

[128] Turning to the evidence, Ms. Reynolds points to what she says is a pattern of DWR and Mr. Jurisich threatening critics, including with legal action in response to and to prevent further criticism. There is some evidence of this, including the letter to CCOBS. In addition, she can point to the demand letter from Mr. Swanson to Mr. Gratl dated July 14, 2022, which included a demand to “remove all images, recordings and data which your client has published in respect of our clients, their operations and activities”.

[129] There is no direct evidence of this as a generalized motivation. On cross-examination, Mr. Jurisich denied that public criticism bothered him, and asserted that he took the actions that are the basis of Ms. Reynolds’ main claim because of the “intrusion in our personal space”. Mr. Gratl, on behalf of Ms. Reynolds, argues that his claim that he was not bothered by complaints to government agencies was not credible. I agree that I cannot give much weight to this evidence.

[130] Nonetheless, I find that Ms. Reynolds has not proven that the Counterclaim would not have been filed “but for” DWR’s desire to silence her. There is an obvious competing explanation, which is that the Counterclaim was filed in part to define what Ms. Reynolds can do with her drone and in part as a strategic response to her own civil action. On the evidence before me, I accept that DWR is sincere in disliking the presence of Ms. Reynolds’ drone, over and above its concerns about the reputational impact of the footage. In particular, I have no reason to reject Mr. Ruttan’s evidence that the drone is distracting and unwanted or his concerns that this distraction poses safety risks.

[131] Had Ms. Reynolds not communicated her video footage, but had engaged in the drone flying and had brought her own action against DWR, I find that they would still probably have filed a counterclaim including the Physical Intrusion Claims.

[132] To be sure, I think it is clear from Mr. Swanson’s July 14, 2022 letter that there were multiple motivations for the Counterclaim and that these *included* DWR’s objection to what it saw as unfair criticism. If the right test is mere “taint”, then I find