

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CITY OF PRINCE GEORGE

PETITIONER

AND:

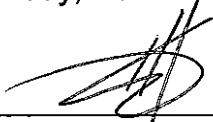
**BELL JOHNNY, CRYSTAL ARNDT, RORY EMBRY,
JANE DOE, JOHN DOE and OTHER UNKNOWN PERSONS**

RESPONDENTS

REQUISITION - GENERAL

Filed by: The Petitioner, City of Prince George

Required: An order pursuant to **Rule 8-5(4), Rule 16-1 (3), (4), (8), (9), (11), (12), Rule 22-1, and Rule 22-4(2)** that the Notice of Application in this matter be heard on short notice with the short notice application set for 30 minutes on Monday, November 29th, 2021 at 9:45 a.m.



Troy DeSouza
Counsel for the Petitioner City of Prince George

ORDER BY ENDORSEMENT (to be completed by a judge, master, or registrar)

[] Date set for hearing of the Notice of Application: Monday, December 6, 2021
9:45 a.m. Trial Assize

Conditions for Service:

Service by Applicant of Petition, Affidavits, Notice of Application with this order on counsel for the Respondents, Darlene Kavka and Melanie Begalka

[] by 4:00 p.m. on Monday, November 29, 2021

Service by the Respondents' of the application response and any supporting affidavit material:

[] by 4:30 p.m. on Wednesday, December 1, 2021

Other Conditions:

Leave to file the Application Record
[] by 11:00 a.m. on Friday, December 3, 2021

Leave to serve the Application Record on the Respondents
[] by 12:00 p.m. on Friday, December 3, 2021

Endorsed:

Judge/Master/Registrar _____

Date: _____

File No. 2160169
Prince George Registry

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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, December 6, 2021 for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An interim and interlocutory order that the Respondents and all those having knowledge of this order and who are occupying a tent encampment in the City of Prince George, British Columbia (the "**City**" or "**Petitioner**") municipally described as 538 Patricia Boulevard and legally described as PID: 015-091-465 BLOCK M1, DISTRICT LOT 343, CARIBOO DISTRICT PLAN 1268 ("**Lower Patricia**" or "**Encampment**") take the following action by 12:00 p.m. on Friday, December 10th, 2021:
 - a. remove all structures, tents, shelters, recreational vehicles, modified

- camper trailers, tarps, shopping carts, stoves, rubbish, objects, personal chattels, and other things from the Encampment;
- b. vacate the Encampment; and
 - c. not re-enter the Encampment;
2. An interim order authorizing the Petitioner's employees and agents to take the following action after 12:00 p.m. on Friday, December 10th, 2021:
- a. dismantle and remove from all structures, tents, shelters, recreational vehicles, modified camper trailers, tarps, shopping carts, stoves, rubbish, objects, personal chattels, and other things remaining at the Encampment; and
 - b. sell, destroy, or otherwise dispose of, those items removed from Lower Patricia, without recourse to the Respondents.

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 Bell Johnny, Crystal Arndt, Rory Embry, Jane Doe, John Doe and all the unknown Respondents are occupants or returning occupants at the Encampment.
3. This Petition flows from and is related to the Order of the Honourable Chief Justice Hinkson in Supreme Court Action No. S2159834 dated October 22, 2021 ("**Order**"). In the Order, there were two "tent-city" encampments; one at George Street and the current encampment at Lower Patricia. At paragraph 115 of the Reasons for Judgment, the Court, while closing the George Street encampment, permitted Lower Patricia to remain under the following conditions:

The City's application for a declaration that the respondents have contravened the *Zoning Bylaw* by using the encampments as campgrounds contrary to the permitted zoning is dismissed on the basis that absent other suitable housing and daytime facilities, the occupants of those encampments must be permitted to stay at the encampments.

4. In August 2021, there were over 50 tent structures with 80 plus occupants at both tent encampments. After the Order, the Petitioner has worked with

the provincial agency, BC Housing, to provide suitable housing and shelter to all twenty occupants at George Street and most of the occupants at Lower Patricia.

5. As of the date of the filing of this action, there are only 2 occupants remaining at Lower Patricia who refuse to leave. There is no longer any purpose for Lower Patricia to remain during the substantially cold winter season in Prince George.
6. In the interest of the life, safety, and health of the remaining two occupants at Lower Patricia (or any new occupant(s) who may be emboldened to join if the Encampment were permitted to remain), the City seeks an interim order to close down Lower Patricia. The final disposition of Lower Patricia can either be made by this Court in a subsequent application for a final order or by the BC Court of Appeal as the Order has been appealed and permanent injunctive relief for Lower Patricia has been sought (Appeal Court No. CA47899).

Part 3. LEGAL BASIS

Injunctive Relief

1. The Petitioner is proceeding with an application for injunctive relief for an interim order pursuant to an enactment under section 274 of the *Community Charter*.

RJR MacDonald Test

2. If the constitutional validity of the enactments underlying the legal right to seek an injunction is being challenged, or the application is for an interim order, the appropriate test is *RJR-MacDonald*. The *RJR – MacDonald* three part test is as follows:
 - a. Is there a serious question to be tried?
 - b. Will the applicant suffer irreparable harm if an application is not granted?
 - c. Does the balance of convenience favour the granting of the remedy?
3. The application of the RJR test upholds the City's position. The serious question to be tried is outlined in the Petition and the courts do not set a high bar on this issue. The second test of irreparable harm applies in that there is no monetary compensation that can be made for the loss of the public's use, access and enjoyment of its public spaces.

4. The third, balance of convenience prong of the three part RJR test would further support granting the injunction for the following reasons:
 - a. The City's position as the owner of Lower Patricia on behalf of the public is unassailable than that of the Respondents' who possess no property rights;
 - b. The real and pressing life, safety, and health concerns of the Respondents' if they remain outside in tents during a Prince George winter;
 - c. The serious and unremedied fire risks to the Respondents in the Encampment;
 - d. The security and property risks to the neighbourhood and surrounding residents; and
 - e. The availability of shelter for the two remaining occupants at Lower Patricia.

Court of Appeal Rulings

5. The Respondents have placed tents, stoves, structures, and various personal chattels on the Encampment for use for permanent occupation. The Respondents do not remove their tents or vacate their encampment each day, as required by the British Columbia Court of Appeal decision in *Victoria (City) v. Adams*, 2009 BCCA 563.
6. The Encampment is 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 on tent encampments. All those decisions permit temporary overnight shelter in public spaces if there are no shelter alternatives available.
7. 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

Part 4: MATERIAL TO BE RELIED ON

City Staff and RCMP

1. Affidavit #1 of Charlotte Peters made 24/Nov/21
2. Affidavit #1 of Cst. Amritpal Dhadwal made 23/Nov/21
3. Affidavit #1 of Cst. Bradley Crawford made 23/Nov/21
4. Affidavit #1 of Cst. Dong Kwak made 23/Nov/21
5. Affidavit #1 of Cst. Hawco made 23/Nov/21
6. Affidavit #1 of Cst. Jordan Fleurissaint made 23/Nov/21
7. Affidavit #1 of Cst. Robyn Kaplan made 23/Nov/21
8. Affidavit #1 of Steve Feeney made 23/Nov/21
9. Affidavit #1 of Morgan Thorlakson made 23/Nov/21
10. Affidavit #1 of Cpl. Blom from Action No. S2159834

BC Housing and Northern Health

11. Affidavit #1 of Tammy Bennett to be filed and sworn herein
12. Affidavit #1 of Valerie Hare to be filed and sworn herein
13. Affidavit #1 of Shane DeMeyer to be filed and sworn herein

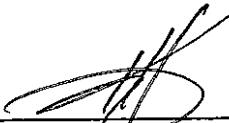
Residents and Others

14. Affidavit #1 of Philomena Hughes from Action No. S2159834
15. Affidavit #1 of Eric Long from Action No. S2159834
16. Affidavit #1 of Ben English from Action No. S2159834
17. Affidavit #1 of Jenna Paquette made 24/Nov/21

The petitioner estimates that the hearing of this interim application may take 60 minutes if unopposed and 120 minutes if opposed.

- This matter is within the jurisdiction of the master.
- This matter is not within the jurisdiction of a master.

Date: 24/Nov/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