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Criminalizing Dissent: Suppressing Freedom of Expression in Canada, Pt. 4

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A final and increasingly serious threat to freedom of expression is the use of the legal system itself to suppress dissent. Governments — including Municipalities like the City of Kelowna — have begun issuing hundreds of falsified bylaw tickets and/or filing court actions to restrict and/or prohibit public demonstrations, particularly those of which they politically disapprove.

Provincial Governments rely upon Municipalities, who frequently rely on bylaws in relation to amplified sound, permits, and public space usage, not as neutral tools for public order, but as strategic weapons to suppress effective protests in relation to opposition to Government activities and ideologies. Administrative delays, exorbitant permit fees, and selective enforcement are all used to frustrate and deter oppositional public expression. For emphasis, our Constitutional freedom of effective expression is neither subject to licensing nor for sale.

A prime example is the City of Calgary's bylaw amendments aimed at curtailing protests— a response to large-scale, recurring demonstrations against COVID-related Government actions. The size and frequency of these protests reflect real public anger and discontent, and attempts to restrict, licence or prohibit them send a false message - by forced silence of public opposition - that public concern is minimal, when in fact it is the opposite. The suppression of visible protests distort reality and conceal the true scale of opposition to Government policies, as Governments rely on the "*out of sight, out of mind*" dogma.

On Jan. 16, 2023, the City of Kelowna filed a Petition for injunctive relief against myself and others, seeking to ban protests in virtually all downtown areas, including key symbolic and strategic locations such as City Hall, the courthouse, the RCMP detachment, and major media outlets. Under oath during cross-examinations, Bylaw Manager Kevin Mead, admitted that the City deliberately targeted these areas precisely because of our effectiveness in using these areas for public protest — an explicit acknowledgment of an improper purpose: to silence opposition.

Fortunately, B.C. is one of only four provinces with SLAPP (Strategic Lawsuit Against Public Participation) legislation, known as the *Protection of Public Participation Act* SBC 2019 CHAPTER 3. This law was enacted to protect individuals and groups from powerful entities (such as the City of Kelowna) using the legal system to suppress freedom of expression, particularly where significant financial or political power is used to intimidate.

We filed a SLAPP application to strike the City's Petition. Under the *Act*, this freezes the City's legal action until our application — and any related appeal — is heard. To our knowledge, this is the first

time in Canada that SLAPP legislation is being used to challenge Government efforts through bylaws to suppress Constitutionally protected protest freedoms (assembly and expression.) If successful, it will serve as a precedent-setting case with national implications.

Documentation related to this case is available at clearbc.org under the "*Legal*" section.

This legal action exposes how Provincial and Federal Governments are using Municipalities as instruments to erode Constitutional freedoms. The SCC has recognized public parks as Constitutionally protected venues for expressive activity. Yet, seventeen months after our first protest at Stuart Park against COVID-19 measures, Kelowna City Council issued the first of their 200 bylaw tickets (and eventual $60 000.00 in fines) against me. By weaponizing their bylaws to quell dissent, they started falsely labeling the protests as an undefined "*event*."

The only evidence of this is the City's claim I was selling merchandise (which is unsupported in evidence and the City lost this in the bylaw hearing to my ticket challenge for this reason), that we had a tent (we had in fact and law, a canopy), and were using amplified sound equipment, which of course is a necessity for any effective protest, especially where hundreds or thousands of people are present. Governments are working to ban sound equipment without permits because it's essential to effective expression.

As an important aside, the City issues the bylaw tickets and bylaw hearings are before an arbitrator who is also appointed by the City, where no evidence is provided under oath. A City video of one of my initial such hearings, caught bylaw officer James Short repeatedly winking at the arbitrator, providing hidden signals to Arbitrator Mellis. After appearing at three such hearings, I gave up any hopes of a fair and impartial hearing before these biased arbitrators who knew little or nothing about law. Hope or no hope, it was impossible to keep up with the amount of tickets the City was falsifying against me. The system is rigged to over 90% (my estimation) of hearings resulting in a victory for the Municipalities.

Kevin Mead admitted that when over 200 tickets (why did they wait so long – Aug/2021 to Jan/2023 - if not to intentionally and improperly cause me financial harm?) failed to stop our rallies, the City escalated to seeking a court injunction. But if Governments can succeed in obtaining injunctions because they disapprove of protest content, (again, no other protester has been charged except me, despite their documented selling of merchandise and use of sound equipment), we risk a future where only Government-approved speech is permitted in public. This is why this legal battle is not about geography or bylaw compliance — it is about principle.

There can be no compromise on fundamental freedoms. Partial settlements that would allow the City to limit our protests to less visible or less effective areas or methods, are not an option. As Kevin Mead further admitted under oath, if the City loses, it plans to rewrite its bylaws to continue its efforts, rather than accept the court's judgment. This is a clear admission of intent to suppress speech based on content, not conduct.

Meanwhile, dozens of other groups protesting for over 20 years without permits in the same downtown Stuart Park have not been charged or harassed. This selective enforcement strongly suggests that our message — and its growing public support — is the real threat the City is attempting to neutralize. If we were ineffective, aligned with the Government narrative, or protesting non-

Government issues such as the weekly Iranian protests (for over five months), we would be left alone like everyone else.

Looking Ahead

As stated, a growing and troubling tactic used to suppress freedom of expression is the cancellation of meeting venues or events by businesses in response to threats, pressure, or false allegations. When this occurs, legal action should be prompt— not only against those who initiated the threats or defamatory claims, but also against venue operators who breach their contracts or unlawfully discriminate based on viewpoint.

If the venue is Government-run — such as a library, park or community centre — then Charter breaches may be directly applicable, as the Government is bound by the Charter, including s. 2(b): freedom of expression, and 2(c): freedom of assembly.

Venue owners must be made aware that cancelling lawful events due to political pressure or misinformation may carry civil liability, reputational damage, and public scrutiny that far outweigh any perceived risk of controversy. Likewise, those who issue threats or spread false allegations must face direct legal consequences, including potential defamation claims, injunctions to prevent repetition, and, where appropriate, criminal charges, even if done by private prosecution.

While private citizens have the historic right to initiate criminal charges under 504 and s. 507.1 of the *Criminal Code*, recent developments — particularly in B.C. — have placed some non-insurmountable barriers in the way of that right.

In B.C., the Attorney General has entered into an agreement with the Provincial Court Chief Judge to impose an approximate six-week delay after filing a private charge before a process hearing can be scheduled, as mandated under s. 507.1 of the *Criminal Code*. This delay is not authorized by law and undermines the principle of timely access to justice.

Previously, a citizen could attend the court counter, have their charge reviewed and sworn before a Justice of the Peace, and immediately proceed to a process hearing at the counter — a preliminary step to determine whether there is some evidence for each essential element of the offence. Importantly, the threshold is low: no proof is required at this stage, only some credible evidence on each essential element of the offence.

However, responsive procedural changes to the *Criminal Code* made in 2002 — following my nationwide public education campaign about laying private charges against Government officials — now require advance notice to the Attorney General and judicial, rather than Justice of the Peace, oversight. The result: Crown prosecutors often threaten to stay charges immediately, sometimes before any evidence is presented, to cover up criminal activity by Government officials. Demands are made for you to provide the Crown with your evidence prior to the statutorily required s. 507.1 process hearing.

It is important to understand that:

- there is no legal requirement to provide your evidence to the Crown in advance of the process hearing;

- the Crown has no statutory authority to demand your evidence prior to that hearing;
- the Crown's pre-emptive stays — without evidence being reviewed on the record — are arguably a breach of their own Charge Approval Guidelines and thus for improper purposes, which require either:
    1. no reasonable likelihood of conviction, or
    2. that prosecution is not in the public interest.

Without reviewing the evidence, neither criterion can be properly assessed. This raises serious concerns about abuse of process, obstruction of justice, and the politicization of prosecution.

The Crown's increasing use of stays to suppress private charges — particularly those involving politically sensitive issues or against Government-affiliated individuals — undermines public trust in the legal system. Worse still, the judiciary's cooperation in delaying or obstructing process hearings may enable the destruction of evidence or evasion of justice by accused parties.

This strategy may prevent damning evidence from ever reaching the public record, especially when the accused are connected to Government institutions. In some cases, superior court action may be required to compel a process hearing and prevent improper interference by the Crown, particularly in cases where the Crown refuses to reverse a decision to stay your charges, despite the presence of evidence supporting prosecution.

These legal and procedural barriers illustrate how precarious freedom of expression has become in Canada. What was once a robust and protected right is now being quickly eroded through political, administrative, procedural, and legal manipulation.

We must remain vigilant. Citizens have an obligation to hold elected officials accountable for any legislation, policy, or action that restricts or prohibits free expression — including public protests and rallies displaying anger against Governments. This includes:

- voting out officials who support censorship or repression, and electing people who will <u>reverse</u> any such legislation;
- challenging unlawful restrictions in court;
- publicly exposing abuses of power;
- resisting any compromise on fundamental freedoms,
- and exercising our Constitutional freedom of peaceful, civil disobedience to their corrupt legislation, regulations, and policies.

Restrictions/prohibitions are the antithesis of freedom. If you believe in true freedom of expression, you have a duty to oppose all forms of censorship, particularly those that target speech in the public realm, where visibility ensures credibility and accountability. "*Out of sight, out of mind*" cannot become the norm in a democratic society.

I feel at this point, sadly, that I must re-emphasize the outcome of complacency: England offers a stark example: the erosion of its culture, history, and freedoms has reached the point where criminals are

released from jail to make room for citizens expressing opposition to Government policies such as immigration. It stands as a sobering warning for Canada. These actions permit treason by officials enabling them to overthrow our culture and laws, while banning all opposition.

Looking ahead, state-enforced censorship mechanisms — possibly via new expression enforcement agencies — are a growing concern. Will such agencies monitor and penalize lawful expression here? Will Canadians face bureaucratic censorship or jail for dissenting online or in public? These are no longer hypothetical discussions— they are frightening and deeply troubling realities that require our immediate attention and public opposition.

Courage must replace fear.

"*I do not care what you say, but I'll defend to the death you're right to say it*."

Evelyn Beatrice Hall, 1906 England