

Form / Formule 1
APPLICATION
DEMANDE

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO

East / Est

Region / Région

(Rule 2.1, Criminal Rules of the Ontario Court of Justice)
(Règle 2.1, Règles de procédure en matière criminelle de la Cour de justice de l'Ontario)

0411998221140079

Court File No. (if known)
N° du dossier de la cour (s'il est connu)

BETWEEN: / ENTRE

HER MAJESTY THE QUEEN / SA MAJESTÉ LA REINE

- and / et -

Guy Meister

(defendant(s) / défendeur(s))

1. APPLICATION HEARING DATE AND LOCATION
DATE ET LIEU DE L'AUDIENCE SUR LA DEMANDE

Application hearing date: _____
Date de l'audience sur la demande

Time _____
Heure

Courtroom number: _____
Numéro de la salle d'audience

Court address: **161 Elgin Street, Ottawa, Ontario K2P 2K1**
Adresse de la Cour

2. LIST CHARGES
LISTE DES ACCUSATIONS

Charge Information / Renseignements sur les accusations			
Description of Charge Description de l'accusation	Sect. No. Article n°	Next Court Date Prochaine date d'audience	Type of Appearance (e.g. trial date, set date, pre-trial meeting, etc.) Type de comparution (p. ex., date de procès, établissement d'une date, conférence préparatoire au procès, etc.)
Wilfully commit mischief	430(1)(c)	Sept. 22, 2022	Set date/to be spoken to
Resist or wilfully obstruct police	129(a)	Sept. 22, 2022	Set date/to be spoken to

3. NAME OF APPLICANT
NOM DE L'AUTEUR DE LA DEMANDE

Guy Meister

4. CHECK ONE OF THE TWO BOXES BELOW:
COCHEZ LA CASE QUI CONVIENT CI-DESSOUS

I am appearing in person. My address, fax or email for service is as follows:
Je comparais en personne. Mon adresse, mon numéro de télécopieur ou mon adresse électronique aux fins de signification sont les suivants :

I have a legal representative who will be appearing. The address, fax or email for service of my legal representative is as follows:
J'ai un représentant juridique qui sera présent. L'adresse, le numéro de télécopieur ou l'adresse électronique de mon représentant juridique aux fins de signification sont les suivants :

**Address for service: Brian Doody (Counsel), 400 Daly Ave., Suite 6, Ottawa K1N 6H2;
Telephone: 519-872-1905; Fax: 226-785-0957; Email: doodycounsel@gmail.com**

5. **CONCISE STATEMENT OF THE SUBJECT OF APPLICATION**
BRÈVE DÉCLARATION DE L'OBJET DE LA DEMANDE

(Briefly state why you are bringing the Application. For example, "This is an application for an order adjourning the trial"; "This is an application for an order requiring the Crown to disclose specified documents"; or "This is an application for an order staying the charge for delay.")

(Expliquez brièvement pourquoi vous déposez la demande. Par exemple : « Il s'agit d'une demande d'ordonnance d'ajournement du procès. », « Il s'agit d'une demande d'ordonnance exigeant de la Couronne qu'elle divulgue les documents précisés. », ou « Il s'agit d'une demande d'ordonnance d'annulation de l'accusation pour cause de retard. »)

Please see Schedule 1, attached to this Form, at paragraphs 1 to 12

6. **GROUND TO BE ARGUED IN SUPPORT OF THE APPLICATION**
MOTIFS QUI SERONT INVOQUÉS À L'APPUI DE LA DEMANDE

(Briefly list the grounds you rely on in support of this Application. For example, "I require an adjournment because I am scheduled to have a medical operation the day the trial is scheduled to start"; "The disclosure provided by the Crown does not include the police notes taken at the scene"; or "There has been unreasonable delay since the laying of the charge that has caused me prejudice.")

(Énumérez brièvement les motifs que vous invoquez à l'appui de la demande. Par exemple : « J'ai besoin d'un ajournement parce que je dois subir une intervention médicale le jour prévu pour le début du procès. », « Les documents divulgués par la Couronne ne contiennent pas les notes de la police prises sur les lieux. » ou « Un retard excessif a suivi le dépôt des accusations qui m'a causé un préjudice. »)

Please see Schedule 1, attached to this Form, at paragraphs 14 to 72

7. **DETAILED STATEMENT OF THE SPECIFIC FACTUAL BASIS FOR THE APPLICATION**
DÉCLARATION DÉTAILLÉE DES FAITS PRÉCIS SUR LESQUELS SE FONDE LA DEMANDE

Please see Schedule 1, attached to this Form, at paragraph 73, clause a to clause j, incorporating by reference paragraphs 1 to 12 and paragraphs 14 to 72 of Schedule 1

8. **INDICATE BELOW OTHER MATERIALS OR EVIDENCE YOU WILL RELY ON IN THE APPLICATION**
INDIQUEZ CI-DESSOUS D'AUTRES DOCUMENTS OU PREUVES QUE VOUS ALLEZ INVOQUER DANS LA DEMANDE

- Transcripts (Transcripts required to determine the application must be filed with this application.)
Transcriptions (Les transcriptions exigées pour prendre une décision sur la demande doivent être déposées avec la demande.)
- Brief statement of legal argument
Bref exposé des arguments juridiques
- Affidavit(s) (List below)
Affidavits (Énumérez ci-dessous)
- Case law or legislation (Relevant passages should be indicated on materials. Well-known precedents do not need to be filed. Only materials that will be referred to in submissions to the Court should be filed.)
Jurisprudence ou lois. (Les passages pertinents doivent être indiqués dans les documents. Les arrêts bien connus ne doivent pas être déposés. Il ne faut déposer que les documents qui seront mentionnés dans les observations au tribunal.)
- Agreed statement of facts
Exposé conjoint des faits
- Oral testimony (List witnesses to be called at hearing of application)
Témoignage oral (Liste des témoins qui seront appelés à témoigner à l'audience sur la demande)
- Other (Please specify)
Autre (Veuillez préciser)

Sept. 7, 2022

(Date)


Signature of Applicant or Legal Representative / Signature de l'auteur de la demande ou de son représentant juridique

To: **Drew Young (Counsel)**

À: (Name of Respondent or legal representative / Nom de l'intimé ou de son représentant juridique)

Ottawa Crown Attorney's Office, Room 3045, 161 Elgin Street, Ottawa, Ontario K2P 2K1

(Address/fax/email for service / Adresse, numéro de télécopie ou adresse électronique aux fins de signification)

NOTE: Rule 2.1 requires that the application be served on all opposing parties and on any other affected parties.
NOTA : La règle 2.1 exige que la demande soit signifiée à toutes les parties adverses et aux autres parties concernées.

SCHEDULE 1

I. CONCISE STATEMENT OF THE SUBJECT OF THE APPLICATION

1. This Schedule, and the Form 1 attached to it, comprise the present Pre Trial Application and Notice of Constitutional Question (hereinafter Application) to stay or withdraw the charges.

Criminal Rules of the Ontario Court of Justice, Rule 2.1, Form 1.

Courts of Justice Act, R.S.O. 1990, c. C.43 (hereinafter *Courts of Justice Act*), section 109 [Notice re: Where constitutional applicability of a law is in question before a court].

2. The Application argues that defendant's detention for an hour on the Rideau St. egress eastbound from the Colonel By Dr. and Sussex Dr. intersection, handcuffed, and his continued detention for nearly three hours in an unheated transport vehicle without access to food, water, washrooms, medical care or legal counsel, in temperatures of minus 13 degrees Celsius; and his release from a remote custody facility on a criminal charge of mischief and an undertaking "[n]ot to attend [the] area bound by Highway 417, Booth Street, Ottawa River, [and] Rideau River" violated sections 8 and 9 of the *Canadian Charter of Rights and Freedoms* "to be secure against unreasonable search or seizure" and "not to be arbitrarily detained or imprisoned."

Criminal Code of Canada, R.S.C. 1985, c. C-46 (hereinafter *Criminal Code*), paragraph 430(1)(d), and sections 494, 495 and 504.

Canadian Charter of Rights and Freedoms, being Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 (In force 17 Apr. 1982) (hereinafter *Canadian Charter of Rights and Freedoms*), section 1, paragraphs 2(b), (c) & (d), sections 7, 8 & 9, paragraphs 10(a) & (b), paragraphs 11(a) & (g), section 12. See also: *Canadian Bill of Rights*, SC 1960, c 44 (In force 10 Aug. 1960) (hereinafter *Canadian Bill of Rights*), paragraph 1(a) and paragraph 2(a).

See: *Fleming v. Ontario*, 2019 SCC 45, [2019] 3 S.C.R. 519 (hereinafter *Fleming v. Ontario*) (*per* Côté J.).

3. The Application further argues that the seizure, towing and removal of the black Mack semi-trailer truck from the intersection of Colonel By Dr., Rideau St. and Sussex Dr. was not rationally connected to the purported purpose of the police presence on the Rideau St. egress, and violated the right to the "enjoyment of property, and the right not to be deprived thereof except by due process of law" at paragraph 1(a) of the *Canadian Bill of Rights*, and the right to "security of the person" pursuant to section 7 of the *Canadian Charter of Rights and Freedoms*.

Canadian Charter of Rights and Freedoms, *supra* para. 2, sections 1, 7, 8 & 9.

Canadian Bill of Rights, *supra* para. 2, paragraph 1(a), paragraph 2(a).

See: *R. v. Dedman*, [1985] 2 S.C.R. 2 (hereinafter *Dedman*) at 23-37 (*per* LeDain J.).

4. The Application argues the detention on the Rideau St. egress and in a transport vehicle cuffed from behind, in minus 13 degrees temperatures without heat, food, water, washrooms or medical care, amounts to “cruel and unusual treatment or punishment” under section 12 of the *Canadian Charter of Rights and Freedoms* and paragraph 2(b) of the *Canadian Bill of Rights*.

Canadian Charter of Rights and Freedoms, supra para. 2, sections 1, 7, 8, 9 & 12.
Canadian Bill of Rights, supra para. 2, paragraphs 1(a) & (b), paragraphs 2(a) & (b).
 See also: *International Covenant on Civil and Political Rights* (Adopted 19 Dec. 1966), 999 *United Nations Treaty Series* (NTS) 171, *Canada Treaty Series* (CTS) 1976, N° 47 (In force 23 Mar. 1976) (hereinafter *International Covenant on Civil and Political Rights*), Article 4 (paragraphs 1 and 2) [re: Rights not to be infringed in an emergency], Article 7.

5. The Application argues that despite claims by police that defendant was offered access to legal counsel while detained on the Rideau St. egress, the first opportunity he had to speak to counsel was at the remote detention facility more than three hours after his arrest, violating the right “to retain and instruct counsel without delay” at paragraph 10(b) of the *Canadian Charter of Rights and Freedoms* and at sub-paragraph 2(c)(ii) of the *Canadian Bill of Rights*.

Canadian Charter of Rights and Freedoms, supra para. 2, sections 1, 7, 8 & 9, paragraphs 10(a) & (b), paragraph 11(a).
Canadian Bill of Rights, supra para. 2, paragraphs 1(a) & (b), sub-paragraph 2(c)(i)-(ii).
R. v. Sinclair, 2010 SCC 35 (hereinafter *Sinclair*) (*per* McLachlin C.J.).
R. v. Suberu, 2009 SCC 33 (hereinafter *Suberu*) (*per* McLachlin C.J.).

6. The Application argues that nothing in the federal or provincial emergency declarations, in force on Feb. 18, 2022, modified the common-law rights to peaceful protest, and that no new powers relating to search, seizure, arrest or detention were conferred, except for the procedure in the provincial *Critical Infrastructure and Highways Order* to cause vehicles to be removed.

Proclamation Declaring a Public Order Emergency, SOR/2022-20 (Registered & In force on 15 Feb. 2022), in *Canada Gazette (Part II)*, Vol. 156, Extra No. 1 (15 Feb. 2022) (hereinafter *Proclamation Declaring a Public Order Emergency*).
Confirmation of Declaration of Emergency, Ontario Regulation 70/22 (Made & Filed on Feb. 12, 2022, confirming “the declaration of emergency made by the Premier” on Feb. 11, 2022), in *Ontario Gazette*, Vol. 155, No. 9 (26 Feb. 2022) (hereinafter *Confirmation of Declaration of Emergency*).
Critical Infrastructure and Highways Order, being Schedule 1 of Ontario Regulation 71/22 (Made on Feb. 12 & in force on Feb. 11, 2022), in *Ontario Gazette*, Vol. 155, No. 9 (26 Feb. 2022) (hereinafter *Critical Infrastructure and Highways Order*), sections 3 to 5.
Fleming v. Ontario, supra para. 2.

7. The Application argues that nothing in the federal or provincial emergency declarations, in force Feb. 18, 2022, changed the common-law *ex post facto* rule against retroactivity of law.

Proclamation Declaring a Public Order Emergency, *supra* para. 6.
Confirmation of Declaration of Emergency, *supra* para. 6.
Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9 (hereinafter *Emergency Management and Civil Protection Act*), section 7.0.1, subsection 7.0.11(4).
Emergencies Act, S.C. 1988, c. 29 (In force 21 July 1988) (hereinafter *Emergencies Act*), Part II [Public Order Emergency], sections 16-26. But see: Part III [International Emergency], sections 27-36, and Part IV [War Emergency], sections 37 to 45.
Canadian Charter of Rights and Freedoms, *supra* para. 2, sections 1, 7, 8, & 9, paragraph 10(a) [re: “arrest or detention”], paragraphs 11(a) & (g) [re: “proceedings”].
International Covenant on Civil and Political Rights, *supra* note 4, Article 4 (paragraphs 1 and 2) [re: Rights not to be infringed during an emergency], Article 15.
Fleming v. Ontario, *supra* para. 2.
 See, for example: *Critical Infrastructure and Highways Order*, *supra*, para. 6, section 4.

8. The Application argues that nothing in the federal or provincial emergency declarations, in force on Feb. 18, 2022, specified an “area” within which the effects of the emergency extend, and thus no geographic boundaries on any “public assembly” could be justified as “reasonable limits prescribed by law” under section 1 of the *Canadian Charter of Rights and Freedoms*.

Proclamation Declaring a Public Order Emergency, *supra* para. 6, Preamble, 1st & 2nd paragraphs.
Confirmation of Declaration of Emergency, *supra* para. 6.
Emergency Management and Civil Protection Act, *supra* para. 7, section 7.0.1.
Emergencies Act, *supra* para. 7, Part II [Public Order Emergency], paragraphs 17(2)(a), (b) & (c), sub-paragraphs 19(1)(a)(i) & (ii).
Canadian Charter of Rights and Freedoms, *supra* para. 2, section 1, paragraphs 2(b), (c) & (d), subsection 6(2), sections 7, 8, 9, paragraph 10(a), paragraph 11(a).
Canadian Bill of Rights, *supra* para. 2, paragraphs 1(a), (d) & (e), paragraphs 2(a) & (c).
Fleming v. Ontario, *supra* para. 2.

9. The Application argues that there was nothing in the federal or provincial declarations of emergency in force on Feb. 18, 2022, that limits or can be interpreted as limiting any “freedom of thought, belief, opinion and expression” at paragraph 2(b) of the *Canadian Charter of Rights and Freedoms*, or limiting “freedom of speech” at paragraph 1(d) of the *Canadian Bill of Rights*.

Proclamation Declaring a Public Order Emergency, *supra* para. 6, 3rd paragraph of the Preamble, letter paragraph (a) of 1st paragraph, letter paragraph (a) of 2nd paragraph.
Confirmation of Declaration of Emergency, *supra* para. 6.
Canadian Charter of Rights and Freedoms, *supra* para. 2, section 1, paragraph 2(b).
Canadian Bill of Rights, *supra* para. 2, paragraph 1(d), paragraph 2(a).
Fleming v. Ontario, *supra* para. 2.

10. The Application argues that the matters set out in it should be heard forthwith by a judge of the Court prior to trial, because the defendant has the right to know the case he has to meet

with “sufficient detail of the circumstances” to prepare a full defense “with respect to the act or omission to be proved against him and to identify the transaction referred to” (*per* subsection 581(3) of the *Criminal Code*), and the right “to be informed without unreasonable delay of the specific offence” pursuant to paragraph 11(a) of the *Canadian Charter of Rights and Freedoms*.

Criminal Code, *supra* para. 2, paragraphs 430(1)(c) or (d), subsection 581(3).
Canadian Charter of Rights and Freedoms, *supra* para. 2, section 1, paragraph 11(a).
 See also: *Canadian Bill of Rights*, *supra* para. 2, sub-paragraph 2(c)(i).

11. The Application argues that the *Proclamation Declaring a Public Order Emergency* by the federal Cabinet on Feb. 15, 2022, did not confer any new powers of search, seizure, arrest or detention on police in the geographic area of Ottawa where defendant was arrested, nor did it confer powers to make public assemblies illegal retroactively or to abrogate “lawful advocacy, protest or dissent,” and serves as Notice of the Application to the Attorney General of Canada.

Proclamation Declaring a Public Order Emergency, *supra* para. 6, 3rd paragraph of the Preamble, letter paragraph (a) of 1st paragraph, letter paragraphs (a), (b), (c) and (d) of 2nd paragraph.
Emergencies Act, *supra* para. 7, Part II [Public Order Emergency], section 16 [re: “threats to the security of Canada” & “public order emergency”], subsection 17(1), paragraphs 17(2)(a), (b) & (c), sub-paragraphs 19(1)(a)(i), (ii) & (iii), paragraph 19(1)(d). But see: *Canadian Security Intelligence Act*, S.C. 1984, c. 21 (in force 16 July 1984) (hereinafter *CSIS Act*), section 2 [“threats to the security of Canada” & “lawful ...protest”].
Canadian Charter of Rights and Freedoms, *supra* para. 2, section 1, paragraphs 2(c) & (d), sections 7, 8 & 9, paragraphs 10(a) & 11(g).
Canadian Bill of Rights, *supra* para. 2, paragraphs 1(a), (b), (d) & (e), paragraph 2(a), sub-paragraph 2(c)(i).
Courts of Justice Act, *supra* para. 1, section 109 [re: Notice of constitutional question].
Fleming v. Ontario, *supra* para. 2.

12. In addition to the statutes, orders or regulations cited above, the applicability of the following statutes, orders or regulations will also be in question, in order of their appearance:

Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10 (hereinafter *RCMP Act*).
Emergency Measures Regulations, SOR/2022-21 (Registered and in force on 15 Feb. 2022), *Canada Gazette (Part II)*, Vol. 156, Extra No. 1 (15 Feb. 2022) (hereinafter *Emergency Measures Regulations*).
Highway Traffic Act, R.S.O. 1990, c. H.8 (hereinafter *Ontario Highway Traffic Act*).
Emergency Economic Measures Order, SOR/2022-22 (Registered and in force on 15 Feb. 2022), *Canada Gazette (Part II)*, Vol. 156, Extra No. 1 (15 Feb. 2022) (hereinafter *Emergency Economic Measures Order*).
Parliament of Canada Act, R.S.C. 1985, c. P-1 (hereinafter *Parliament of Canada Act*).
Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 (hereinafter *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*).
Canada Evidence Act, R.S.C. 1985, c. C-5 (hereinafter *Canada Evidence Act*).

II. GROUND TO BE ARGUED IN SUPPORT OF THE ACCUSED'S APPLICATION

13. Part II of the Application will set out the grounds to be argued in support, and Part III will set out the remedies sought, for orders to stay or withdraw the charges or for more disclosure. All documents in support of the Application have been disclosed or requested from the Crown.

14. As he walked 100 meters westbound on Rideau St. shortly before 12:00 noon on Feb. 18, 2022, Cst. Paul LaForest would have had an unobstructed view across the egress to the intersection where Rideau intersects Colonel By Dr. southbound, and Sussex Dr. northbound.

15. At approximately 12:15 p.m. on Feb. 18, 2022, as he approached Colonel By Dr. and Sussex Dr. on the Rideau St. egress, Cst. LaForest would have had an unobstructed view of the accused exiting a passenger door of a yellow semi-trailer truck situated at the intersection.

16. The statement by arresting officer Cst. LaForest (Ottawa Police badge #2066) dated Mar. 28, 2022 said the accused Guy Meister was arrested on Feb. 18, 2022, as a “cooperative” subject, exiting the passenger door of a yellow Freightliner semi-trailer truck at the intersection of Rideau St. and Sussex Dr. and purportedly charged with one count of mischief at 12:15 p.m.

17. The decision of Cst. LaForest to immediately arrest the accused for “mischief,” covering a transaction from Jan. 29 to Feb. 18, 2022, was arbitrary, because Cst. LaForest had no direct knowledge whether the person observed was also present at that junction on the previous days nor could Cst. Laforest have observed any obstructing, interrupting or interfering with the lawful use of the eastbound Rideau St. egress on Feb. 18, 2022, which was obstructed by the police.

Criminal Code, supra para. 2, sections 430 [“wilfully”], 494, 495, 504, subsection 581(3).
Canadian Charter of Rights and Freedoms, supra para. 2, section 1, paragraphs 2(b), (c) & (d), subsection 6(2), sections 7, 8 & 9, paragraph 10(a), paragraphs 11(a) & (g).
Canadian Bill of Rights, supra para. 2, paragraph 1(a), paragraph 2(a).

18. In order to detain a person under the common law, a police officer needs to have either “articulable cause” or “reasonable suspicion” that the observed activity may be against the law.

R v Waterfield, [1963] 3 All ER 659 (C.C.A.) (hereinafter *Waterfield*).
R v Simpson (1993), 12 O.R. (3d) 182 (O.C.A.) (hereinafter *Simpson*).
R. v Murray (1999), 136 C.C.C. (3d) 197 (Q.C.A.) (hereinafter *Murray*) at 212 (Fish J.A.).

19. The purpose of Cst. LaForest’s attendance on the Rideau St. egress on Feb. 18, 2022, was presumably to remove the vehicles from the intersection at Colonel By Dr. and Sussex Dr.,

in accordance with the *Critical Infrastructure and Highways Order* of the Province of Ontario, but no tow-trucks to remove defendant's truck from the intersection were visible on the egress.

Critical Infrastructure and Highways Order, supra para. 6, subsections 3(1), 4(3) & 5(4).

20. The seizure and removal of defendant's Mack truck from the intersection of Colonel By and Sussex Dr. on Feb. 18, 2022, was arbitrary and unreasonable, and was not in accordance with due process of law, because it was not "rationally connected to the purposes of the initial detention" on the Rideau St. egress, which was for police to "cause the vehicle to be removed."

Canadian Bill of Rights, supra para. 2, paragraph 1(a).

Canadian Charter of Rights and Freedoms, supra para. 2, sections 7, 8 & 9.

Murray, supra para. 18, at 212 (Fish J.A.) [Applying the test set out in *R. v. Waterfield*].

Simpson, supra para. 18.

Critical Infrastructure and Highways Order, supra para. 6, subsections 3(1), 4(3) & 5(4).

21. The detention of the accused by Cst. LaForest on the Rideau St. egress between 12:15 p.m. and 12:43 p.m. becomes arbitrary when it becomes known that Cst. LaForest's reason for being on the egress on Feb. 18, 2022, was to arrest people, not to detain people in order to tow the vehicles away, because no tow-trucks to remove any vehicles were visible on the egress.

Deadman, supra para. 3.

Waterfield, supra para. 18.

Critical Infrastructure and Highways Order, supra para. 6, subsections 3(1), 4(3) & 5(4).

Canadian Charter of Rights and Freedoms, supra para. 2, section 1, paragraphs 2(b), (c), & (d), sections 7, 8 & 9, paragraphs 10(a) & (b), paragraph 11(a), section 12.

Canadian Bill of Rights, supra para. 2, paragraphs 1(a) & (d), paragraph 2(a).

22. The typewritten statement of Cst. Munier (Ottawa Police badge #2613), dated Mar. 31, 2022 records that constables Munier and Zackrias (Ottawa Police badge #2616) took custody of Cst. LaForest's prisoner, whom Munier and Zackrias identified using the prisoner's Nova Scotia driver's license photo-identification card, as the accused, Guy Meister, at 12:43 p.m.

23. The typewritten statement of Cst. Dieu (Ottawa Police badge #1894) dated Mar. 1, 2022 reads, "At 12:52 p.m., I took custody of a male who was later identified [as] Guy Meister (NS DL)[,] from [Ottawa Police Service] Cst. Zackrias #2616, and Cst. Munier #2613, for mischief."

24. Cst. Dieu records that after she took custody of Meister at 12:52 p.m., Meister reported his black Mack semi-trailer truck parked at the intersection of Rideau St. and Sussex Dr., which Dieu later took photographs of, prior to Cst. Dieu charging Meister with offences at 12:52 p.m.

25. A photograph of a written record (of a writing on whiteboard), that appears to have been prepared by police officers in the absence of the arresting officer, Cst. LaForest, and then photographed, at an area at least 20 meters from the place where Cst. Laforest had arrested the accused (at 12:15 p.m.), contains the words “Hot Team #3” in the upper-left corner, and states, “HT-3-5, Acc[used] Meister Guy, 1253 Hrs, 68-07-30, Ottawa #2066, VEA” and across a row, “Mischief x2, Obstruct, Disobey Court Order,” “Bag #0315081,” followed by “4342-1 Nova Scotia B[la]ck Mack,” which refers to the license plate number, the province issuing the plates, color, and make of Meister’s semi-trailer truck. Meister is photographed holding the whiteboard.

26. Cst. LaForest’s statement dated Mar. 25, 2022 records that the accused Meister was arrested exiting the passenger door of “a yellow semi truck parked within the ... intersection.” Cst. Munier recorded on Mar. 31, 2022, that Cst. LaForest arrested Meister “in a yellow truck,” yet the whiteboard refers to the black truck. Cst. Zackrias’ record makes no reference to trucks.

27. The detention of the accused by Cst. Dieu on the Rideau St. egress between 12:52 p.m. and 1:03 p.m. becomes arbitrary when defendant’s detention is no longer rationally connected to the presumed purpose of the police presence on the egress, and is no longer “reasonably necessary: (1) to secure non-conscriptive evidence of a crime; (2) to protect the police or any member of the public from imminent danger; or (3) to discover and secure anything that could endanger the police, the person detained or any member of the public, or facilitate escape.”

Murray, supra para. 18, at 212 (Fish J.A.) [Applying the test set out in *R. v. Waterfield*].

28. The officer who arrested the accused while he exited a passenger-side door of a yellow Freightliner semi-trailer truck, at 12:15 p.m. on Feb. 18, 2022, could only have had “reasonable grounds to believe” that the accused “impede[d] access to or egress from, or the ordinary use of [a] highway” with his vehicle at the time of arrest, not on the previous day or prior to Feb. 11, 2022, and it was not until 12:52 p.m. when another officer saw the accused’s black Mack truck.

Critical Infrastructure and Highways Order, supra para. 6, subsections 3(1), 4(3) & 5(4). *Highway Traffic Act, supra* para. 12, section 1 [“highway”], subsection 16(1) [“operator”]. Compare: *Criminal Code, supra* para. 2, paragraphs 430(1) (c) or (d) [“mischief”], subparagraphs 495(2)(d)(i), (ii) & (iii) [re: “reasonable grounds” to arrest without a warrant].

29. The purpose of the “[exercise]” or “perform[ance]” by the police at the intersection where the accused was arrested on Feb. 18, 2022, was to remove or to order the removal of vehicles,

so it was not possible for the accused, in custody, to resist or to willfully obstruct a police officer “in the exercise of his duty” to remove or to order the removal of his truck from the intersection.

Emergencies Act, supra para. 7, section 3 [“national emergency”]; Part II [Public Order Emergency], paragraph 19(3)(b) [re: “concerted action,” “power, duty or function”].
Critical Infrastructure and Highways Order, supra para. 6, subsections 3(1), 4(3) & 5(4).
 See: *Criminal Code, supra* para. 2, paragraph 129(a) [“resists or wilfully obstructs”], and sub-paragraphs 495(2)(d)(i), (ii) & (iii) [“reasonable grounds” to arrest without a warrant].

30. *Per* Cst. Munier, Meister was transferred to “Hamilton” Police badge “#916” at 1:03 p.m., and, *per* Cst. Zacharias, “loaded into a prisoner transport van.” The arrest timeline ends there.

31. The detention of the accused in the police truck for nearly three hours by Transportation Officers Brock Vessie (Badge # T5107) and Jenn Stevenson (Badge #T5078), of the Ontario Provincial Police, between 1:03 p.m. and 3:30 p.m., without heat, water, a washroom, medical care or legal counsel, in temperatures of minus 13 degrees Celsius, with frequent stops and starts, until stopping outside a detention facility on Conroy Rd., where the accused waited to be summoned arbitrarily on a “one-at-a-time” basis, was not rationally connected to the purpose of the police presence on the Rideau St. egress, and not “reasonably necessary” for public safety.

Murray, supra para. 18 at 212 (Fish J.A.) [Applying the test set out in *R. v. Waterfield*].
Simpson, supra para. 18.

32. The only information about the accused available to the booking staff sergeant at the “remote custody facility” on Conroy Rd. on Feb. 18, 2022, between 3:30 p.m. and 4:05 p.m., was the “Hand Off Team (HOT) Arrest Sheet,” according to which Cst. Zackrias and Cst. Munier were “arresting officer[s]” and Cst. Dieu informed him of his right to counsel, along with the photograph of the accused holding a record of his purported arrest details on a whiteboard.

33. The detention of the accused at the temporary “remote custody facility” on Conroy Rd. in southern Ottawa was arbitrary, because the booking staff sergeant at the facility did not have access to any direct information from the arresting officers, Cst. Laforest or Cst. Dieu, before determining whether there was articulable cause to detain or any reasonable grounds to arrest.

Murray, supra para. 18, at 212 (Fish J.A.) [Applying the test set out in *R. v. Waterfield*].
 See: Office of the Independent Police Review Director, *Policing the Right to Protest: G20 Systemic Review Report* (Toronto: OIPRD, 2012) (hereinafter *OIPRD Report*) at 16-17, 136-37, 158, 186-87 [“breach of the peace,” “unlawful assembly,” “mischief”].

34. On Feb. 18, 2022, at 4:05 p.m., Meister was released on an “Undertaking,” after being “processed” and charged with public mischief pursuant to paragraph 430(1)(d) *Criminal Code*.

Criminal Code, supra para. 2, paragraphs 430(1) (c) & (d) [“mischief”], sub-paragraphs 495(2)(d)(i), (ii) & (iii) [“reasonable grounds” to arrest without a warrant].

But see: Canadian *Charter of Rights and Freedoms, supra* para. 2, sections 1, 7, 8 & 9.

But see: *Canadian Bill of Rights, supra* para. 2, paragraph 1(a), paragraph 2(a).

35. As the booking staff sergeant, Sgt. Stephen Plummer (Ottawa Police Service badge #1788), put it, “I have no duty notes related to this event. The accused was processed by the officers working in the [Conroy Rd.] remote custody facility and released on an Undertaking.”

Canadian Charter of Rights and Freedoms, supra para. 2, sections 1, 7, 8, 9 & 12.

Canadian Bill of Rights, supra para. 2, paragraph 1(a), paragraphs 2(a) & (b).

36. In the absence of duty notes, the police transcripts purport to give reasons for the arrest in a synopsis of prior events (hereinafter “Synopsis”), notably this “release to ... Demonstrators”:

On February 9th, 2022, the Ottawa Police Media Unit issued a release to the Demonstrators advising that it is a criminal offence to obstruct, interrupt or interfere with the lawful use, enjoyment, or operation of property. ... This release served as notice that anyone blocking the streets or assisting others ... may be committing a criminal offence ... and they must immediately cease further unlawful activity or face possible charges.

37. The “Synopsis” of events from Feb. 11 to 14, 2022 refers to protesters’ “illegal behavior.”

38. The “Synopsis” construes the powers conferred under the *Emergencies Act* as follows:

On February 14th, 2022, the federal government enacted the *Emergencies Act*... This act allows for the regulation or prohibition of travel to, from or within any specified area. Notably, anyone coming into Ottawa for the purpose of joining the ongoing demonstration is breaking the law. The act also provides police with ... additional powers, including the ability to seize vehicles that are part of this demonstration.

Emergencies Act, supra para. 7, Part II [Public Order Emergency], paragraphs 17(2)(a), (b) & (c), sub-paragraphs 19(1)(a)(i), (ii) & (iii), paragraph 19(1)(d), subsection 19(2).

39. According to the “Synopsis” of notices given on Feb. 16, 2022, the Ottawa Police Media Unit prepared a “Notice to Demonstrators” on Feb. 16, 2022 at 10:30 a.m., and Police Liaison Teams “handed out pamphlets to demonstrators in the downtown core and other encampment areas. The wording included, but not limited to, ‘You must leave the area now. Anyone blocking streets, or assisting others in ... blocking streets, are committing a criminal offence and you may be arrested. You must immediately cease further unlawful activity, or you will face charges ...’.”

40. The “Synopsis” of the notices to protesters notes that “[a] further notice to demonstrators was released on the same date [Feb. 16, 2022] at 4:53 p.m. advising demonstrators that under federal and provincial legislation, they will face severe penalties if unlawful activities do not cease and vehicles and/or property are not removed immediately from the unlawful protest”.

41. None of the “Notice[s]” to “Demonstrators” dated Feb. 9 to 16, 2022, can be the “Notice” required by the *Critical Infrastructure and Highways Order* and by the Ontario *Emergency Management and Civil Protection Act*, because subsection 5(1) of the *Critical Infrastructure and Highways Order* states expressly that a “contravention” of an officer’s order may result in a person’s vehicle being towed by the police, but the “Synopsis” of the “Notice” on Feb. 16, 2022, says the recipients of the Notices were “committing a criminal offence” and “will face charges.”

Critical Infrastructure and Highways Order, supra para. 6, subsections 5(1) & (2).
Emergency Management and Civil Protection Act, supra para. 7, subsection 7.2(2).

42. The Ontario *Critical Infrastructure and Highways Order* of Feb. 12, 2022, distinguishes between “critical infrastructure,” at sections 1 and 2, from “highways,” which subsection 3(3) states are “highway[s] as defined in the *Highway Traffic Act*, other than a 400-series highway.”

Critical Infrastructure and Highways Order, supra para. 6, subsections 3(3), 4(3), 5(5).
Highway Traffic Act, supra para. 12, section 1 [“highway”], subsection 16(1) [“operator”].

43. Sections 3 to 5 of the Ontario *Critical Infrastructure and Highways Order* granted lawful authority on the police in Ottawa to order people to “cease” blocking the Rideau St. intersection (paragraph 4(1)(a)), to leave (“disperse”) (paragraph 4(1)(b)), and to “remove” any object or vehicles from Rideau St. (paragraph 4(1)(c)), and to “remove” or “cause” the removal of objects and vehicles (subsections 4(3) and 5(4)), but did not confer any common-law powers of arrest.

Critical Infrastructure and Highways Order, supra para. 6 paragraphs 4(1)(a), (b) & (c), subsection 4(3) [“police officer ... may remove the object”], subsection 5(4) [“police officer ... may cause the vehicle to be removed”].
Murray, supra para. 18, at 212 (Fish J.A.) [Applying the test set out in *R. v. Waterfield*].

44. The *Confirmation of Declaration of Emergency* and *Critical Infrastructure and Highways Order*, made pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*, “expressly provided” a “mode of proceeding” authorized by the Ontario legislature and Cabinet respecting “imped[ing] access to or egress from, or the ordinary use of” Rideau St., meaning the “ordinary use” is determinable under that *Act*, not via “mischief” under the *Criminal Code*.

Critical Infrastructure and Highways Order, supra para. 6, sections 3 to 6.

Confirmation of Declaration of Emergency, supra para. 6 [“declaration” (Feb. 11, 2022)].
Criminal Code, supra para. 2, paragraph 129(a), paragraphs 430(1)(c) or (d), subsection 581(3). See, for example, subsection 127(1) [“mode of proceeding ... provided by law”].

45. The legislative “criteria for [a] declaration” that must be satisfied pursuant to subsection 7.0.1(3) of the Ontario *Emergency Management and Civil Protection Act* include the following:
1. There is an emergency that requires immediate action to prevent, reduce or mitigate a danger of major proportions that could result in serious harm to persons or substantial damage to property.
 2. One of the following circumstances exists:
 - i. The resources normally available to a ministry of the Government of Ontario or an agency, board or commission or other branch of the government, including existing legislation, cannot be relied upon without [...] serious delay.
 - ii. The resources referred to in subparagraph i may be insufficiently effective to address the emergency.
 - iii. It is not possible, without the risk of serious delay, to ascertain whether the resources referred to in subparagraph i can be relied upon.

Emergency Management and Civil Protection Act, supra para. 7, subsection 7.0.1(3).

46. The *Confirmation of Declaration of Emergency*, as published on Feb. 26, 2022, reported the emergency was declared by the Premier on Feb. 11, 2022, whereas subsection 7.0.11(4) of the *Emergency Management and Civil Protection Act* states, “[N]o person shall be charged with an offence under subsection (1) for failing to comply with or interference or obstruction in respect of an order that is retroactive to a date that is specified in the order if the failure to comply, interference or obstruction is in respect of conduct that occurred before the order was made [prior to Feb. 12] but is after the retroactive date specified in the order” [after Feb. 11].

Criminal Code, supra para. 2, subsections 581(1) & (3) [re: “A count shall contain sufficient detail of the circumstances ... to identify the [‘single’] transaction referred to”].

Confirmation of Declaration of Emergency, supra para. 6.

Emergency Management and Civil Protection Act, supra para. 7, subsection 7.0.1(3), subsection 7.0.11(4).

See: *Canadian Charter of Rights and Freedoms, supra* para. 2, sections 1, 7, 8, & 9, paragraph 10(a), paragraphs 11(a) & (g).

See: *International Covenant on Civil and Political Rights, supra* note 4, Article 4 (paragraphs 1 and 2) [re: Rights not to be infringed during an emergency], Article 15.

Dedman, supra para. 3, at 23-37 (*per* LeDain J.).

47. Despite the declaration of a public-order emergency by the federal Cabinet on Feb. 15, 2022, pursuant to the federal *Emergencies Act*, “[n]othing in [the] declaration of a public order emergency or ... order or regulation made pursuant thereto shall be construed or applied so as

to derogate from, or to authorize the derogation from, the control or direction of the government of [the] province,” or city, “over any police force over which it normally has control or direction.”

Emergencies Act, supra para. 7, Part 1 [Public Welfare Emergency], subsection 9(1); Part II [Public Order Emergency], subsection 20(1); and Part III [International Emergency], subsection 31(1). No similar rules exist during a Part IV [War Emergency]. See also: *RCMP Act, supra* para. 12. Section 20 of the *RCMP Act* and subsections 9(2), 20(2) and 31(2) of the *Emergencies Act* specify provincial “control and direction” over the RCMP under the “terms and conditions” of any “arrangement” (contract for policing) between a province and the Minister of Public Security and Emergency Preparedness.

48. Section 3 of the federal *Emergencies Act* states that while the declaration of a “national emergency” is in effect, there exists by definition a “situation” that “cannot be effectively dealt with under any other law of Canada” and that, during that time, “[t]he power ... to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, shall be exercised or performed,” pursuant to Parts I, II, III or IV of the *Act*, “with the view of achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed,” and, pursuant to Parts I, II or III of the *Act*, “in a manner that will not unduly impair the ability of any province to take measures, under an Act of the legislature, for dealing with an emergency in the province.”

Emergencies Act, supra para. 7, section 3 [definition, “national emergency”]; Part I [Public Welfare Emergency], paragraphs 6(2)(a), (b) & (c), and paragraphs 8(3)(a) & (b); Part II [Public Order Emergency], paragraphs 17(2)(a), (b) & (c), and paragraphs 19(3)(a) & (b); Part III [International Emergency], paragraphs 28(2)(a) & (b), and subparagraphs 30(2)(a)(i) & (ii); Part IV [War Emergency], subsections 38(2) and 40(4).

49. Each of the four statutory authorities that may be relied on while a “national emergency” is in effect requires, “before the [Cabinet] issues” or “continues” a declaration of a “national emergency” (pursuant to either Part I, II, III, or IV), that the “[Cabinet] of each province in which the effects of the emergency occur shall be consulted with respect to the proposed action.”

Emergencies Act, supra para. 7, Part I [Public Welfare Emergency], subsection 14(1); Part II [Public Order Emergency], subsection 25(1); Part III [International Emergency], section 35; Part IV [War Emergency], section 44.

50. Subsection 2(1) declares that the federal *Emergencies Act* “is binding on Her Majesty in right of Canada or a province,” while subsection 2(2) states, “[f]or greater certainty, nothing in this Act derogates from the authority of the Government of Canada to deal with emergencies on any property, territory or area in respect of which the Parliament of Canada has jurisdiction.”

Emergencies Act, supra para. 7, section 2.

51. Section 4 clarifies that “[n]othing in this *Act* shall be construed or applied so as to confer on the [Cabinet] the power to make orders or regulations (a) altering the provisions of this *Act*, or (b) providing for the detention, imprisonment or internment of Canadian citizens ... on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”

Emergencies Act, supra para. 7, section 4 [Construction of laws, “construed,” “applied”].

52. There was nothing in the federal *Proclamation Declaring a Public Order Emergency* that derogated from the authority of the government of Ontario to control or direct police operations on the Rideau St. egress on Feb. 18, 2022, despite the “measures” wherein Cabinet “believed,” on “reasonable grounds,” that it was “necessary” to authorize the “Minister of Public Safety and Emergency Preparedness [*sic*], the Commissioner of the Royal Canadian Mounted Police, or a person acting on their behalf” to “[request]” anyone to “render the essential goods and services requested ... for the removal, towing and storage of any vehicle ... that [was] part of a blockade.”

Proclamation Declaring a Public Order Emergency, supra para. 6, letter paragraph (d) of 2nd paragraph [re: “[‘special’] measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference.”].

Emergencies Act, supra para. 7, Part II [Public Order Emergency], sub-paragraph 19(1)(a)(iii), paragraph 19(1)(d), section 20. But see: Part III [International Emergency], paragraphs 30(1)(e) & (k) [re: Minister], and Part IV [War Emergency], subsection 40(1). But see: *Emergency Measures Regulations, supra* para. 12, Preamble, subsection 7(2).

53. During a “Public Order Emergency,” the legal authority of a federal Cabinet is narrower than it is during an “International Emergency,” which includes broader discretion to confer legal decision-making “authorization” on “any minister ...to discharge specified responsibilities ... or to take specified actions;” “the control or regulation of any specified industry or service;” “the appropriation, control, forfeiture, use and disposition of property or services;” and “the control or regulation of the international aspects of specified financial activities within Canada.”

Emergencies Act, supra para. 7, Part II [Public Order Emergency], sub-paragraph 19(1)(a)(iii); and Part III [International Emergency], paragraphs 30(1)(a),(b),(i) & (k).

54. The broadest discretion is conferred in a “War Emergency,” during which a Cabinet may make “orders or regulations” it “believes, on reasonable grounds, are necessary or advisable”.

Emergencies Act, supra para. 7, Part IV [War Emergency], section 40 [re: “advisable”].

55. The authority conferred on a federal Cabinet to regulate “essential services” in a public-order emergency is to make orders or regulations authorizing or directing the service providers to “render” services, respecting “the regulation or prohibition” of “the use of specified property.”

Emergencies Act, supra para. 7, Part II [Public Order Emergency], paragraph 19(1)(d) and sub-paragraph 19(1)(a)(iii). See, for example: Part I [Public Welfare Emergency], paragraphs 8(1)(b) [“evacuation”], (c) & (d); But see: Part III [International Emergency], paragraphs 30(1)(b), (e) & (k) [re: Minister’s “authorization” to “take specified actions”].

56. In the “Preamble” to the *Emergencies Act*, Parliament declared: “whereas the [Cabinet], in taking such special temporary measures” at Part I, II, III, or IV of the *Act*, “would be subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights* and must have regard to the *International Covenant on Civil and Political Rights*, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency.”

Emergencies Act, supra para. 7, at 3rd paragraph of Preamble.

Canadian Charter of Rights and Freedoms, supra para. 2, section 1.

Canadian Bill of Rights, supra para. 2, section 2.

International Covenant on Civil and Political Rights, supra para. 4, Article 4.

57. Speaking in the House of Commons in Nov. 1987 at second reading of Bill C-77, which became the *Emergencies Act*, the Hon. Perrin Beatty, Minister of National Defence, declared:

To the challenge that a [Part II] public order emergency also gives [a] Cabinet the right to prohibit public assembly, and that a Canadian could have difficulty in availing himself or herself of the right to protest peacefully the declaration of emergency powers, I would reply that there are absolutely no restrictions on the freedom of expression, thought, conscience or religion under this [P]art [II] of Bill C-77. Unlike the *War Measures Act*, Part II of Bill C-77 confers no new powers relating to search, seizure, arrest or detention. The provisions of the *Criminal Code* in these areas are considered adequate to ensure law and order. Restricting public assembly would be authorized only to protect lives and property during a serious national emergency. ... One of the grave threats to civil liberties ... in the *War Measures Act* ... was shown very markedly in the regulations under the *War Measures Act* when it was invoked in October 1970. We found civil liberties across the country suspended in order to deal with the situation which was relatively isolated in terms of its implication. ... This is a much more finely tuned piece of legislation. ... This section [Part II] of the Bill gives no new powers of arrest. We will not have under the powers of this Bill in Part II, the knock on the door in the middle of the night because of a crime being created retroactively. We will not have the situation that someone who once attended a meeting of an organization would have the burden of proof shifted onto him to prove he is not a member of that organization. ... That is how civil liberties were affected in October of 1970. That is the sort of abuse we are determined to correct.

Canada, House of Commons, *Debates*, 33rd Parliament, 2nd Session, Vol. IX (Nov. 16, 1987), at 10811 (Hon. Perrin Beatty).

58. Respecting a Cabinet’s powers to make “regulations” or “orders” during a “declaration of emergency” declared pursuant to Part I or II of the *Act*, a declaration “specifies” that the “effects of the emergency extend only to a specified area of Canada,” and “the power ... to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, may be exercised or performed only with respect to that area.”

Emergencies Act, supra para. 7, Part I [Public Welfare Emergency], subsection 8(2) [re: “Restriction”]; and Part II [Public Order Emergency], subsection 19(2) [re: “Restriction”].

59. The declaration of a “Public Order Emergency” that was proclaimed in force on Feb. 15, 2022, pursuant to the powers conferred on the federal Cabinet by authority of subsection 17(1) of the *Emergencies Act*, applied “throughout Canada” generally, and did not “specify” the “area of Canada to which the effects of the emergency extend[ed]” (*per* paragraph 17(2)(c)); As a consequence, the Cabinet did not “specify” on “reasonable” grounds the “area” of the “public assemblies,” nor any area(s) in Ottawa, that it “believes” are “necessary” to prohibit or regulate.

Emergencies Act, supra para. 7, Part II [Public Order Emergency], subsection 17(1), paragraphs 17(2)(a), (b) & (c) [re: “area,” “specify”] and sub-paragraphs 19(1)(a)(i) & (ii). *Proclamation Declaring a Public Order Emergency, supra* para. 6, Preamble at 4th paragraph, paragraph (a) of 1st paragraph & paragraphs (a) to (d) of 2nd paragraph. But see: *Emergency Measures Regulations, supra* para. 12, Preamble & sections 1 to 6.

60. The Cabinet did not exercise its discretion, in the *Proclamation Declaring a Public Order Emergency* registered on Feb. 15, 2022, to “specify” downtown Ottawa as an “area ... to which the effects of the emergency extend,” but merely specified the non-contiguous “parliamentary precinct,” and “canals,” to be “places ... designated as protected and [which] may be secured.”

Emergencies Act, supra para. 7, Part II [Public Order Emergency], paragraphs 17(2)(a), (b) & (c) [“specify”], paragraph 19(1)(b) [“designation and securing of protected places”]. *Proclamation Declaring a Public Order Emergency, supra* para. 6, letter paragraph (a) of the 1st paragraph, and paragraphs (a), (b), (c) and (d) of the 2nd paragraph [“measures”]. *Emergency Measures Regulations, supra* para. 12, sections 1 [“critical infrastructure”], 2 to 5 [“Public assembly,” “reasonably,” “breach of the peace”] and 6 [“protected places”]. *Parliament of Canada Act, supra* para. 12, section 79.51 [re: “parliamentary precinct” & “Parliament Hill.” Note that Ottawa’s streets are under provincial legislative authority]. See also: *Critical Infrastructure and Highways Order, supra* note 6, sections 1 [“critical infrastructure” being “400-series highways” at Windsor], 3 [“highways” being at Ottawa].

61. There is nothing in any of the sub-paragraphs enumerated as part of the declaration of “the state of affairs constituting the emergency” that could identify even one “area of Canada to which the effects of the emergency extend” (*per* paragraph 17(2)(c) of the *Act*), because non-

contiguous “various locations throughout Canada” in paragraph (a) of the 1st paragraph of the *Proclamation Declaring a Public Order Emergency* are not precise enough to specify an “area.”

Emergencies Act, supra para. 7, Part II [Public Order Emergency], paragraph 17(2)(c).
Proclamation Declaring a Public Order Emergency, supra para. 6, 3rd paragraph of the Preamble, and letter paragraph (a) of the 1st paragraph [re: “specify the emergency”].

62. Despite the fact that the Cabinet did not declare any “area” where ministers “believe[d]” the regulation or prohibition of “any public assembly” was “necessary” (*per* paragraph 17(2)(c) of the *Act*), the Cabinet published “special temporary measures” in which the Preamble to said *Regulations* declared that the Cabinet “believe[d] on reasonable grounds, that the regulation or prohibition of public assemblies in the areas referred to in these *Regulations*” was “necessary.”

Emergencies Act, supra para. 7, Part II [Public Order Emergency], paragraphs 17(2)(a), (b) & (c), and sub-paragraphs 19(1)(a)(i) & (ii) [“travel to ... or within any specified area”].
Proclamation Declaring a Public Order Emergency, supra para. 6, Preamble, letter paragraphs (a) & (e) of 1st paragraph, letter paragraphs (a) to (d) of 2nd paragraph.
Emergency Measures Regulations, supra para. 12, Preamble & sections 2 to 5.

63. While the *Regulations* purport to prohibit any “public assembly that may reasonably be expected to lead to a breach of the peace,” in specified situations, nothing in the *Regulations* identifies “the area of Canada” within which the “effects” of any prohibited “assembly” extend, and therefore the common-law powers to arrest for a “breach of the peace” were not modified.

Emergencies Act, supra para. 7, Part II [Public Order Emergency], paragraphs 17(2)(a), (b) & (c) [re: “A declaration ... shall specify”], and sub-paragraphs 19(1)(a)(i) & (ii).
Proclamation Declaring a Public Order Emergency, supra para. 6, Preamble and letter paragraphs (a) & (e) of 1st paragraph & letter paragraphs (a) to (d) of 2nd paragraph.
Emergency Measures Regulations, supra para. 12, Preamble and sections 2 to 5.
Canadian Charter of Rights and Freedoms, supra para. 2, section 1, paragraph 2(c).
Canadian Bill of Rights, supra para. 2, paragraph 1(e).
Fleming v. Ontario, supra note 2.

64. At section 16 of the *Emergencies Act*, Parliament has defined “public order emergency” to be “an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency;” The same section also defines “threats to the security of Canada” as having “the meaning assigned by section 2 of the *Canadian Security Intelligence Act*.”

Emergencies Act, supra para. 7, Part II [Public Order Emergency], section 16.
CSIS Act, supra para. 11, section 2.

65. At section 2 of the *Canadian Security Intelligence Service Act*, Parliament has defined “threats to security of Canada,” the relevant paragraph from which reads as follows:

“Threats to the security of Canada” means

(a) ...

(b) ...

(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, ...

(d) ...

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d). [underline added]

Emergencies Act, supra para. 7, at section 16.
CSIS Act, supra para. 11, at section 2.

66. Speaking in the House of Commons at second reading of Bill C-9, the future *Canadian Security Intelligence Service Act*, the Hon. Bob Kaplan, Solicitor General of Canada, declared:

I am convinced that the mandate described in the Bill amounts to the best possible protection of civil liberties in Canada. Never in any instance will it be possible to equate protest or non-violent and legitimate unrest with a threat to national security. Still, to avoid any possibility of misleading interpretation, no matter how remote, we have clearly indicated in the Bill that no one can be investigated by the Service only because he or she has taken part in activities related to lawful advocacy, protest or dissent. ... The service will not be allowed to exercise any intrusive powers without a judicial warrant ...

Canada, House of Commons, *Debates*, 32nd Parliament, 2nd Session, Vol. II (Feb. 10, 1984), at 1274 (Hon. Bob Kaplan).

67. The *Proclamation Declaring a Public Order Emergency*, at paragraph (a) after the 1st paragraph, under the heading, “[w]e do specify the emergency as constituted of,” the Cabinet has copied nearly the entire paragraph (c) of the definition “threats to the security of Canada” from the *Canadian Security Intelligence Service Act*, but omits “within or relating to Canada,” “religious,” “or a foreign state,” and “but does not include lawful advocacy, protest or dissent”:

(a) The ...blockades by both persons and motor vehicles ...at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada. [underline added]

Proclamation Declaring a Public Order Emergency, supra para. 6, 1st paragraph.
CSIS Act, supra para. 11, section 2 [“threats to the security of Canada”].

68. The *Proclamation Declaring a Public Order Emergency*, at paragraph (a) after the 2nd paragraph, under the heading, “[w]e do further specify that the special temporary measures that may be necessary for dealing with the emergency, as anticipated by the [Cabinet], are,” the Cabinet cites the statutory exception to “threats to the security of Canada” which allows for “lawful advocacy, protest or dissent,” but does not specify the “area” for protests to take place.

(a) Measures to regulate or prohibit any public assembly - other than lawful advocacy, protest or dissent - that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including...infrastructure [underline added].

Proclamation Declaring a Public Order Emergency, supra para. 6, 2nd paragraph.
Emergencies Act, supra para. 7, Part II [Public Order Emergency], paragraph 19(1)(a).
CSIS Act, supra para. 11, section 2 [re: “threats” & “lawful advocacy, protest or dissent”].

69. Even if the federal Cabinet “believe[d] on reasonable grounds” that it was “necessary,” during the “public order emergency,” to copy part of the definition of “threats to the security of Canada” (from section 2 of the *Canadian Security Intelligence Service Act*), into the Cabinet’s definition of “public assemblies” subject to its “regulation or prohibition” (2nd paragraph of the Preamble and paragraph 2(1)(c) of the *Emergency Measures Regulations*), the Cabinet cannot substitute its beliefs for a judicial warrant and “reasonable grounds” to investigate a “threat,” if it would “limit a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms*.”

CSIS Act, supra para. 11, section 2 [“threats to the security of Canada”]; Part I [Security Intelligence Service], subsections 12.1(3.2) [re: Warrant from judge required if the action “limit[s] a right or freedom”], (3.3) & (3.4); and Part II [Judicial Control], sections 21 to 28.
Emergencies Act, supra para. 7, section 3 [“national emergency”], Part II [Public Order Emergency], section 16 [“public order emergency,” “threats to the security of Canada”].
Emergency Measures Regulations, supra note 12, Preamble, paragraph 2(1)(c).
Emergency Economic Measures Order, supra note 12, section 5 [“designated person”].

70. Although “lawful advocacy, protest or dissent” is excluded from “threats to the security of Canada” at section 2 of the *Canadian Security Intelligence Service Act*, “unless carried on in conjunction with any of the activities referred to” in that definition, the Cabinet did not specify any “[belief]” on “reasonable grounds” that it was “necessary” to specify the “area of Canada” within which “any public assembly” that “may reasonably be expected to lead to a breach of the peace,” and within which “lawful advocacy, protest or dissent” might be subject to “reasonable limits” and thus no limit is placed on the right to “lawful advocacy, protest or dissent” in Ottawa.

Proclamation Declaring a Public Order Emergency, supra para. 6, “Preamble,” paragraph (a) of 1st paragraph, paragraph (a) & (d) [re: RCMP policing] of 2nd paragraph. *Emergencies Act, supra* para. 7, Part II [Public Order Emergency], sections 19 & 20. *CSIS Act, supra* para. 11, section 2 [re: “threats” & “lawful advocacy, protest or dissent”]. *Emergency Measures Regulations, supra* para. 12, Preamble, sections 1 to 6. *Canadian Charter of Rights and Freedoms, supra* note 2, section 1 and paragraph 2(c). *Fleming v. Ontario, supra* para. 2.

71. Even if the federal Cabinet “believe[d] on reasonable grounds” that it was “necessary,” during the “public order emergency,” for the Royal Canadian Mounted Police to be given power to “[request]” “goods and services” for the vehicles’ removal (subsection 7(1) of the *Emergency Measures Regulations*) and to “disclose” the names of “designated person[s]” without a warrant to 12 financial “entities” for the search and seizure of property (sections 1-6 of the *Emergency Economic Measures Order*), Ontario “normally has control or direction” over police operations.

Proclamation Declaring a Public Order Emergency, supra para. 6, letter paragraph (d) of 2nd paragraph [re: “authorize [RCMP] to enforce ...laws by... incorporation by reference”]. *Emergencies Act, supra* para. 7, section 3 [“national emergency”], Part II [Public Order Emergency], paragraph 19(3)(a), subsections 20(1) & (2) [re: RCMP policing contracts]. *Emergency Measures Regulations, supra* para. 12, subsection 7(1) [On RCMP “behalf”]. *Emergency Economic Measures Order, supra* para. 12, section 5 [RCMP “disclos[ur]e”].

72. The disclosure of the names of “designated person[s]” among the RCMP, CSIS and the 12 “entities” set out in the *Emergency Economic Measures Order*, including online fund-raising “entities” that were not (until Feb. 15, 2022) subject to the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, for the purpose of causing the 12 “entities” to “cease” all “dealing in any” non-specified fungible “property” that belongs to the “designated person[s],” violated defendant’s right “to be secure against unreasonable search or seizure” of property, pursuant to sections 1, 7 and 8 of the *Canadian Charter of Rights and Freedoms*, which was not subject to any “reasonable [limit] prescribed by law,” and defendant’s concomitant rights to the “security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law,” pursuant to paragraph 1(a) of the *Canadian Bill of Rights*.

Proclamation Declaring a Public Order Emergency, supra para. 6 [“specified property”]. *Emergencies Act, supra* para. 7, Part II [Public Order Emergency], sections 17, 19 & 20; Part III [International Emergency], sections 28-31; Part IV [War Emergency], section 40. *Emergency Economic Measures Order, supra* para. 12, sections 1, 2, 3, 4, 5 & 6. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, supra* para. 12. *Canadian Charter of Rights and Freedoms, supra* para. 2, sections 1, 2, 7, 8, 9 & 12. *Canadian Bill of Rights, supra* para. 2, paragraph 1(a), paragraphs 2(b) & (e). *Murray, supra* para. 18, at 212 (Fish J.A.) [Applying the test set out in *R. v. Waterfield*].

III. DETAILED STATEMENT OF SPECIFIC FACTUAL BASIS FOR THE APPLICATION

73. Considering the “grounds ... in support of the Application” (at paras. 14 to 72, *supra*, in Part II of Schedule 1 of this Application), and applying the arguments in the “concise statement of the subject of the Application” (at paras. 1 to 12, *supra*, in Part I of Schedule 1), the “specific factual basis for the Application” requests a stay or withdrawal of charges, or further disclosure:

- a. **ORDER** a stay or a withdrawal of all *Criminal Code* charges of “wilfully” committing “mischief,” pursuant to paragraphs 430(1)(c) or (d), and for resisting or “wilfully” obstructing a police officer in the exercise of his duty, pursuant to paragraph 129(a);

OR, IF THE COURT DOES NOT ORDER A STAY OR A WITHDRAWAL OF THE CHARGES,

- b. **ORDER** the production of duty-notes for Special Operations Directors, Incident and Section Commanders directing the police operations on the Rideau St. egress; and
- c. **ORDER** the production of all duty-notes of the police officer(s) in the vehicle(s) at the police road-block that obstructed the eastbound Rideau St. egress 24 hours per day, 7 days per week, between Jan. 29 and Feb. 18, 2022, and including in the notes any officers’ observations of emergency or towing vehicles given entry to the egress; and
- d. **ORDER** the production of all duty-notes of the police officer(s) in the vehicle(s) at the police road-block that obstructed the southbound Sussex Dr. egress 24 hours a day, 7 days a week, between Jan. 29 and Feb. 18, 2022, and including in those notes any officers’ observations of emergency or towing vehicles given entry to the egress; and
- e. **ORDER** the production of all duty-notes of the police officer(s) “acting on behalf” of the Minister of Public Security and Emergency Preparedness, the Commissioner of the RCMP, or the Director of CSIS “for the removal, towing and storage” of the black Mack truck, including the time of day it was towed and whether it was searched, and to give 7 days’ notice prior to trial (*per* sections 23 to 28 *Canada Evidence Act*); and
- f. **ORDER** the production of all duty-notes of the police officer at the remote detention facility who put defendant’s cuffs on “in front,” to allow defendant to use facilities; and
- g. **ORDER** the production of all duty-notes of the police officer at the remote detention facility who took custody of defendant from vehicle, and the time of the transfer; and
- h. **ORDER** the production of all duty-notes of the police officer at the remote detention facility who took defendant’s prints, twice, to allow urgent treatment for frostbite; and
- i. **ORDER** the production of all duty-notes of the police officer at the remote detention facility who had phone interaction with counsel prior to call transfer to prisoner; and
- j. **DECLARE** that written reasons for decision should be given to protect parties’ rights.