

IN THE SUPREME COURT OF BRITISH COLUMBIA



CITY OF BURNABY

PLAINTIFF

AND:

PATRICIA KELLY (a.k.a. KWITSEL TATEL), JOHNNY LEE,  
CORY SKINNER (a.k.a. XENOA SKINTEH),  
JOHN DOE and JANE DOE

DEFENDANTS

ORDER MADE AFTER APPLICATION

BEFORE	)	THE HONOURABLE JUSTICE	)	
	)	GOMERY	)	10/AUG/2018
	)		)	

ON THE APPLICATION of the Plaintiff, the City of Burnaby (“**Burnaby**” or the “**City**”), coming on for hearing at the Law Courts, 800 Smithe Street, Vancouver, British Columbia on 10/AUG/2018 and on hearing Gregory J. McDade, Q.C. and Jamie Arbeau, counsel for Burnaby and R.K. Friesen, counsel for the R.C.M.P. ; and no one appearing for the Defendants:

THIS COURT ORDERS that:

1. The Defendants, and any other person having notice of this Order, are hereby restrained and enjoined from:
  - (a) constructing, erecting, assembling, placing or otherwise maintaining any structure, building, shelter, temporary or permanent camping or lodging or cooking facility, or other such similar shelter in the area as shown on the attached **Map “A”**
    - (i) including all City property along Shellmont Street and Underhill Avenue, from the intersection of Shellmont Street with Meadowood Park in the west, through the intersection of Shellmont Street and Underhill Avenue, to the east along Shellmont trail for a distance of 200 m. more or less as

shown on Map A, and south on Underhill Avenue to the south end of the intersection of Underhill Avenue and Forest Grove Drive:

(collectively, the "Shellmont Camp Site")

- (b) inhabiting or occupying or otherwise utilizing or being present within any structure, building, shelter, temporary or permanent camping or lodging or cooking facility, or other such shelter in the Shellmont Camp Site;
- (c) parking or placing any vehicles, trailers or other means of transportation device or shelter within the Shellmont Camp Site or adjacent road ways at any time;
- (d) starting, allowing or maintaining any open flame or heat-source at the Shellmont Camp Site;
- (e) placing any fill, gravel, woodchips or other foreign material on City property in the Shellmont Camp Site; or
- (f) defacing or otherwise damaging any barriers, fencing, poles, signage, roadways or other city property situated on or around the Shellmont Camp Site, including without limitation the copies of this Order that are posted pursuant to this Order.

AND THIS COURT FURTHER ORDERS THAT:

2. Within 48 hours following service of this order pursuant to the terms <sup>of the order</sup> issued by Master Caldwell, and posting of a copy of this order at the Shellmont Camp Site, the Defendants and any persons who have placed such structures or objects shall remove all structures, building, shelter, temporary or permanent camping or lodging or cooking facilities, and all vehicles, trailers or other means of transportation device or shelter, and any other objects which are located at the Shellmont Camp Site.
3. The Defendants and any other persons having any interest in such items shall remove all personal belongings, tents, tarps, furniture, fencing, garbage, waste or other items belonging to them or placed by them prior to the time set in paragraph 2
4. Following the expiry of the time set in paragraph 2, the Plaintiff City of Burnaby is authorized to demolish and remove or dispose of any remaining structures, shelters, facilities or other objects or items remaining on the site, and may enter upon or within any such structures, areas, or objects, and do such acts as necessary to demolish and remove and dispose of such structures or other items. The Plaintiff may tow and impound any vehicles, trailers or other mobile device remaining on the Site.
5. The Defendants, and any other person having notice of this Order, are hereby restrained and enjoined from impeding, restricting, harassing, intimidating or physically preventing or interfering with the acts of demolition or removal of the structures, facilities or objects by City staff or contractors.

AND THIS COURT FURTHER ORDERS THAT:

6. 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.
7. The Police retain discretion as to the timing and manner of enforcement of this Order, and specifically retain discretion as to the timing and manner of arrest and removal of any person pursuant to this Order.
8. The Police retain discretion to detain and release any person without arrest who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order, upon that person agreeing in writing to abide by this Order.
9. Any peace officer and any member of the Police who arrests or arrests and removes any person pursuant to this Order is authorized to:
  - (a) Release that person from arrest upon that person agreeing in writing to abide by this Order;
  - (b) 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;
  - (c) Bring that person forthwith before this Court at the Law Courts, 800 Smithe Street, Vancouver, British Columbia, or such other place as may be directed by this Court;
  - (d) Detain that person in custody until such time as it is possible to bring that person before this Court; and/or
  - (e) Otherwise take steps in accordance with Form 11.1 of the *Criminal Code*, R.S.C. 1985, c. C-46.
10. The Police are authorized to provide assistance to the plaintiff in demolishing and removing all structures, vehicles and objects and otherwise taking possession of the Shellmont Camp Site pursuant to this Order, including, but not limited to, the following powers:
  - (a) standing by and keeping the peace;
  - (b) using all reasonable force required in the circumstances;
  - (c) entering any private premises located on the Site, including any residences or outbuildings;

- (d) physically removing the Defendants or other persons from the Shellmont Camp Site; and
  - (e) arrest the Defendants or any persons found in any premises on the Shellmont Camp Site if they do not leave the premises immediately upon demand.
11. Any police officer is hereby authorized to enter any temporary or permanent structure at the Shellmont Camp Site for the purpose of removing, arresting or apprehending a person on Burnaby property pursuant to this Order.
  12. Burnaby shall cause copies of this Order to be posted on and around the Shellmont Camp Site.
  13. Notice of this Order may be given to the Defendants by any of the following:
    - (a) Posting this Order in the fashion described in paragraph 12 of this Order;
    - (b) Delivering the Order to them or if they refuse it, placing a copy of it on the ground in their sight;
    - (c) Posting a sign in a conspicuous location within 5 metres of the Shellmont Camp Site (a "Warning Sign"), with text that is no less than 10 centimeters in height that states:

"There is a court order (injunction) that applies to this area and includes an Order to remove all structures, belongings and camping facilities. Persons who impede or interfere with the demolition or removal of the structures will be subject to arrest."
  - or,
  - (d) Reading the statement in (c) to the persons present at the Shellmont Camp Site over an amplification system, and offering copies of the Order to the persons present.
  14. For the purposes of enforcing this Order, any person, regardless of whether they are in breach of this Order, shall be deemed to have knowledge and notice of this Order if a copy of this Order is shown and offered or handed to them and they are provided a brief opportunity to comply with this Order.
  15. This Order shall not enjoin persons acting in the course of or in the exercise of a statutory duty, power or authority.
  16. Provided the terms of this Order are complied with, the Defendants and other persons remain at liberty to engage in a peaceful, lawful and safe protest at the Shellmont Camp Site.

17. Burnaby undertakes to this Court that it will abide by any Order of this Court as to damages payable by it to the Defendants named or subsequently named in this Action as a result of the granting of this Order, or as otherwise ordered by this Court.
18. This Order shall be in effect from pronouncement until the trial of this Action.
19. Any person affected by this Order shall have the liberty to apply to set aside or vary this Order on 2 clear days notice.

Approved as to Form  
*[Handwritten signature]* J.

By the Court.

*[Handwritten signature]*  
\_\_\_\_\_  
Gregory J. M. Dudge  
Counsel, City of Burnaby


*[Handwritten signature]*  
\_\_\_\_\_  
Registrar

MAP "A"



The information has been gathered and assembled on the City of Burnaby's computer systems. Data provided herein is derived from a number of sources with varying levels of accuracy. The City of Burnaby disclaims all responsibility for the accuracy or completeness of information contained herein.

Between Meadowood & Underhill

 Designates City Property



