, page 36, Fishing and Recreational Harbours Regulations. See Fishing and Recreational Harbours Regulations.
10. The Campbell River Harbour Authority is a Public Corporation, according to the provisions of the Canada Corporations Act, Part II. See Canada Corporations Act C-1.8.
11. The Applicant 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.
12. 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 Canada Corporations Act C-1.8.

The Applicants estimates that the hearing of the Application will take 2 hours.

Dated at Campbell River, this 25th. day of October, 2011



Captain E. G. da Costa Duarte

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