

Prince George

25-Aug-21

REGISTRY

File No.: PRG-S-S-2159834
Prince George Registry

In the Supreme Court of British Columbia

BETWEEN:

CITY OF PRINCE GEORGE

PETITIONER

AND:

**SHELDON STEWART, CRYSTAL ARNDT, BRANDON DEEG,
JANE DOE, JOHN DOE and OTHER UNKNOWN PERSONS**

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: City of Prince George
Counsel for the Applicant – Troy DeSouza
office@govlaw.ca
250-590-1840

To: Respondents

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 250 George Street, Prince George, B.C., on the trial assize week for Monday, September 13, 2021 for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. A declaration that the Respondents have committed trespass by entering on the following two Properties in the City of Prince George, British Columbia (“**PG**” or the “**City**”) after the owner or occupier of those Properties has given the Respondents notice that such trespass is prohibited and their departure requested:
 - a. 538 Patricia Boulevard (“**Lower Patricia**”)

PID: 015-091-465

BLOCK M1, DISTRICT LOT 343
CARIBOO DISTRICT PLAN 1268

- b. 231-233 George Street (“**George St**”)

PID: 009-483-781

LOT 3 BLOCK 43, DISTRICT LOT 343

CARIBOO DISTRICT PLAN 1268

(the “**Properties**” or “**Tent Cities**”)

2. A declaration that the Respondents have contravened the Petitioner’s *City of Prince George Zoning Bylaw No. 7850, 2007* (the “**Zoning Bylaw**”) by using the Property as a campground contrary to the permitted zoning.
3. A declaration that the Respondents have contravened section 2 of the *Trespass Act (RSBC 2018) Chapter 23* by failing or refusing to comply with a notice to vacate.
4. A declaration that the Respondents trespass is particularized by:
 - a. entering and remaining on Lower Patricia and George Street;
 - b. setting up a permanent tent encampment, after the owner or occupier of the Property advised that such activity is not permitted and that emergency shelter is available.
5. A mandatory and permanent injunction order against the Respondents, and all those having knowledge of the order Court to:
 - a. remove all structures, tents, shelters, shopping carts, stoves, rubbish, objects, personal chattels, and other things on the Properties;
 - b. vacate the Properties within a period specified by the Court;
 - c. not re-enter the Properties or any other location within the City not authorized by the Petitioner;
 - d. forfeit all prohibited weapons and drugs to the police; and
 - e. not erect or bring structures, tents, shelters, shopping carts, stoves, rubbish, objects, personal chattels, and other things, on City owned property, parks or public spaces except as authorized by the Petitioner.
6. An order authorizing the Petitioner’s employees and agents to:

- a. dismantle and remove from the Properties all structures, tents, shelters, shopping carts, stoves, rubbish, objects, personal chattels, and other things remaining on the Properties; and
 - b. sell, destroy, or otherwise dispose of, those items removed from the Properties, without recourse to the Respondents.
7. An order authorizing any police officer within the Prince George detachment of the Royal Canadian Mounted Police (the “**RCMP**”) to arrest and remove from the Properties any person who fails to comply with this order in accordance with the standard enforcement practices used by the RCMP and pursuant to section 127 of the Criminal Code of Canada.
 8. Costs on a level and basis to be determined by this Honourable Court.

Part 2: FACTUAL BASIS

The Parties

1. The City of Prince George is a municipality incorporated under the *Local Government Act*, SBC 2015, Chapter 1.
2. The Respondents Sheldon Stewart, Crystal Arndt, Brandon Deeg, Jane Doe, John Doe and all the unknown Respondents are occupants on the Properties or persons of unknown occupations and addresses.
3. All Respondents are trespassers on the Properties and have refused to vacate after being requested to do so.

Use on The Property

4. The Respondents have constructed two Tent Cities within the boundaries and ownership of the City.
5. The Properties are located in downtown Prince George.
6. The Properties are zoned as follows:

George St – C1: Downtown: the Zoning Bylaw provides for the following permitted uses:

- a. Apartment Hotel

- b. Auction, Minor
- c. Boarding or Lodging House
- d. Club
- e. Community Care Facility, Major
- f. Community Care Facility, Minor
- g. Education
- h. Education, Commercial
- i. Education, Higher
- j. Emergency Service
- k. Entertainment, Adult Oriented
- l. Entertainment, Spectator
- m. Exhibition & Convention Facility
- n. Greenhouse & Plant Nursery
- o. Health Service, Minor
- p. Hotel
- q. Housing, Apartment
- r. Housing, Congregate
- s. Housing, Row
- t. Housing, Stacked Row
- u. Library & Exhibit
- v. Motel
- w. Office

Lower Patricia - P1: Parks and Recreation: the Zoning Bylaw provides for the following permitted uses:

- a. Park
- b. Recreation, Outdoor

7. Section 1.6.1 states:

Except for legal non-conforming uses or development approved by a development variance permit, temporary use permit, or a Board of Variance order, uses, buildings, and structures in each zone or area shall be in accordance with the uses listed in the zone and all the appropriate regulations and requirements in this Bylaw, and any applicable housing agreement, or heritage revitalization agreement.

8. Section 1.6.7 states:

Uses not permitted in the Bylaw are prohibited.

9. The Respondents are using the Properties as a "Campground." Campground are permitted under the C5 Visitor Commercial Use Zone of

the Zoning Bylaw but are not permitted uses under P1 or C1. The Zoning Bylaw defines "Campground" as follows:

a. Section 2.3.6 of the Zoning Bylaw

Campground: land which has been planned, improved, or occupied for the seasonal short term use of tents, and camper vehicles, and is not used as year round storage or accommodation for residential use for a period exceeding 240 days in a calendar year. Typical uses include tourist trailer parks, campsites, and tenting grounds. This use may include accessory facilities for eating and assembly purposes, washrooms and bathing facilities, entrance kiosk, minor indoor and outdoor recreation, spectator and patron participation entertainment, and convenience retail with a maximum gross floor area of 100 m².

The Tent Cities

10. On May 10, 2021 the Respondents set up a Tent City on George St. and followed up with an expanded location on Lower Patricia a few days later.
11. The Respondents did not obtain permission from the City to set up and occupy the Properties as a campground or Tent City.
12. Housing is a provincial responsibility.
13. On June 11, 2021 the City served the Respondents with a Notice of Trespass requiring that Occupants leave the Properties and advised of shelter availability. The Occupants did not vacate, and instead expanded their occupation from George Street to Lower Patricia.
14. The Respondents will not leave the Properties even though there is shelter currently available in the City.
15. The City is required to undertake costly legal proceedings at the taxpayers' expense as the Respondents will not vacate the Properties voluntarily.

Impact to Community

16. The Tent Cities have caused harm to residents and businesses in the surrounding neighbourhood and has been harmful to the Occupants.

17. Since the Tent Cities were established, there has been an increase in crime and property theft in the neighbourhoods or areas surrounding the Tent Cities.
18. The Tent Cities have caused a negative impact in the neighbourhood and deprived members of the public of their peace, enjoyment and personal safety.
19. Local businesses and residents have complained of increased theft, shoplifting, drug use, prostitution, discarded needles, loitering, urinating, defecating and other behaviours coming from the Respondents at the Tent Cities.
20. Local residents or employees have ceased walking at or near the Tent Cities due to the garbage, smell, aggressive panhandling and general fear over their own safety.
21. There has been an increase in discarded needles and garbage near the Tent Cities.
22. The Tent Cities occupants have placed the Properties at risk of fire. Discarded lit cigarettes next to combustible materials such as cardboard, dry grass and propane have become a public safety risk.
23. The problems associated with the Tent Cities will increase the longer the Respondents are permitted to remain.
24. The City has delayed its injunction as a compassionate step while working with BC Housing to open up more supportive housing for the occupants to coincide with a Court order for the closure of the Tent Cities.

Part 3. LEGAL BASIS

Statutory Injunction

1. The Petitioner is proceeding with a statutory injunction for a final order pursuant to section 274 of the *Community Charter*.
2. The Properties are owned, operated and under the jurisdiction and control of the City. The Respondents are trespassers and the Petitioner has the authority to enforce its bylaws and trespass breaches against the Respondents.

3. Unlike the traditional *RJR* injunction test, this is a statutory injunction to enforce the public interest. The public interest, represented by the City, by definition addresses a broad variety of competing needs and priorities, which are ultimately dealt with by the municipality. Accordingly, the purpose of this section “is to give a municipality broad powers to approach the Court for the purposes of ensuring that its bylaws are not flouted”.

Denman Island Local Trust Committee v. Ellis,
2005 BCSC 1238 at para. 78, aff’d 2007 BCCA 536

4. This section applies equally to resolutions from Council.
5. Accordingly, the City is only required to demonstrate a contravention of its bylaws. After that is demonstrated, the Court’s jurisdiction to refuse an injunction is exceptionally narrow and limited to “rare cases with exceptional circumstances”. This is not one of those “rare cases”.

North Pender Island Local Trust Committee v. Conconi,
2010 BCCA 494 at paras. 37-39.
Langley (Township) v. Wood, 1999 BCCA 260 at para. 17;
Delta (Corporation) v. WeeMedical Dispensary Society, 2016 BCSC 1566
Burnaby (City) v. Oh, 2011 BCCA 222.

6. These principles continue to apply even with “camping”-style protests and assemblies: see e.g. *Vancouver (City) v. O’Flynn-Magee*, 2011 BCSC 1647.
7. The test under trespass is very similar. At common law, a landholder is entitled to possession of his land. When a landowner seeks an injunction in trespass, even for an interim injunction, all that is required is that the landowner show that they have entitlement to the land. After that, the injunction “should be granted unless there are exceptional circumstances”.

Vancouver (City) v. O’Flynn-Magee, 2011 BCSC 1647.

*Board of School Trustees of School District No. 27
(Cariboo-Chilcotin v. Van Osch et al.)*, 2004 BCSC 1827,
leave refused 2004 BCCA 570

8. The Tent Cities are not protected under the British Columbia Court of Appeal decisions in *Victoria (City) v. Adams*, 2009 BCCA 563, *Johnston v. Victoria (City)*, 2011 BCCA 400 or any other case law including tent cities. All those decisions permit temporary overnight shelter in public spaces if there are no shelter alternatives available.

9. Since its establishment, the Respondents have placed tents, stoves, structures, and various personal chattels on the Properties which they have used as an encampment for permanent occupation. The Respondents do not remove their tents or vacate their encampment each day, as provided for in the British Columbia Court of Appeal decision in *Victoria (City) v. Adams*, 2009 BCCA 563. Thus the Respondents' encampment exceeds the duration for a typical "protest" and is a permanent trespass and occupation.
10. No Canadian Court has ever granted or recognized the right to establish a permanent or semi-permanent Tent City occupation:

See e.g. Victoria (City) v. Adams, 2009 BCCA 563
Abbotsford v. Shantz, 2015 BCSC 1909
Johnston v. Victoria (City), 2011 BCCA 400

11. Further, the right to camp temporarily, and only overnight, is not a freestanding right to erect shelter. The Court must look at the negative consequences of the camp in the surrounding area. As camps lead to increases in problems such as crime, theft, discarded needles, drug dealing, or strains on local government resources, then all these matters may lead to the Court ordering the camp be vacated.

Abbotsford v. Shantz, 2015 BCSC 1909
British Columbia v. Adamson, 2016 BCSC 1246

Police Enforcement Clause

12. The Petitioner contracts with the RCMP for policing. As a "practice", the police may decline to act in the absence of an enforcement clause in the order.
13. Accordingly, Courts grant a police enforcement clause in situations like this to ensure compliance with the Court's order.

Costs

14. Unrepresented or impecunious parties are not exempt from the ordinary rules governing costs.

Part 4: MATERIAL TO BE RELIED ON

City Staff and RCMP

1. Affidavit #1 of Cst. Amritpal Dhadwal made 25/Aug/2021
2. Affidavit #1 of Charlotte Peters made 25/Aug/2021
3. Affidavit #1 of Steve Feeney made 25/Aug/2021

Business Owners and Residents

4. Affidavit #1 of Jacqueline Marion made 25/Aug/2021
5. Affidavit #1 of Benjamin English made 25/Aug/2021

6. Affidavit #1 of Maria Paulson made 25/Aug/2021
7. Affidavit #1 of Eric Long made 25/Aug/2021
8. Affidavit #1 of Philomena Hughes made 25/Aug/21

The petitioner estimates that the hearing of the petition may take 1 day and be opposed.

Date: 25/Aug/2021



Signature of lawyer for applicant
Troy J. DeSouza

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date:

Signature of Judge Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts