

Court File No:

FORM 80A

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

Julian Renaud
Dana Hartt
Alex Davenport

Plaintiffs

- and -

Brad Woodside
City of Fredericton
Murray Jamer

Defendants

CLAIM

FROM: PLAINTIFFS

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ALEX DAVENPORT

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TO: DEFENDANTS

BRAD WOODSIDE

Business Address:

Brad Woodside,
Mayor of Fredericton
Office of the Mayor
City Hall
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Fax: (506) 460-2134
Email: brad.woodside@fredericton.ca

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25 Carrington Lane
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CITY OF FREDERICTON

Legal Services Division
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MURRAY JAMER

Director of Engineering and Public Works
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PART A

A. does not apply

PART B

B. does not apply

PART C

C.(1) The plaintiffs claim from you:

a) damages in the amount of \$15,000.00 jointly and severally against Brad Woodside, Murray Jamer, and the City of Fredericton, for their willful and tortious breach of the plaintiffs' legal rights and constitutional freedoms; and such further or other order as the court may deem appropriate and just under section 24(1) of the *Canadian Charter of Rights and Freedoms*;

b) exemplary or punitive damages to be assessed by the court;

c) \$1,500.00, for the seizure, confiscation and destruction of the personal property listed in C.(2), along with other personal property;

d) and an additional \$100.00 for the destruction of other personal property, a claim that includes but is not restricted to the damage to a flag and Christmas lights;

e) the plaintiffs are also seeking a declaration of their rights, as explained below.

The reasons for these claims are supplied below.

C.(2) In the alternative, the plaintiffs claim from you the return of the following personal property for the reasons set out below:

Property

1 clear non-rigid water jug;
 1 blue faux-marble counter top;
 1 steel kerosene heater grille;
 1 manila envelope full of lapel pins;
 1 fire extinguisher;
 1 orange arctic sleeping bag;
 1 12-volt boat/RV battery;
 2 round LED touch lamps;
 2 pieces of oblong Tupperware;
 11 red gift boxes;
 1 red broom;
 1 smoke detector;
 2 carbon monoxide detectors;
 1 rigid and curved green PVC lawn chair;
 1 black folding chair;
 3 travel mugs;
 roughly 200 community development promotional pamphlets;
 several tarps;
 several books;
 emergency blankets;
 a large canvas banner reading "Occupy Fredericton: We are the 99% and so are you";

and other personal property.

Reasons: These and other pieces of personal property were seized by Brad Woodside and the crew acting under his direction, and were never returned to the plaintiffs, in spite of the plaintiff's requests. **Further reasons for this claim are supplied below.**

The estimated value of the property is: approximately \$1,500.00.

C.(3) The plaintiffs are claiming less than \$30,000.00 and hereby abandon any damages above that amount.

PART D

D. The plaintiffs claim from you costs of this claim.

PART E

E. The plaintiffs intend to proceed in the English language.

REASONS FOR THE PLAINTIFF'S CLAIM:

1. The plaintiffs were all participants in a global protest movement against corporatism and its ill effects on people and environment. This protest movement has been termed 'Occupy' and formed a Fredericton chapter in 2011 called 'Occupy Fredericton'. On October 15th, 2011, Occupy Fredericton held a political protest in Phoenix Square, outside Fredericton City Hall, in downtown Fredericton. This protest continued for approximately two and one-half months.

2. The City of Fredericton is a municipality in the Province of New Brunswick. The defendant Brad Woodside is the Mayor of the City of Fredericton. Murray Jamer is the Director of Engineering and Public Works for the City of Fredericton.

3. During the course of the protest, the participants and other protesters set up a shelter in Phoenix Square. The shelter was a symbolic and highly visible form of protest, which drew attention to the protest in the Square. The shelter provided a meeting place and community centre for the protesters, and functioned as a metaphor for the movement's message to the public. It was time for ordinary people – the 99% – to take back government. As part of their protest, the occupiers believed that the public needed to reassert their ownership of those public spaces that are symbolically or physically attached to government. The shelter also drew attention to the plight of homeless people and reminded passers-by that many social issues have not been properly addressed by government.

4. The shelter also allowed the Occupy Fredericton participants to store provisions and provided protection from the rain, wind, and cold. The shelter was built and rebuilt several times to deal with the changing weather. The final shelter was constructed primarily of wood and tarps. This shelter was inspected and approved by the Fire Marshall of the City of Fredericton, who approved the use of a kerosene heater within the shelter, along with two carbon monoxide detectors, one smoke detector, and two fire extinguishers.

5. On November 21st of 2011, the plaintiff Dana Hartt received a letter from Woodside stating that he would like the Occupy Fredericton shelter dismantled voluntarily by November 25th of 2011 to make room for the annual Christmas Tree Lighting Ceremony. On November 21st of 2011, Woodside attended an emergency General Assembly meeting of Occupy Fredericton. In this meeting, Woodside was recorded making several statements in which he indicated that he would not have the Occupy Fredericton shelter and protesters forcibly removed from Phoenix Square.

6. During November, the plaintiff Alex Davenport took up residence at the shelter at Phoenix Square. He eventually had the address on his driver's license changed to 371 Queen Street (the street address of the building beside Phoenix Square) because, being the primary caretaker of the Occupy Fredericton shelter at that time, he had been living at the shelter for over a month. Under section 96 of the *Motor Vehicle Act*, RSNB 1973, c. M-17, he was accordingly required to change the address on his license. Davenport was in peaceable possession of the shelter in December 2011 and remained in peaceable possession when the shelter was taken down by the City on January 3rd, 2012.

7. On November 24th of 2011, members of Occupy Fredericton entered into negotiations with Woodside with regard to his request to remove the Shelter from Phoenix Square. As a result of these negotiations, Occupy Fredericton reduced the size of the shelter by approximately one-half and removed most of the signage it had been using for the duration of the Tree Lighting Ceremony. The members of Occupy Fredericton were calm and respectful during the ceremony, as they had promised. During these negotiations, Woodside stated that: "I'm not going to force you out ... You're there, and I'm going to let you stay there".

8. Woodside indicated on many occasions that the City of Fredericton recognized the political nature of the Occupy protest and would not remove the protesters from Phoenix Square by force. Woodside and the City also recognized that Alex Davenport and the protesters had peaceable possession of the shelter. The City agreed to let the protesters remain in the Square and the shelter. The plaintiffs claim that this gave rise to an estoppel by conduct, or constitutional estoppel, which along with their legal and constitutional rights, prevented the defendants from removing them at will. Under the rule of law, the defendants had no authority to remove the plaintiffs or seize their property without an appropriate legal process in accordance with the city's by-laws, the *Municipalities Act*, RSNB 1973, c. M-22 and the principles of fundamental justice.

9. On the evening of December 31st of 2011, Woodside personally delivered a number of envelopes to André Faust outside the door to the shelter. The envelopes were addressed to specific members of Occupy Fredericton in Phoenix Square, and to Occupy Fredericton collectively. These envelopes contained a "notice" from Murray Jamer, the Director of Engineering and Public Works for the City of Fredericton, which is attached as a supporting document. The notice was addressed to: Alex Davenport, Arthur Taylor, Bryan Foglia, Julian Renaud, Dana Hartt, André Faust, and "all other Members of Occupy Fredericton".

10. The notice from Murray Jamer begins with the statement: "Pursuant to Section 5 of By-law No. T-4, A By-law Respecting Streets and Sidewalks, you are hereby given three (3) days notice to remove any and all structures that are located in Phoenix Square". It went on to state:

"If you fail to remove any and all structures from Phoenix Square after three (3) days you will be in violation of By-Law No. T-4. Please be advised that

every person who violates any provision of this by-law is guilty of an offence and is liable on summary conviction to a fine of not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00)."

The notice also referred to section 12 of the by-law, which prohibits “enhanced attraction signage” on a street.

11. The plaintiffs claim, and the fact is, that the notice does not specify what offence the plaintiffs and Occupy Fredericton would have violated if they failed to remove the shelter from Phoenix Square. Section 5 of By-law T-4 does not disclose an offence. The plaintiffs further claim that they were not in violation of By-law T-4, and that the defendants were aware of this fact. None of the plaintiffs or protesters were ever charged under the by-law. When Woodside delivered the notice, the plaintiffs and the members of Occupy Fredericton told him that they were willing to deal with any issues concerning the shelter and the continuing protest in court. The plaintiffs also stated that they would obey an order from the court removing them from the Square.

12. The envelope addressed to Occupy Fredericton contained an additional notice, which was addressed to: “Occupy Fredericton and Members of Occupy Fredericton located at Phoenix Square”. This notice stated that Occupy Fredericton was prohibited from “installing, erecting or maintaining a building or other structure”, and from “placing or causing to be placed an enhanced attraction or signage” in Phoenix Square. The second notice is also attached as a supporting document and is signed by “Brad Woodside –Mayor–”.

13. When he delivered the envelopes, Woodside described the protest in Phoenix Square as "you guys against me". He then suggested that his personal reputation would suffer if the protest continued, since "the headline in the paper, and everybody else, saying 'Woodside Backs Down, Occupiers Stay'". Woodside stated: "I disagree with Occupy, and I'm doing everything I can to make sure that this doesn't happen again". When the members of Occupy Fredericton indicated, during the course of the conversation, that they would be happy to deal with the matter in court and would obey a court ruling, Woodside responded: "I'm led to believe that this stuff could go on and on and on and on, and that's not acceptable to me." The defendants and the City of Fredericton refused to seek a court order.

14. The notice from the Director of Engineering and Public Works was issued under the authority of section 5 of By-law T-4, which states that the Director of Engineering and Public Works “shall” give anyone who contravenes the section “three days notice in writing to remove the same”. The defendants did not, however, wait the prescribed three days—which should be reckoned as four days under section 22 of the *Interpretation Act*, RSNB 1973, c. I-13—to move against the defendants. On January 3rd, 2012, at approximately 5:00 a.m., Woodside attended at Phoenix Square with a city crew, made up of members of CUPE Local 508. Woodside was escorted by police and directed the city crew to take down the Occupy shelter. The crew then cut down the shelter with Alex Davenport and two guests from other Occupy camps, Kevin Holloway and Matt Burton, inside it. The crew used a chainsaw to cut the wooden frame and box cutters to cut the tarps. Davenport was hit by the walls as they came down, and a section of the roof collapsed on Holloway's head. Holloway was hurt.

15. The wooden frame and tarps that were used to construct the shelter were destroyed. A large canvas banner with the words “Occupy Fredericton: We are the 99% and so are you” was taken down; a string of Christmas lights was cut; a flag was cut with box cutters. The shelter and the plaintiff’s personal property was seized by the city crew and taken to an undetermined location.

Some of this property was subsequently retrieved by the plaintiffs from a City of Fredericton depot on Regent Street. The items listed in C(2) were never recovered.

16. On January 9th of 2012, the plaintiffs emailed several departments of the City of Fredericton (including the Legal department, the Public Works department, and the Office of the Mayor), informing them that the City had not returned their property. The email included a list of items that were missing. The plaintiffs received an email response from the City of Fredericton's legal department indicating that it was investigating the issue, and that it would advise the plaintiffs when their property was recovered. No such follow-up email was received.

17. The City has not responded to communications from the plaintiffs. On February 14th of 2012, Julian Renaud accordingly delivered a letter to Michelle Brzak, the City Solicitor, at the office of the City Solicitor, on behalf of the plaintiffs and Occupy Fredericton, asking for the City's legal position on the matter and requesting the return of the items that had been seized by the city crew. The letter is attached as a supporting document and explains the legal basis of the current claim. The City Solicitor has refused to respond, leaving the plaintiffs no alternative but to pursue their case in court.

18. The letter from Julian Renaud challenged the legality of the actions of Murray Jamer, Brad Woodside, and the City of Fredericton. As the letter states, the plaintiffs take the position that Murray Jamer and Brad Woodside exceeded any authority that they possessed, as officials, representatives, or employees of the City of Fredericton, and are accordingly personally liable for their actions. It is further alleged that they willfully violated the plaintiffs' legal and constitutional rights. Renaud contacted Woodside on April 16th, by telephone, and asked to discuss the matter with him in person. He subsequently sent an email to Woodside, with a list of the items that have gone missing. There has been no response to these efforts to settle the matter.

19. The plaintiffs claim, without limiting their rights under any other head of damages, that the actions of Brad Woodside, Murray Jamer, and the City of Fredericton constitute a constitutional tort. The plaintiffs are accordingly seeking damages in the amount of \$15,000.00 jointly and severally from Brad Woodside, Murray Jamer, and the City of Fredericton for their willful breach of the plaintiffs' legal and constitutional rights, exemplary or punitive damages to be assessed by the court, and such further or other order as the court deems appropriate and just in the circumstances under section 24(1) of the *Canadian Charter of Rights and Freedoms*.

20. The plaintiffs are seeking the return of the property which was improperly and illegally confiscated by the city. In the alternative, the plaintiffs are claiming compensation in the amount of \$1,600.00 for the loss and destruction of their property.

21. The plaintiffs are claiming less than \$30,000.00 and hereby abandon any damages above that amount.

22. The plaintiffs are further seeking a declaration that Brad Woodside, the City of Fredericton, and Murray Jamer did not have the legal authority to remove and destroy the Occupy Fredericton shelter, or to seize and destroy the property of the plaintiffs, and that Brad Woodside, Murray Jamer, and the City of Fredericton breached the constitutional rights of the plaintiffs under sections 2(b), 2(c), and 2(d) of the *Canadian Charter of Rights and Freedoms*.

DATED at Fredericton, this ____ day of April, 2012

Signature of the Plaintiff, Julian Renaud

Signature of the Plaintiff, Dana Hartt

Signature of the Plaintiff, Alex Davenport
