



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

CORPORATION OF THE CITY OF ABBOTSFORD

PETITIONER

AND

MARY JANE'S GLASS & GIFTS LTD. and DONALD JOSEPH BRIERE

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

Mary Jane's Glass & Gifts Ltd.
1108 Richards Street
Vancouver, BC V6B 3E6

Donald Joseph Briere
810 Winthrop Street
New Westminster, BC V3L 4B2

Deputy Attorney General
Ministry of Justice
PO Box 9280 Stn Prov Govt
Victoria BC V8W 9J7

This proceeding is brought for the relief set out in Part 1 below by

the person(s) named as petitioner(s) in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner(s)

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

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| (1) | The address of the registry is: 800 Smithe Street, Vancouver, B.C. V6Z 2E1 |
| (2) | The ADDRESS FOR SERVICE of the petitioner is: c/o Lidstone & Company Barristers and Solicitors Suite 1300 – 128 Pender Street West Vancouver, B.C. V6B 1R8 |
| (3) | The name and office address of the petitioner's lawyer is: Sara Dubinsky c/o Lidstone & Company Barristers and Solicitors Suite 1300 – 128 Pender Street West Vancouver, B.C. V6B 1R8 |

Claim of the Petitioner

Part 1: ORDERS SOUGHT

1. A Declaration that the Respondents are in breach of the City of Abbotsford's *Business Licence Bylaw, 2006*, as amended (the "Business Licence Bylaw").
2. A Declaration that the Respondents are in breach of the City of Abbotsford's *Abbotsford Zoning Bylaw No. 2400-2014*, as amended (the "Zoning Bylaw").
3. Orders pursuant to s. 274(1) of the *Community Charter*, S.B.C. 2003, c. 26 restraining the Respondent Mary Jane's Glass & Gifts Ltd. by itself or by its agents, servants, employees, directors (or otherwise) and the Respondent Donald Joseph Briere from:
 - a. carrying on business at 32042 South Fraser Way, in Abbotsford, British Columbia in contravention of the Business Licence Bylaw;
 - b. operating a business in the City of Abbotsford without a valid and subsisting business licence or exemption issued by the City of Abbotsford;
 - c. packaging, storing, distributing, dispensing, trading or selling of cannabis in contravention of the Zoning Bylaw; and
 - d. occupying or using the premises at 32042 South Fraser Way, in Abbotsford British Columbia, for the purpose of the retail sale of cannabis and cannabis products, within 3 days of the date of the Order.
4. An Order requiring the Respondent Donald Joseph Briere to notify the agents, servants, and employees of Mary Jane's Glass & Gifts Ltd. of all Orders issued by the Court in this proceeding within 24 hours of pronouncement.
5. An Order prohibiting the Respondent Donald Joseph Briere from operating an unlawful marijuana dispensary in the City of Abbotsford either personally or through any corporation or society of which he is a director, officer, shareholder or member.
6. An Order requiring the Respondent Donald Joseph Briere to pay special costs of this Petition.
7. In the alternative, an Order requiring the Respondent Mary Jane's Glass & Gifts Ltd. to pay special costs of this Petition.
8. In the further alternative, an Order requiring the Respondents to pay the costs of this Petition.
9. An Order requiring the Respondent Mary Jane's Glass & Gifts Ltd. to pay all penalties imposed by bylaw notice for the breaches of the Business Licence Bylaw and Zoning

Bylaw at 32042 South Fraser Way until the date the contraventions cease, within 30 days of the date of the Order.

10. Such further Declarations, Orders or Directions as this Court deems to be appropriate.

Part 2: FACTUAL BASIS

Parties

1. The Petitioner, the City of Abbotsford (the “City”), is a municipal corporation duly constituted pursuant to the laws of British Columbia, having its principal place of business at 32315 South Fraser Way, Abbotsford, British Columbia.
2. The Respondent Mary Jane’s Glass & Gifts Ltd., (“Mary Jane”) is a company duly incorporated under the laws of British Columbia with its registered and records offices located at 1108 Richards Street, Vancouver, British Columbia.
3. The Respondent Donald Joseph Briere is the sole director of Mary Jane.
4. Mary Jane is operating a marihuana dispensary at the premises located at 32042 South Fraser Way, Abbotsford, British Columbia (the “Premises”). The dispensary involves the retail sale of cannabis and cannabis products. The Premises are zoned C5 pursuant to the Zoning Bylaw.
5. Pursuant to s. 274(2)(c) of the *Community Charter*, a municipality must serve the Attorney General with a copy of this Petition and supporting affidavits.

Dispensary at the Premises

6. At all material times, the City had in force the Business Licence Bylaw and the Zoning Bylaw.
7. On August 20, 2015 Mr. Briere applied to the City for a business licence for the Premises using the City’s online application form. Mr. Briere described the business as “medical cannabis retailer” and listed an opening date of September 15, 2015. Mr. Briere applied for the licence under the trade name Mary Jane’s Glass and Gifts, and described himself as the business owner. Mr. Briere listed “Ravi” as the emergency contact on the application form.
8. On August 28, 2015, Mr. Briere submitted a second online business licence application for the Premises, describing the proposed business as “retail sale of glass products and gifts” with an opening date of September 15, 2015. Mr. Briere again applied for the licence under the trade name Mary Jane’s Glass and Gifts and described himself as the business owner on the application form. Mr. Briere listed “Ravi M.” as the emergency contact.

9. On September 1, 2015 the City's Senior Business Licence Inspector, Inder Litt, emailed Mr. Briere to follow up regarding the multiple applications the City had received for the Premises. Mr. Litt noted that it was an offence pursuant to the Business Licence Bylaw to provide incorrect or misleading information on a business licence application, and sought written confirmation that Mr. Briere was withdrawing the initial business licence application for a medical cannabis retailer and that cannabis would not be stored or sold at the Premises. Mr. Litt advised that if the City received such confirmation it would process the second business licence application.
10. Mr. Briere did not respond to the email or provide the requested confirmation. Accordingly the City did not issue a licence in response to the second business licence application, and it issued a cheque to refund the application fee.
11. The City likewise did not issue a business licence in respect of the first application, for a medical cannabis retailer, and refunded the application fee. By letter dated September 2, 2015, addressed to Mr. Briere, Mr. Litt denied the application, citing the following reasons:
 - a. The C5 zone is not a zone in which cannabis retailer is a permitted use;
 - b. The City does not issue business licences for uses of land that are not permitted under the applicable zoning;
 - c. The Business Licence Bylaw requires every business to comply with all applicable laws and allows the City to require proof of a certification, approval or qualification required by a federal government authority; and
 - d. The retail sale of cannabis is not lawful and the applicant does not have and cannot obtain the requisite approval from the Federal Government for the business.
12. The letter further advised that the operation of a business without a valid licence and the use of land, buildings, or structures contrary to the Zoning Bylaw are offences, and warned the applicant to govern itself accordingly.
13. Finally, the letter advised that Mary Jane was entitled to request a reconsideration of the refusal, by delivering a written request for reconsideration within ten days.
14. Mary Jane did not request a reconsideration of the refusal.
15. After the refusal letter was returned to the City as undeliverable, on September 14, 2015 Mr. Litt visited the Premises to hand deliver the refusal letter. At that time he observed the operation of a marihuana dispensary.
16. On September 16, 2015 City Bylaw Enforcement staff conducted an inspection of the Premises. The dispensary was in operation at that time. During the inspection staff advised Mr. Ravi Matharu, who identified himself as the manager, that the dispensary

was not a permitted use in the zone and did not hold a valid business licence. Mr. Matharu indicated he understood.

17. On September 17, 2015, the City wrote a demand letter to Mary Jane. The demand letter advised that the dispensary was operating contrary to the Zoning Bylaw and without a valid business licence contrary to the Business Licence Bylaw. The letter demanded that the dispensary cease operating within 21 days. This letter was served on Mary Jane via personal service on Mr. Briere on October 1, 2015.
18. On September 28, 2015, the City wrote a second demand letter, addressed to Mary Jane and to the owner of the Premises, and enclosing a copy of the September 17, 2015 letter. The September 28, 2015 letter drew attention to the offence provisions of the Zoning Bylaw and advised of the possible penalties and consequences associated with a breach of the Zoning Bylaw.
19. The September 28, 2015 letter and enclosure were served on Mary Jane via personal service on Mr. Briere on October 1, 2015.
20. City Bylaw Enforcement staff conducted a second inspection of the Premises on October 23, 2015. The dispensary was in operation at that time. The manager, Mr. Matharu, was in attendance again. He advised that he was aware of the demand letter but the dispensary was operating as normal and continuing to do so.
21. City Bylaw Enforcement staff conducted a third inspection of the Premises on December 8, 2015. The dispensary was in operation at that time.
22. The City has not received an application for an exemption and has not issued any business licences or exemptions for the dispensary being operated at the Premises.

Special Costs

23. In addition to being the sole director of Mary Jane, Mr. Briere is also the sole director and officer of Weeds Glass & Gifts Ltd., (“Weeds”) a company duly incorporated under the laws of British Columbia, with its registered and records offices located at 810 Winthrop Street, New Westminster, British Columbia. Prior to its dissolution Mr. Briere was also one of the directors of the Canadian Weed Cannabis Society (the “Society”).
24. The City has already successfully enforced its Business Licence Bylaw and obtained an injunction in respect of a marijuana dispensary located at 103-2451 Clearbrook Road in Abbotsford and operated by Weeds and, prior to its dissolution, the Society (the “Clearbrook Dispensary”): *Abbotsford (City) v. Weeds Glass & Gifts Ltd.*, 2016 BCSC 135. Mr. Briere filed the Response to Petition and appeared on behalf of both Weeds and the Society in that proceeding.
25. Mr. Briere applied to the City for a business licence for the Clearbrook Dispensary on May 15, 2015. On the application form he self-identified as the “business owner” of Weeds. The City served its first demand letter in respect of the Clearbrook Dispensary on Weeds via Mr. Briere on May 26, 2015.

26. Less than one month after the City began its enforcement efforts against Weeds, Mr. Briere incorporated the Respondent and operator in these proceedings, Mary Jane, on June 16, 2015.
27. The website for Weeds (weedsglassandgifts.com) advertises the dispensary operated by Mary Jane at the Premises and in issue in the instant proceeding. Mary Jane does not have its own independent website.
28. After the City began its bylaw enforcement efforts in respect of the Clearbrook Dispensary against Weeds, Mr. Briere also took the position that the Clearbrook Dispensary was being operated by the Society. The City then extended its bylaw enforcement efforts to the Society. The City served a second demand letter in respect of the Clearbrook Dispensary on the Society on August 28, 2015. The Society was registered as active at that time.
29. The City filed the Petition in *Abbotsford (City) v. Weeds Glass & Gifts Ltd.* on October 13, 2015. At that time the Society was in the process of being dissolved.
30. The City filed a Notice of Hearing setting the Petition down to be heard on November 25, 2015. The City served a copy on Mr. Briere on November 13, 2015, but advised Mr. Briere that if he was unable to attend court on that date the matter could be rescheduled to another date in the near future.
31. Mr. Briere requested a hearing date after January 1, 2016.
32. The City requested particulars as to why Mr. Briere was not available on any date until 2016.
33. Mr. Briere replied by stating he would be in Toronto on November 25, 2015, but did not provide any further particulars.
34. The City nevertheless agreed to adjourn the hearing date until 2016, and re-set the Petition to be heard on January 11, 2016. The Petition was heard by Mr. Justice Walker on that date.
35. The Society was dissolved on December 31, 2015.
36. Accordingly, Mr. Justice Walker declined to extend the injunction or costs award to the Society. However, after hearing submissions from Mr. Briere that he intended to continue selling marihuana and related products through a federally incorporated society, Mr. Justice Walker issued the injunction against the Society's directors, officer, liquidators and members, pursuant to s. 135 of the *Society Act*, to enjoin them from carrying on that business in Abbotsford.
37. After Mr. Justice Walker granted the injunction on January 11, 2016, requiring the Clearbrook Dispensary to cease operating commencing 3 days following the date of the Order, Mr. Briere was quoted in the media as intending to "keep the business open" and "continue operations".

38. City Bylaw Enforcement staff attended the Clearbrook Dispensary on January 15, 2016 to ensure it was complying with the injunction.
39. The Clearbrook Dispensary was open for business. City Bylaw Enforcement staff gave Mr. Matharu, the manager of the Clearbrook Dispensary (as well as the Premises) a copy of the injunction. Mr. Matharu stated that he was unaware of the injunction and did not receive notice of it from Mr. Briere. Mr. Matharu closed the dispensary.
40. After the City obtained the injunction in respect of the Clearbrook Dispensary it served a further and final demand letter on the Respondents in respect of the Premises that are the subject of this proceeding, which were still operating. In particular, by letter dated January 28, 2016 the City:
 - a. reiterated that the terms of the injunction prohibited Weeds, by itself or by its directors (including Mr. Briere), as well as the directors of the Canadian Weed Cannabis Society (including Mr. Briere) from operating a business in the City without a valid licence or exemption;
 - b. advised that City Council had directed staff and legal counsel to commence action against all marihuana dispensaries in the City;
 - c. warned that if the dispensary at the Premises did not cease operating in contravention of City bylaws and the ruling in *Abbotsford (City) v. Weeds Glass & Gifts Ltd.* that the City would commence issuing daily fines for the bylaw breaches; and
 - d. put the Respondents on notice that if it was necessary to return to court to achieve compliance with City bylaws, the City would bring the terms of Mr. Justice Walker's Order to the Court's attention and would seek special costs.
41. The January 28, 2016 letter was served on Mary Jane via personal service on Mr. Briere on January 29, 2016.
42. City Bylaw Enforcement staff conducted a fourth inspection of the Premises on February 3, 2016. The dispensary was in operation at that time. The manager, Mr. Matharu was present. He advised that the dispensary intended to continue operating. Staff advised Mr. Matharu yet again that the dispensary was not a permitted use and was operating without a valid business licence. Staff also warned that fines would be issued for each day the dispensary operated.
43. Since February 3, 2016 City staff have attended the Premises almost daily to conduct inspections and issue bylaw notices. Despite repeated warnings and receiving almost daily bylaw notices imposing penalties for the ongoing bylaw violations, Mary Jane continues to operate the dispensary in breach of the Business Licence Bylaw and Zoning Bylaw.

Part 3: LEGAL BASIS

1. The City intends to rely on the following enactments:
 - a. The City of Abbotsford's *Business Licence Bylaw, 2006*, as amended ;
 - b. The City of Abbotsford's *Abbotsford Zoning Bylaw No. 2400-2014*, as amended;
 - c. *Community Charter*, S.B.C. 2003, c. 26, s. 274 in particular;
 - d. The *Local Government Bylaw Notice Enforcement Act*; and
 - e. *Supreme Court Civil Rules*, Rule 14-1(1)(b)(i) in particular.
2. Section 5.1 of the Business Licence Bylaw prohibits a business from operating within the City without a valid licence, unless the business is expressly exempt from the requirement to obtain a licence. Mary Jane has neither a licence nor an exemption.
3. Section 5.9 of the Business Licence Bylaw provides that every business must comply with all applicable laws, rules, codes, regulations and orders of all federal or provincial authorities having jurisdiction over the business. Section 8.2 of the Business Licence Bylaw provides that the Licence Inspector may require an applicant for a licence to provide proof of a certification, approval or qualification required by a federal, provincial or local government authority having jurisdiction over the proposed business. As the retail sale of marihuana is not lawful, Mary Jane does not have, and cannot obtain, the requisite approval from the federal government for the dispensary. Issuance of a business licence is thereby precluded.
4. Section 12.1 of the Business Licence Bylaw sets out various offences:

PART 12 – OFFENCES AND PENALTY

12.1 A person that:

- (a) carries on a business without holding a valid licence for that business;
- (b) fails to display or carry a valid licence as required by this bylaw;
- (c) fails to provide any documentation or information as required by this bylaw;
- (d) provides false or misleading information to obtain a licence under this bylaw;
- (e) carries on or remains open for business after receiving notice that the licence for the business was suspended or cancelled; or

(f) violates any other term or condition of this bylaw or of a licence issued to the person under this bylaw;

commits an offence under this bylaw.

5. Section 12.2 of the Business Licence Bylaw provides that every person who violates a provision of the bylaw, or who consents, allows or permits any act or thing to be done in contravention or in violation of a provision of this bylaw, or that neglects to do or refrains from doing anything required to be done by a provision of this bylaw, is guilty of an offence and, if the offence is a continuing one, each day that the offence is continued shall constitute a separate offence.

6. Schedule A of the Bylaw defines “business” as follows:

Business means:

- (a) Carrying on a commercial or industrial activity or undertaking of any kind; and
- (b) Providing professional, personal or other services for the purpose of gain or profit

7. The Business Licence Bylaw is designated as enforceable by bylaw notice pursuant to the City’s Bylaw Notice Enforcement Bylaw, 2007.

8. Section 130.1.1 of the Zoning Bylaw provides that the Permitted Uses Table in each zone sets out the uses permitted in that zone. Only the uses listed in the zone and in s.140.1 of the Zoning Bylaw are permitted in the zone and all other uses are prohibited.

9. In addition, s. 140.3.1 of the Zoning Bylaw specifically prohibits cultivating, growing, producing, packaging, storing, distributing, dispensing, trading or selling of cannabis in any zone in the City unless specifically provided for in that zone.

10. The Permitted Uses Table for the C5 zone does not permit the retail sale of cannabis or cannabis products, or any related uses.

11. Section 130.8.1 of the Zoning Bylaw provides that no person shall use any land, building, structure or the surface of water, or suffer or permit any land, building, structure or the surface of water to be used in contravention of the Zoning Bylaw.

12. Section 130.9.1 of the Zoning Bylaw provides that each day that a violation is caused, or allowed to continue, constitutes a separate offence.

13. Section 130.9.2 provides that the Zoning Bylaw may be enforced by means of a bylaw notice pursuant to the Bylaw Notice Enforcement Bylaw.

14. Pursuant to s. 260(3) of the *Community Charter*, if a bylaw establishes a regulation or requirement to be observed in a municipality, a person who contravenes the regulation or

requirement commits an offence that is punishable in the same manner as if the bylaw had expressly forbidden persons from doing or refraining from doing the act.

15. The City may enforce its bylaws and the provisions of the *Community Charter* by way of a civil proceeding pursuant to section 274 of the *Community Charter*. Pursuant to s. 274(3) the City is expressly authorized to pursue such relief in addition to any other remedy or penalty provided under the *Community Charter*. Issuing bylaw notices for bylaw contraventions is provided for by s. 260(2)(b.1) of the *Community Charter*.
16. Special costs may be awarded where a party's conduct is reprehensible. In the context of bylaw enforcement proceedings this includes circumstances where a respondent deliberately flouts a bylaw for profit: *Denman Island Local Trust Committee v. Ellis*, 2005 BCSC 1238 and (20 October 2005), Vancouver L042564 (B.C.S.C.); and where defiance of a bylaw is particularly flagrant: *Regional District of Kootenay Boundary v. Demski*, 2000 BCSC 877.
17. The successful party is entitled to its costs pursuant to Rule 14-1(9) and a good reason is required to depart from the rule that costs follow the event: *Ngo v. South Pacific Development Ltd.*, 2007 BCCA 119.

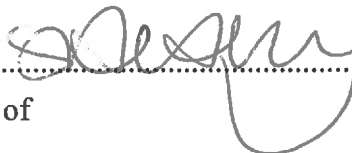
Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Shamus Wilcott, made 13/Oct/2015
2. Affidavit #2 of Shamus Wilcott, made 14/Oct/2015
3. Affidavit #1 of Edward Byers, made 2/Feb/2016
4. Affidavit #1 of Inder Litt, made 1/Mar/2016
5. Affidavit #1 of Magda Laljee, made 2/Mar/2016
6. Affidavit #1 of Navi Sidhu, made 9/Mar/2016
7. Affidavit #1 of Brayden Fehr, made 9/Mar/2016

The petitioner estimates that the hearing of the petition will take **1.5 hours**.

Date:

.....15/Mar/2016.....



Signature of

petitioner lawyer for petitioner
Sara Dubinsky

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

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.....
.....

Date:[dd/mmm/yyyy].....

.....
Signature of Judge Master