IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kelowna (City) v. Lindsay,*
2026 BCSC 842

Date: 20260507
Docket: S136195
Registry: Kelowna

Between:

City of Kelowna

Petitioner

And

Unknown Persons operating as "Common Law Education and Rights", David Lindsay, John Doe, Jane Doe, and Persons Unknown, and Lloyd Manchester

Respondents

Before: The Honourable Justice Hardwick

Reasons for Judgment

Counsel for the Petitioner:	N. Falzon B. Williamson
Appearing on his own behalf:	D. Lindsay
Appearing on his own behalf:	L. Manchester
Place and Date of Hearing:	Kelowna, B.C. June 19, September 3 – 6, 2024; August 26 – 29, 2025
Place and Date of Judgment:	Kelowna, B.C. May 7, 2026

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Introduction

[1] At issue is the application of the *Protection of Public Participation Act*, S.B.C. 2019, c. 3 [*PPPA*] in the context of a petition commenced on January 16, 2023 (the "Petition") seeking declarative and injunctive relief to restrain certain conduct allegedly occurring in violation of four municipal bylaws.

[2] The factual matrix underlying the Petition is premised on concerns regarding the COVID-19 pandemic (the "Pandemic") and discourse about potentially contentious issues arising from/associated with the Pandemic, including but expressly not limited to lockdowns, social distancing, masking, and vaccinating.

[3] These reasons for judgment do not address the merits of the Petition. These reasons for judgment exclusively address the relief sought in the companion notice of applications brought pursuant to s. 4 of the *PPPA* by both Mr. David Lindsay and Mr. Lloyd Manchester to quash the Petition (the "Applications").

[4] Despite the extensive volume of material relied upon, at the crux of deciding the Applications is the discrete legal issue of whether the Petition is a "proceeding" which "arises from an expression" made by the applicants in accordance with s. 4(1)(a) of the *PPPA*.

The Parties

[5] The petitioner, the City of Kelowna (the "City") is a municipal corporation incorporated pursuant to the *Community Charter*, S.B.C. 2003, c. 26 and the *Local Government Act*, R.S.B.C. 2015, c. 1. The City's primary operations are conducted from the premises situated at 1435 Water Street, Kelowna, B.C. ("City Hall").

[6] Amongst the many municipal bylaws enacted by the City in accordance with its constating legislation are four bylaws (collectively, the "Bylaws") which are relevant for the purposes of the Petition. The Bylaws are the:

a) Parks and Public Spaces Bylaw, No. 10680, 2017 (the "Parks Bylaw");

b) Good Neighbour Bylaw, No. 11500, 2018 (the "Good Neighbour Bylaw");

c) Traffic Bylaw, No. 8120, 2002 (the "Traffic Bylaw"); and

d) Outdoor Events Bylaw, No. 8358, 1999 (the "Outdoor Events Bylaw").

[7] The respondent, David Lindsay, is the co-founder and primary spokesperson of the unincorporated association known as "Common Law Education and Rights" ("C.L.E.A.R."). C.L.E.A.R. is not a specific legal entity, however, I shall reference C.L.E.A.R. as necessary throughout these reasons for judgment as required to assist in understanding the underlying narrative.

[8] Lloyd Manchester, an individual with long established ties to the central Okanagan region, is an environmental consultant who is also a member of the Unity Community Society, a local non-profit organization. Mr. Manchester, according to his affidavit evidence, is not and has never been a member of C.L.E.A.R. I will address Mr. Manchester's legal standing in the Petition in due course.

[9] Although Mr. Lindsay and Mr. Manchester are the respondents to the Petition, they are the applicants in the Applications and, importantly, the applicants for the purposes of s. 4 of the *PPPA*. Throughout these reasons for judgment, I may refer to them individually or I may collectively refer to them as either the "petition respondents" or the "applicants" as appropriate.

Factual Synopsis

[10] The evidentiary record before me for the purposes of the Applications is more than 1800 pages, including numerous affidavits, including from third party affiants. The affidavits append core exhibits including the Bylaws and key correspondence, supplemented with photographs, literature, brochures and other ancillary documents. Limited cross-examination on affidavits also occurred as permitted pursuant to s. 9 of the *PPPA*.

[11] For critical context to my below summary of the relevant pleadings, it is necessary only to provide a brief synopsis of the underlying factual matrix I alluded to above given I am not deciding the Petition on its merits.

[12] Commencing in or about March 2020, C.L.E.A.R. began organizing, leading, and carrying out weekly rallies commonly referred to as the "Freedom Rally" every Saturday. With very few isolated exceptions, the rallies occurred at Stuart Park, located at 1430 Water Street, Kelowna, BC (the "Park"). The Park is located directly across the road from City Hall. The rallies were also frequently followed by demonstrations on public streets and roadways in the downtown core of the City, on behalf of and with the participation of supporters of C.L.E.A.R. and other individuals interested in the subject matter of the rallies.

[13] Mr. Lindsay is, as noted, the co-founder and operating mind of C.L.E.A.R. According to his evidence, Mr. Lindsay was present for virtually every "Freedom Rally" that occurred at the Park up to the commencement of the Petition. Mr. Lindsay acknowledges being the primary organizer of the "Freedom Rally". For the very occasional rally which Mr. Lindsay did not attend, Mr. Lindsay was still involved in coordinating the other speakers/singers/participants at said rally.

[14] Mr. Manchester was not involved in the early days of the "Freedom Rally" but was present for many of the rallies that occurred at the Park up to the commencement of the Petition. Although he did not attend the same number of rallies as did Mr. Lindsay due to family commitments, Mr. Manchester personally spoke at multiple rallies he attended. Mr. Manchester spoke particularly, but not necessarily exclusively, about vaccination issues, including vaccine injuries, vaccine mandates, adverse events and informed consent. Mr. Manchester's passion about these issues was evident in his submissions to the Court.

[15] In his Affidavit #1, affirmed August 1, 2023, Mr. Lindsay described the genesis behind the "Freedom Rally" as follows:

> 5. I am co-founder of the group CLEAR. Common Law Education and Rights (CLEAR *circa* 2000.) CLEAR is a non-registered, non-profit group, with the purpose and intention of educating Canadians on various forms of unconstitutional, unlawful and/or illegal government actions and comments at all levels of Government, with particular focus on the unconstitutional usury-based monetary system, our common law rights, freedoms and system of law, our accurate Constitutional history including the Coronation Oath of the Monarch (and the supremacy of God therein) and its implications for statutes

> and Bylaws, s. 2, 7 Charter freedoms and rights, and other Government activities that are a threat to our rights and freedoms, and to inspire people to take some form of action.
>
> 6. CLEAR and myself are not limited to concerns about past Constitutional violations but are also gravely concerned with, and intend to warn people on an ongoing basis about present and upcoming threats such as, inter alia, (now passed) Bill C36 and Bill C-11, our health care and other legislation, digital ID and currencies which will eliminate our privacy rights, what are known as “15-minute (prison) cities” where various cities including Kelowna are preventing or planning on preventing people from travelling more than 15 minutes from their home under punitive sanctions, and geoengineering especially by chemtrails from various aircraft.
>
> 7. One of my primary recent concerns arose in 2020 with the alleged COVID-19 situation. This situation and the Government and Health Minister lockdown and restriction responses and Constitutional violations, as well as their criminal and civil unaccountability for their actions and later for the effects from the experimental injection vaccinations, were the driving motivation for my ongoing protests. These remain due to the ongoing said unaccountability for their actions and because Governments have continued to threaten to reinstate these lockdowns restrictions again.
>
> 8. I intend to inspire people to publicly and privately oppose and not to support these threats I have mentioned, by sharing information with them. I knew in 2020, and today have more information to support my knowledge and belief, that COVID-19 was indeed a scam or minimally Government recklessness, consisting of a PCR test with a 97% false positive rate, falsified statistics, misleading models based on the 'crap in, crap out' principle, masks that are physically impossible to stop viral transmission, and vaccinations that Governments knew would subject people to health issues and even death. This has provided further motivation to educate people and let them know that rights and freedoms deprivations in relation to COVID-19 were not required.
>
> 9. It was agreed to publicly call our assemblies at Stuart Park “rallies” to avoid the possible negative connotation associated in the public, with the word *"protest',* which I accurately refer lo herein as the Lawful Protests, from our reliance upon our common law and s. 2 Charter freedoms to so do. Others even in the media, repeatedly interchange the use of these words. At all times, myself and those in attendance to the Lawful Protests, were protesting Government actions and decisions in relation to COVID-19 and related issues, as well as threats to other rights and freedoms.

[16] In his Affidavit #1, affirmed August 16, 2023, Mr. Manchester describes his personal experiences at the “Freedom Rally”, in part, as follows:

> 16. I have attended and participated in numerous protests at Stuart Park in downtown Kelowna over the last two years in my attempt to convey and actually convey my messages in relation to my opposition to the Governments' COVID-19 decisions that were made over these years.

> 17. The rallies permitted me to inform and convey to hundreds of people of my activities, beliefs, ideas, suggestions and distribute significant amounts of information to people that were there and to help them further distribute them as well.
>
> 18. Speaking at rallies was important and necessary for me to inform the public so they could pass on my important information and materials to doctors and health professionals and the public, for which many did.
>
> 19. I believe that speaking about important information in relation to COVID-19 is essential to protecting the public's health. This is the value of my freedom of speech in providing this information that mainstream media (MSM) is not doing, nor is our Government.
>
> . . .
>
> 25. I attended these protests at Stuart Park on Saturdays to assemble, to listen and to express my concerns and opposition to the Government's COVID-19 policies that have adversely affected all British Columbians and Canadians.

[17] The frequency of holding the “Freedom Rally” in the Park on Saturdays diminished significantly over time following the filing of the Petition. As did the onsite participation of Mr. Lindsay. However, there were still occasional rallies being held when the hearing of the Applications started on June 19, 2024, and finally concluded on August 29, 2025, which Mr. Lindsay and Mr. Manchester both acknowledged continued involvement with. As a result, no argument was advanced before me that issues raised in the Petition or the Applications have been rendered legally “moot” in accordance with the law as set out in the seminal case of *Borowski v. Canada (Attorney General)*, 1989 CanLII 123, [1989] 1 S.C.R. 342.

The Pleadings

The Petition

[18] The Petition, the originating document filed by the City, complies with the *Supreme Court Civil Rules* [*SCCR*]. The Petition specifies the relief sought, contains a concise summary of the material facts and includes a sufficiently thorough legal basis. The Petition is 10 pages.

[19] According to the material facts plead in the Petition, the “Freedom Rally” involves the following activities on public property:

a) Erecting gazebo-style 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;

c) Selling merchandise in the Park;

d) Standing and loitering on public roadways adjacent to the Park and Harvey Avenue/Highway 97 (the major highway thoroughfare through Kelowna); and

e) Walking in group parades or processions through the Park and down roadways in the City's downtown core between the Park and Harvey Avenue/Highway 97.

[20] Of the foregoing activities, only the selling of merchandise is significantly factually disputed by the petition respondents. For the purposes of deciding the Applications, I need not determine whether this allegation can be proven by the City but simply note that it is very strongly denied. Similarly, the petition respondents strenuously submit that the "gazebo style tent" referred to by the City in the Petition and supporting affidavits is a "canopy". For the purposes of the Applications, I again need not adjudicate this controversy as the pictures included in the record before the Court illustrate that all parties are referring to the same "portable roofed apparatus" (as I can most neutrally describe it).

[21] Importantly, the City defines the activities described above in paragraph 19 as "Unlawful Events" in the Petition. I am electing, as necessary, to use that defined term in these reasons for judgment for the purposes of continuity and efficacy as it appears throughout all parties' materials. I expressly do so without in any way predetermining that the "Freedom Rally" constitutes an "event" and specifically not whether it constitutes an "unlawful event". These very contentious issues are at the core of the merits of the Petition which I shall stress, again, that I am not deciding.

[22] Based on the above plead material facts in the Petition, the City alleges that:

a) No permit or approval has been issued by the City under the Parks Bylaw which would authorize the Unlawful Events in the Park;

b) No permit or approval has been issued by the City under the City of Kelowna Outdoor Events Bylaw which would authorize parades or processions on the City's roadways;

c) The City has received numerous complaints from the public regarding the Unlawful Events;

d) The City issued warnings, bylaw offence notice fines and letters to Mr. Lindsay and C.L.E.A.R. to discourage the continued Unlawful Events; and

e) Despite the warnings, the petition respondents have failed, neglected and refused to cease the Unlawful Events.

[23] Stated more broadly, the City's position is that the Unlawful Events are carried on by the petition respondents in such a manner as to create a nuisance and interfere with the use and enjoyment of the Park by other persons. The activities, it is alleged, take place frequently and are highly disruptive and detrimental to the community and to other persons who desire to use the Park and roadways.

[24] The specific and detailed declaratory and injunctive relief sought by City in the Petition is attached in Schedule "A" to these reasons for judgment.

The Petition Response filed by Mr. Lindsay

[25] The petition response filed by Mr. Lindsay on August 1, 2023 (the "Lindsay Petition Response") can be accurately described as prolix. The response itself is 28 pages in length but attaches and incorporates a "notice of challenge, pursuant to s. 8(2) of the *Constitutional Questions Act*", which is 54 pages in length. In total, the Lindsay Petition Response is 82 pages (with 431 paragraphs) and refers to

approximately 100 different authorities (primarily caselaw but also various secondary sources). The Lindsay Petition Response opposes all relief sought in the Petition.

[26] Distilling the Lindsay Petition Response down to its core elements, as best as can be done given the nature of the pleading, Mr. Lindsay's position in opposing the Petition can be summarized, in my understanding, as follows:

a) The Petition is an attempt to deny the petition respondents their common law rights and constitutionally protected freedoms under s. 2 of the *Canadian Charter of Rights and Freedoms* ("the *Charter*") for no valid reason or grounds, for improper purposes and to give injustice the colour of justice;

b) Communities must provide public space for the petition respondents to use for their freedom of expression or there would be nowhere to exercise their freedoms "without the fiat of the very [g]overnments they are protesting against";

c) The City cannot be a judge in its own cause as to what it approves of with respect to date, time, location and/or content as it is biased in its decision making;

d) The right to freedom of expression must not be relegated to times and places where it is of the least possible relevance or effectiveness, or upon "the fiat of the [s]tate being opposed";

e) Parks and streets are, inherently and by their very nature, significant community gathering places for purposes of communications, or alternatively, incident or necessarily incident to their use. If there is a conflict between the use of the Park and public streets in the exercise of the Constitutional freedoms of the petition respondents and the Bylaws, the former govern. The nature of the lawful protests is not incompatible with the use of any street or park, including the Park;

f) The sound equipment, C.L.E.A.R. “canopy” and signage are necessarily incidental to, and/or part of and/or mode of the petition respondents’ common law, s. 2 *Charter* freedoms and manner of communication;

g) Any alleged interference by the petition respondents with the use of the Park or streets by others, is, temporally and factually *di minimus*, insignificant, minimal, trifling and/or inconvenient and is inherent to all protests;

h) The City’s underlying reasons for this Petition are arbitrary, improper, an abuse of process, in bad faith and punitive in support of its relief for political reasons. The City’s literal interpretation of the Bylaws relied upon in support of its position is contrary to various maxims and principles of statutory interpretation, and is being used in an inappropriate attempt to defeat the petition respondents’ constitutional freedoms and give the appearance of justice to their unjust activities; and

i) The Petition is, overall, unreasonable, frivolous and vexatious.

[27] The Lindsay Petition Response specifically pleads the *PPPA*: see paras. 68 and 121-186.

The Petition Response filed by Mr. Manchester

[28] Mr. Manchester was not personally named as a respondent in the Petition at first instance. Mr. Manchester filed a petition response on August 16, 2023, on his own behalf as “respondent John Doe and/or Person Unknown”. The City took no objection to this, and Mr. Manchester was formally added as a party in the Petition in the style of cause pursuant to a consent order entered January 8, 2024.

[29] Mr. Manchester’s response to the Petition is not identical to the Linsday Petition Response but it is substantially duplicative in all material ways (and is indeed slightly longer, comprising 85 pages with 451 paragraphs).

[30] Mr. Manchester also specifically pleads the *PPPA*: again, see paras. 68 and 121-186.

The Applications

[31] On August 9, 2023, Mr. Lindsay sought and subsequently obtained leave to file an application in this proceeding and *nunc pro tunc* leave to file the Lindsay Petition Response including the "notice of constitutional question". This leave was sought because of a 2006 order of this Court, upheld on appeal, declaring Mr. Lindsay to be a vexatious litigant.

[32] On November 6, 2023, Mr. Lindsay filed his *PPPA* application. Rule 8-1(4) of the *SCCR* mandates that a notice of application, other than where it appends a draft form of order, must not exceed 10 pages. Mr. Lindsay's application is 103 pages and includes 421 footnotes (the "Lindsay *PPPA* Application").

[33] The Lindsay *PPPA* Application seeks the following relief:

a) An order dismissing the Petition against the applicants David Lindsay and C.L.E.A.R., and John Doe, Jane Doe and persons unknown, pursuant to s. 4 of the *PPPA*;

b) An order for costs of the application and of the proceeding on a full indemnity basis against the City, pursuant to s. 7 of the *PPPA*;

c) An order for damages payable to David Lindsay and C.L.E.A.R., by the City, pursuant to s. 8 of the *PPPA*; and

d) Such further and other relief as this Honourable Court may permit.

[34] On November 24, 2023, the City filed its application response to the Lindsay *PPPA* Application. The City opposes all the relief sought.

[35] On November 23, 2013, Mr. Manchester filed his own *PPPA* application. It is 104 pages and while not identical to the Lindsay *PPPA* Application, it is substantially duplicative in all material respects and seeks the same substantive relief (albeit on

behalf of Mr. Manchester). The City did not file a separate application response but opposes, in its submissions, the relief sought on the same basis as it opposes the relief sought in the Lindsay *PPPA* Application. No procedural objection to this approach by the City was raised by Mr. Manchester.

The Applicants' Theory of the Case

[36] Both Mr. Lindsay and Mr. Manchester separately addressed the court during the hearing of the Applications which took place over the course of nine days, with Mr. Lindsay taking the predominant role. Much of what was submitted and considered by the court will not make its way into these reasons for judgment as the scope of the legal issues requiring determination at this stage of the "proceeding" are, in the Court's conclusion, much narrower than the petition respondents believe them to be.

[37] However, the court recognizes that in a dispute which arises over what the petition respondents believe to be an attempt to suppress their right to free speech and silence their potentially controversial or unpopular views it may be frustrating to not have their theory of the Applications fulsomely articulated for the record.

[38] Accordingly, I am electing to include Mr. Lindsay's opening remarks from June 19, 2024, and his concluding remarks from August 26, 2025, verbatim, in these reasons for judgment as I think they represent a fair summary of their collective position. I do so with no disrespect to Mr. Manchester who made his own similar, but somewhat nuanced, oral submissions.

[39] Starting with Mr. Lindsay's opening remarks from June 19, 2024:

> So, basically, today, I'm here to address you on a critical issue, just by way of opening comments, that strikes at the heart of democratic principles in Canada. And that is the City's misuse of its bylaws to stifle constitutionally protected freedoms. The City has applied to cancel our weekly protest, citing non-compliance -- alleged non-compliance with bylaws regarding the use of sound equipment, the erection of an alleged tent, the holding of an event without a permit. So, the City is somewhat saying these factors are what we're relying upon to say you have an event under the bylaw. The action is not merely regulatory. It's an attempt to weaponize municipal bylaws to curtail freedom of expression and assembly.

The protests in question are a vital exercise of our s. 2 freedoms. These freedoms are not privileges or licences that can be curtailed or conditioned upon the payment of fees or acquisition of permits. By imposing such requirements, the City is effectively transforming these fundamental freedoms into privileges, undermining the very sense of our constitutional freedom. The City's actions constitute a strategic lawsuit against public participation, aiming to either silence dissent and burden us with legal and financial obstacles or that is certainly the end result.

These suits are recognized as a significant threat to public discourse and democratic engagement. They exploit legal processes to intimidate or harass individuals or groups exercising their lawful rights and freedoms, and thereby chilling free speech and stifling legitimate protest. And that's important, because as I'll talk about throughout the day, there will be a chilling of free speech, if there -- if they were to win on their petition.

And make no mistake, any successful petition will be henceforth relied upon by all cities in British Columbia. In fact, in Vernon, already, at a rally, a protest that was happening last fall, sheriffs were telling people that -- there was about 500 people -- they were telling them that they could not use sound equipment in support of their protest. So, it's started already with the cities trying to exercise powers, in my respectful opinion, that violate our constitutional freedoms.

Legal precedents affirm the paramount importance of protecting constitutional rights against undue interference. And the Supreme Court of Canada has consistently upheld that any restriction on Charter rights and freedoms must be demonstrably justified. This is not just argument or a legal fiction or speculation, but a proven evidentiary foundation. And the City's bylaw enforcement in this context fails to meet this test.

The requirement for permits and the associated costs impose an unnecessary and unjustifiable burden on our ability to exercise our constitutional freedoms. A permit system presupposes that the activity in question is a licensed privilege. And that comment is important, I'll talk about later. In order to get a permit, you have to presuppose that it's a license privilege in the first place as opposed to constitutional freedom. One cannot require a permit without first recognizing that the activity is prohibited to begin with, thereby requiring someone else, in this instance the City, to authorize to do something. So claims by the City that our protests are not prohibited are incorrect.

This is fundamentally incompatible with the nature of rights and freedoms enshrined in the *Charter.* The imposition of permits and fees for the exercise of free speech and peaceful assembly creates a barrier that is financially and administratively burdensome -- burdensome, disproportionately affecting those with limited resources, such as us. And indeed, that is what SLAPP applications were struck for, for people who are -- don't have a lot of power or a lot of money, being subjected to activities by those who do have a lot of power and money.

In light of those -- overall position, I respectfully am going to urge the court to recognize the City's actions for what they are. A deliberate attempt to suppress constitutionally protected freedoms through misuse of municipal bylaws. At worst, the City is following orders from the Province to shut us

> down, and their --and the City amounts to dishonest opportunists who are seeking a way to effect the same result. The Court, respectfully, has the power and duty to protect fundamental rights and freedoms against such oppressive tactics. And Section 1 of the *Charter* should not be permitted to be relied upon in a perfunctory manner or on a routine override basis.

[40] After hearing the remainder of his submissions on June 19, 2024, and his further submissions from September 3 to 6, 2024, Mr. Lindsay concluded his oral argument on the afternoon of August 26, 2025, with the following summary:

> I'm just going to summarize my presentation and then Lloyd [Mr. Manchester] is going to speak here.
>
> Essentially, the City filed a petition, as you know, seeking injunctive relief based on various bylaws and the *Community Charter*. I set out our facts that we're relying upon, and I set out the legal basis. In doing so, starting last September, I went on the proper interpretation of the SLAPP [strategic lawsuits against public participation] legislation here in British Columbia. How we checked it is to be applied and I also went through and structured it in two ways: one was a factual, or evidentiary, on basis on why the City did not have a chance to win, if I can use that term; and the other was a legal basis as to why the City's interpretation of its bylaws was incorrect, and those are the defences that we are going to be putting forth with respect to part 2 of the test about whether they have substantial merit to their defence, and we believe they do not have substantial merit. I addressed that last September, as opposed to simply having a possibility of success. And the legal basis I went through last September as well as this morning, and part of our defence is the constitutional challenge that the bylaws are of no force and effect for reasons set out in our constitutionalized -- constitutional challenge which was attached.
>
> I have really, justice, really summarized the constitutional challenge because I went into some detail on the arguments there and I would be appreciative if you have the time, just even on the challenge, to read that in more detail when you get the opportunity, because I -- I simply could not get through it all without taking extensive amount of more time. But our challenge is there and essentially in the challenge we've basically put forth the position that the bylaws violate our constitutional right to freedom of expression in the *Charter* and when one considers the importance of freedom of expression in all aspects and the fact that it includes using sound equipment. Plus, in conjunction with the specific wording of the bylaws here in British Columbia compared to other locations.
>
> My position is the -- our position -- sorry -- is the bylaws in their present wording as advanced by the City are over broad, they're void for vagueness, they're unreasonable, they're arbitrary, that the City has acted in bad faith, and certainly its officials, and we went through the section 1 analysis as well why we believe that it is not justified under section 1 considering especially the importance of freedom of expression on a political view. And then finally I addressed the harm that was suffered by us compared to the City earlier today, and -- and why, even if the City meets its test that the harm by us

> compared to the harm suffered by the City as a corporation, our harm is certainly worse than that -- than their corporation, which it provided no evidence of any harm. And finally, throughout the presentation I pointed out that the *PPPA* does apply to the City and its bylaws, which must comply. I think last year we talked about paramountcy and principle and the other reasons and then today we talked about the wording of the *PPPA* -- act -- when it refers specifically to proceedings in the definition as included in the petition.

The *PPPA*

Overview

[41] The *PPPA* is a statute expressly intended to protect society from strategic lawsuits against public participation. Such actions, intended to quell speech that is in the public interest, are commonly referred to as "SLAPP" lawsuits. This includes protecting speech that may be controversial, whether politically or otherwise. This is consistent with the freedom of expression, which is both a fundamental right and value and which is recognized as fostering a pluralistic and healthy democracy: see *Rooney v. Galloway*, 2024 BCCA 8 at paras. 1, 17-18.

[42] The defining characteristic of a SLAPP lawsuit is that "the proceeding acts to silence the defendant, and more broadly, to suppress debate on matters of public interest, rather than to remedy serious harm suffered by the plaintiff": see *Siman v. Eisenbrandt*, 2024 BCCA 176 at para. 3.

[43] The *PPPA*, which has a somewhat interesting legislative history in this province, came into force in March 2019. In *Hansman v. Neufeld*, 2021 BCCA 222, Justice Fenlon described the legislation as follows at para. 3:

> [3] The *PPPA* came into force in March 2019. The Attorney General described the *Act* as "intended to protect an essential value of our democracy, which is public participation in the debates of the issues of the day." Of particular concern were strategic lawsuits brought by the wealthy and powerful to shut down public criticism. In addressing the purpose of the *PPPA,* he said:
>
> > What the bill proposes to do is strike a balance between a couple of values. One is the value of protecting an individual's reputation or a company's reputation. The other is the value of a robust and rigorous debate that the courts have described as freewheeling, that can be heated, that can result in intemperate comments. But that's part of

> public debate, and it shouldn't be met with threats of litigation to stop people from talking about the issues of the day. Those are values that this bill is aimed at addressing: British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 41st Parl., 4th Sess., No. 198 (14 February 2019) at 7018 (Hon. David Eby).

[44] The *PPPA* is modelled upon an Ontario statute with an identical name, the *Protection of Public Participation Act*, 2015, S.O. 2015, c. 23 ("Ontario *PPPA*"): see *Rooney* at para. 74.

[45] The Supreme Court of Canada described the purpose of the Ontario *PPPA*, which comments necessarily apply to the *PPPA* given their similarity, in *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 ["*Pointes*"] at para. 2, as follows:

> [2] Strategic lawsuits against public participation ("SLAPPs") are a phenomenon used to describe exactly what the acronym refers to: lawsuits initiated against individuals or organizations that speak out or take a position on an issue of public interest. SLAPPS are generally initiated by plaintiffs who engage the court process and use litigation not as a direct too to vindicate a bona fide claim, but as an indirect tool to limit the expression of others. In a SLAPP, the claim is merely a façade for the plaintiff, who is in fact manipulating the judicial system in order to limit the effectiveness of the opposing party's speech and deter that party, or other potential interested parties, from participating in public affairs.

Section 4 of the *PPPA*

[46] A key element of the *PPPA* is the creation of a discrete legal test which can stop a SLAPP lawsuit in its tracks and result in its dismissal, with attendant financial consequences. This, importantly, is an objective test which does not require the court to subjectively assess a plaintiff's motives in commencing the litigation or conclude that it is brought for nefarious purposes.

[47] The operative section of the *PPPA*, s. 4, provides as follows:

> 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.

[48] An application brought pursuant to s. 4 of the *PPPA* first requires the applicant to prove, on the balance of probabilities, that the "proceeding" "arises from" "an expression" made by the applicant and that the "expression" relates to a matter of "public interest": see s. 4(1) and *Hamer-Jackson v. Neustaeter*, 2026 BCSC 155 at para. 50.

[49] This is a two part-part analysis, and the initial onus is on the moving party (the defendant/respondent in the proceeding): see *Pointes* at paras. 18 and 20; and *Blanc v. S.H.P.*, 2026 BCSC 797 at para. 38.

[50] If the first element of the test is not satisfied, the application fails and the proceeding is permitted to continue in the normal course in accordance with the *SCCR*: see *Blanc* at paras. 37 and 40; and *Siman* at para. 32.

[51] If the first element of the test is met, the onus shifts to the defendant/respondent to satisfy the court there are grounds to believe that:

a) The proceeding has substantial merit (s. 4(2)(a)(i)); and

b) The defences raised by the applicant (usually the defendant) are not valid (s. 4(2)(a)(ii)).

[52] The above must be proven on the basis there are "grounds to believe", a standard lower than the balance of probabilities but more than mere suspicion: see *Pointes* at para. 39, *Rooney* at para. 80; and *Hamer-Jackson* at para. 52.

[53] Where this onus is met, the court is required to conduct a public interest weighing exercise under s. 4(2)(b), in which the respondent must satisfy the court that the harm it is likely to have suffered or is likely to suffer due to the applicant's expression outweighs the public interest in protecting that expression: see *Hansman v. Neufeld*, 2023 SCC 14 at para. 53 [*Neufeld*].

[54] This final weighing exercise, if engaged, emphasizes balancing and proportionality between the public interest in allowing meritorious lawsuits to proceed and the public interest in protecting expression on matters of public interest: see *Pointes* at para. 18.

[55] The evaluation of the public interest in protecting the defendant's expression is informed by s. 2(b) of the *Charter* which "grounds the level of protection afforded to expression in the nature of the expression": see *Pointes* at para. 77; and *Siman* at para. 47. The closer a defendant's expression is to the core values underlying freedom of expression, the greater the public interest in protecting it: see *Pointes* at para. 77; and *Siman* at para. 47.

Application of *PPPA* to the Petition

[56] Although a thorough review of the jurisprudence confirms that the SLAPP legislation is typically used in response to defamation actions, the *PPPA* has a much broader scope: see *Siman* at para. 33; and *Hamer-Jackson* at para. 47.

[57] In s. 1 of the *PPPA*, a "proceeding" is defined as "has the same meaning as in the *Supreme Court Act*". Under s. 1 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443, a "proceeding" includes an action, suit, cause, matter, appeal, petition proceeding or requisition proceeding (emphasis added).

[58] Accordingly, the *PPPA* has *prima facie* application to any court proceeding that arises from "an expression that relates to a matter of public interest". This includes the Petition. The City appropriately concedes this.

[59] Of some significance, *Pointes*, which marked the first occasion that SLAPP legislation was considered by the Supreme Court of Canada, was not a defamation case. It was a breach of contract claim brought by a land developer against a community association and its executive committee members that followed on the heels of the settlement of a judicial review commenced in respect of a land use approval decision made by a local government body and comments made by an executive committee member at an appeal hearing: see paras. 84-90.

[60] The other key leading Supreme Court of Canada case, *Neufeld*, concerned a defamation claim: see paras. 2-5. As did *Bent v. Platnick*, 2020 SCC 23: see para. 2.

Step 1: Does the Proceeding "Arise From" an "Expression"?

The Law

[61] Section 4(1) of the *PPPA* requires, as step one, the applicant to prove that the proceeding "arises from an expression". Step one also requires that the expression "relate to a matter of public interest". The City appropriately concedes that the subject matter of the "Freedom Rally" is of "public interest". The crux of the Application, as I already set forth in the introduction to these reasons for judgment, is whether the Petition "arises from an expression".

[62] Section 1 of the *PPPA* defines "an expression" as "any communication, whether it is made verbally or non-verbally, publicly or privately, and whether it is directed or not directed at a person or entity". This definition is expansive but is narrower than the meaning of the term under s. 2(b) of the *Charter*. Specifically, in *Reynolds v. Deep Water Recovery Ltd.*, 2024 BCSC 570 ["*Deep Water*"], Justice Morley stated at para. 106 that:

> [106] The first problem with Ms. Reynolds argument, however, is that it conflates the constitutional protection of freedom of expression against government in the Charter, the dimensions of which are necessarily determined by judicial construction with the statutory protection private litigation created by the *PPPA*, the scope of which is up to the Legislature. While the Legislature could have adopted the s. 2(b) case law in its definition of the scope of "expression" under the *PPPA*, it chose not to and instead narrowed the expression to the act of communication itself: *PPPA*, s. 1.

[63] As to the requirement that the proceeding "arises from" an expression, Justice Cote explained as follows in *Pointes* at para. 24:

> [24] Second, what does "arises from" require? By definition, "arises from" implies an element of causality. In other words, if a proceeding "arises from" an expression, this must mean that the expression is somehow causally related to the proceeding.[1] What is crucial is that many different types of proceedings can arise from an expression, and the legislative background of s. 137.1 indicates that a broad and liberal interpretation is warranted at the s. 137.1(3) stage of the framework. This means that proceedings arising from an expression are not limited to those *directly* concerned with expression, such as defamation suits. A good example of a type of proceeding that is not a defamation suit, but that nonetheless arises from an expression and falls within the ambit of s. 137.1(3), is the underlying proceeding here, which is a breach of contract claim premised on an expression made by the defendant (this is explored in further detail in Part IV of these reasons). Indeed, the APR explicitly discouraged the use of the term "SLAPP" in the final legislation in order to avoid narrowly confining the s. 137.1 procedure (at para. 22), and the legislature obliged.

[64] Footnote 1 referred to in the above quote from *Pointes* suggests that the inquiry as to whether a proceeding "arises from" an expression is context specific and does not lend itself well to a bright line rule:

> [1] I do not believe that a precise level of causation needs to be identified, as courts have consistently been able to grapple with and apply the "arising from" standard (*Allstate Insurance Co. of Canada v. Aftab*, 2015 ONCA 349, 335 O.A.C. 172; *Sheppard v. Co-operators General Insurance Co.* (1997), 1997 CanLII 2230 (ON CA), 33 O.R. (3d) 362 (C.A.); *New Brunswick v. O'Leary*, 1995 CanLII 109 (SCC), [1995] 2 S.C.R. 967; *Bracklow v. Bracklow*, 1999 CanLII 715 (SCC), [1999] 1 S.C.R. 420).

[65] This causal link was explored in *Thatcher-Craig v. Clearview (Township)*, 2021 ONSC 7352 (reversed on other issues by 2023 ONCA 96), wherein the Court found that a claim for breach of fiduciary duty against the municipality did not "arise from an expression". At the root of the claim in *Thatcher-Craig* were certain letters, which the applicants alleged were defamatory of them, which the municipality refused to remove from a public counsel agenda. The refusal was asserted by the applicants to be a "bargaining chip" to induce them to discontinue an appeal of a decision that was submitted to be of public interest. The municipality sought to strike the entire claim under the legislation that pre-dated the Ontario *PPPA* but which

contained the same operative language. The Court concluded that the Town's alleged actions did not "arise from an expression", stating as follows at para. 52:

> [52] While the refusal to take down the defamatory public letters is part of the narrative on this claim, I do not view the expression at issue, which is positing of public letters online, as having the element of causality as discussed in Pointes Protection in relation to the claim of breach of fiduciary duty advance. In other words, the claim for breach of fiduciary duty does not arise from the expression, it arises from the alleged highhanded, malicious, bath faith conduct of the Township in encouraging the plaintiffs to develop their business on the one hand while engaging in various efforts to thwart their business. At best, the alleged use of the public letters as "a bargaining chip" is some evidence of malice or bad faith, but it is not integrally linked to the claimed breach of fiduciary duty.

[66] Also instructive in this regard is the analysis of Morely J. in *Deep Water*. In *Deep Water*, the litigation alleged harms that included "*both* expression on matters of public interest and physical conduct that was not expressive": see para. 1. The underlying civil claim brought by the plaintiff, Ms. Reyolds, against Deep Water Recovery Ltd. ("DWR") and others sought damages for trespass/conversion, harassment, assault and intimidation. At the root of the claims was an incident involving a drone owned by the plaintiff and used to obtain video of DWR's "shipbreaking" operations on Vancouver Island. DWR defended that claim and filed a counterclaim alleging the plaintiff engaged in the torts of trespass, nuisance and violation of privacy contrary to the provincial *Privacy Act* pertaining to her use of said drone and her dissemination of that footage. The plaintiff applied to strike the counterclaim pursuant to s. 4 of the *PPPA*.

[67] In considering the plaintiff's application in this context, Morely J. considered the "arising from" question required by s. 4(1)(a) of the *PPPA*. At para. 10, Justice Morely approached the question as follows:

> [10] The *PPPA* requires me to ask what a proceeding "arises from". There are two senses in which this question could be answered. The first is causal/historical: what series of events led to the decision to file the proceeding? The second is content/analytical: what set of events, legal theories and remedies make up the proceeding. Before turning to the content/analytical discussion of the Counterclaim, I will therefore first discuss the events that led up to DWR's decision to file it. In my view, the history demonstrates the Counterclaim arose both from expressions in matters of public interest and from physical acts and acts of surveillance.

[68] Returning to this issue in considering whether the "physical intrusion" claims (as defined therein) should be dismissed under s. 4 of the *PPPA*, Morley J. held as follows:

> [100] Under s. 4(1)(a) of the *PPPA*, the onus is on Ms. Reynolds to show that these aspects of the Counterclaim "arise" from an expression made by her and that the expression is in relation to a matter of public interest. In this case, it is the former question that is really in issue. Starting with the Physical Intrusion Claims, the gravamen of which is that Ms. Reynolds flew the drone either in the airspace where DWR had a right to exclude or sufficiently close to DWR's operations to interfere with DWR's reasonable use of the Property, has Ms. Reynolds demonstrated that these "arise from" her own expression?
>
> [101] At paragraph 24 of Pointes Protection, Justice Côté states that the phrase "arises from" by definition implies an "element of causality" and that it is sufficient if the expression is "somehow causally related to the proceeding". In a footnote, she declines to define a "precise" level of causation, but it is clear that if the proceeding would not have been brought "but for" the expression, then this will be sufficient: Mizzi at para. 96.
>
> [102] Regardless of the level of precision of causation, it can clearly be established when the communication/expression is an element of the cause of action (as in defamation) or a key material fact to the theory of liability (as in the Subway case). It can also be established if the motivation for the proceeding—regardless of its content—was the expression of the person against whom it is brought, at least if that motive is a "but for" cause of bringing the proceeding. Thus, even if the content of the proceeding was entirely non-expressive, it would arise from expression if the claim would never have been made if the applicant had not engaged in expression.

[69] With respect to the foregoing, I generally accept and adopt the reasoning of Morley J. except as it contemplates the consideration of a litigant's "motivation". Determining "motive" or "motivation", a subjective concept, is a proverbial legal rabbit hole that the *PPPA* was expressly drafted to avoid in creating an objective test in s. 4. In this regard, while *Deep Water* is persuasive authority, it is not binding upon me, and I choose not to follow it.

Summary of the Applicants' Position

[70] The Applicants' position is that the Petition is a proceeding which "arises from an expression" pursuant to s. 4(1)(a) of the *PPPA* as set out at paras. 102 to 117 of the Applications (which are identical but for the reference to Mr. Manchester in para. 108). The Applications, omitting footnotes, read as follows:

102. This s. 4(l)(a)(b) test is set on a balance of probabilities.

103. The term, *"expression", "means any communication, whether it is made verbally or non-verbally, publicly or privately, and whether it is directed or not directed at a person or entity".*

104. The Supreme Court of Canada acknowledged that this provision need not require any elaboration- it is "... *defined expansively.".*

105. Whether the proceeding *"arises from"* the expressions of the Applicants, implies an extremely low level of causality. If the proceeding is *"somehow"* related to the expression, this test is met.

> *[59] The meaning of the words "arises from" and "expression ", within the context of ss. 137.1(2)-(3) of the Ontario Act, was considered by the Supreme Court of Canada in Pointes as follows:*
>
> > *[24] ... what does "arises from" require? By definition, "arises from" implies an element of causality. In other words, if a proceeding "arises from" an expression, this must mean that the expression is somehow causally related to the proceeding. What is crucial is that many different types of proceedings can arise from an expression, and the legislative background of s. 137.1 indicates that a broad and liberal interpretation is warranted at the s. 137.1(3) stage of the framework. This means that proceedings arising from an expression are not limited to • those directly concerned with expression, such as defamation suits."* (my emphasis)

106. A precise level of causation need not be identified.

107. The words *"made by",* include any positive actions, whether verbal or non-verbal, taken by the Applicant Lindsay or others, to cause or create the expressions.

108. The Applicant Lindsay spoke, expressed himself and conveyed his own messages at almost every Lawful Protest, including the dates in the Affidavit #1 of Bylaw Officer Short in support of the Petition. Further, he took positive action to cause or create the expressions of other individuals, which he supported, by seeking out, requesting and authorizing them to speak, convey and express themselves at the Lawful Protest. Further he took the positive action of creating signs that were set up and used in all the Lawful Activities.

109. This Petition proceeding arises from the expressions made by the Applicants. But for the Applicant Lindsay's presence, expressions and seeking out and authorizing others to express themselves and them so doing, this Petition would never have been filed.

110. In *Pointes,* the entire evidence of the witness Mr. Gagnon was considered and accepted for purposes , of determining if it constituted an expression, without detailing any specific words made. This is because it was not a defamation case which does rely upon specific words to be uttered.

111. The expressions and information expressed by the Applicants at their Lawful Activities relate to, *inter alia* their concerns regarding the accuracy and truthfulness of comments and representations from public servants in relation to COVID-19, the Constitutionality of Public Health Orders and mandates,

> whether these officials have committed criminal offences, the dangers of the COVID-19 vaccines and speaking for vaccine injured people, statistical accuracy from inaccurate models and PCR tests, falsified claims of COVID-19 caused hospital backlogs and shortages, jurisdiction in relation to the COVID-19 situation, mainstream media (MSM) cover-ups, political participation in elections, issues such as digital ID and currencies and 15 minute prison cities, and geoengineering by way of spraying toxins from airplanes in our atmosphere.
>
> 112. Individual people speaking on COVID-19, their experiences and involvement, and other rights and freedoms related issues, included *inter alia,* professional medical doctors, nurses, pastors, vaccine injured, national group leaders such as Vaccine Choice Canada and Action4Canada, lawyers, politicians, candidates, children, school teachers, media persons, retired police officers, court mask experts, and protest singers, from B.C., Canada and globally.
>
> 113. Expressions at the Lawful Activities were not restricted to verbal communications either. The Applicants Lindsay, CLEAR and others created dozens of signage and banners for use at the Lawful Protests, and the CLEAR Canopy for further expressive messaging to the pubic and protestors.
>
> 114. Whether or not the allegations or concerns of these people, including the Applicant Lindsay are valid is irrelevant, because ". . . *there is no qualitative assessment of the expression at this stage*."
>
> 115. The Petition itself recognizes the expressive activities of the Applicants as providing the factual basis for the Petition at Part 2, para. 3, 4(b)(d) therein.
>
> 116. It is not possible to claim that the expressions by the Applicant Lindsay and others he authorized to speak were not expressive, as they were made and did communicate to a segment of society at each and every Lawful Protest, from which this Petition arises from.
>
> 117. The Applicants, including the Applicant Lindsay clearly meet this part of the test.

Summary of the City's Position

[71] The City's position is that the Petition, which it characterizes as an enforcement "proceeding", does not "arise from an expression" in the manner contemplated by the *PPPA*. There is, therefore, not the necessary level of causation required to substantively engage in the *PPPA* analysis.

[72] Specifically, the City submits that:

a) For the purposes of s. 4 of the *PPPA*, a proceeding arises from an expression only if the content of the expression is an element of the

illegality alleged in the proceeding, as was the case in *Neufeld* and *Pointes*;

b) It is not enough that the proceeding relates to harms caused by the communication at issue, or that are taken to facilitate it, such as excessive noise, nuisance or trespass; and

c) Where, as here, the content of a communication is, according to the City, "irrelevant" in the "proceeding", the proceeding cannot be said to "arise from" that communication for the purposes of s. 4 of the *PPPA*.

[73] Further, the City submits, none of the contraventions of the Bylaws it seeks to enforce either target or have a sufficient nexus with the content of the speech. The Petition is not, therefore, causally related to the context of the petition respondents' speech in the manner required by the *PPPA*.

[74] This, it is submitted, is borne out by a review of the relief sought by the City as set out in Schedule "A". The declaratory and injunctive relief sought does not "address or restrain the substantive content of any expression, or the activity of protesting". Rather, the relief sought by the City seeks to restrain only acts which are asserted to breach the Bylaws, without relation to the content of any expressions which may or may not be made during such acts.

[75] The City maintains that the petition respondents, and all other C.L.E.A.R. parties, remain free to express their views publicly, in "any manner which does not constitute a breach of the relevant bylaws governing safe, respectful and orderly community use of public spaces".

Analysis

[76] Upon considerable reflection, I accept the City's position that the petition respondents have failed to discharge the burden placed on them by s. 4(1)(a) of the *PPPA* of proving, on a balance of probabilities, that the Petition is a proceeding "which arises from" "expressions" made by "the applicants".

[77] Even though a “precise level” of causation need not be identified, per *Pointes*, the content of the “expression” must, I conclude, be a material element of the cause of action (or causes of action) in the “proceeding”.

[78] The evidence before the Court clearly establishes that the petition respondents, and certain third-party affiants, subjectively believe that the “Freedom Rally” has been targeted due to the content of the subject matter of these rallies. However, the legislative intention of the *PPPA* was expressly to avoid the court peering behind the cloak of privilege to try and determine what a party’s motivation is for commencing litigation. Section 4 of the *PPPA*, as explained above, creates an objective test that requires the applicant to meet that threshold element of a causal link between the “the proceeding” and “an expression” before potentially having the ability to obtain the dismissal order (and its attendant quite draconian remedies which include an entitlement to full indemnity costs and a claim for statutory damages absent any other underlying cause of action).

[79] Despite considering the petition respondents’ submissions and the authorities which I was referred to, I conclude they cannot objectively meet the necessary threshold required by the *PPPA* to engage its application to the Petition. Having failed to meet the burden upon them under step 1 of the s. 4 test, there is no need to continue with the legal analysis set forth above.

Conclusion

[80] In conclusion, the Application is dismissed in its entirety. The petition respondents are not entitled to an order of dismissal of the Petition.

[81] As noted in the introduction to these reasons, this does not entitle the City to any declaratory or injunctive relief as against the petition respondents. This order merely allows the City to continue to pursue the Petition on its merits. Whether it chooses to do so will be up to the City.

Costs

[82] In keeping with the legislative purpose of the *PPPA*, there is a specific provision regarding costs which overrides the usual application of the *SCCR*.

[83] Pursuant to s. 7 of the *PPPA*:

a) If the court makes a dismissal order under s. 4, the applicant is entitled to costs on the application and in the proceeding, assessed as costs on a full indemnity basis unless the court considers that assessment inappropriate in the circumstances: s. 7(1); and

b) If, on an application for a dismissal order under s. 4, the court does not dismiss the proceeding, the respondent is not entitled to costs on that application unless the court considers it appropriate in the circumstances: s. 7(2).

[84] As the petition respondents failed in obtaining a dismissal order, s. 7(2) does not entitle the City to an award of costs unless the court considers it appropriate to do so. I do not consider it appropriate to do so, particularly given that the City did not request that I so exercise my discretion in its submissions in opposing the Application.

[85] Accordingly, the parties shall bear their own costs of the Application in any event of the cause.

Hardwick J.

Schedule "A"

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 [in] 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 a 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 the 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 retain 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.