

AFFIDAVIT #1 OF DARIN BOWLAND
SWORN SEPTEMBER 17, 2006

NO. S-063817
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DARIN BOWLAND

PLAINTIFF

AND:

BRITISH COLUMBIA FERRY SERVICES INC.

DEFENDANT

AFFIDAVIT

I, Captain Darin Bowland, Master Mariner and former Director of Safety, Health and Environment, BC Ferry Services Inc. (“BC Ferries”), of 3739 – 155th Street, in the City of Surrey, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Plaintiff in this action and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be made upon information and belief, and, as to such facts, I verily believe the same to be true.

2. I hold a Master Mariner’s licence and am considered to be an expert in maritime safety. Prior to commencing employment with BC Ferries, I had been employed by Royal Caribbean Cruise Lines (“RCCL”) for approximately 11 years, most recently as the Captain of the luxury liner *Radiance of the Seas*. Prior to joining RCCL, I spent approximately eight years serving as an officer in the Royal Canadian Navy. Prior to my joining BC Ferries, the extent of my experience, skills and training in maritime matters generally, and in maritime safety matters in particular, had been recognized within the maritime industry.

3. I have reviewed BC Ferries' List of Documents dated August 11, 2006, and believe that there are several specific documents and classes of documents that have not been produced, as I have described below.

Pre-Employment

4. In September 2005, while I was still employed by RCCL, I went to Victoria and met with Captain Trafford Taylor, Executive Vice President of Operations, BC Ferries.

5. In early October 2005 BC Ferries sent me an email asking me to call Mr. Taylor. Shortly thereafter, I phoned Mr. Taylor and during that conversation he asked me if I would be interested in the position of Director of Safety, Health and Environment.

6. By way of email dated October 28, 2005, BC Ferries sent me a job description and other documents relating to the position.

7. In early December, 2005, I went to Victoria where I met with and discussed the nature of the position with senior executives at BC Ferries, namely: (a) Mr. Taylor; (b) George Cappaci, Vice President, Fleet Operations; and (c) David Hahn, President. I recall specifically that at that time Mr. Cappaci gave me a wallet-sized card that listed BC Ferries "core values", which include safety, and emphasized the importance of safety to the company.

8. In late December 2005, I went to Victoria again as part of the formal interview process. During this process I met again with members of the BC Ferries' executive team and senior management, namely: (a) Barbara Gill, Manager, Corporate Human Resources; (b) Mr. Cappaci; (c) Mark Collins, Vice President of Engineering; (d) Bill Cottick, Executive Vice President Corporate Affairs & General Counsel; and (e) Mr. Taylor. During these interviews, these individuals and I discussed the nature of the position being offered. During my discussion with Ms. Gill she told me that the company was looking to hire someone who would make changes and improve the safety practices and protocols within the company.

9. If representatives of BC Ferries had not advised me during these pre-employment discussions and interviews of the company's commitment to safety, I would not have been interested in taking the position as Director of Safety, Health and Environment.

10. Shortly after the interviews I described in paragraph 8 of my Affidavit, I participated in a conference call with Mr. Taylor, Mr. Cappaci and Mr. Cottick, where once again we discussed the position being offered by BC Ferries.

11. Other than my resume, which is document #1 on BC Ferries' List of Documents, BC Ferries has not produced any documents relating to the pre-employment contact I had with its representatives, as set out above, including any job descriptions, interview notes, emails and internal memos that may have been sent or prepared by and among the individuals who met with me and/or interviewed me.

Commencement of Employment

12. By way of letter dated January 4, 2006, BC Ferries offered me employment, which I accepted. At around the same time, a draft internal memo was prepared by Mr. Taylor announcing my arrival. I was given an opportunity to review the memo.

13. BC Ferries has not produced the draft memo, the final version of the memo or any other documents relating to what the BC Ferries' executive team or senior management told or considered telling other BC Ferries' employees or the company's Board of Directors about my hiring and the nature of my position.

Electronic Calendar

14. After I commenced my employment with BC Ferries on February 1, 2006, I became aware that BC Ferries has a mainframe calendar that it uses to keep track of the meetings of all of its executive and management employees, essentially an electronic group day-timer. It was on this electronic day-timer that I kept track of all my appointments and meetings while employed by BC Ferries, including many of those which I discuss in this Affidavit. I would

regularly instruct one of my assistants – either Annalise Sekyar or Shereen Vedam – to download this calendar onto my company Blackberry.

15. Despite specific requests from my counsel, BC Ferries has not produced my electronic day-timer or print-outs of the electronic day-timer. Attached as **Exhibit “A”** to my Affidavit is a copy of a letter dated August 15, 2006, from my counsel, Rodney Hayley, to counsel for BC Ferries, Matthew Cooperwilliams, requesting my day-timer.

16. Attached as **Exhibit “B”** to my Affidavit is response letter from Mr. Cooperwilliams, dated August 24, 2006, in which he simply stated that I did not have a hard-copy day-timer but was silent on the issue of my electronic day-timer.

Meeting with Barb Gill – early February 2006

17. In around early February 2006 I had a meeting with Ms. Gill and we discussed safety concerns and safety problems at BC Ferries. At this meeting, Ms. Gill asked me to put together ideas for a new Occupational Health and Safety organization that would address these concerns and problems.

18. BC Ferries has not produced any documents relating to this meeting with Ms. Gill and/or its subject matter.

Meeting with Barb Gill and Glen Schwartz – mid to late February 2006

19. In around mid to late February 2006, I attended a meeting with Ms. Gill and Glen Schwartz, Executive Vice President, Human Resources & Corporate Development. The purpose of the meeting was to discuss BC Ferries’ safety organization. At this meeting, I outlined some of the safety concerns and problems within BC Ferries, including that the Occupational Health and Safety organization was dysfunctional and in a state of disarray. I also showed them a presentation that I had prepared in relation to creating a new Occupational Health and Safety organization. Mr. Schwartz asked me to put my ideas in a different format and subsequently sent me a copy of one of his presentations to use as a template.

20. BC Ferries has not produced any documents relating to this meeting with Ms. Gill and Mr. Schwartz and/or its subject matter, including the original presentation I prepared, the template that Mr. Schwartz provided me with, and the revised report I prepared.

Meeting with Barb Gill – mid to late February 2006

21. Immediately after my meeting with Ms. Gill and Mr. Schwartz, I met with Ms. Gill in her office, where I again emphasized that there were serious safety problems at BC Ferries. I also asked her to convey the urgency of the situation to Mr. Corrigan.

22. Ms. Gill subsequently advised me that she had discussed the situation with Mr. Corrigan, and that his response was, in effect, that he did not want me trying to make changes so quickly.

23. BC Ferries has not produced any documents relating to this meeting I had with Ms. Gill and/or its subject matter, her subsequent communications with Mr. Corrigan and her follow-up discussions with me.

Telephone conversation with Mike Corrigan – February 21, 2006

24. On or about February 21, 2006, I had a telephone conversation with Mr. Corrigan while I was standing on the deck of the *Queen of Oak Bay*, one of the ships in BC Ferries' fleet. During this conversation we discussed the fact that the BC Ferries' Occupational Health and Safety organization was in disarray, the negative effect this fact had on the state of the International Safety Management ("ISM") system at BC Ferries and the possible liability of company directors and officers that could result from this.

25. The ISM system is based on an internationally developed code that addresses the need for commitment at all levels of a company - including senior management and executives - to a safety culture that is built around a safety management system subject to external audit and certification. In short, it requires a safety management system that is structured and documented

and that enables a company's personnel to implement effectively the company's safety and environmental protection policies. Among other things, the ISM Code expressly provides that:

Every Company should develop, implement and maintain a safety management system which includes the following functional requirements:

- 1) a safety and environmental-protection policy;
- 2) instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation;
- 3) defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;
- 4) procedures for reporting accidents and non-conformities with the provisions of this Code;
- 5) procedures to prepare for and respond to emergency situations; and
- 6) procedures for internal audits and management reviews.

26. BC Ferries has not produced any documents relating to the ISM system generally, and this conversation I had with Mr. Corrigan and/or its subject matter including any emails, memos or notes prepared as a result of the conversation.

Discussions with Trafford Taylor about Local Area Investigations –late February 2006

27. One of the first things I did at BC Ferries was to undertake “Local Area Investigations” of incidents that had occurred on board the *Queen of Alberni* and the *Queen of Coquitlam*. Specifically, in early February 2006, both ferries had had incidents where a vehicle and its driver was left on board the ferry after the crew had secured the vessel and gone home for the night. A Local Area Investigation is the second most serious type of investigation that can be done under BC Ferries’ accident/incident investigation protocol.

28. Over the course of the investigation, I recommended twice to Mr. Taylor that these two Local Area Investigations should be elevated to one Divisional Inquiry, which is the most serious type of investigation that can be done at BC Ferries. I also provided Mr. Taylor with a written report I had prepared that included safety and security recommendations. Mr. Taylor

directed me to continue to prepare two separate Local Area Investigations. He also told me to remove the most pointed and critical recommendations from the report and put it in a separate letter to him, which I did. I had not finished the two Local Area Investigation reports by the time I left BC Ferries.

29. BC Ferries has not produced any documents relating to these Local Area Investigations and my discussions with Mr. Taylor, including the original report I prepared with my recommendations, the letter I sent to Mr. Taylor, and the two final Local Area Investigation reports.

Other discussions concerning the Local Area Investigations – late February 2006

30. In addition to my conversations with Mr. Taylor, I also discussed the two Local Area Investigations and my findings, concerns and recommendations with Mr. Cappaci, Jamie Marshall, Superintendent- South Coast, and Steve Graham, Superintendent – Central Coast.

31. BC Ferries has not produced any documents relating to the discussions I had with Mr. Cappaci, Mr. Marshall and Mr. Graham about the Local Area Investigations.

Other Divisional Inquiries and Local Area Investigations

32. While employed by BC Ferries I reviewed various reports that had been prepared by BC Ferries concerning safety in its fleet, including:

- (a) the Local Area Investigation report that had been written in relation to the engine room fire on the *Queen of Prince Rupert* (2006);
- (b) the Divisional Inquiry report that had been written in relation to the near grounding of the *Spirit of B.C.* (2005);
- (c) the Divisional Inquiry report that had been written in relation to the grounding of the *Queen of Oak Bay* (2005); and

- (d) the Divisional Inquiry report that had been written in relation to a fire on board the *Queen of Surrey* (2003).

33. Based on these reports, I concluded that there were significant problems in the manner in which BC Ferries approached safety, and with its culture of safety. Further, I had these reports in mind when I prepared my presentation for the manager's conference at the Empress Hotel in early March 2006 (which I address in paragraph 42 of this Affidavit) and when I recommended that a new position be created to look after bridge resource management training (which I address in paragraphs 58 and 59 this Affidavit).

34. Despite my counsel's specific request (see **Exhibit "A"**), BC Ferries has not produced any documents relating to the incidents that gave rise to those reports nor the reports themselves. By way of letter dated August 23, 2006, Mr. Cooperwilliams has taken the position that these documents are not relevant to my claim. Attached as **Exhibit "C"** to my Affidavit is a true copy of the letter from Mr. Cooperwilliams dated August 23, 2006.

Captain's Interviews – late February 2006

35. In around late February 2006, I sat on a board that was conducting interviews for open captain positions at BC Ferries. The board was chaired by Mr. Cappaci. The other board members were Ms. Gill, Mr. Graham, and Al Deconick, the Senior Master, *Queen of Alberni*.

36. The board interviewed mainly internal candidates and over the course of the interviews it soon became evident that the majority of them did not have sufficient bridge resource management training, such training being essential according to industry standards. As a result, Ms. Gill, Mr. Deconick and I raised concerns with and gave advice to Mr. Cappaci about the inadequate level of training within the BC Ferries fleet.

37. Based on my discussions with Ms. Gill, I believe that that she had discussions with Mr. Schwartz about the concerns we raised about the level of training, that Mr. Schwartz had discussions with Mr. Hahn about this issue, and that Mr. Hahn had conversations with Mr. Cappaci and Mr. Taylor about this issue.

38. BC Ferries has not produced any documents relating to this interview process, the concerns that we raised and the advice we gave about the level of training and any subsequent communications that took place between and amongst the executive team and senior management.

Conversation with George Cappaci - late February 2006

39. In late February 2006, shortly after the interviews for the captain's position at which time I had raised the need for bridge resource management training, Mr. Cappaci asked me to review a document that he was preparing in relation to the Stanton Island ferry incident that had occurred in New York City, since he had been asked to participate in the investigation as an expert witness.

40. After reviewing the document I told Mr. Cappaci that I thought it was generally sound, but I raised a caveat about one paragraph that set out his recommendation that all watch keepers on board ferries should be trained in bridge resource management and that the company that ran the Stanton Island ferry should adopt practices that better reflect these standards. Specifically, I advised Mr. Cappaci that his credibility as a witness could easily be attacked, given that BC Ferries itself did not conduct such training, despite its importance in the industry. The fact that lack of proper bridge resource management could lead to catastrophic results was exemplified plainly by the Stanton Island ferry incident, in which there was both loss of life and extensive property damage. After hearing my comments, Mr. Cappaci threw the draft report across the room and told me he would deal with it later.

41. BC Ferries has not produced any documents relating to this discussion I had with Mr. Cappaci and/or its subject matter, including the draft report I reviewed and the final report he produced, and any documents Mr. Cappaci may have authored on the need for improved bridge resource management in the BC Ferries' fleet.

BC Ferries Managers Conference (Empress Hotel) – early March 2006

42. In around early March 2006, BC Ferries had a three-day conference for its management/non-union employees at the Empress Hotel in Victoria. I gave a PowerPoint presentation at the conference that outlined my concerns about safety practices and protocols. Some of these concerns were based on the Local Area Investigation and Divisional Inquiry reports that I had reviewed and written (as I have outlined in paragraphs 27-33 of this Affidavit). It was my understanding that my presentation was controversial and generated a lot of discussion among the attendees, which included most if not all of the executive team and senior management.

43. BC Ferries has not produced any documents relating to my presentation at this conference and/or its subject matter, including the PowerPoint presentation itself and any documents, memos and email correspondence that were produced by the executive team and senior management in relation to my presentation.

Conversation with George Cappaci – early March 2006

44. In about early March 2006, I met with Jackie Miller, President of the BC Ferry and Marine Workers' Union (the "Union"), and her assistant, Kevin Hall, to discuss ongoing safety issues at BC Ferries. In particular, they requested that I take urgent action to address concerns about the state of the Occupational Health and Safety organization.

45. The day after my meeting with the Union, I had a discussion with Mr. Cappaci, at which time I explained to him what had transpired with the Union and that we needed to address the safety deficiencies at BC Ferries as soon as possible.

46. BC Ferries has not produced any documents relating to my discussions with the Union representatives and with Mr. Cappaci, nor has it produced any documents relating to concerns the Union had with safety of the fleet.

Meeting with Mike Corrigan – mid-March 2006

47. In mid-March 2006, I met with Mr. Corrigan to discuss the presentation - about the state of safety at BC Ferries and the Occupational Health and Safety organization - that I had finished preparing after my telephone conversation with him on February 21, 2006. At the meeting I expressly recall Mr. Corrigan stating in relation to the ISM system (which I discuss at paragraph 25 of my Affidavit): “What you are saying to me then, Darin, is that the ISM system at BC Ferries is fucked.” I confirmed this was correct. After we went through my presentation Mr. Corrigan asked me how many people had copies of the document and if it was on BC Ferries’ main server.

48. Given its implications for the safety of the crew and the travelling public, the fact that the ISM system was “fucked” obviously should have been an extremely important issue to BC Ferries, and should have been reported by Mr. Taylor or Mr. Corrigan to their superior, Mr. Hahn, and by Mr. Hahn to the Board of Directors. This is because the ISM system is a key aspect of mitigating risk in a maritime operation and if it is not properly functioning, it becomes probable that the fleet will experience a serious or even catastrophic accident.

49. BC Ferries has not produced any documents relating to my conversation with Mr. Corrigan and/or its subject matter, including the report that I prepared and gave to Mr. Corrigan and any documents relating to the actions that Mr. Corrigan may have taken following this conversation.

Meeting with Trafford Taylor, Chris Clack and Mike Corrigan – mid March 2006

50. In mid March 2006 I arranged a meeting with Mr. Taylor, Mr. Corrigan and Chris Clack, the Director, Operational Safety & Audit and the “Designated Person” under ISM. According to the ISM Code, the purpose of the Designated Person position is as follows:

To ensure the safe operation of each ship and to provide a link between the Company and those on board, every Company, as appropriate, should designate a person or persons ashore having direct access to the highest level of management. The responsibility and authority of the designated person or persons should include monitoring the safety and pollution-prevention

aspects of the operation of each ship and ensuring that adequate resources and shore-based support are applied, as required.

51. At this meeting we discussed issues still outstanding from the *Queen of Surrey* fire in 2003, including (a) whether the recommendations that had been contained in the Local Area Investigation report had been acted upon and (b) whether the directives that had been issued by the Transportation Safety Board were being followed. Significant concerns about the state of the ISM system were also once again discussed and Mr. Clack stated that the ISM system was “broken”.

52. BC Ferries has not produced any documents relating to this meeting with Mr. Taylor, Mr. Corrigan and Mr. Clack and/or its subject.

Kevin Stapelton

53. Given that the Occupational Health and Safety organization was in a state of disarray and that there was in effect nobody there to staff it, I arranged for an existing employee, Kevin Stapelton, to become my right-hand man. One of the main initiatives I assigned to him was to prepare reports for me on various safety issues that I had been alerted to by the crew members on the fleet.

54. On the next working day after my meeting with Mr. Taylor, Mr. Corrigan and Mr. Clack (discussed in paragraphs 50-51 of my Affidavit), Mr. Taylor advised Mr. Stapelton that he was in fact to report to and assist him. This decision would have had the effect of leaving me with no other resource person to rely on in order to carry out my safety initiatives. It seemed to me that I was being punished for having arranged the meeting in which Mr. Clack spoke bluntly about the dangerously deficient state of the ISM system. Moreover, given Mr. Taylor’s previous unwillingness or reluctance to respond in a constructive or supportive manner to the safety issues I had advised him about, I did not feel confident that Mr. Stapelton would be able to continue to effectively assist me in matters of safety and security if he reported to Mr. Taylor.

55. BC Ferries has not produced any documents relating to my arranging for Mr. Stapelton to work for me and Mr. Taylor’s insistence that he work for him.

Fire fighting Capability

56. Based partly on my review of the Local Area Investigation and Divisional Inquiry reports discussed in paragraphs 32-33 of this Affidavit, I identified the fire-fighting system and capabilities on board the fleet as one of the most pressing safety concerns at BC Ferries. I had numerous conversations with Mr. Taylor, Mr. Cappaci and Ms. Gill about my concerns, including conversations where I recommended that new equipment be purchased. Shortly afterwards, there was a fire on the *Queen of Prince Rupert* that highlighted the need for urgent changes and improvements in BC Ferries' fire fighting protocol and equipment. However, BC Ferries still did not take sufficient steps to address the systemic problems that I identified.

57. BC Ferries has not produced any documents relating to the conversations I had with Mr. Taylor, Mr. Cappaci and Ms. Gill about the fire-fighting system and capabilities on board the BC Ferries fleet, and/or this subject matter.

Position to oversee Bridge Resource Management Training

58. Based on my research and investigations, including my review of the Local Area Investigations and Divisional Inquiry reports discussed in paragraph 32-33 of this Affidavit, I also identified as a pressing safety concern for BC Ferries, the urgent need for bridge resource management training for the crews of the ferries. I made my concerns known to Mr. Taylor, Mr. Cappaci, Mr. Clack and Ms. Gill, and in my conversations with them I recommended that BC Ferries create a position to oversee such training. My recommendations were generally met with indifference, although I have since learned that after the sinking of the *Queen of the North* such a position was created. Based on my experience, I believe that BC Ferries' faulty or insufficient bridge resource management training of the crew may have been the cause, or one of the causes, of the sinking of the *Queen of the North*.

59. BC Ferries has not produced any documents relating to the conversations I had with Mr. Taylor, Mr. Cappaci, Mr. Clack and Ms. Gill about the need for bridge resource management training and/or this subject matter, including documents relating to the eventual creation of a position to oversee such training.

Weekly Superintendents Meeting

60. BC Ferries has a superintendents' meeting every Monday that I attended while employed there. Mr. Taylor or Mr. Capacci normally chaired the meeting. I recall that Mr. Taylor's secretary took formal minutes. I raised safety concerns at these meetings, including one meeting where I stated that there had been six or seven ferry dockings which had resulted in damage to the ship and that we needed to assess carefully this negative trend that was apparent so that we could learn how future incidents could be prevented.

61. BC Ferries has not produced any documents relating to the weekly superintendents meetings, including the minutes, notes taken by attendees, and documents relating to the docking incidents that I recommended warranted further investigation.

Report on Outstanding Safety Deficiencies

62. While employed at BC Ferries, I created a document that compiled all of BC Ferries outstanding safety deficiencies into one document. In total there were over 800 deficiencies - or safety problems that had been identified but not fixed - on the list. After discussing it with Mr. Cappaci, I circulated this document by email to the superintendents. After I circulated the report, one member of the senior management team, Mr. Marshall who is the Superintendent in charge of the entire South Coast, strongly challenged my decision to prepare and circulate the list and his complaint led to a heated argument between us. At the end of the argument, I told Mr. Marshall that, given the state of the company's safety practices and protocols, the fleet was an "accident waiting to happen".

63. BC Ferries has not produced the safety deficiency document I compiled or any documents relating to it and/or its subject matter, including documents relating to my discussions with Mr. Cappaci and Mr. Marshall.

Ship-Safety Markings Report

64. While employed by BC Ferries I became aware - in part, because of emails that were sent to me by crew-members - that many of the safety-markings on the ships (for example, exit signs and low level lighting) were not working and so I asked Mr. Stapelton to prepare a report on this. He prepared a very detailed report with graphics which I forwarded to Mr. Taylor, Mr. Collins, and Mr. Clack.

65. I then asked Mr. Clack to create a Corrective Action Required report or a "CAR", and add it to the safety action log, so that it would be clear that Mr. Collins, as the Vice-President of Engineering, had ultimate responsibility for fixing this problem. This type of accountability was mandated by the ISM system. However, senior management – namely Mr. Cappaci and Mr. Collins - prohibited me from doing this.

66. BC Ferries has not produced any documents relating to the Ship Safety Markings Report, including the report itself, emails that were sent to me and documents relating to my recommendation to have the CAR added to the safety action log.

Additional communications relating to safety

67. In addition to the specific discussions, meetings and events noted above, I also frequently communicated my general concerns, advice, warnings and recommendations about safety and the environment - including by way of email - to numerous BC Ferries executive or management employees throughout my employment, including: (a) Mr. Taylor; (b) Mr. Corrigan; (c) Mr. Cappaci; (d) Ms. Gill; (e) Mr. Clack; (f) Mr. Marshall; (g) Mr. Stapleton; (h); Mr Collins; (i) David Hartman, the former Manager Occupational Safety & Health; and (j) Alicja Rudzki, the Manager of the Environment. In some cases, the emails were prepared by or sent by one of my assistants, Ms. Sekyar and Ms. Vedam.

68. Other than perhaps of document #15 in its List of Documents, BC Ferries has not produced any documents relating to this general correspondence I had with members of BC Ferries executive and management team.

Sinking of the Queen of the North – Accident response team

69. The *Queen of the North* sank early in the morning on Wednesday, March 22, 2006. Two people died as a result of the sinking. Although the rest of the passengers managed to escape with their lives, they lost their personal property including in some cases their vehicle.

70. Despite my position and my contractual duties to conduct Divisional Inquiries, I was not part of the initial accident response team that the BC Ferries executive team sent to Prince Rupert. Rather, I was sent to Prince Rupert later that day and did not arrive until that evening. I believed at the time – and maintain that belief today – that as the Director of Safety, Health and the Environment, I should have been sent to the scene of the accident as soon as possible, in order to gather and preserve evidence while it was available and fresh. Attached as **Exhibit “D”** to my Affidavit is a true copy of my employment contract dated January 4, 2006, which states that I have the “responsibility for the investigation of incidents or accidents to identify potential causes and determine appropriate course of action”.

71. BC Ferries has not produced any documents relating to the decision or decisions when to send various BC Ferries employees to Prince Rupert as part of the accident response team.

Sinking of the Queen of the North – Role in the investigation

72. On the morning of Thursday, March 23, 2006, BC Ferries had a management meeting at the hotel in Prince Rupert to discuss our strategy and response plan. At this meeting Mr. Taylor announced that I would be conducting a Divisional Inquiry. Later that day I telephoned Mr. Cappaci to get his insight on what he believed the scope of the Inquiry should be.

73. Other than documents #25, #35 and #36 on its List of Documents, BC Ferries has not produced any documents relating to my role in the investigation, including emails or internal memos between members of the executive team and senior management.

Meeting with Bill Cottick and outside lawyer – March 24, 2006

74. On Thursday, March 23, 2006 and the morning of Friday March 24, 2006, the Divisional Inquiry board managed to start the investigation and interview a few of the crew members.

75. However, on the afternoon of Friday, March 25, 2006, I was asked by Mr. Cottick, BC Ferries' senior legal officer, to meet with him at the hotel restaurant. He was accompanied by an outside lawyer that BC Ferries had hired, whose name I do not recall. At the meeting, the lawyers suggested that the cause of the sinking was crew negligence. I pointed out that it was necessary to recognize that BC Ferries had serious systemic safety problems, including the fact that, as I had advised members of the executive team and senior management previously, the ISM system was "broken".

76. They then moved the meeting from the restaurant to a private conference room. Once in the conference room they suggested that the way for me to conduct the Inquiry was to not focus on what BC Ferries had done wrong but rather on "opportunities" for BC Ferries to improve. They also suggested that a better way of conducting the Inquiry might be for the lawyers hired by BC Ferries to conduct the interviews and then to pass the information obtained on to the Divisional Inquiry board.

77. In response to these statements, I asked Mr. Cottick and the lawyer three times if they were suggesting that we should suspend the Inquiry. Each time my question was met with silence. Their silence, however, spoke volumes to me and clearly indicated that it had been decided that I should end the Inquiry. I advised the lawyers that I needed to get instructions and clarification from my superiors, Mr. Taylor, Mr. Corrigan and Mr. Hahn.

78. BC Ferries has not produced any documents relating to my meeting with Mr. Cottick and the outside lawyer and/or its subject matter, including documents relating to BC Ferries desire to change the focus and format of the Divisional Inquiry.

Telephone Conversations with George Cappaci and Mike Corrigan – March 25, 2006

79. After my meeting with Mr. Cottick and the outside lawyer, I returned to the hotel where I found out that the Divisional Inquiry board had been prevented from interviewing crew-members, but that the lawyers hired by BC Ferries were continuing on with their interviews. I then telephoned Mr. Corrigan and said that I could not carry out the Inquiry without witnesses. I said as well that given the two deaths that I had just learned about, it was now necessary for the senior officer of the company, Mr. Hahn, to define the scope of the Inquiry and to confirm the membership of the panel or board. Mr. Corrigan said that he would speak to Mr. Hahn and Mr. Taylor and that he would get back to me. Mr. Corrigan called me back that evening and said that he had spoken to Mr. Hahn and Mr. Taylor and that Mr. Taylor would get back to me in an hour to discuss the scope of the Inquiry. Mr. Taylor did not phone me that evening. I tried to call him but with no success.

80. In light of these developments, I telephoned Mr. Cappaci and told him that I had grave concerns with what was happening in relation to the investigation and that I would be heading home the next day (Saturday) to contemplate my future as I did not want my ethical standards to be compromised. I also subsequently talked to Mr. Corrigan on the phone about my concerns, at which time he told me I should return to Victoria if the Divisional Inquiry was not going ahead.

81. BC Ferries has not produced any documents relating to my telephone conversations with Mr. Cappaci and Mr. Corrigan and/or the subject matter of the conversations.

Discussion with Barb Gill – March 25, 2006

82. I flew back to Victoria on Saturday, March 25, 2006, and that same day went to BC Ferries office where I started composing my resignation email. I then had a long discussion over the phone with Ms. Gill about what had transpired in Prince Rupert and the concerns I had with the investigation, and with the way in which BC Ferries' executives and senior management had responded to the concerns about safety I had raised from the time I was hired. She emailed me later that day and asked me to call Mr. Schwartz.

83. Other than documents #57, #58 and #61 on its List of Documents – which are brief emails relating to Ms. Gill’s request that I talk to Mr. Schwartz - BC Ferries has not produced any documents relating to my discussion with Ms. Gill and/or its subject matter.

Resignation – March 27, 2006

84. On March 27, 2006 I officially tendered my resignation by sending an email to Mr. Corrigan, Mr. Capacci, and Mr. Schwartz.

85. By way of return email dated March 27, 2006 – which was sent within seconds after I tendered my resignation - Mr. Cappaci accepted my resignation. Mr. Cappaci’s email was copied to Mr. Taylor, Mr. Hahn, Mr. Corrigan and Mr. Schwartz.

86. While BC Ferries has produced the resignation email itself in various forms and one internal memo announcing my resignation (documents #57, 58, 60, 61, 67, 68, 70 on its List of Documents), it has not produced any documents relating to discussions or correspondence that members of the executive team or senior management had in light of my resignation, including correspondence between Mr. Capacci, Mr. Taylor, Mr. Hahn, Mr. Corrigan and Mr. Schwartz following the receipt of my resignation.

BC Ferries notification to the media of my resignation – March 2006

87. Shortly after my resignation, BC Ferries advised the media, incorrectly, that I had left the company for “personal reasons”. In my experience, such a phrase is used to describe an employee’s departure from an organization in circumstances in which he has been remiss in his duties and forced, or at least strongly encouraged, to leave. In fact, as an email I sent to Ms. Gill confirmed, I left because of my negative experiences with BC Ferries’ approach to safety and what had transpired in Prince Rupert. As the email to Ms. Gill stated; “Bottom line – the company scares me and I am not willing to carry on within the current culture and organization.”w

88. BC Ferries has not produced any documents relating to its notification of the media of my resignation, including any media releases that were created or other documents relating to the decision to advise the media of my resignation and what specifically the media should be told about my resignation.

Reference requests from new employers – ongoing

89. Since leaving BC Ferries, I have applied for many new jobs in the maritime industry but have been entirely unsuccessful in obtaining employment commensurate with my experience and qualifications. In particular, I was recommended for one job at the Port of Vancouver but when I met with the woman who interviewed me she volunteered that the maritime industry was a small community and that she knew Mr. Taylor. I was not hired for the position.

90. BC Ferries has not produced any documents relating to any references its representatives may have given to prospective employers.

David Hahn's comments to the media - June 2006

91. In June 2004, David Hahn stated to the media, inaccurately, that I "...was only on four or five ships during the period [I] was here [employed by BC Ferries]". In fact during my employment with BC Ferries I visited and inspected numerous vessels on the fleet – approximately half of the ships - to consider the issue of safety and the environment. From time to time I also observed BC Ferries' ships in dry-dock and in port. Further, I spent a full three days and nights on board the *Spirit of B.C.* to assess the fleet's safety and environmental system in detail.

92. Mr. Hahn has also stated in the media that I "never was on board the *Queen of the North*". That statement is accurate, but misleading. The concerns I raised with the BC Ferries' executive team and senior management involved systemic problems that affected the entire fleet, such as lack of adequate bridge resource management training and inadequate fire fighting

capabilities. Again, I believe that the lack of bridge resource management training might have been the cause, or one of the causes, of the sinking of the *Queen of the North*.

93. When I visited the ferries I used either my temporary or permanent pass, or that of other management personnel accompanying me on the particular occasion.

94. BC Ferries has not produced a record of my visits on the various ferries, including swipe card records and my electronic day-timer (as discussed in paragraphs 14-15 of this Affidavit).

Summary

95. In this Affidavit I have referred to various discussions, incidents and events relating to fleet safety, the environment and security at BC Ferries. Given that this should be an extremely important issue for the company, I would expect that there would be a significant number of documents produced within the company, and for the company, on this issue, besides those that I authored or reviewed.

96. Moreover, the primary reason that I felt compelled to leave BC Ferries was that its commitment to safety was not what it had represented to me during the pre-employment interviews and discussions we had, and in my employment contract. Rather, BC Ferries failed to support my initiatives to improve the safety for its employees and for the public as a whole. The documents that have not been produced will help establish these critical facts.

97. More specifically, the documents requested should speak to the fact that I advised the BC Ferries’ executive team and senior management on numerous occasions that there were serious deficiencies in their approach to risk management within the fleet, including: (a) a “broken” ISM system; (b) serious communication deficiencies; (c) a lack of bridge resource management training; (d) an emphasis on reacting to individual incidents rather than taking a proactive and systemic approach to safety problems; (e) the fostering of a culture that discouraged internal criticism and constructive debate on issues of safety and the environment; and (g) a failure to take even temporary measures or initial steps to address critical safety problems, as I have described in my Affidavit.

98. I swear this Affidavit in support of my application for further and better production of documents.

SWORN BEFORE ME at the City)
of Vancouver, in the Province of British)
Columbia, this 17th day of September 2006.)
)
)
_____)
A Commissioner for taking Affidavits within)
British Columbia.)

DARIN BOWLAND

NO. S-063817
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DARIN BOWLAND

PLAINTIFF

AND:

B.C. FERRY SERVICES INC.

DEFENDANT

**AFFIDAVIT #1 OF
DARIN BOWLAND**

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GTG/RMH