

FORM 56A (RULE 41(13), (16) AND (16.3))

NO. S81758  
KELOWNA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

REGIONAL DISTRICT OF CENTRAL OKANAGAN

PLAINTIFF

AND:

KELOWNA DIRT BIKE CLUB

DEFENDANT

ORDER

BEFORE	)	A JUDGE OF THE COURT	)	Tuesday, THE 5 DAY OF April 2011
	)	or	)	
	)	<del>A MASTER OF THE COURT</del>	)	
	)	or	)	
	)	<del>A REGISTRAR</del>	)	

ON THE APPLICATION of the Plaintiff, without a hearing and by consent

THIS COURT ORDERS that:

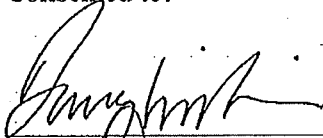
1. This order applies to the operation of the Defendant Kelowna Dirt Bike Club's (the "Club") dirt bike track ("Track") situated on those parts of District Lots 3748 and 4089, Osoyoos Division Yale District as identified as the "Land" on the Licence of Occupation dated August 2, 2001 issued by Her Majesty The Queen in Right of the Province of British Columbia, represented by the Minister responsible for the *Land Act* under Disposition No. 805759.

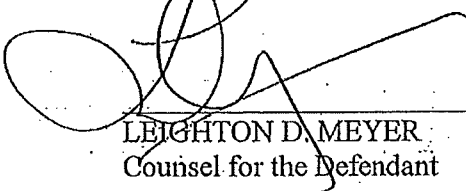
2. The Club must test, or cause to be tested, each motorcycle used by a member of the Club at least once, before the motorcycle is first used or operated on the Track, in any calendar year to determine the noise level of the motorcycle.
3. The Club agrees to provide a decal or other form of emblem to be displayed on each motorcycle that passes the noise level test as provided for in this order.
4. The test must be carried out using a sound level meter capable of measuring the sound level in decibels on the "A" Scale, also described as dB/A.
5. The test procedure must be conducted in accordance with the Society of Automotive Engineers (SAE) test standard J1287 or such other procedure as may be prescribed by the Canadian Motorsport Racing Corporation (CMRC).
6. The Club must test, or cause to be tested, every motorcycle used or operated on the Track by an operator who is not a current member in good standing of the Club before such motorcycle is used or operated.
7. In addition to the testing conducted under paragraph 2 of this order, the Club must test the noise level of each motorcycle used by a member of the Club where, to the knowledge of the Club, the exhaust system of the motorcycle has been replaced or modified; such testing to be conducted before the motorcycle is operated on the Track.
8. The Club agrees that by June 1, 2011 it will amend its rules to provide that every Club member be required to inform the Club promptly of any replacement or modification of a motorcycle's exhaust system.
9. The Club must not allow a motorcycle to be operated on the Track where the sound level, as measured by the test required by paragraphs 2, 6 and 7 of this order, exceeds 96 dB/A.
10. In every case where the sound level measurement exceeds 96 dB/A for a motorcycle, the Club must advise the owner, or operator if not the owner, that the motorcycle must be modified, repaired or serviced so as to reduce the noise level to 96 dB/A before the motorcycle may be operated on the Track.

11. The Club must re-test the sound level of any motorcycle that tested above 96 dB/A and ensure the sound level is no higher than 96 dB/A before permitting the motorcycle to be operated on the Track.
12. The Club must maintain a record of all sound tests conducted under the requirements of this order and produce the record for inspection by the Plaintiff within 10 days of a request for inspection during those months that the Track is in operation.
13. The Club acknowledges the Plaintiff's right to enter the Track and to be present during any noise level tests conducted under the requirements of this order. For certainty, the right of inspection under this paragraph should not be construed as a limitation on any rights of inspection under section 268 of the *Local Government Act* R.S.B.C. 1996, c. 323 or other enactment affording the Plaintiff, its officers, employees and agents a right of inspection.
14. Notwithstanding the sound level limit being established as 96 dB/A in paragraphs 9, 10 and 11 of this order, in the event that the CMRC prescribes a sound limit less than 96 dB/A in its Amateur Rule Book, that lower limit shall replace the 96 dB/A limit in paragraphs 9, 10 and 11, effective no later than two years of the date of the CMRC adopting the lower sound limit.
15. This Order shall be binding on the Club until (except as provided hereafter in this paragraph) the Plaintiff declines to approve, on the application of the Club, in each calendar year, either (i) four special event permits under section 8 of the Regional District of Central Okanagan Noise Control Bylaw No. 403, 1989 (the "Bylaw") or (ii) such lesser number of special event permits under the Bylaw, should the Club seek a total of less than four in a calendar year. The special event permits shall be for the purpose of conducting race events at the Track. The denial of any single special event permit application by the Plaintiff shall not invalidate this Order but the Order shall no longer be binding on the Club upon the Plaintiff declining to approve two special event permit applications in succession. The Club acknowledges that the approval of a special event permit by the Plaintiff's Board is within the absolute and unfettered discretion of the Board and the provisions of this agreement will not in anyway obligate the Board to approve such a permit.

16. In the event that the Plaintiff's Board shall in its discretion decide not to approve the Club's request for special events permits, and this Order no longer binds the Club as a consequence, the Club acknowledges that the Plaintiff is free to pursue enforcement of the Bylaw against the Club, either in this proceeding or in a new proceeding. The Club further agrees that neither its decision to enter into the Order or the Board's decision not to approve special events permits will be raised as a defence or bar to any proceeding by the Plaintiff to enforce the Bylaw.

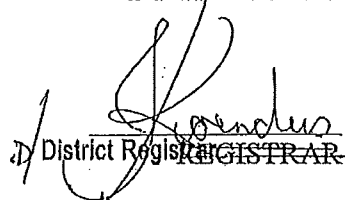
Consented to:

  
BARRY WILLIAMSON  
Counsel for the Plaintiff

  
LEIGHTON D. MEYER  
Counsel for the Defendant



BY THE COURT

  
District Registrar



NO. S81758  
KELOWNA REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**REGIONAL DISTRICT OF CENTRAL OKANAGAN**

PLAINTIFF

AND:

**KELOWNA DIRT BIKE CLUB**

DEFENDANT

---

**ORDER**

---

Barry Williamson  
YOUNG ANDERSON  
Barristers and Solicitors  
201 – 1441 Ellis Street  
Kelowna, BC V1Y 2A3

Telephone: (250) 712-1130  
Facsimile: (250) 712-1180

---

Our File No. 139-131

