

Court File No. CV-25-00000019-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**THE CORPORATION OF THE COUNTY OF PRINCE EDWARD**

Plaintiff/Defendant by Counterclaim

– and –

**TENACITY MARINA CORPORATION**

Defendant/ Plaintiff by Counterclaim

**REPLY AND DEFENCE TO COUNTERCLAIM**

1. Except as otherwise expressly admitted and/or addressed herein, the Plaintiff/Defendant by Counterclaim, The Corporation of the County of Prince Edward (the “County”) denies the allegations contained in the Statement of Defence and Counterclaim of the Defendant, Tenacity Marina Corporation (“Tenacity”).
2. Capitalized terms have the same meaning as defined in the County’s Statement of Claim, dated July 17, 2025.
3. The County admits the allegations at paragraphs 3, 4, 12, 17-23 of the Statement of Defence and Counterclaim.
4. The County has no knowledge of the allegations at paragraphs 13, 14, 15 and 43, insofar as these purport to plead the effect and/or interpretation of statutes and/or common law legal principles.

*The Head Lease and the Sub-Lease (together, the “Leases”)*

5. With respect to paragraph 16, the Head Lease was not entered into between the County and MNR until the passing of By-Law No. 3043-2012 on April 10, 2012, authorizing the signatories on behalf of the County to execute said agreement.
6. The Head Lease placed the ‘control area’ defined thereunder, being Parts 1-9 shown on Plan and Field Notes of Water Lot Location CL 2654 (“CL 2654”), under the County’s management and control.
7. That the control area is submerged under the waters of Lake Ontario does not affect that the fee simple owner of said area, being the Crown, solely holds the rights to occupation, construction of works and/or other development thereon – irrespective of whether or not such construction or works make contact with or are otherwise attached to, the lakebed.
8. Further, since the control area constitutes public lands, it is unlawful to take possession and erect improvements without lawful authority, upon such lands – again, irrespective of whether those improvements are physically touching the lakebed.
9. Under the Head Lease, the Crown, by way of the MNR, conveyed its rights, as the fee simple owner, over occupation, control and development of the control area (which included the Part Water Lots), to the County, subject to:
  - a) the submission of plans and specifications of any proposed development;
  - b) approval of such development by the MNR; and
  - c) the enacting of any such by-laws necessary to enable developmental compliance with proposed uses and regulations (as enacted by the County).
10. MNR retained the right under the Head Lease to enter and inspect the control area, and any buildings and structures thereon, at any time.
11. In relation to such development upon the control area, including the Part Water Lots, the County was required under the Head Lease:

- a) to file with the MNR on or before the 31<sup>st</sup> day of March each year, an annual report of the progress with respect to any development authorized upon the control area, including an itemized list of all receipts and expenditures relating thereto; and
  - b) to remit a sum equal to 10% percent of gross revenue shown in the annual report, detailing receipts and expenditures relating to development that had been authorized upon the control area.
12. Accordingly, the Head Lease represents the delegation of the Crown's fee simple ownership in the control area lands to the County, provided that the development undertaken upon such lands (which would otherwise be unlawful) is accounted for and a portion (10%) of any revenue generated thereto, remitted to the MNR.
13. The County submits that the foregoing constitutes the only commercially reasonable interpretation of the Head Lease provisions, taking the express words of the lease in their ordinary and grammatical meaning and in light of the factual matrix surrounding the lease.
14. Paragraph 6 of the Head Lease permitted the County to grant leases for occupation of any part or parts of the control area, which it proceeded to do with Tenacity as detailed in the Statement of Claim.
15. The Sub-Lease included occupation of not only the Part Water Lots explicitly referred to therein, but also the County's public marina at 1 Head Street (together, the "Marina") and use of the associated Equipment, for the operation of a marina by Tenacity on the Premises that comprised both the public marina (owned by the County) and the Part Water Lots (owned by the Crown; leased to the County).
16. Tenacity was required to account for and remit 10 % of revenues arising from its operation of a marina business upon the Premises (as a whole) as Rent to the County pursuant to paragraph 2 of the Sub-Lease, representing the consideration underlying the contractual relationship between these parties.
17. Indeed, the Sub-Lease does not differentiate what Rent, as defined, is payable with respect to the Marina vis-à-vis the Part Water Lots, but expressly directs that such rents are

considered with recourse to what is required of the County pursuant to sections 8 and 9 of the Head Lease, which clearly ascribe these obligations in relation to the Part Water Lots.

18. Otherwise, Tenacity's occupation and operations upon that part of the Premises consisting of the Part Water Lots would be unlawful and unauthorized as infringing upon public Crown lands, occupation and development upon which is expressly proscribed pursuant to the terms of the Head Lease governing the grant of those lands to the County.
19. Any *riparian rights* of a shoreline property owner, of which Tenacity was/is not, and has never been, would not extend to rights of development and/or construction upon the Part Water Lots, or the control area under the Head Lease, at large – these latter rights solely held by the Crown, as the fee simple owner of these public lands.
20. Tenacity's actions and conduct support the interpretation advanced by the County with respect to the parties' respective obligations under the Leases: it is admitted that upon demand, Tenacity did furnish what it described in its pleading as "extensive information" to the County with respect to its operations at the Marina, signifying Tenacity's understanding of its responsibility under the Sub-Lease to account for its operations. That such accounts were insufficient and rent outstanding, leading to the subsequent termination of the Sub-Lease is unrelated to the obligation to furnish same.

*Performance and Termination of the Sub-Lease*

21. Tenacity failed to remit Rent, as required, under the Sub-Lease. It also failed to operate a marina, as required, upon the Premises in a prudent, appropriate and/or satisfactory manner, resulting in numerous complaints received by the County throughout the term of the Sub-Lease and limited, if any, revenue generated thereto.
22. Even had expenses exceeded receipts resulting in negative revenues associated with Tenacity's operation of the Marina, the accounting of such negative revenues was a necessary component of the Sub-Lease, an obligation that Tenacity failed to meet annually, and one that, alongside the failure to remit 10% of what revenues they had recovered, justified the termination of the Sub-Lease by the County, applicable notice of which was duly and properly given to Tenacity.

23. Following termination, Tenacity did in fact abandon and cease to operate a marina from the Premises, forcing the County to utilize its own employees to staff the fueling and CBSA docking slips there to maintain limited and necessary operations to the public.
24. As described in the Statement of Claim, the County's efforts in this respect were materially impacted and interfered with due to, among other issues, Tenacity's failure to remove its docks occupying the Part Water Lots.
25. Furthermore, the Term of the Sub-Lease was to have ended, before being terminated, as of December 31, 2025. Any renewal thereof (for one or subsequent terms) was predicated on Tenacity having "satisfactorily" operated the Marina upon the Premises, as defined.
26. The County pleads that Tenacity did not, and never did, satisfactorily operate the Marina upon the Premises and was therefore not entitled to any renewal of the Term, even if the breaches underlying the termination that took place had not occurred.
27. Accordingly, the Term of the Sub-Lease would have ended as of December 31, 2025, requiring Tenacity to remove any docks, equipment and/or other chattels located upon the Premises, including the Part Water Lots, by the end of 2025.

*The parties' motivations*

28. The County denies any improper motivations underlying the termination of the Sub-Lease.
29. Rather, it had provided numerous opportunities to Tenacity, an errant tenant, to meet its obligations under the Sub-Lease, which it failed to do; accordingly, the County was entirely within its rights to terminate, as provided for, under the Sub-Lease.
30. Conversely, Tenacity had no reason, much less legal basis, for continuing its video surveillance of the Premises after the County had issued notice of the termination of the Sub-Lease and, particularly, after Tenacity had taken actual steps to abandon most of the Premises and remove its own chattels thereon, in response thereto.
31. Any video surveillance by Tenacity from within the Premises itself was predicated upon a valid, subsisting Sub-Lease authorizing its occupation of those lands. Upon termination of

that Sub-Lease, Tenacity had no rights to continue monitoring the property even if they had yet to remove all of their tenant chattels from those lands.

32. That Tenacity removed all of its chattels but for its video cameras (and docks) from the Premises and continued to operate these cameras upon the Premises without legal authorization or colour of right post-termination purports to its own improper motivations, further underscored by its subsequent reliance on such third-party recording taken without consent to advance its own commercial position.
33. Thereafter, and following the commencement of the within legal proceedings, Tenacity opted to air their grievances and legal/factual submissions in relation to the Sub-Lease and its operations of the Marina to a local newspaper, The Picton Gazette, which ran articles dated August 27, 2025 and October 29, 2025, containing quotations given by Mr. Thompson concerning the issues and subject-matter of the within litigation.
34. Included in these published articles is reference to the surreptitious recording obtained by Tenacity from its security cameras at the Premises which had been provided to The Picton Gazette to review and watch.
35. These also included the repetition of patently false facts and incorrect legal conclusions, drawn from Tenacity's pleading (and the pleadings in the related-action commenced by 8673691 Canada Inc. in Picton Court File No. CV-25-00000025-0000), including: that as an incident of a waterfront landowners' "riparian ownership" rights, such owners did not "require the permission of" the fee simple owner, the Crown, or the municipality, the County, to keep installed its docks upon Crown-owned, lakebed lands such as the Part Water Lots.
36. The County relies on its pleadings to be delivered in the related action commenced by 8673691 Canada Inc.

### **DEFENCE TO COUNTERCLAIM**

37. The County repeats and relies on the allegations contained in their Statement of Claim and Reply, herein.

38. Specifically, and without limitation, the County denies that Tenacity is entitled to any damages, much less in the amount of \$2 million dollars, as claimed, as:
- a) Tenacity never generated significant revenue, much less profits, during its entire tenure operating a marina at the Premises; and if it did, it never properly accounted for and remitted amounts owing on same as required under the Sub-Lease and therefore, such damages need to be set off by all outstanding amounts owing to the County under the Sub-Lease; and
  - b) The Sub-Lease was set to expire as of December 31, 2025, in any event, and would not have been renewed, as outlined above.
39. Accordingly, the County states that any damages claimed by Tenacity, which are not admitted by expressly denied, are, in any event, excessive, remote, unenforceable, exaggerated and/or unrecoverable at law and on the claims as plead, and further, that Tenacity have failed to mitigate such damages, to the extent any damages are recoverable.
40. Furthermore, if Tenacity has suffered damages or losses as plead, which is not admitted but expressly denied, such damages and losses were caused by Tenacity, alone, and contributed to by its own actions and/or inactions.
41. The County claims a right to set-off any damages awarded on the Counterclaim, if any, against its damages recovered in the main action.
42. The Plaintiff requests that the Counterclaim be dismissed with costs.

November 19, 2025

**TEMPLEMAN LLP**  
Barristers and Solicitors  
366 King Street East, Suite 401  
Kingston ON K7K 6Y3

**JENNIFER NG**  
LSO No. 66411M  
[jng@tmlegal.ca](mailto:jng@tmlegal.ca)  
Tel: 613-542-1889  
Fax: 613-542-8202

Lawyers for the Plaintiff/ Defendant by

Counterclaim

TO: **O'FLYNN WEESE LLP**  
Barristers and Solicitors  
65 Bridge Street East  
Belleville ON K8N 1L8

**Mark Pedersen**  
LSO No.: 83990O  
Tel: 613-966-5222  
Fax: 613-961-7991  
E: [mpedersen@owtlaw.com](mailto:mpedersen@owtlaw.com)

Lawyers for the Defendant/Plaintiff by Counterclaim



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**REPLY AND DEFENCE TO  
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**TEMPLEMAN LLP**  
Barristers and Solicitors  
366 King Street East, Suite 401  
Kingston, Ontario K7K 6Y3

**JENNIFER NG**  
LSO No. 66411M  
E: jng@tmlegal.ca  
Tel: 613-542-1889  
Fax: 613-542-8202

Lawyers for the Plaintiff