Tuesday, August 26, 2025

Court hearing

Kelowna v Lindsay, Manchester *et al*

Thank you to everyone who showed up to support us today!!! The courtroom was full!

We arrived at court approximately 9:30. All was well until a female Sheriff decided to abuse her powers, by demanding to search everyone. I have gone through this process with this same abusive Sheriff in the past, who seems to think that because she has powers, she can abuse them, at our expense.

Others started objecting as well. A male Sheriff arrived from the next courtroom and began to demand we be searched. His position was that we had a choice, we could refuse and would be forced out of the courthouse.

Again, I reminded him we have a Constitutional right to be there, and I have a legal duty to be in court. He didn't care and his position was that safety outweighs out Constitutional rights and freedoms. Another heated argument broke out on this issue.

Lloyd, though initially opposing, reluctantly allowed the male Sheriff to search his legal bag.

The female Sherriff wanted to search my shopping bag which contained my computer and cords. I left my computer knapsack at home specifically to avoid this. Previous court appearances have not resulted in any search of my shopping bag and computer.

I threw the shopping bags into the garbage and left my computer in the bankers box of documents.

Meanwhile, counsel for the City readily agreed to give up their Constitutional freedoms and have their bags searched. The Sheriffs were not going to search them until they offered.

Finally, finally we were able to enter the court, albeit late.

After setting up, we began with hearing our application for new evidence from Lloyd and myself in relation to the actions of the City over the past year. Lloyd was evidencing that the City had not charged him at all for conducting these rallies. I evidenced how the recent protests by the atheists at City Hall, with sound equipment, resulted in no charges to them, and they did not have a permit.

The City's counsel objected claiming that we were too far along in the proceeding, and that with cross examinations, it would unduly prolong this case even further.

The City filed and affidavit from City official Laura Bentley, claiming, to our surprise, that the City was in fact charging Lloyd with offences for conducting the rallies. She attached a copy of a Statement of Account claiming about $9 500.00 in fines for Lloyd now!

However, the address listed on the Statement, was an address Lloyd had not lived in for over three years!! This should have been on the City's tax records with a new owner and the City must have been aware of this. So, the City was serving Lloyd with tickets to an address he does not live in.

I pointed out that the City at no time said they would want to cross examine to invoke this right, and thus was a red herring of an argument.

This was all new evidence that occurred after the Sept. 2024 hearing and was relevant to show improper actions by the City.

Unfortunately, this afternoon, Justice Hardwick ruled that my evidence was merely in support of our existing application and existing evidence,

so though somewhat relevant, was not something that the case would turn on.

J. Hardwick did however, state that she would have accepted Lloyd's affidavit if not for the existence of Ms. Bentley's affidavit. Because there was conflicting evidence, this would have required cross examinations which would unduly delay this case further. So, our application for new evidence was declined.

I continued in the morning to present the remaining part of our case to the Judge. I then provided a cursory overview of our Constitutional Challenge to the bylaws and why the City was not going to win against our Challenge. This continued into the afternoon.

After this, I proceeded to address the City's Written Response to our SLAPP application.

The City's primary position is that the Bylaws must be given a broad interpretation, and that an 'event' includes protests or any other similar activity in a park. Also, that the street marches we did, and standing on Water St., constituting loitering, if you can believe that.

I took great pains to accurately legally define this and how it simply didn't apply. The City's interpretation of its own Bylaws is so stupid and absurd as to defy logic. How the City thinks it can licence a Constitutional freedom of protest, including fees, insurance, and other commercial requirements, is beyond my understanding. Just corrupt City officials following orders from a corrupt Provincial Gov't in Victoria. (as Mayor Dyas admitted to me that is who is pressuring them to take this legal action against us – which started when Mayor Basran was in power.)

(SLAPP – Strategic Lawsuit Against Public Participation) pursuant to the *Protection of Public Participation Act*, B.C. This is where someone files a

court proceeding with the intention or effect of shutting down freedom of expression, exactly as the City is doing.

A few minutes later I was made aware that the City had not served their Written Submissions on the Court. I was completely unaware and did not feel comfortable making submissions to the Judge on a document she did not have before her.

Apparently, the City files this when they make their oral submissions to the Judge. As a result, I then provided the Judge with an overview of my entire position, and Lloyd came up to speak around 3:25 p.m.

We ended at 4:00 p.m.

Though Court was originally set for three days in the spring, which I did not feel comfortable with, two months ago I sought a fourth day, knowing this was going to take longer.

We learned on Friday, that we had two days this week, as J. Hardwick was committed on a criminal hearing on Thursday and Friday. We learned today, however, that this might be shortened to one day, and we may get a third day in this week on Thursday. We won't know until tomorrow (Wednesday.)

One of the drawbacks about being in the Supreme Court is that the hours available in a day to make representations is shorter by an hour each day, from Provincial Court.

And the Assize System of setting dates is so prejudicial for everyone, litigants and the public who want to watch but need advance knowledge to plan accordingly.

In freedom

David

Wednesday August 27, 2025

Court hearing

Kelowna v Lindsay, Manchester *et al*

Thank you to everyone who showed up to support us today!!!

As with yesterday, Aug. 26, the blonde female Sheriff was present again. With nine (9) courtrooms, we were the only courtroom that was once again targeted for being searched, despite this being only a civil case.

The Sheriff began telling everyone that they had to be searched again to enter the courtroom. and it was voluntary but if you didn't voluntarily agree, that she would evict you from the courthouse. She wanted to check my open bankers box that was only ½ full of documents, despite not checking yesterday.

I repeatedly inquired as to why and she refused to answer me. She continually demanded to search it or she was going to evict me. Upon further inquiries by me, she claimed she was a peace officer and threatened to charge me with obstructing a peace officer – for simply refusing to be searched without reasonable grounds to so do.

This Sheriff was rude and obnoxious to everyone in attendance, harassing everyone throughout the day. She asked John, who was sitting in the hallway in the morning before Court started, if he was video recording. He replied no he was looking on the net for something.

The female Sheriff, threatened him that their cameras could see what was on his screen. She then called backup on her microphone and told

them to use the cameras to look on his phone! If so, this is a massive privacy violation, in addition to unconstitutional searches.

Finally, court began.

To refresh your memory. The City filed its Petition seeking an injunction against us from protesting, not just at Stuart Park, but everywhere in downtown Kelowna. In response, we filed our SLAPP (Strategic Lawsuit Against Public Participation) Application, to strike the City's claim. This was originally heard last Sept. and due to scheduling problems with the Court, was adjourned to this week.

Here is the applicable SLAPP legislation we are relying upon:

Application to court

4*(1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that*

(a) the proceeding arises from an expression made by the applicant, and

(b) the expression relates to a matter of public interest.

(2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that

(a) there are grounds to believe that

(i) the proceeding has substantial merit, and

(ii) the applicant has no valid defence in the proceeding, and

(b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that

the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

Lloyd continued with a masterful presentation today and into the early afternoon. His evidence was awesome, as was his analysis of Ted's affidavit, filed in this case. He took the judge through all of our speakers at these rallies, demonstrating the massive public interest in the importance of the COVID-Con issues.

Lloyd is also supporting our Constitutional Challenge to these Kelowna Bylaws that the City is relying upon: *Parks Bylaw, Good Neighbour Bylaw, Traffic Bylaw* (street marches), and *Outdoor Events Bylaw*, that they claim we need to get a permit under, to protest in Stuart Park.

Around 2:20 p.m., Nick Falzon, counsel for the City addressed Judge Hardwick. His opening presentation centered around the City's claim that under the *Protection of Public Participation Act (PPPA)*, the City's Petition did not "*arise from*" the content of our expressions at the Freedom Rallies. Falzon argued that **s. 4(1)(a)** of the *PPPA* only relates to content of speech, that the City was not attacking our content, and the bylaws are content-neutral in that they apply to everyone.

Really – then why after 20 years at Stuart Park, am I the only person who has been charged with holding protests using sound equipment? To the amount of over $60 000.00 in fines!

The City spent almost 20 pages out of a 40-page Response, just on this one issue. The objective is to try and make sure our Application does not get heard on the merits, of whether they have substantial merit to their case, whether we have any valid defences, or the weighing exercise at **s. 4(2(b)**, to determine who will suffer the greatest harm.

Falzon is back in court tomorrow for the City as is his obnoxious, arrogant partner lawyer Barry Williamson. If an attitude problem were an indicator of success, Williamson would win every case.

After court, I stopped by the Sheriff's office and complained to the Chief Sheriff, who is usually pretty reasonable. I advised him of this female Sheriff's comments, demeanour, attitude and actions toward everyone. Lloyd was clear, we were the only people in the courthouse being searched and this was wrong.

I respectfully told the Sheriff to not have her back in our courtroom tomorrow and to confirm if these hallway ceiling cameras can actually see people's phone screens. We will find out tomorrow if this female sheriff is returning.

Thursday August 28, 2025

Court hearing

Kelowna v Lindsay, Manchester *et al*

Thank you to everyone who showed up to support us today!!!

This was the third day in court, with one more to follow.

After court yesterday, I stopped by the Sheriff's office and complained to the Chief Sheriff, who is usually pretty reasonable about the actions, demeanour and comments of the female Sheriff in our courtroom the past two days. I advised him of this female Sheriff's comments, demeanour, attitude and actions toward everyone. Lloyd was clear, we

were the only people in the courthouse being searched and this was wrong.

I respectfully told the Chief Sheriff to not have her back in our courtroom today and to confirm if these hallway ceiling cameras can actually see people's phone screens.

Upon our arrival to the courthouse, two Sheriffs were searching everyone coming in the building. They searched Lloyd's bag with his legal materials. My ½ empty open box was not searched. Nonetheless, we made sure the Sheriffs knew that we were not happy with the unconstitutional searches without reasonable and probable grounds.

We proceeded up to courtroom #5 to be greeted by a wonderfully nice and respectful Sheriff. His presence made the day go by so much better and relaxing.

Court began with City counsel Nick Falzon continuing his presentation to Justice Hardwick.

He began by representing that the issue is about responsible management of public space and that our protests were "highly disruptive" of others to use the Park.

I emphasize, there is no evidence presented from anyone to this effect.

No affidavit from anyone saying they wanted to use the park and could not because of our presence.

Counsel continued to claim that the City's Petition was not to harass us but only to enforce City bylaws against sound equipment, despite the fact that all enforcement action has been against us only.

He claimed that case law has insisted that municipal bylaws be given this wide and broad interpretation pursuant to the scheme of the bylaws and what they were designed to do. Ordinary principles of statutory

interpretation did not apply, only the fact that municipalities can pass bylaws into a wide variety of examples, because they cannot foresee every situation that may come up. Courts give deference to the municipalities in so doing.

Falzon argued that the objectives of the bylaws override any errors or deficiencies in the bylaws, such as lack of definitions. He argued the Court can fill in the gaps by reading into the bylaws that which is not stated.

He further argued that the definition of "*expression*" in the *Protection of Public Participation Act*, was narrower then in the Charter, but again, nothing turns on this as all our expressions are subsumed in the *PPPA* definition anyway.

He claimed that the Parks Bylaw, having no definition of an event, should include protests, be licenced with fees and insured. The City is benevolently passing bylaws for the public, and they should be given precedence over our protests, which the City claims, without evidence, that we were causing a nuisance and public disturbances with our rallies.

He opposed our argument that because the City has a trust agreement, that the City does not own or lease Stuart Park. This is important because the Parks Bylaw and Outdoor Events Bylaw both stipulate that the City must own or lease the land.

Also, that the City's contractual promises with the Province for a $500 000 grant to build Stuart Park as a "*public or town square*" specifically for the purpose of public speaking, still allowed them to licence Constitutionally protected rights of protests and assembly.

The City is arguing our defences that the City's interpretation of its bylaws is incorrect, and should not be accepted.

Finally, he argued that if there was a 50-50 chance we might win our Constitutional challenge or other defences, a case law ruled that the judge must rule in the City's favour. This is amazing.

After the lunch break, the City began with presentations by the ever arrogant and smug, Barry Williamson, who argued that our Constitutional challenge cannot be successful. The City is arguing that other cases have allowed blanket bans using sound equipment, even though their use is Constitutionally protected. The City is arguing that s. 1 of the Charter applies to override our freedom of protest, even though parks are Constitutionally protected venues for expression, because bylaws passed by municipalities deemed to be for the public interest and thus deserving of higher protection.

These other cases however, are factually and legally different than our case and they bylaws here in Kelowna.

Friday, August 29, 2025

Court hearing

Kelowna v Lindsay, Manchester *et al*

Thank you to everyone who showed up to support us today!!!

Court started on a good footing. We were able to get into the courtroom without being searched or even asked. The female Sheriff that harassed us the first two days, was again, nowhere to be found, gratefully. Thursday and Friday was so much more relaxed as a result.

Court began on time, with myself speaking in response to the City's arguments for the morning. Counsel for the City had a couple of objections but nothing major. I am pretty sure I managed to address all their legal issues. One issue stood to be addressed, however, that I was unsure about. J. Hardwick was going to ask some questions but did not.

After lunch, Lloyd completed his presentation in response to the City's submissions and I then inquired of the Justice what questions she had. She mentioned that my presentation in the morning had pretty much answered all her questions except one. This was in relation to **para. 10** of the *Reynolds* case, on the City's submissions as to the appropriate test to be applied to a SLAPP application, either the causality/historical test, or the analytical test, and the Justice wanted to know which one I thought should be applied.

I really did not understand this point, and so asked for an explanation, which the Justice provided. I was not overly excited about having to address this relatively new issue on the fly – but my response I think satisfied her. Why do I need to choose? Either one could apply depending on the facts of the case and our legislation. That kind of surprised her as the City counsel kept arguing it could only be one or the other.

I further pointed out if there had to be one or the other, it would be the causality/historical test, as this best complies with the wording and scheme of the statute (**s. 4(1)(a)** of the *Protection of Public Participation Act*). The statute looked to past tense events of expression, so why should any other test but a historical test apply?

I think she was satisfied with this answer, though I really did not have time to fully study this case and its implications. Had I been able to do so, I likely could have elaborated in much more detail upon this point.

I then passed along a new case to the Justice, advising her that if she was to come across any new issues/case law/principles in her deliberations that were either not discussed in Court or not before the Court, under the Constitutional principles of natural justice and procedural fairness, she would be required to contact both parties and obtain our position on the matter. Despite not being aware of this case, she agreed it was correct and if she came across anything new, she would contact us for either submissions in writing or another ½ day in Court for oral submissions.

I have noticed in past judgments, in relation to comments that are made in the decisions and I think to myself, "*We never discussed that in Court*." I wanted to avoid this at all costs here to ensure we responded to everything.

J. Hardwick, as expected, reserved judgment. She has also ordered transcripts for herself for all hearing dates so far.

Both the Justice and even City counsel concede that this is a precedent setting case. No one has sought application of the SLAPP legislation to municipal bylaws anywhere in Canada in the past, though counsel has conceded that there is nothing in the B.C. legislation that prohibits it from applying to municipal bylaws.

This is a complicated case, with a lot of moving parts. The City raised five bylaws that we are attacking in our SLAPP application, based on a factual and legal interpretation of each of them being incorrect, as well as our Constitutional Challenge to these bylaws, plus showing how our position meets the SLAPP test in law. We also had the City's submissions on the broad application to be given to City bylaws to contend with. My question is obvious: what do you do when you get a requirement to give bylaws a broad interpretation, and our Constitution a broad interpretation? Which governs? Clearly it must be the latter.

Both myself and Lloyd share concerns about the "*David v Goliath*" situation here, with the City hiring one of the top municipal law firms in the province against us. We hope that there is no inherent bias or prejudice against us in that regard, because the Court generally does not like to see unrepresented litigants win against major experienced, counsel, even if they are wrong, as is the case herein.

No lawyer wants to go to work and have unrepresented litigants beat them on precedent setting issues. Colleagues and the City then ask, why are they paying them all this money if we can beat them? "*You had those unrepresented freedom guys beat YOU?*" Ha ha ha ha ha!

Make no mistake, Justice Hardwick has not shown any bias toward the City counsel in this case in the Courtroom to date, and has been entirely professional and respectful to everyone, including us. She did however, have a lot of questions for me last hearing in Sept. 2024, and had only one question for City counsel. This has me worried a bit. Frequently, this is because the judge is already predisposed to the other party.

Having been in court hundreds of times, and talked to lawyers around the country, I know that there are serious politics going on behind the scenes in this case, and I made sure to tell the Justice that this is nothing but a political case being played out in the Court. The City will stop at nothing to have public protests be converted from a Constitutional freedom, into a licenced privilege. I know City counsel has been in contact with the Crown behind the scenes as well. The Crown, despite any claims of judicial independence, has connections into the judiciary. To what extent, remains unknown.

Though I am 100% certain our position in law is correct, nothing in a Court is guaranteed. We need your ongoing prayers to God that His will is for us to be successful, with the Justice upholding our Constitutional freedoms and not allowing the City further deprivations of same.

I finished my presentation by simply telling the Justice: "*Do the Honourable thing!*" Clearly in reference to ruling in our favour, as we believe that the law requires.

We will keep you posted when judgment is ready to be delivered. No date has been set, but this case has gone on for some time. I hope the Justice does not use this as a reason to rush her decision, even though the City keeps complaining that they can't enforce the bylaws until this case is heard. They shouldn't be able to after judgment either! There are hundreds of authorities before her, huge affidavit evidence, transcripts of cross-examination of City Bylaw Manager Kevin Mead, oral submissions, statutes, bylaws, statutory interpretation and Constitutional issues. This decision should not be rushed.

As I wrote in my article on the attacks on freedom of expression in Canada in the August edition of Druthers, the attacks are getting worse. The Federal Gov't is now trying to criminalize protesting in various bubble zones that they will create, coming this fall session of Parliament.

Destructive incrementalism of our rights and freedoms has got to stop – and this is the perfect case for this to happen.

Thank you to Lloyd for joining this case and his incredible work, insights, and presentation to the Court. This would not have been the same without him!

And thank you to all who braved the unconstitutional searches to watch these proceedings in court all week as well!

In freedom

David