



No. **S-097345**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHRIS ARIEL SHAW and
ANDREA ALISSA WESTERGARD-THORPE

PLAINTIFFS

AND:

THE CITY OF VANCOUVER

DEFENDANT

WRIT OF SUMMONS

(Name and address of each plaintiff)

Chris Ariel Shaw
c/o Gratl & Company
302-560 Beatty Street
Vancouver, B.C. V6B 2L3
Attn: Jason Gratl

Andrea Alissa Westergard-Thorpe
c/o Gratl & Company
302-560 Beatty Street
Vancouver, B.C. V6B 2L3
Attn: Jason Gratl

(Name and address of each defendant)

The City of Vancouver
453 West 12th Avenue
Vancouver, B.C.
V5Y 1V4

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the defendant(s):

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) for the claim(s) set out in this writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this writ, and
- (b) if a statement of claim is provided with this writ of summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for appearance has been set by order of the court, within that time.]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

(1)

The address of the registry is:

The Supreme Court of British Columbia
800 Smithe Street
Vancouver, BC
V6Z 2E1

(2)

The plaintiffs' ADDRESS FOR DELIVERY is:

302-560 Beatty Street
Vancouver, B.C. V6B 2L3

Fax number for delivery (if any):

604-608-1919

(3)

The name and office address of the plaintiffs' solicitor is:

302-560 Beatty Street
Vancouver, B.C. V6B 2L3

The Plaintiff's claim is set out in the attached Statement of Claim.

Dated October 7, 2009



Solicitor for the Plaintiffs

THIS WRIT OF SUMMONS is filed and served by Jason B. Gratl, Barrister and Solicitor, whose place of business and address for delivery and service is 302-560 Beatty Street, Vancouver, B.C. V6B 2L3 (telephone: 604-694-1919 facsimile: 604-608-1919)

S-087345

No.

Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHRISTOPER ARIEL SHAW and
ANDREA ALISSA WESTERGARD-THORPE

PLAINTIFFS

AND:

THE CITY OF VANCOUVER

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff Chris Shaw is employed as a Professor in the Department of Ophthalmology at the University of British Columbia and, outside of and separate from his employment, has become interested in and spends time as a vocal critic of the 2010 Olympic Winter Games, the Vancouver Olympic Organizing Committee ("VANOC") and the International Olympic Committee ("IOC"). Professor Shaw is the author of "The Five Ring Circus: Myths and Realities of the Olympic Games", a book-length analysis of the social and financial costs incurred through hosting the 2010 Winter Games in Vancouver.
2. The Plaintiff Andrea Alissa Westergard-Thorpe is an elector in the City of Vancouver, a student at the University of British Columbia, and is a vocal critic of the 2010 Olympic Winter Games, VANOC and the IOC.
3. The Plaintiffs are both members of organizations that engage in political advocacy dealing with the 2010 Winter Games, including the Olympic Resistance

Network and 2010 Watch.

4. The Defendant City of Vancouver is a body corporate under the laws of British Columbia and continued as a corporation and a municipality under section 6 of the Vancouver Charter, S.B.C. 1953, c.55. Vancouver enjoys the legislative power to enact certain types of By-laws under the Vancouver Charter, S.B.C. 1953, c.55.
5. On July 23, 2009, the Defendant Vancouver enacted By-law No. 9908 "Vancouver 2010 Olympic and Paralympic Winter Games By-law" (the "Olympics Bylaw").
6. The provisions of the Olympics Bylaw with which the Plaintiffs take issue in this proceeding ("Restrictive Provisions") are as follows:

Prohibitions regarding city land

- 4B During the games period, in addition to the requirements set out in this By-law, a person, unless licenced to do so by, or under the authority of the city, must not:
 - (d) distribute any advertising material or install or carry any sign unless licenced to do so by the city.
- 4D. During the games period, the City Manager may make additional rules concerning city land, and may post those rules at the entrance to city land.

10.1 Miscellaneous street and traffic amendments

After section 103 of the Street and Traffic By-law, Council adds:

2010 Winter Games Provisions

104. The following provisions apply during the games period:

Advertising on Streets

- (7) A person must not:
 - (a) exhibit or place any advertising-matter, including any sandwich board, handbill, printed matter, brochure, leaflet, sample, or product on, in, or above any zone, street, venue corridor, pedestrian corridor, or Olympic lane, or on any pole or projection therein; or

- (b) distribute any advertising-matter, including any handbill, printed matter, brochure, leaflet, sample, or product to persons or vehicles on, in, or above any zone street, venue corridor, pedestrian corridor, or Olympic lane.

Sign on a street

(8) A person must not exhibit, place, display, install, or erect a sign on a street on, in, or above any zone street, venue corridor, pedestrian corridor, or Olympic lane, except for:

- (a) any sign on a street existing as at the date of enactment of this By-law which the city has authorized by permit, licence, or agreement;
- (b) any sign on a street in connection with a street use special event and referred to in 104(11); and
- (c) any sign on a street that is a celebratory sign or wayfaring sign authorized by VANOC or the city.

Definitions

1.2 In this By-law, unless the context otherwise requires:

“advertising-matter” means capable of use or used to convey information or direct or attract attention for a commercial purpose including advertisement, business promotion, or promotion of a product, activity or service;

“celebratory sign” means a sign that celebrates the 2010 Winter Games, and creates or enhances a festive environment and atmosphere for the 2010 Winter Games;

“games period” means that period of time from January 1, 2010 to March 31, 2010;

“sign on a street” means any design, device, display, illumination, inscription, material, medium, notice, object, structure, or visual projection on, in, or above any street or anything on a street, including its structure, supports, framework, lighting system, or other components, and attachments, ornaments, or other features that is:

- (a) free standing, stationary, portable, or moving;
- (b) located on a street, and
- (c) capable of use or used to convey information or direct or attract attention for the purpose of announcement, advertisement, business promotion, promotion of a product, activity or service, or of providing direction,

identification or information;

“City Site” is any site established, owned, or controlled by the city, and described in Schedule A to this By-law for:

- (a) live celebration of the 2010 Winter Games, and
- (b) administrative, cultural, or governmental protocol pavilions, facilities, or centers,

and other such site authorized from time to time by the Chief Building Official, Director of Licenses and Inspections, or Director of Planning, as the case may be;

“Olympic lane” means any portion of a street referred to in section 104(3) of the Street and Traffic By-law, being an amendment to the Street and Traffic By-law which Council is to enact under section 10 of this By-law, or which the City Engineer may later designate under section 104(3);

”venue corridor” means any portion of a street referred to in section 104(3) of the Street and Traffic By-law, being an amendment to the Street and Traffic By-law which Council is to enact under section 10 of this By-law, or which the City Engineer may later designate under section 104(3);

”pedestrian corridor” means any portion of a street referred to in section 104(3) of the Street and Traffic By-law, being an amendment to the Street and Traffic By-law which Council is to enact under section 10 of this By-law, or which the City Engineer may later designate under section 104(3);

Offences under By-law

14.1 A person who:

- (a) violates any provision of this By-law, or does any act or thing which violates any provision of this By-law, or suffers or allows any other person to do any act or thing which violates a provision of this By-law..

... is guilty of an offence against this By-law, and liable to penalties imposed under Section 14.

14.4 Every person who commits an offence against this By-law is punishable on conviction by a fine of \$2,000.00 for each offence.

14.5 Every person who commits an offence of a continuing nature against this By-law is liable to a fine of \$50.00 for each day such offence continues.

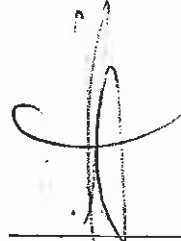
7. Schedule A lists six “city sites”: the Main Branch of the Vancouver Library (350 West Georgia Street); Roundhouse Community Centre (181 Roundhouse Mews); Coal Harbour Community Centre (480 Jervis Street); Queen Elizabeth Theatre (648 Cambie Street); Live City Vancouver at Georgia Street (668 Cambie Street); and Live City Vancouver at David Lam Park (1300 Pacific Blvd). The historical and actual functions of these sites include serving as sites for public assembly, political protest and critical expression. Expressive activity is compatible with the historical and actual uses of the sites.
8. Section 104 lists “venue corridors”, “pedestrian corridors” and “Olympic lanes” to include numerous arterial roads, including large sections of downtown including Broadway, Burrard, Cambie, Georgia, Dunsmuir, Hastings, Howe, Pender, Seymour, Beatty, Davie, Granville, Hamilton and Robson Streets (the “Corridors”). The historical and current use of the Corridors is compatible with expression.
9. The plaintiffs intend to criticize the 2010 Winter Games on and within the public lands designated by Schedule A and on and above the Corridors during the games period. They intend to express and communicate their thoughts and opinions with Vancouverites and visitors, politicians and attendees to the sites, pedestrians and commuters using the Corridors, and they intend to disseminate their thoughts and opinions through messages, including to people throughout British Columbia and Canada, by communicating at city sites and along Corridors with news reporters and internet content providers.
10. Without limiting the forms of expression they wish to employ, the plaintiffs intend to wear critical t-shirts, buttons, badges, hats, and other apparel to distribute leaflets and posters, and erect and carry signs within the city sites and along Corridors.
11. The Plaintiff Chris Shaw additionally intends to distribute information about and call attention to his book, *The Five Ring Circus*, and the thoughts and opinions expressed therein, with the goal of promoting sales thereof.

12. The Plaintiffs also intend to promote sales of t-shirts, buttons, badges, hats and other apparel emblazoned with “Olympic Resistance Network” marks and messages critical of the costs imposed by the 2010 Winter Games.
13. The Plaintiffs anticipate that their expressive activities will be subject to sanction under the Restrictive Provisions.
14. The purpose and effect of the Restrictive Provisions is to restrict the content of public expression and communication within and around large and central areas of Vancouver between January 1, 2010 and March 31, 2010.
15. The Restrictive Provisions deny and are an infringement and an anticipatory infringement of the right to free expression as guaranteed by s. 2(b) of the *Charter of Rights and Freedoms* and cannot be justified in a free and democratic society.
16. The Restrictive Provisions are, and should be declared to be, of no force and effect, pursuant to s. 52 of the *Charter of Rights and Freedoms*.
17. Further, or in the alternative, the Vancouver Charter does not grant the Defendant the power to enact the Restrictive Provisions, and the Restrictive Provisions are therefore *ultra vires* and of no force and effect.
18. The Plaintiffs claim for declarations and orders that:
 - a. The Restrictive Provisions deny and are an infringement and an anticipatory infringement of s.2(b) of the *Charter of Rights and Freedoms*;
 - b. The Restrictive Provisions cannot be justified in a free and democratic society;
 - c. The Restrictive Provisions are of no force and effect, pursuant to s.52 of the *Charter of Rights and Freedoms*;
 - d. Further, or in the alternative, the Vancouver Charter does not grant the Defendant the power to enact the Restrictive Provisions, and that the Restrictive Provisions are *ultra vires* and of no force and effect;
 - e. The City of Vancouver, its councilors, officers, servants and agents, and any person with notice of the Order pronounced herein, be restrained, on an interim, interlocutory and permanent basis, from acting on or enforcing the Restrictive Provisions;

- f. Costs of this action; and
- g. Such further and other relief as this Honourable Court may consider just.

Place of trial: Vancouver, British Columbia

Dated: October 5, 2009.



Solicitor for the Plaintiffs

Name and address of solicitor:

Jason B. Gratl
Gratl & Company
Barristers and Solicitors
302-560 Beatty Street
Vancouver, BC V6B 3L2

THIS STATEMENT OF CLAIM is filed and served by Gratl & Company, Barristers and Solicitors, whose place of business and address for delivery and service is 302-560 Beatty Street, Vancouver, British Columbia V6B 3L2 (telephone: 604-694-1919 facsimile: 604-608-1919)