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File No. 566381.000001

May 26, 2022

This is Exhibit " B " referred to in the
Affidavit of Rob Kerr
sworn (or affirmed) before me at
Alberni Bay, BC
this 6 day of AUGUST 20 22.

A Commissioner for Taking Affidavits for British Columbia

Delivered by Courier and Email (carlaconkin@protonmail.com and admin@wcel.org)

Conkin Reynolds
101 9th Avenue South
Cranbrook, BC V1C 2M2

West Coast Environmental Law
700 – 509 Richards Street
Vancouver, BC V6B 2Z6

Attention: Carla Conkin

Dear Sirs/Mesdames:

Re: Defamatory Comments Made By Concerned Citizens of Baynes Sound

We are legal counsel for Deep Water Recovery Ltd. ("Deep Water").

We understand that you are counsel for a group called the "Concerned Citizens of Baynes Sound" and some or all of its members, including "Ashlee Anne", also known as Ashlee Anne Gerlock, and Marilynne Manning (the "CCOBS"). If you are not counsel for the CCOBS and/or some or all of its members, please let us know and we will redirect our letter.

It has come to our attention that the CCOBS has made several negative and disparaging comments against Deep Water and its operations on a Facebook Page which it operates, including in posts published on January 26, 2022, February 2, 2022, April 21, 2022, April 22, 2022, and May 11, 2022.

Comments made by the CCOBS have also been repeated and republished on a website called "ALLTHINGSUNIONBAY" and by various news outlets, including in articles posted on the following dates: Comox Valley Record, January 10, 2022; Comox Valley Record, January 30, 2022; Vancouver Island Free Daily, January 31, 2022; Comox Valley Record, January 31, 2022; Comox Valley Record, April 21, 2022; and Comox Valley Record, May 16, 2022. The posts and articles can be found at the following website addresses:

<https://www.facebook.com/ConcernedCitizensofBaynesSound/>

<https://allthingsunionbay.com/>

<https://www.comoxvalleyrecord.com/news/concerned-citizens-of-baynes-sound-want-answers-about-shipbreaking/>

<https://www.comoxvalleyrecord.com/news/comox-valley-regional-district-approves-shipbreaking-resolutions/>

<https://www.vancouverislandfreedaily.com/news/comox-valley-regional-district-to-consider-injunction-against-union-bay-shipbreaking/>

<https://www.comoxvalleyrecord.com/news/directors-say-shipbreaking-a-non-compliant-use-in-union-bay/>

<https://www.comoxvalleyrecord.com/news/shipbreaking-continues-in-union-bay-despite-injunction/>

<https://www.comoxvalleyrecord.com/community/baynes-sound-residents-planning-town-hall-to-discuss-union-bay-shipbreaking-business/>

For ease of reference, we have quoted the relevant passages of the posts and articles below:

CCOBS Facebook Page, January 26, 2022:

On Oct 15th, 2021, the FNLNR [sic] changed the water lease from "storage of logs" to "moorage of vessels." These vessels are too large for the ocean depths in the water lease area. The vessels are resting on the ocean bed, scraping lead paint which kills any ocean vegetation...

[Emphasis added]

CCOBS Facebook Page, February 2, 2022:

ALL HANDS ON DECK!

If you have time can you please send an email to Forest Lands Natural Resources (FLNR). Here is an example of what we sent. It can be short and sweet:

"I am appealing the FLNR decision to amend the foreshore lease for Deep Water Recovery Ltd./Union Bay Industries Limited at 5084 Island Hwy S, Union Bay BC V0R 3B0."

All hands on deck to get these toxic ships out of Baynes Sound which is an ecological sensitive area. Please share with family and friends and ask them to help us too!

[Emphasis added]129336572:v5

CCOBS Facebook Page, February 2, 2022:

Protect Baynes Sound!

[Post includes photograph containing the following comments]

Deep Water Recovery Ltd/Union Bay Industries Limited at 5084 Island Hwy S, Union Bay, BC V0R 3B0

Excavation without permits

...

Diverted Creek

Bylaws do not permit people living on site in trailers...

The Miller Freeman currently moored at the site contains hazardous [sic] materials.

***WARNING THIS PROPERTY CONTAINS ASBESTOS. ASBESTOS HAS BEEN IDENTIFIED IN PIPE INSULATION, EXHAUST BREECH INSULATION, 9 X 9 FLOOR TILE, WALLBOARD ON THE MAIN DECK AND HIGHER AND WALLBOARD IN THE WALK-IN COOLER. ALL ASBESTOS ON THE VESSEL HAS BEEN VERIFIED AS NON-FRIABLE (BONDED OR OTHERWISE RENDERED UNAVAILABLE FOR RELEASE INTO THE ATMOSPHERE THROUGH NORMAL USAGE). DO NOT RELEASE FIBERS BY CUTTING, CRUSHING, SANDING, DISASSEMBLING, OR OTHERWISE ALTERING THIS PROPERTY.*

[Emphasis added]

CCOBS Facebook Page, April 21, 2022:

Shipbreaking is NOT occurring on a [sic] sealed asphalt as they say; it is all happening on raw land.

[Emphasis added]

CCOBS Facebook Page, April 21, 2022:

Hay bales for environment spill containment, at the high tide mark? What is wrong with this picture? What is Edgett sucking out of that barge? Where is our government protecting the people, ocean and environment???

[Emphasis added]

CCOBS Facebook Page, April 22, 2022:

On this day I reflect on what has happened over the past two years at Deep Water Recovery/ Union Bay Industries Limited Site. This unique and beautiful part of the island has been torn up and raped once again of her beauty.

A foreign owned company has started shipbreaking in our community. They call us names like Nimby's, attack our ethics and tell people we are only activists to protect our property value, they verbally attack our first nations, our land, ocean and people of the community.

Bayne's sound is home to over 50% of BC's shellfish, we do not want heavy metals, PCB's, asbestos etc. in the sound...

[Emphasis added]

CCOBS Facebook Page, May 11, 2022:

CCOBS is fortunate to have the support of West Coast Environmental Law through their Environmental Dispute Resolution Fund. We have an experienced environmental lawyer who has also guided us through this process. Together with our extended CCOBS family, and WCEL, we have made significant progress in ridding Baynes Sound of shipbreaking. However, our battle has only begun. The legal action taken by the CVRD only covers the Land portion of this dispute, and the operator continues their shipbreaking activities on the lands. It usually requires several months to obtain a judgment from the BC Supreme Court. The Province contends that their approval of an amendment to the foreshore lease on October 15, 2021 from logs to toxic vessels in the foreshore awaiting shipbreaking on the lands was only a minor change requiring zero public consultation. This was a major change of use requiring a new application and significant public and First Nations consultation.

While WCEL generously supports environmental legal challenges, cost sharing is approximately 60/40 between WCEL and CCOBS, Todate [sic], CCOBS has been funding our share of this legal challenge. To continue the legal challenge to permanently rid the foreshore of these toxic vessels will require significant legal resources. The cost to CCOBS members alone is prohibitive. We are requesting donations from the public to support this legal challenge. 100% of all donations go directly to support the WCEL assisted legal challenge...

[Emphasis added]

Comox Valley Record, Concerned Citizens of Baynes Sound want answers about shipbreaking, January 10, 2022:

A group dubbed Concerned Citizens of Baynes Sound (CCOBS) is pressing the regional district for answers as to why shipbreaking is being allowed on the water near Union Bay.

The business involves dismantling an obsolete vessel for scrapping or disposal, conducted at a drydock. CCOBS says shipbreaking is known as one of the most dangerous and hazardous industries, in terms of risk to human and environmental health due to asbestos and other materials on old vessels. The group concurs with the K'ómoks First Nation who say the operation is "an environmental disaster waiting to happen" in Baynes Sound.

...

CCOBS is asking the CVRD and FLNR to issue the companies a Cease and Desist Order for operations at the site, and for non-compliance activities on the foreshore lease...

[Emphasis added]

Comox Valley Record, Comox Valley Regional District approves shipbreaking resolutions, January 30, 2022:

In recent months, shipbreaking has become a contentious issue in Union Bay, where a community group and the KFN says an operation is threatening Baynes Sound. They are concerned about a risk to human and environmental health due to asbestos and other materials on old vessels. Union Bay Industries (UBIL) owns the property where the activities are taking place. They lease it back to Deep Water Recovery (DWR). The Concerned Citizens of Baynes Sound question why shipbreaking is allowed in the community. It claims the activity — dismantling an obsolete vessel for scrapping or disposal — contravenes regional district bylaws.

[Emphasis added]

Vancouver Island Free Daily, Comox Valley Regional District to consider injunction against Union Bay shipbreaking, January 31, 2022; and

Comox Valley Record, Directors say shipbreaking a non-compliant use in Union Bay, January 31, 2022:

A community group dubbed the Concerned Citizens of Baynes Sound, along with the K'ómoks First Nation, have said DWR's operation is threatening Baynes Sound. They are concerned that shipbreaking poses a

risk to human and environmental health due to asbestos and other materials on old vessels.

[Emphasis added]

Comox Valley Record, *Shipbreaking continues in Union Bay despite injunction*, April 21, 2022:

The CCOBS and the K'ómoks First Nation say that shipbreaking at this site is threatening Baynes Sound, in terms of leaching asbestos and other hazardous materials into the ocean.

[Emphasis added]

Comox Valley Record, *Baynes Sound residents planning town hall to discuss Union Bay shipbreaking business*, May 16, 2022:

The Concerned Citizens of Baynes Sound have scheduled a town hall meeting to discuss the contentious shipbreaking business conducting its operations in Union Bay.

...

"Union Bay Industries Ltd. (UBIL) at 5084 Island Highway South was a log sort for over 30 years," reads a CCOBS press release. "UBIL was sold to foreign owners in 2019. These new owners then started a pop-up shipbreaking operation (Deep Water Recovery) with the arrival of multiple vessels.

"The international community defines shipbreaking as hazardous waste. These are all known carcinogens. Our environment, the viability of our community, and public health and safety are all in jeopardy."

[Emphasis added]

Contrary to the statements, Deep Water is not a "pop-up shipbreaking operation" that is performing work on "toxic ships" containing "hazardous [sic] materials". Deep Water is not "threatening Baynes Sound", and there is no "risk to human and environmental health" either due to "asbestos", "heavy metals", "PCB's", or "other materials on old vessels". The CCOBS' statement that Deep Water is "leaching asbestos and other hazardous materials into the ocean" is entirely unfounded. Further, Deep Water has not, and is not, conducting its operations on "raw land", nor is it using "[h]ay bales for environmental spill containment". There are no vessels "resting on the ocean bed, scraping lead paint" and Deep Water is not "kill[ing] any ocean vegetation".

It is plainly false to say that Deep Water's operations are a "risk to human and environmental health", "an environmental disaster waiting to happen", or that they are putting the "environment, the viability of [the] community, and public health and safety... in jeopardy". Deep Water's activities do not involve "hazardous waste... [and] known carcinogens". Further, it is entirely

baseless and irresponsible to say that Deep Water has “torn up and raped” any part of the island or that Deep Water has “verbally attack[ed]... first nations, [the] land, ocean and people of the community”.

Finally, Deep Water has not conducted any “[e]xcavation without permits”, nor has it diverted a creek. It is not undertaking non-compliant activities on the foreshore lease and it is Deep Water’s position that it does not contravene the Comox Valley Regional District’s bylaws.

The comments made by the CCOBS and its members have no foundation and are misleading.

All of the statements, as outlined above, are untrue and are unequivocally denied. These statements have and will continue to cause damage to Deep Water’s reputation. As a result, the CCOBS’ statements are defamatory.

Since the publication of the CCOBS’ statements, the original defamatory statements have been repeated and republished by media outlets in British Columbia and other websites, and some have been reposted on the CCOBS Facebook Page. However, the full extent of the dissemination of the statements is not known and cannot be known.

The defamatory statements continue to be available to be read by anyone who visits the CCOBS Facebook Page, the “ALLTHINGSUNIONBAY” website, and the Comox Valley Record and Vancouver Island Free Daily websites (among others), which exacerbates the harm and damages caused by the CCOBS’ defamatory statements.

It has also come to our attention that the CCOBS intends on further disseminating defamatory statements about Deep Water and/or its operations at a town hall meeting organized by the CCOBS, at the Union Bay Community Hall (5401 Island Highway South) on May 29, 2022, from 1:00 p.m. to 3:00 p.m.

In light of the foregoing, and on behalf of Deep Water, we hereby demand that the CCOBS and everyone else who contributed to, published or republished the defamatory statements, **immediately cease and desist from making further defamatory, libellous, false and/or disparaging statements about Deep Water and its operations.**

On behalf of Deep Water, we also demand a complete retraction of the defamatory comments the CCOBS made to third parties, and that the CCOBS take immediate steps with the parties to whom the statements were made, as well as any and all internet service providers, news databases and standard search engines to have all archived and cached copies of the statements either deleted, corrected, or made no longer accessible via the internet. Deep Water requires evidence that these requests have all been completed and complied with.

If the CCOBS fails to take the above noted steps by 12:00 p.m. on May 31, 2022, we expect to receive instructions from Deep Water to immediately take all necessary steps to protect Deep Water’s interests and prevent further harmful conduct, which would include, but would not be limited to, pursuing injunctive relief and commencing legal proceedings against the CCOBS seeking general, aggravated, punitive and special damages.

In the event that litigation is required, we will bring this letter to the attention of the Court.

This is not an exhaustive statement of Deep Water's position. Deep Water reserves all of its rights, claims and remedies at law and in equity.

We trust that you will give this matter your immediate attention.

Yours truly,

Borden Ladner Gervais LLP

By:

Matthew G. Swanson
MGS/SMP