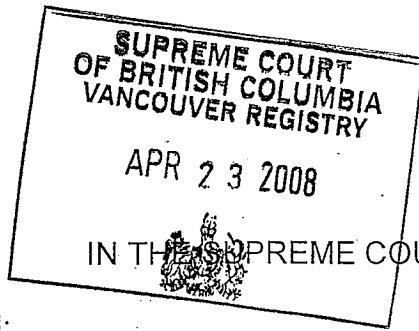


S-082905



ACTION NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JOHN DIXON and
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

PLAINTIFFS

AND:

THE CORPORATION OF THE CITY OF POWELL RIVER

DEFENDANT

WRIT OF SUMMONS

(Name and address of each plaintiff):

John Dixon
5576 Marine Avenue
Powell River, BC

British Columbia Civil Liberties Association
Suite 550 – 1188 Georgia Street
Vancouver, BC

(Name and address of each defendant)

The Corporation of the City of Powell River
City Hall, City of Powell River
6910 Duncan Street
Powell River, BC

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: 800 Smithe Street Vancouver, British Columbia V6Z 2E1
(2)	The plaintiff's ADDRESS FOR DELIVERY is: 1300 – 1111 West Georgia Street Vancouver, British Columbia V6E 4M3 Fax number for delivery (if any): (604) 681-1307
(3)	The name and office address of the plaintiff's solicitor is: Holmes & King Barristers & Solicitors 1300 – 1111 West Georgia Street Vancouver, British Columbia V6E 4M3 Attention: Robert D. Holmes

The plaintiffs' claim is as set out in the attached Statement of Claim.

Dated: April 23, 2008


Solicitor for the Plaintiffs

THIS WRIT OF SUMMONS is filed by the firm Holmes & King, Barristers and Solicitors, whose address for delivery is 1300 - 1111 West Georgia Street, Vancouver, B.C. V6E 4M3, Attention: Robert D. Holmes. Telephone: (604) 681-1310; Facsimile: (604) 681-1307

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VANCOUVER REGISTRY

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BETWEEN:

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PLAINTIFFS

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DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff John Dixon is a Philosophy Instructor at a community college in British Columbia, is the Secretary of the British Columbia Civil Liberties Association (the "BCCLA"), owns real property in the City of Powell River at 5576 Marine Avenue, Powell River, B.C., is a taxpayer through property taxes and otherwise in and to the City of Powell River, and is an elector in the City of Powell River.
2. The Plaintiff British Columbia Civil Liberties Association was formed in 1962 as a society incorporated under the laws of the province of British Columbia, is the oldest and most active civil liberties group in Canada, and has its headquarters at Suite 550 – 1188 Georgia Street, Vancouver, British Columbia.

3. The Plaintiffs have a special interest in and are dedicated to the protection and preservation of civil liberties in Canada, including rights of free expression as set forth under the Canadian *Charter of Rights and Freedoms*.
4. The Corporation of the City of Powell River is a body corporate of the residents of Powell River, British Columbia under the provisions of the Community Charter and the Local Government Act and has its administrative offices at the City Hall, City of Powell River, 6910 Duncan Street, Powell River BC V8A 1V4.
5. The Mayor of the Corporation of the City of Powell River is currently Stewart Alsgard.
6. The Councillors of the Corporation of the City of Powell River are currently: Patricia Aldworth, Robert Astrope, Edward Byng, Myrna Leishman, Ted Rodonets and Sandra Tremblay.
7. The City of Powell River proposed certain measures in relation to a \$6.5 million local improvement known as the "North Harbour Project" and adopted an alternative approval process in relation thereto.
8. The steps taken by the City of Powell River in relation to the North Harbour Project led to a public discussion both as to the merits of the proposed local improvement, as to the method of obtaining the approval of the community therefor and as to the management of the affairs and finances of the City of Powell River by the Mayor, Council and the management and administration thereof (the "North Harbour Debate").
9. The North Harbour Debate was at all material times a matter of public interest in the City of Powell River.
10. Among those who expressed views dissenting from those of the Mayor and the majority of the Council of the City of Powell River concerning the North Harbour Debate were Councillor Patricia Aldworth, Winslow Brown and Noel Hopkins (the "Powell River Three").

11. Councillor Patricia Aldworth was elected to council on or about February 23, 2008 in a by-election, is a resident of Powell River and serves as the head of a local community group known as the Townsite Ratepayers Association.

12. Winslow Brown is a resident of Powell River who has remained interested in community affairs.

13. Noel Hopkins is a resident of Powell River who has remained interested in community affairs.

14. The City of Powell River, on the purported authority of the Mayor and majority of the Council of the City of Powell River, instructed legal counsel for the City of Powell River to write three letters dated March 6, 2008, one to each of the Powell River Three (the "Defamation Suit Threat Letters").

15. The Defamation Suit Threat Letters were written by Michael C. Woodward, of the law firm Woodward Walker.

16. Writing the Defamation Suit Threat Letters and matters related thereto, including the attendant cost of legal advice with respect to structuring a defamation suit against the Powell River Three and others, was wrongful and unlawful and has put the City of Powell River to unnecessary and wasteful cost and expense.

17. The Defamation Suit Threat Letters were written with the express, or alternatively implied, purpose of silencing critics of the Mayor and the majority of Council in relation to the North Harbour Debate.

18. The Defamation Suit Threat Letters alleged that comments made by the Powell River Three in the course of public discussion and commentary concerning the North Harbour Debate:

- a. Were "false and defamatory" of the City of Powell River;
- b. Were actionable by the City of Powell River against them as defamation of the City of Powell River; and

c. Must cease and desist; and

d. Must be retracted and apologies provided to the City of Powell River.

19. Further, the Defamation Suit Threat Letters stated that even if the demands contained therein were complied with that would still leave the Powell River Three exposed to a claim for damages for defamation of the City of Powell River and the letters concluded by demanding that the Powell River Three "govern themselves accordingly".

20. Further, on or about March 6, 2008, the City of Powell River, through its solicitors, wrote to another resident of Powell River, David Harris, who had expressed support for the views of the Powell River Three and had complained that having two council members sit as directors of Powell River Sunshine Coast Land Development Inc. amounted to a conflict of interest, and the solicitors stated that his views lacked "any legal basis" and expressly, or in the alternative impliedly, demanded that he cease expressing them.

21. Following delivery of the Defamation Suit Threat Letters:

- a. Winslow Brown contacted the Mr. Woodward of the firm of Woodward Walker, solicitors for the City of Powell River, told him that he could not afford a lawsuit and asked what he should do;
- b. The solicitor told Brown to contact the PeakOnline news and discussion journal and publish an apology and retraction there;
- c. The PeakOnline publication declined, saying that what had been published was not defamatory;
- d. Winslow Brown contacted the solicitor for the City of Powell River again and asked what to do;
- e. The solicitor told him "you had better do something" or words to like effect;

- f. Thereafter, Winslow Brown attended before a council meeting on or about March 11, 2008, stated that he could not afford a lawsuit and therefore publicly retracted and apologized for the views he had expressed, and asked if that satisfied the demands of the City of Powell River and whether "it was over" or words to that effect;
- g. The Mayor declined to provide the assurance that the matter was "over", saying instead that the statement would be noted by the city clerk and communicated to the solicitors for the City of Powell River; and
- h. Following this public spectacle, the Mayor repeated that defamatory comments about the City of Powell River would not be tolerated from anyone, or words to that effect.

22. By a letter dated April 3, 2008, the Plaintiffs wrote to the Mayor and Council of the City of Powell River, set out their concerns that the Defamation Suit Threat Letters and the other steps set out herein in relation thereto were aimed at, or alternatively would have the effect of, silencing free expression contrary to the *Canadian Charter of Rights and Freedoms*, that the reference to defamation suits by or on behalf of a municipal corporation or any government body was repugnant and contrary to law, and that the effect of such threats would lead to a chilling effect on public debate and discussion of matters of public concern in and concerning the City of Powell River.

23. On or about April 8, 2008, at a Powell River Council Meeting:

- a. The Mayor delivered a statement, referred to the April 3, 2008 letter from the Plaintiffs, but repeated the position that the City of Powell River had been defamed;
- b. The Mayor repeated that the City of Powell River had a legal right to seek redress for defamation against the Powell River Three and anyone else who acted in a manner that the City of Powell River found objectionable; and

- c. The Mayor refused, expressly or alternatively impliedly, to withdraw:
 - i. The threats made in the Defamation Suit Threat Letters; and
 - ii. The other efforts described herein that had as their purpose or effect chilling freedom of expression concerning the City of Powell River and matters relating to it.

24. The Plaintiffs are concerned that the actions of the City of Powell River described herein have had and will continue to have a serious and damaging effect on the right of all persons in Canada under section 2(b) of the *Canadian Charter of Rights and Freedoms* to "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."

25. The Plaintiffs expressly refer to and rely upon section 24 of the *Canadian Charter of Rights and Freedoms*, section 36 of the *Law and Equity Act*, and the inherent jurisdiction of this Honourable Court.

WHEREFORE THE PLAINTIFFS CLAIM FOR:


- a. A declaration and order that government and public bodies, including municipal corporations such as the Defendant City of Powell, lack the legal status and right to bring action against any person for defamation;
- b. A declaration and order that the Defamation Suit Threat Letters were wrongful and unlawful;
- c. An order restraining the City of Powell Rivers, its Mayor, Council, servants and agents, from:
 - i. Making threats that the City of Powell River will bring action and sue any person for defamation; or

ii. Otherwise by words and deeds seeking to deny or infringe the rights of any person under section 2(b) of the *Canadian Charter of Rights and Freedoms*; and

d. Such further and other relief as to this Honourable Court may seem meet and just.

PLACE OF TRIAL: VANCOUVER, B.C.

DATED: APRIL 23, 2008



Solicitor for the Plaintiffs