

[31] Although the “cease and desist” letter to CCOBS does not refer to the video footage from Ms. Reynolds’ drone, I find, for the purposes of this application, that some of the information published by CCOBS and asserted to be defamatory by DWR probably came from Ms. Reynolds’ drone footage. There is specific reference to a “photo” illustrating what CCOBS characterizes as carving up of ships on the foreshore in violation of the foreshore lease. It is plausible that the “photo” is a still from Ms. Reynolds’ videos. In any event, I find that Ms. Reynolds’ videos were a probable source of CCOBS’ information.

[32] Counsel for CCOBS responded to the “cease and desist” letter on May 30, stating that CCOBS would not remove the material or retract it, and that if DWR chose to pursue legal action, CCOBS would “exercise the remedies available, including Anti-SLAPP remedies”, a reference to the *PPPA*.

[33] DWR decided not to pursue litigation against CCOBS.

The Basis of Ms. Reynolds’ Claim Against DWR and Mr. Jurisich

[34] The first incident giving rise to Ms. Reynolds’ own action occurred on June 11, 2022. Ms. Reynolds pleads that while she was standing beside her vehicle in the Union Bay Community Hall parking lot, flying her drone, Mr. Jurisich arrived as a passenger in a vehicle driven by another person, jumped out of the vehicle and came towards her “with a highly aggressive and angry demeanor”. She claims that he used his greater height, size and his gender and younger age to physically dominate her and back her up against her vehicle. According to Ms. Reynolds’ pleading, when the drone was approximately five feet off the ground, Mr. Jurisich grabbed it, yelled angrily at her, and then went back into the vehicle. Ms. Reynolds pleads that Mr. Jurisich and the unknown driver were acting within the scope of their employment with DWR.

[35] DWR did not put in evidence of its or Mr. Jurisich’s version of the events. This is perfectly appropriate in this application and I do not make any findings about what actually happened. However, since DWR’s motivations are relevant, I am prepared

to find that Mr. Jurisich, on behalf of DWR, was angered by Ms. Reynolds' activities with the drone.

[36] According to Ms. Reynolds' pleadings, Mr. Jurisich drove up to Ms. Reynolds' residence shortly after 10 p.m. on June 14 and deposited the drone on her front porch. She claims that he or other DWR employees had removed the memory card for the drone and damaged the drone. I am prepared to infer that part of what angered Mr. Jurisich (and therefore was a source of motivation for DWR) was the fact that video footage was taken from the drone.

[37] Ms. Reynolds pleads that the next afternoon, June 15, Mr. Jurisich again confronted her at the Union Bay Community Hall parking lot. She pleads that he parked a white pickup truck directly in front of her vehicle, preventing her from moving. She further claims that he then confronted her physically in an angry and aggressive way and pushed his head into her car window and started yelling at her. Finally, she claims he made a false police report about her and followed her home with other DWR employees with the intent of intimidating her.

[38] These alleged events became the basis of the Notice of Civil Claim in this action, filed on June 20, 2022. The legal basis of the claim is in conversion against the drone, for "harassment, assault and intimidation" and of "unlawful confinement" for the alleged conduct of Mr. Jurisich and an unnamed employee of DWR for the alleged events of June 14. There is also a claim of "harassment, assault and intimidation" for the alleged visit to Ms. Reynolds' home where the drone was allegedly returned.

[39] The Notice of Civil Claim claims general, special, aggravated and punitive damages. It also asks for an interim, interlocutory and permanent injunctions to prevent Mr. Jurisich, the unnamed "John Doe" defendants and any other employee of DWR from approaching within 100 feet of Ms. Reynolds or her residence.

DWR Files a Response to Civil Claim and the Counterclaim

[40] On July 13, 2022, DWR and Mr. Jurisich filed a Response to Civil Claim and DWR, on its own, filed the Counterclaim that is the subject matter of this application, thus bringing the “pre-history” of the Counterclaim to an end.

[41] In a direct sense, the Counterclaim was a response to the Notice of Civil Claim: it was tit for tat. In response to allegations of conversion of chattels and intimidation, DWR made allegations of its own. To be sure, both pleadings occur in a broader context, part of which was a public campaign about DWR’s activities that DWR seems to have felt was unfair and certainly resisted. But they also occur in a context of clashes of claims about physical boundaries. I find that the filing of the Counterclaim was motivated by all of these events, including Ms. Reynolds’ use of the drone, the surveillance of DWR’s operations by the drone, Ms. Reynolds’ apparent presence as among DWR’s critics and Ms. Reynolds’ decision to sue DWR and Mr. Jurisich.

III. ANALYSIS OF THE CONTENT OF DWR’S COUNTERCLAIM

[42] Having reviewed the facts that might shed a light on the motivation for filing the Counterclaim, I turn now to its content. As with the motivation, I find that the content of the Counterclaim has both expressive and non-expressive aspects.

[43] Like any claim, the Counterclaim includes remedies sought, alleged material facts on the basis of which they are sought and legal theories according to which proof of these material facts would constitute a reason for the granting of the remedies. In my view, the remedies, alleged facts and legal theories can be subdivided into three sub-claims, one having to do with the alleged violation of DWR’s property rights as the lessee of the Property, one having to do with alleged surveillance of DWR and its employees, and one having to do with the communication by Ms. Reynolds of the content of her videos to other activists, the public and the media. All three of the sub-components have their own alleged facts, legal theories and remedies.