



Court File No. **KEL-S-S-136195**
No. _____
KELOWNA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CITY OF KELOWNA

PETITIONER

AND:

**UNKNOWN PERSONS OPERATING AS "COMMON LAW
EDUCATION AND RIGHTS", DAVID LINDSAY, JOHN DOE,
JANE DOE, AND PERSONS UNKNOWN**

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO: David Lindsay
657 Eckhardt Ave
Penticton, BC V2A 2B6

Attorney General of British Columbia
PO Box 9290 Stn Prov Govt
Victoria, BC V8W 9J7

This proceeding has been started by the Petitioner for the relief set out in Part 1 below.

If you intend to respond to this Petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to Petition described below, and
- (b) serve on the Petitioner
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

TIME FOR RESPONSE TO PETITION

A Response to Petition must be filed and served on the Petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	1355 Water St, Kelowna, BC V1Y 9R3
(2)	The ADDRESS FOR SERVICE of the Petitioner:	c/o Young Anderson 1616 - 808 Nelson Street Box 12147, Nelson Square Vancouver, BC V6Z 2H2
	Fax number address for service (<i>if any</i>) of the Petitioner:	604.689.3444
	Email address for service (<i>if any</i>) of the Petitioner:	anderson@younganderson.ca
(3)	The name and office address of the Petitioner's lawyer is:	Elizabeth Anderson Young Anderson 1616 - 808 Nelson Street Box 12147, Nelson Square Vancouver, BC V6Z 2H2

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. A declaration that the Respondents are contravening Part 3 of the City of Kelowna Parks and Public Spaces Bylaw, No. 10680, 2017 (the "Parks Bylaw"), by:
 - (a) Conducting events, processions, and marches (the "Events") at Stuart Park, located at 1430 Water Street, Kelowna, BC (the "Park"), without written permission from the City;
 - (b) Selling and displaying for sale refreshments, articles, merchandise, products, or things in the Park without a permit or written permission from the City;

- (c) erecting tents or pavilions in the Park without prior written approval of the City; and
 - (d) engaging in activities the Park which create a nuisance and interfere with the use and enjoyment of the Park by other persons.
- 2. A declaration that the Respondents are contravening Section 7.3 of the City of Kelowna Good Neighbour Bylaw, No. 11500, 2018 (the “Good Neighbour Bylaw”) by causing or permitting noise from a public address system and voice amplification equipment at the Park in such manner that is liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals and the public.
- 3. A declaration that the Respondents are contravening sections 8.2.2 and 8.2.4 of the City of Kelowna Traffic Bylaw No. 8120, 2002 (the “Traffic Bylaw”) by walking on the roadway where there is a sidewalk that is reasonably passable on either or both sides of the roadway, and by standing or loitering in such a manner as to obstruct or impede or interfere with traffic on a roadway.
- 4. A declaration that the Respondents are contravening section 2.1.2 of the City of Kelowna Outdoor Events Bylaw No. 8358, 1999 (the “Outdoor Events Bylaw”), by holding a parade or procession on the public streets and roadways within the City, without a valid permit issued pursuant to that Bylaw.
- 5. An injunction restraining the Respondents and any other person having notice of this order, from doing any of the following in, on or at the Park or any other park in the downtown core of the City between Recreation Avenue and Harvey Avenue to the west of Gordon Drive:
 - (a) Conducting events, processions, and marches without written permission from the City;
 - (b) Selling or displaying for sale refreshments, articles, merchandise, products, or things without a permit or written permission from the City;
 - (c) Erecting tents or pavilions without prior written approval of the City; or
 - (d) Creating a nuisance and interfering with the use and enjoyment of the park by other persons, including by causing or permitting noise from a public address system and voice amplification equipment in such manner that is liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals and the public.
- 6. An injunction restraining the Respondents and any other person having notice of this order, from doing any of the following in or on a highway within the

downtown core of the City between Recreation Avenue and Harvey Avenue to the west of Gordon Drive:

- (a) participating in any parade or procession on a street or roadway, except as authorized by a permit issued by the City under the Outdoor Events Bylaw; or
- (b) standing or loitering in such a manner as to obstruct or impede or interfere with traffic on a roadway, except as part of a parade or procession authorized by a permit issued by the City under the Outdoor Events Bylaw.

7. An order:

- (a) That authorizes any police officer with the Royal Canadian Mounted Police and/or the appropriate police authority in the jurisdiction in question (the "Police") to arrest and remove any person who has knowledge of this order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this order;
- (b) That the Police retain discretion as to the timing and manner of enforcement of this order, and specifically retain discretion as to the timing and manner of arrest and removal of any person pursuant to this order;
- (c) That the Police retains discretion to detain and release any person without arrest whom the Police have probable grounds to believe is contravening or has contravened any provisions of this order, upon that person agreeing in writing to abide by this order;
- (d) Authorizing any peace officer and any member of the Police who arrests or arrests and removes any person pursuant to this order to:
- (e) Release that person from arrest upon that person agreeing in writing to abide by this order;
- (f) Release that person from arrest upon that person agreeing in writing to abide by this order, and require that person to appear before this Court at such place as may be directed by this Court, on a date to be fixed by this Court;
- (g) Bring that person forthwith before this court at Kelowna, British Columbia, or such other place as may be directed by this Court;
- (h) Detain that person until such time as it is possible to bring that person before this Court; and/or

- (i) Otherwise take steps in accordance with Form 10 of the *Criminal Code*, RSC 1985, c. 46.
- 8. Costs.
- 9. Such further and other relief as this Honorable Court deems just.

Part 2: FACTUAL BASIS

1. The Petitioner City of Kelowna (the “City”) is a municipal corporation under the *Community Charter* and the *Local Government Act*, with its City Hall at 1435 Water Street, Kelowna, BC.
2. The Respondent David Lindsay is the co-founder and spokesman of the Respondent unincorporated association known as “Common Law Education and Rights” or C.L.E.A.R.
3. In or about 2020, the Respondent Lindsay began and continues to organize, lead, and carry out weekly “Freedom Rally” events every Saturday at Stuart Park, located at 1430 Water Street, Kelowna, BC (the “Park”), and on public streets and roadways in the downtown core of the City, on behalf of and with the participation of other supporters of the C.L.E.A.R. Respondent.
4. The Freedom Rally events include the following activities on public property:
 - (a) Erecting gazebo-style tents (the “Tents”) in the Park;
 - (b) Setting up and using amplified sound system equipment in the Park and a megaphone on public roadways to make speeches, in a manner that is liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public (the “Noise”);
 - (c) Selling merchandise (the “Sales”) in the Park; and
 - (d) Standing and loitering on public roadways adjacent to the Park and Highway 97, and walking in group parades or processions through the Park and down roadways in the City’s downtown core between the Park and Harvey Avenue, also known as Highway 97 (the “Processions”);

(collectively, the “Unlawful Events”).
5. No permit or approval has been issued by the City under the Parks Bylaw which would authorize the Unlawful Events in the Park.
6. No permit or approval has been issued by the City under the Outdoor Events Bylaw which would authorize the Processions on the City’s roadways.

7. The City has received numerous complaints from the public regarding the Unlawful Events.
8. The City has issued warnings, bylaw offence notice fines and letters to the Respondent David Lindsay and C.L.E.A.R. to discourage the continued Unlawful Events.
9. The Respondents have failed, neglected and refused to cease the Unlawful Events.

Part 3: LEGAL BASIS

1. The Respondents have and continue to contravene the below-described provisions of the City's Bylaws through continually carrying out the Unlawful Events, and the City is entitled to an injunction to require the Respondents to cease the Unlawful Events in and upon public spaces without the required permits.

Parks Bylaw

2. Pursuant to its authority under section 8(3)(b) and (h) and sections 62 and 64 of the *Community Charter*, the City has enacted the Parks Bylaw to regulate, prohibit and impose requirements in relations to City parks.
3. Section 3.1 of the Parks Bylaw provides that "No Person shall use any land in a Park in contravention of this bylaw or in contravention to a sign which has been posted prohibiting or regulating such use."
4. Section 3.8 of the Parks Bylaw provides that "No Person shall conduct any event, procession, march, drill, performance, ceremony, concert, gathering or meeting without the written permission of the City firstly being obtained."
5. The Respondents are violating the Parks Bylaw by carrying on the Unpermitted Events in and at the Park without a permit.
6. Section 3.3 of the Parks Bylaw provides that "No Person shall sell or display for sale any refreshment, article, merchandise, product, thing, service, or conduct any business in a Park without a permit issued by the City or written permission obtained from the City."
7. The Respondents are violating the Parks Bylaw by conducting the Sales without a permit or written permission from the City.
8. Section 3.8 of the Parks Bylaw provides that "No Person shall erect, construct or build any tent, building, shelter, pavilion or other construction whatsoever, or penetrate the ground with any object including stakes or posts, without prior written approval of the City."

9. The Respondents are violating the Parks Bylaw by erecting the Tents without the prior written approval of the City.
10. Section 3.41 of the Parks Bylaw provides that “No Person shall engage in any activity that creates a nuisance or that interferes with the use and enjoyment of the park by other persons.”
11. The Respondents are violating the Parks Bylaw by organizing and carrying on the Unlawful Events, which are creating a nuisance and interfering with the use and enjoyment of the Park by other persons.

Good Neighbour Bylaw

12. Pursuant to its authority under section 8(3)(h) and section 64 of the *Community Charter*, the City has enacted the Good Neighbour Bylaw, No. 11500 (the “Good Neighbour Bylaw”) to regulate, prohibit and impose requirements in relation to nuisances, disturbances and other objectionable situations in the City.
13. Section 7.3 of the Good Neighbour Bylaw provides that “No person shall make, cause, or permit to be made or caused, noise or bass sound of a radio, television, player, or other sound playback device, public address system, or any other music or voice amplification equipment, musical instrument, whether live or recorded or live, whether amplified or not, in or on private property or in any public space or street in such manner that is liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public.”
14. The Respondents are violating the Good Neighbour Bylaw by making or permitting to be made the Noise at the Park and on the roadways.

Traffic Bylaw

15. Pursuant to its authority under Part 3, Division 5 of the *Community Charter*, the *Local Government Act* and the *Motor Vehicle Act*, the City has enacted the Traffic Bylaw No. 8120, 2002 (the “Traffic Bylaw”).
16. Section 8.2.2 of the Traffic Bylaw provides that “Pedestrians shall not walk on the roadway where there is a sidewalk that is reasonably passable on either or both sides of the roadway.”
17. Section 8.2.4 of the Traffic Bylaw provides that “No person shall stand or loiter in such a manner as to obstruct or impede or interfere with traffic on a roadway.”
18. The Respondents are violating the Traffic Bylaw by conducting and participating in the Processions.

Outdoor Events Bylaw

19. Pursuant to its authority under section 8(3)(b), (g) and (h), 62 and 64 of the *Community Charter*, the City has enacted the Outdoor Events Bylaw No. 8358, 1999 (the “Outdoor Events Bylaw”).
20. Section 2.1.2 of the Outdoor Events Bylaw provides that “No person shall hold an Outdoor Event on public property unless the person promoting or organizing the event holds a valid permit issued pursuant to this bylaw.”
21. Section 1.2.1 defines an “Outdoor Event” as any public or private exhibition, parade, procession, carnival, athletic event, commercial performance or show, held outdoors on public property, including any street, road, lane, bridge, park or other public right of way or place
22. The Respondents are violating the Outdoor Events Bylaw by holding the Processions on City roadways without a permit.

Entitlement to Injunction

23. A municipality may, by a proceeding brought in the Supreme Court, enforce, or prevent or restrain the contravention of a bylaw or resolution of the council under the *Community Charter* or any other Act.

Community Charter, section 274(1)

24. An injunction under s. 274 of the *Community Charter* is a statutory remedy that engages the public interest. The discretion of the court to decline such an injunction to enforce a bylaw is very narrow and is reserved for rare cases with exceptional circumstances.

North Pender Island Local Trust Committee v. Conconi, 2010 BCCA 494

25. The Respondents are clearly breaching the Parks Bylaw, the Good Neighbour Bylaw, the Traffic Bylaw and the Outdoor Events Bylaw through organizing, carrying out, and/or participating in the ongoing Unlawful Events, such that the City has established its legal right to an order enforcing and preventing the contravention of those Bylaws.
26. The authorities in the municipal bylaw enforcement context are clear that where a breach is established, the discretion of the court to refuse to grant an injunction to enforce a bylaw is narrow and is reserved for rare cases, for example where the

injunction would not properly address the mischief the bylaw is aimed at preventing.

Workers' Compensation Board of British Columbia v Skylite Building Maintenance Ltd., 2019 BCSC 231, para. 155;
 aff'd *Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, 2020 BCCA 365;
 leave to appeal ref'd *Seattle Environmental Consulting Ltd., et al. v. Workers' Compensation Board of British Columbia*, 2021 CanLII 52022 (SCC)

27. The City submits that there are no exceptional circumstances that would justify refusal of the injunction in this case, and the relief should be granted as sought.

Enforcement Clause

28. The inclusion of police authorization follows the Canadian practice of ensuring that orders which may affect members of the public clearly spell out the consequences of non-compliance. Members of the public need not take the word of the police that the arrest and detention of violators is authorized, because this is clearly set out in the order signed by the judge.


Teal Cedar Products Ltd. v Rainforest Flying Squad, 2022 BCCA 26, para. 11;
MacMillan Bloedel Ltd. v Simpson, [1996] 2 SCR 1048

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Shawn O'Hanlon, made 20/Dec/2022.
2. Affidavit #1 of Sarah Stokes, made 20/Dec/2022.
3. Affidavit #1 of Kenneth Black, made 20/Dec/2022.
4. Affidavit #1 of James Short, made 23/Dec/2023.
5. Affidavit #1 of Danny Hogan, made 04/Jan/2023.
6. Affidavit #1 of Ken Hunter, made 09/Jan/2023.
7. Such further and other material as counsel may advise and this Honorable Court permit.

The Petitioner estimates that the hearing of the Petition will take 1 day.

Date: 12/Jan/2023
 [dd/mmm/yyyy]


 Signature of lawyer for the City
 Elizabeth Anderson

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this
Petition

with the following variations and additional terms:

Dated: _____.
[dd/mm/yyyy]

Signature of Judge Master