

File #: \_\_\_\_\_

Nelson Registry

*In the Supreme Court of British Columbia*

Between:

West Kootenay Community Ecosociety

PETITIONER

And:

Her Majesty the Queen in right of the Province of British Columbia, Minister of  
Community, Sport and Cultural Development & Jumbo Glacier Mountain Resort  
Municipality

RESPONDENTS

**PETITION TO THE COURT**

ON NOTICE TO:

Attorney General of British Columbia  
P.O. Box 9044 STN PROV GOVT  
Victoria, BC V8W 9E2

Minister of Community, Sport and Cultural Development  
P.O. Box 9056 STN PROV GOVT  
Victoria, BC V8W 9E2

Jumbo Glacier Mountain Resort Municipality  
4836A Radium Blvd.  
Radium, BC V0A 1M0

Jumbo Glacier Resorts Ltd.  
P.O. Box 546  
Invermere, BC V0A 1K0

Union of British Columbia Municipalities  
Local Government House  
525 Government Street  
Victoria, BC V8V 0A8

**This proceeding has been started by the petitioner for the relief set out in Part 1 below.**

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

(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,

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

(1)	The address of the registry is: 320 Ward Street, Nelson, British Columbia
(2)	The ADDRESS FOR SERVICE of the petitioner is:  Judah Harrison Law Office 406-909 Radio Ave. Nelson, BC V1L 3L2  Fax number address for service of the petitioner: 877-747-9180
(3)	The name and office address of the petitioner's lawyer is:  c/o Judah Harrison Judah Harrison Law Office 406-909 Radio Ave. Nelson, BC V1L 3L2

## CLAIM OF THE PETITIONER

### PART 1 – ORDERS SOUGHT

1. An Order that the Letters Patent issued November 19, 2012, respecting the incorporation of the Jumbo Glacier Mountain Resort Municipality be quashed;
2. An Order that subsections 11(2.1), 11(3.01) and 11(3.02) of the *Local Government Act*, R.S.B.C. 1996, c. 323, be struck down;
3. A declaration that the province lacks the constitutional or legal authority to incorporate the Jumbo Glacier Resort as a Municipal Institution absent residents;
4. A declaration that the province must adequately consult with the Union of British Columbia Municipalities prior to amending the *Local Government Act*;
5. A declaration that in the case of subsections 11(2.1), 11(3.01) and 11(3.02) of the *Local Government Act*, R.S.B.C. 1996, c. 32, the Union of British Columbia Municipalities was not adequately consulted pursuant to subsection 276(1)(b) of the *Community Charter*, S.B.C. 2003, c. 26;
6. In the alternative, a declaration that the province lacks the constitutional or legal authority to incorporate the Jumbo Glacier Resort as a Municipality absent residents;
7. In the further alternative, a declaration that subparagraph 16(3) of the Letters Patent issued November 19, 2012, respecting the Jumbo Glacier Mountain Resort Municipality is unlawful, as it unreasonably fetters the discretion of council.
8. An injunction enjoining the Respondent Jumbo Glacier Mountain Resort Municipality, including its appointed council, from making any decisions with respect to land-use, zoning, and/or the adoption of a Master Plan, or making any decisions that would otherwise further the construction or carrying on of the Jumbo Glacier Resort proposal, until these proceedings are resolved;
9. An Order for costs; and
10. Such further and other relief as counsel may advise and this Honourable Court deems just.

### PART 2 – FACTUAL BASIS

11. On May 1<sup>st</sup>, 2012, Bill 41 – 2012 entitled the *Miscellaneous Statutes Amendment Act (No. 2)*, 2012 (hereinafter “Bill 41”) received First Reading at the Legislative Assembly of British Columbia. Bill 41 proposed amendments to various legislations, including the *Local Government Act*, which, *inter alia*, would permit the incorporation of a Mountain Resort Municipality whether or not there are residents in the area.  
Bill 41, *Miscellaneous Statutes Amendment Act (No. 2)*, 2012, 4<sup>th</sup> Session, 39<sup>th</sup> Parl., British Columbia, 2012, s. 14
12. At committee, opposition Members of the Legislative Assembly expressed various concerns respecting Bill 41 generally, and with respect to Section 14 of Bill 41 in particular. Among the questions put forth was whether or not the amendments to the *Local Government Act* were specifically for the purpose of creating the Jumbo Glacier Mountain Resort Municipality.  
British Columbia, Legislative Assembly, *Hansard*, Vol. 37, No. 5 (May 9, 2012), 1610 - 1815

13. On May 31<sup>st</sup>, 2012, Bill 41 received Royal Assent and the *Local Government Act*, R.S.B.C. 1996, c. 323 was thereby amended instituting subsections 11(2.1), 11(3.01) and 11(3.02) of the current legislation.
14. Prior to passage of Bill 41, on February 14, 2012, the District of Invermere passed Resolution 12-0212 opposing the creation of an undemocratic Mountain Resort Municipality in the Jumbo Valley and in any other region of the province.
15. In April 2012, the Association of Kootenay Boundary Local Governments (hereinafter “AKBLG”) passed Resolution #11 opposing the concept of an undemocratic municipality and urging provincial consultation with the Union of British Columbia Municipalities (hereinafter “UBCM”).
16. On May 24, 2012, the Regional District of Central Kootenay passed a Motion which opposed the creation of an electoral area with appointed council as contrary to the principles of democratic government.
17. In September 2012, the UBCM passed Resolution B55 which, *inter alia*, stated that the UBCM does not support the concept of an unelected body making land use decisions for an area with no population; and that the UBCM requests a governance model for Mountain Resort Municipalities that requires at least 200 people.
18. Despite these various Resolutions, and despite subsection 276(1)(b) of the *Community Charter*, the provincial government did not consult with the Union of BC Municipalities with respect to the proposed amendments to the *Local Government Act* as instituted by Bill 41.
19. On November 19, 2012, the Lieutenant Governor in Council of the Province of British Columbia issued Letters Patent incorporating the Jumbo Glacier Mountain Resort Municipality notwithstanding that there are no residents within the boundaries of the newly created municipality. The issuance of these Letters Patent was the first time that a Mountain Resort Municipality was created absent residents pursuant to the amendments to the *Local Government Act*, R.S.B.C. 1996, c. 323 as implemented through Bill 41.

#### **Background on Petitioner:**

20. The Petitioner West Kootenay Community Ecosociety (hereinafter “Ecosociety”) is a not-for-profit society incorporated pursuant to the *Society Act*, R.S.B.C. c. 433.
21. Ecosociety brings this petition in the public interest. Ecosociety believes that the incorporation of a Mountain Resort Municipality absent residents is a serious and precedent-setting decision that should be reviewed by the Courts. Ecosociety has a long-standing and genuine interest in the Jumbo Glacier Resort proposal generally, and in the incorporation of the Jumbo Glacier Mountain Resort Municipality in particular. Judicial Review is a reasonable and effective means by which to have these issues determined.

#### **PART 3 – LEGAL BASIS**

22. Every province has the exclusive authority to make laws in relation to Municipal Institutions pursuant to subsection 92(8) of the *Constitution Act, 1867*.
23. It is admitted that provinces have wide discretion in their creation and regulation of Municipal Institutions. Notwithstanding a province’s wide discretion in creating Municipal Institutions, such discretion must be grounded in both the Constitution and law, and must adhere to constitutional convention. A review of legal authorities evinces two clear legal prerequisites for a province to properly exercise its constitutional authority and create a Municipal Institution; there must be both: (i) a defined geographical area; and (ii) a local population.

24. The Letters Patent creating the Jumbo Glacier Mountain Resort Municipality were issued with respect to a defined geographic area where there are currently no inhabitants. It is respectfully submitted that absent local inhabitants, the province did not have the legal authority to declare this geographic area a Municipal Institution or a Municipality.
25. There is ample authority regarding Municipal Institutions requiring inhabitants. Virtually every definition of a municipality or Municipal Institution, both historic and recent, embeds the requirement of a local population. From the very first Municipal Act of England and historical legal scholars, to modern day Canadian municipal legislation and case law, the requirement that a municipality have a local population is crystal clear.
26. As recognized in common law, Municipal Institutions are both democratic institutions, and must act in the public interest. To satisfy either of these common law principles it is necessary to have a local population.
27. A Municipal Institution absent inhabitants offends various provisions of both the *Local Government Act* and the *Community Charter*, including the purpose provisions of both Acts.
28. In the issuance of Letters Patent on November 19, 2012, incorporating the Jumbo Glacier Mountain Resort Municipality, the provincial government did not adequately consult with the Union of British Columbia Municipalities as required pursuant to subsection 276(1)(b) of the *Community Charter*.
29. In addition, prior to issuing these Letters Patent the provincial government did not adequately consult with affected members of the public.
30. Paragraph 16 of the Letters Patent issued November 19, 2012, requires council to adopt an official community plan that does not 'supersede or impair' the Jumbo Glacier Master Development Agreement, and thereby unlawfully fetters the discretion of council.

The Petitioner will rely on the following laws in support:

31. *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, s. 92(8);
32. The *Local Government Act*, R.S.B.C. 1996, c. 323, particularly sections 1, 2, 7, 8 and 11;
33. The *Community Charter*, S.B.C. 2003, c. 26, particularly sections 1, 6, 7 and 276;
34. The *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241;
35. British Columbia, *Supreme Court Civil Rules*.

#### **PART 4 – MATERIAL TO BE RELIED UPON**

36. The Affidavit of Gerald Taft, affirmed February 17, 2013;
37. The Affidavit of Gerald Wilkie, affirmed February 17, 2013;
38. The Affidavit of David Reid, affirmed February 18, 2013; and
39. Such other materials as counsel may advise, and this Court may permit.

The petitioner estimates that the hearing of the petition will take approximately 1.5 days.

Date: \_\_\_\_\_

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Signature of Lawyer for petitioner  
Judah Harrison