

# ONTARIO COURT OF JUSTICE

DATE: 2025 04 03  
COURT FILE No.: 22-15545, 23-11401103 Ottawa

**B E T W E E N :**

**HIS MAJESTY THE KING**

**— AND —**

**Tamara Lich**

**Christopher Barber**

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Before Justice H.E Perkins-McVey  
Heard on from September 5, 2023, with interruptions until September 2024.  
Reasons for Judgment released on April 3, 2025

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**J.: H.E Perkins-McVey**

**[1]     General Overview**

**[2]**     The accused Tamara Lich and Christopher Barber are charged on a 7-count information arising out of their involvement in the city of Ottawa over approximately 3 weeks in January /February 2022, in what has been called the “Freedom Convoy 2022”. That Ms. Lich and Mr. Barber were organizers and leaders of the Freedom Convoy was admitted in the list of Admissions Exhibit 1, paragraph 4(c). Together, along with others, they led a convoy of semi-trucks and other vehicles and demonstrators from Western Canada arriving in Ottawa on January 28th, 2022.

**[3]**     Although the term Freedom Convoy has become a term synonymous with all protests of Government COVID restrictions and mandates in 2022. It was, a series of

different protests across various parts of the Country organized initially to oppose COVID-19 vaccine mandates for cross border truck drivers. The movement seemingly quickly expanded to include all COVID-19 restrictions and mandates.

[4] It was in fact Tamara Lich, Chris Barber along with others who came to Ottawa that formed the Freedom Convoy 2022 Corporation. Tamara Lich was the President of that Corporation and Chris Barber one of the directors.

[5] The Crown commenced the trial by saying that this trial was not about the political views or perspectives of Ms. Lich or Mr. Barber and that they certainly were entitled to engage in peaceful protest. The Crown also conceded that the mere presence of the Accused in Ottawa was not unlawful. The Crown conceded in its final submissions that Ms. Lich and Mr. Barber came to Ottawa with the best of intentions to peacefully protest seeking the end to COVID restrictions. The Crown says they crossed the line, however, with the means used to try to achieve those ends.

[6] The Crown acknowledged in its final submissions the right of citizens to demonstrate, citing *R. v McCann* 2014 ONSC 2987 at para 16 “ in a free and democratic society such as Canada, we welcome and encourage people to hold demonstrations if such is necessary to exercise their right of freedom of conscience, freedom of expression, freedom of peaceful assembly and their right to freedom of association as guaranteed by section two of the Canadian Charter of Rights and Freedoms. However. Society also expects demonstrators to exercise these rights to do so without violating the rights of others to move about freely or to engage in activities which they have a perfect legal right to do so”. In submissions, the Crown said that at the earliest stage of the planning to come to demonstrate in Ottawa did not constitute as an unlawful act. They argue that upon arrival in Ottawa, the nature of the agreement quickly changed and turned into an agreement to commit an unlawful act.

[7] The Crown argues that the Accused before the Court by the means they used to express their wish for COVID mandates to end, violated the rights of others to move about freely or engage in activities they had every right to engage in. Defence argues to the

contrary that their clients engaged in a peaceful lawful demonstration and always encouraged that anyone associated with them do so.

[8] There is no doubt about the effect of the Freedom Convoy on downtown Ottawa. Several thousand individuals came to Ottawa from all parts of Canada, some arriving in private vehicles, many drove large commercial tractor-trailers and other types of trucks too. This was a grassroots movement which galvanized persons wanting to protest COVID-19 health mandates and other perceived government overreach. Some people and their vehicles were part of the Freedom Convoy, some were curious onlookers, and some were in Ottawa to protest but were unaffiliated with the Freedom Convoy

[9] With the arrival of trucks from western Canada, eastern Canada, Quebec, etc. the Ottawa Police assisted or directed trucks where to park on Wellington and the downtown area and gave them additional parking on Coventry Road. It became quickly apparent that police intelligence vastly underestimated the number of vehicles and persons who joined this protest. The downtown core areas were jammed with trucks and vehicles blocking many downtown streets. Trucks lined the streets, their engines running and their horns honking.

[10] The Court heard from witnesses that this protest disrupted public transportation routes and that public streets were occupied by vehicles, food stations, structures, speaking platforms, and people. Persons testified that the noise from the truck horns made it difficult for downtown residents to sleep and focus on work. Others testified that the egress from their buildings was blocked or that because of the streets being blocked that it was difficult or impossible to get to work and appointments. Generally, the central core of the city came to a standstill. The downtown residents who testified including persons and their families who lived in the downtown core, owners and employees of small businesses and other institutions such as churches suffered significant interferences in the use and enjoyment of their property and in their daily activities because of the protest. In addition to witnesses being called the Crown also tendered a compilation of photos and videos to portray the state of things in Ottawa. There is no question that this was the state of things in Ottawa during the period of January 28 to February 21, 2022.

[11] As Freedom Convoy participants continued to occupy Ottawa's downtown area over the three-week period, they and their spokespersons told both police and the public that they would not leave until the government agreed to terminate COVID-19 mandates. Police sought to manage the situation and ensure public safety by controlling the movement of traffic and public transportation and by attempting to keep one traffic lane open on most streets to permit emergency vehicle access. Police were overwhelmed as the situation escalated and grew out of control. The City of Ottawa declared a municipal state of emergency on February 6, 2022. Downtown residents, through private legal counsel, sought and obtained injunctive relief against honking of air horns and train horns (order of the Superior Court of Justice, per McLean J., dated February 7, 2022, and Feb16, 2022). The City of Ottawa on February 9, 2022, declared an Emergency. The Government of Ontario declared a provincial state of emergency on February 11, 2022. The situation contributed to the federal government's invocation of the Emergencies Act, R.S.C. 1985, c. 22, and the ensuing declaration of a national state of emergency.

[12] On February 18, 2022, a three-day multi-jurisdictional police enforcement operation began to clear Freedom Convoy participants still within the downtown core of Ottawa. The accused's Chris Barber and Tamara Lich were arrested on February 17, 2022, and thus had no further involvement in convoy activity from that point forward.

[13] The question to be determined is whether the Crown has proven beyond a reasonable doubt that it was the actions of the Accused before this court who caused or counselled this interference with the lawful use or operation of property, intimidation by the blocking or obstruction of roads, obstruction of justice or disobeying a court order in the case of Mr. Barber.

[14] **Charges and Summary of Evidence**

[15] Tamara Lich and Chris Barber are charged that between Dec 1 , 2021 and February 19 , 2022 they did counsel to commit mischief which was not committed by one or more persons contrary to Section 464(a)(count 1), count 2 that between December 1, 2021 and February 19 , 2022 that they did counsel to commit the indictable offence of intimidation which was not committed, contrary to section 464(a) of the Criminal Code of

Canada, Count 3 that between January 26, 2022 and February 19, 2022 that they did counsel to commit the indictable offence of obstruct police which was not committed, Count 4 that between January 26 2022 and the 19th day of February 2022, they did resist or willfully obstruct a peace officer in the execution of his duty contrary to section 129(a) of the Criminal Code of Canada , Count 5 that they did between January 26 , 2022 and the 19th day of February 2022 did wrongfully and without lawful authority, for the purpose of compelling one or more persons to abstain from doing anything that the person had the lawful right to do , or do anything that that the person had a lawful right to abstain from doing , block or obstruct one or more highways contrary to s. 423(1) (g) of the Criminal Code of Canada, Count 6 that between January 26 2022 and the 19th of February 2022 did commit Mischief contrary to Section 430(3) of the Criminal Code of Canada .

[16] Christopher Barber is charged alone on count 7 that he did counsel commit the indictable offence of disobeying court order, which was not committed contrary to s. 464(a) of the Criminal Code of Canda.

[17] The Crown alleges that both accused committed the offences outlined above either as a principal or as a party under s. 21(1)(b) and (c) of the Criminal Code, R.S.C. 1985, c. C-46, or by way of counselling pursuant to ss. 22 and 464 of the Criminal Code.

[18] The Crown called numerous witnesses including Members of the Ottawa Police including PLT officers who liaised between police and persons involved in the protest. Also, Senior managers with the City of Ottawa as well as residents residing or carrying on business in the downtown core.

[19] Specifically, the following Crown witnesses were called: Cst. Craig Barlow who put together a compilation video, Inspector Lucas, Surete du Quebec Captain Martel whose team was involved in the take down and arrests. City of Ottawa officials Kim Ayotte and Serge Arpin were called to testify. Also, Sgt Pillotte who reviewed Facebook materials from the Freedom Convoy Facebook site, PLT officer Isabelle Cyr-Piddcock, PLT officers Bach and Blonde and who dealt with and exchanged texts with Chris Barber. Nathalie Huneault who described the effects of the protest on OC Transpo, and four citizens living

in the downtown core who described what they observed living or working in downtown Ottawa late Jan into Feb 2022.

[20] **Cst. Craig Barlow**

[21] Cst. Craig Barlow put together a compilation video of 38 clips. The Crown then sought to add 7 more clips taken on February 19, 2022, that had not been included by Cst. Barlow. The clips showed each week of the protest as well as the last few days of the takedown February 18,19, 20 and some coverage from Coventry. In putting together the video he used open-source material, police sources and some body cam footage. He testified that the compilation video represented what was going on in Ottawa at the time. The video compilation was filed as Exhibit 3.

[22] In cross examination, he agreed that he had been directed by the Crown's office to include five specific things. He submitted a first draft and was told they wanted more footage from the downtown core to show congested streets. He agreed that the compilation was put together based on that Crown directive.

[23] The compilation video filed on consent as Exhibit 3, showed loud and disorderly conduct, streets blocked with people and all types of trucks and other vehicles.

[24] **Inspector Lucas**

[25] Inspector Russell Lucas became the OPS Incident Commander on January 21, 2022, when they were planning to deal with a response to the Freedom Convoy protest. He did not have any contact with either Tamara Lich or Mr. Barber. The PLT officers who worked under him were to work as liaison to enable dialogue between the parties. He said our general practice is to facilitate between lawful protests and the persons affected. He said we tried to find a balance between the two. He said this includes public safety for everyone and mitigate any impacts that arise. He stated that Freedom Convoy organizers were for the most part able to keep an emergency lane open on Wellington during the first weekend (January 28-30, 2022), but that "we lost it by the Monday or Tuesday completely". Lucas believed that the emergency lanes "were gone more than

we had them”. He said their resources were stretched thin and after the first weekend they were not as focused on traffic and that they just wanted to keep everyone safe.

[26] Inspector Lucas in his testimony (pg. 10) said he thought initially by January 21st, 2022, there were five different convoys but that by the time they are starting arriving January 28, there were up to 13 identified groups, in addition to many loners or private individuals. He recalled it was challenging to get a handle on the numbers. Inspector Lucas said “So, that changes the dynamics because the initial posting of the event that was taking place from the western convoy and the original group that left, they were a core group to the best of my knowledge of about 50 people in that, but there were people coming and going from that group. And then there were more groups that were growing every day, which was changing our plans daily, on how we were going to respond and manage their imminent arrival.”

[27] Inspector Lucas said there were also local groups, and that part of the challenge is that there were a lot of private vehicles joining especially from Ontario and Quebec and the immediate area. The original estimate was that there would be 10,000 people in the downtown core. He admitted that when on Friday January 28, 2022, they all started coming in, we didn’t know the size and scope of the convoys, especially from the Ontario/Quebec areas, until they left that day. (pg. 22). Inspector Lucas said they had been told there would be up to 100 vehicles per province but that the size exceeded that with over 5000 vehicles. He said their planning was based on the original 2000 vehicle estimate of numbers but that the event far exceeded our expectations.

[28] Inspector Lucas said when they were planning, protestors were co-operative with police and that there were no red flags with them enroute. They looked to where they could divert these vehicles to mitigate the impact on the city. He said “it’s a balance, regardless of the message. We wanted to balance the right of free speech but mitigate the impact.

[29] Inspector Lucas was aware of the routes provided to the protestors and where they were directed to go to the staging areas. He said the traffic plan came for the Ottawa Police. Inspector Lucas said it was his decision to allow trucks on Wellington, that he

approved it and endorsed it. He said Wellington was where they wanted to be, and it was an easy place to manage. He said in cross that he would still allow the Convoy to park on Wellington to prevent it spilling out onto other areas. He was asked Is that still your view today. Answer: It is. In re-examination, Inspector Lucas said his rationale is that Wellington Street is primarily government offices and that they would have moved away from residential areas and decreased the impact on residents and decreased stress on resources.

[30] Inspector Lucas said the exit strategy was that they would leave after the first weekend. He said many did leave, but the challenge was that the footprint remained the same. He said the footprint of the Convoy exceeded their plan.

[31] Inspector Lucas said he was aware of efforts to negotiate the movement of trucks to shrink the footprint and move vehicles further west onto Wellington Street. He was also aware that at one point, there was an agreement to reduce the footprint. He said his preference was to shrink the protest, but his directive from the Chief of police was not to give them one inch. In cross-examination, he said he thought that directive came Jan 31st. Inspector Lucas said that it took power away from the PLT officers as they had no negotiating power.

[32] The Inspector said that enforcement was difficult as officers were sometimes swarmed while trying to do enforcement but that there were no physical violent exchanges.

[33] **Sgt. Cyr**

[34] Sgt. Cyr was part of the police liaison team or PLT whose job was to lease with the protestors. She described that they reached out to organizers to get and convey information for the safety of the organizers and the public. She had some contact with Chris Barber early on but had no contact with Tamara Lich.

[35] She understood that there was to be no violence and that the truckers were to register and there was a code of conduct, but she never saw a copy and nor was it made an exhibit at the trial. Sgt. Cyr understood the protestors wanted a peaceful, lawful protest.

[36] Sgt. Cyr recalled that there was the drawing of a map of where the key staging was to occur. Identified Exhibit 125 as the maps and routes that were communicated to the truckers. She agreed that it was spelt out that there was to be an emergency access lane.

[37] Sgt. Cyr was aware that there were efforts to shrink the footprint. She said some truckers were more open to discussion than others. She agreed that the purpose was to get the trucks out of the residential areas into the staging areas. She said a couple of times “I asked Inspector Lucas if I could move trucks onto a different street and I was denied that.

[38] The signal chat was the means the PLT officers communicated with each other about what was going on. Feb 2 there was a signal chat which she agreed conveyed that the trucks at Rideau and Sussex were not part of the Freedom Convoy but were part of the “French connection”.

[39] **Sgt. Pillotte**

[40] Sgt. Pillotte was tasked with a review of the Facebook accounts of Chris Barber and the Freedom Convoy. The review included screen shots, posts, and videos on the Facebook accounts of the Freedom Convoy 2022 and Chris Barber. Several admissions were made regarding whose account it was, dates shown are accurate, that they are publicly accessible and that the numbers beside following and followers is accurate etc. The admissions are set out in Exhibit 1 particularly pages 4 and 5. It was further agreed that the 11 posts on the Freedom Convoy face book signed by Tamara were attributable to Tamra Lich and on Exhibit 39 pg. 10/212 that post is signed by Tamara Lich. In addition, that any video clips featuring the accused and words spoken by them are attributable to them. Similarly, that posts signed Chris Baber and word spoken by him were Mr. Barber as well as those authored on his own account. Screenshots, videos, and transcripts of those videos were filed as exhibits by the Crown. The Crown stated that they were aware that much of the content on these sites is hearsay, and stated they were not relying on any replies or comments from third parties on the Freedom Convoy or Chris Barber’s Face Book account. They were not relying on that either for circumstantial evidence, the

Carter Application or to prove the case on the merits. The crown said they may however rely on the number of computer-generated likes or followers. There was an extensive review of the materials viewed and put together by Sgt. Pilotte, those will be referred to as need be in the analysis of the evidence and the application of the law.

[41] **Captain Etienne Martel-Surety du Quebec**

[42] Captain Martel was in command of a team of police officers who aided the Ottawa Police. They were deployed to assist with the “removals”, February 18, 2022. The team included officers for crowd control, the first line had shields, there was also a team for arrest and flight, 2022. He was responsible for the Green Squad which was composed of 45 to 50 people. Their role was to assist in crowd control.

[43] They had an early morning briefing on February 18, 2022, and then received an order to form a front line on Wellington Street. He was in the Mackenzie and Wellington Street area. He himself was 15 ft behind the front line. They were equipped with crowd control equipment. First, they established a presence line and eventually asked to move forward to clear space. He said there was a heavy presence of demonstrators that prevented them from moving forward. He said the crowd was resisting. They were not clearing but there were no projectiles that were thrown. He said they could hear yelling, but they just stayed in place. He said the line of demonstrators pushed back.

[44] On February 19, 2022, he and his quad were asked to go back to Wellington Street past Parliament. Again, they formed a line and moved slowly. The order was to turn the demonstrators so they would go down Bank Street and make sure there were no further demonstrators on Wellington Street.

[45] Cpt. Martel was shown the compilation video clips of Wellington Street (exh 3) from February 19, put together by Cst. Barlow. He identified members of his green squad from that compilation. He described that at certain points, as they tried to move forward, there was pushback by the demonstrators. He agreed in cross that there were demonstrators singing and chanting the word “Freedom”.

[46] In cross, he was shown other videos taken from the same time (Exhibit 6 and 7) He agreed there were police officers saying Hold the Line on the police radio. He said when he relayed that to his officers, it to mean don't move forward. Not to move. We keep the line where we were up to."

[47] **Kim Ayotte**

[48] Mr. Ayotte was called by the Crown. In January /February 2022, he was General Manager of Emergency and Protective Services, in charge of the fire department, paramedic services, by-law officers, and corporate security. He explained that the Chiefs of Fire and Paramedic Services reported to him and that his group of 2500 people who report to him work alongside OPS, RCMP and OPP etc Mr. Ayotte reported to the City Manager.

[49] During the protest, he said the police took the lead and that his group were there for consequence management. He said By-Law gave support by issuing tickets when escorted by police in certain areas. He did not give any direction to By-Law. He explained on January 29, 2022, his by-law officers were directed not to give out tickets or tow vehicles in the Red Zone as police controlled all enforcement activity.

[50] He explained it was the Ottawa Police Service who were responsible for keeping the peace, maintaining public order, and dealing with the Freedom Convoy, with Emergency and Protective Services providing a backup role. In cross-examination, he agreed that handling the protest came entirely under Ottawa Police management, as a well as all operational decisions, closing the street, as well as crowd control, ticketing, and fire safety. From the outset, the Ottawa Police had complete responsibility for handling the protest. (pg. 27 Transcript Sept 20/2023. It was put to Mr. Ayotte in cross, "All open-source information and our interaction with organizers indicate that this will be a significant and extremely fluid event that could go on for a prolonged period. He was asked if he disagreed with that information. He did not (pg. 53)

[51] He testified in cross-examination that he was not aware of the Ottawa Police Operational Traffic Plan. In cross, however (pg. 53 Transcript Sept 20/2023 he agreed that prior to the arrival of the Convoy, some streets were closed at the direction of OPS

and that the street closures were meant to coincide with the areas to be occupied by trucks. That they (OPS) were trying to funnel trucks into certain areas.

[52] Mr. Ayotte outlined that his objective was to help the police manage a peaceful protest with minimal damage and injury and the least intrusion to businesses and citizens of Ottawa.

[53] Mr. Ayotte was also able to provide some first-hand observations about the protest. Mr. Ayotte was able to make observations from his office on the fifth floor of City Hall, which is close to the Red Zone where convoy vehicles were concentrated. He also had access to CCTV cameras and drone footage which he could access from his home and from his office. CCTV footage was filed as Exhibit 98. He also took several walks around the Red Zone. He recalled going for a walk on February 11/2022, looking at things from an injunction perspective. So, I went looking for issues that were a concern. He said (Sept 20/2 pg17) "I made observations with regards to, you know, honking horns and, you know, diesel fumes, illegal parking, illegal use of roads. He could not recall if he made specific observations regarding burning fires but had made observations of those in the previous week and a half, at different times.

[54] Generally, he observed that the honking of horns for the first week and a half was constant. He could hear them not only on his walks from the office but at his condo in Westboro., they were nonstop... so my observations are on the 11th that they continue to honk their horns." He said "they" were the people participating in the Convoy, large trucks, small trucks, people who felt like honking their horns. He noticed there was an odor of diesel fuel in the air, which they had received complaints about. He said trucks were idling contrary to the Idling By-Law.

[55] When asked about his observations regarding congestion (Transcript Sept 20/2023 pg. 18), "There was a lot of congestion on the roads. There were trucks parked everywhere. There was an attempt to keep the emergency lanes open, and that effort was visual. By-Law was out there assisting with the effort as well, but all lanes were blocked. All of Wellington Street was blocked. There was no emergency lane on Wellington. And there was illegal use of roads setting up – speakers, people playing

music in the middle of the road and dancing. Exhibit 98 pg. 21 photo stamped Feb 5 at 2:00 pm Mr. Ayotte said shows the emergency lane taken over and that there was no Emergency Lane.

[56] Regarding Wellington Street, Mr. Ayotte said, “We lost the emergency lane the very first night. There was one planned, but the trucks parked in it, and they chained each other together” (September 20, pg. 19). Later in his testimony, He said for the most part several of the emergency lanes were maintained. In re-examination, he explained what he meant, saying (September 21, pg.51) Well, as the protestors came in larger numbers, especially on Wellington Street, some of them would expand the overall footprint and would block some of the emergency lanes. He said this was during the first couple of days and the second weekend.

[57] As for the honking, he observed, “the honking while I was in my office in the early days of the convoy was constant. They continued to honk their horns, large trucks, small trucks anyone who felt like honking their horns. It was non-stop, constant. Following, I believe, the citizens’ injunction...I found it more sporadic...it was a lot less”.

[58] Mr. Ayotte testified about his direct dealings with Mr. Barber. He attended a meeting with Mr. Barber on February 13, 2022. The meeting was with a convoy group, including Chris Barber which was to discuss how Mr. Ayotte could help them facilitate the moving of vehicles from the residential portion of the downtown area onto Wellington and out of the city. (Transcript Sept 20 pg. 4) His understanding was that the Convoy group was going to remove or move the vehicles, and if they had any pushback or concerns, Mr. Ayotte would be the Senior person within the city they could deal with to assist in moving barricades or police vehicles, etc.

[59] At that meeting, they had a map and identified which part of Wellington all the way to the parkway that they could put vehicles on. He said the organizers understood that it was not physically possible to move all the vehicles onto Wellington, that they would convince people to leave the city and go outside the city to a farm that they had identified where they could continue their protest. The goal was to remove vehicles from the residential areas. (Transcript Sept 20/24 pg5). Mr. Ayotte explained that most of the east

end of Wellington was blocked with Trucks, so they were talking west of Bank St all the way as far as they could get it to the SJAM without blocking any bridges.

[60] It was for that purpose that he and Mr. Barber exchanged text messages on Feb 14 and 15, filed as Exhibit 99. Mr. Ayotte said his group were to facilitate with the removal of barriers etc. He recalled that they did assist with moving barricades and that some of the roadblocks were also with police officers not wanting to move vehicles because they had not been given the direction to move vehicles (pg. 8). Mr. Ayotte contacted Staff Inspector Drummond, who provided information with regards to their position.

[61] Mr. Ayotte was asked, "And what was the value of moving those trucks? A: We were trying to look after the citizens of Ottawa, the residential properties who lived in the downtown Ottawa, who had been suffering for three weeks with regard to everything they were dealing with. And what we saw by moving them out of the residential property would give some people relief with regards to the stress they had been under and, you know, the challenges they had been under. Also, it would offer them opportunities to leave their buildings in a comfortable way without feeling unsafe, which is what we were hearing from them. "(pg 11)

[62] Mr. Ayotte observed on the CCTV the moving of trucks, and he physically observed that some trucks had moved onto Wellington. He said Pg 11 Transcript Sept 20/2022 "My observations were that some trucks had been moved but, in their place, either smaller vehicle had moved in their place and the jockeying seemed to be that everyone was still trying to get closer to Wellington but there wasn't a lot of movement out of town. "

[63] He said the movement of trucks that first day was seen as a success and from his perspective, the truckers were living up to their end of the bargain.

[64] Mr. Ayotte did not have any interactions with Tamara Lich.

[65] Inspector Lucas also spoke of this plan to reduce the footprint and impact on residential areas, which he endorsed but ultimately direction came from OPS chief, not to continue this plan and not to allow Trucks to move onto Wellington.

[66] Mr. Ayotte also discussed the circumstances surrounding the declaration of an Emergency declared by the Mayor on February 6. He said the purpose was to flag to the Senior levels of Government that we needed assistance. He also testified about the fact that the city sought injunctive relief on February 14. In re-examination, He said they did this as it was seen as another tool to use that could possibly enforce the laws to a greater degree (pg. 54 Sept 21/2022 to provide greater enforcement. He explained that the agreement to reduce the footprint was to help the residents and alleviate the pressure and anxiety they were facing and still allow the protestors to protest. The injunction was a tool to enforce, at a greater level, from a court perspective, the violations that we observed on the streets from a by-law perspective.

[67] In re-examination, Mr. Ayotte was asked about an inconsistency in his evidence, on the one hand indicating that he thought it was going to be a two-day event, but also not disagreeing with the suggestion that it was going to be a potential prolonged event. He explained that there was a lot of information coming in from all kinds of sources. He said as of Jan 26, 2022, his concerns were the lack of intelligence about who was coming to Ottawa and from what other places in the country? Are they coming for the weekend? Are they going to last longer? Is this going to be a long-duration event? And no one could really answer that question. It was an operating assumption in creating our plans that we were hopeful that it would be a two-day event, that they would come in and police would escort them out as quickly as possible, in two-days (Transcript pg. 50, Sept 21/2022)

[68] **Serge Arpin**

[69] Serge Arpin was the Chief of Staff to the former City of Ottawa mayor Jim Watson. Arpin testified that he could see trucks lined up to Parliament Hill and that the entire width of the thoroughfare he walked on Metcalfe Street was taken up by parked trucks. He said he personally walked Lisgar, Metcalfe and Wellington Street. While walking on Metcalfe Street during the second week of the demonstration, Arpin indicated that every city block from Lisgar to Wellington Streets had vehicles parked tightly side-by-side, three to four wide. He said some trucks were idling, some running and some honking. He said there was a strong smell of gas and diesel and loud noises from the trucks idling. He said it was a loud noise like a lawnmower, which prevented conversation next to that vehicle. Arpin

believed that the vehicles on Metcalfe Street “were parked in a coordinated fashion all the way down the avenue”. Arpin also stated that some of these vehicles were vacant, while others were occupied.

[70] Mr. Arpin said he sent a letter to Ms. Lich on February 12, 2022, Exhibit 100, the fundamental purpose was to send a letter from the mayor asking the Convoy leaders to consider removing the trucks from the residential districts of Ottawa, where we felt they were causing issues. We asked them if they would consider removing their trucks from the residential areas, those that were south of Wellington, near Coventry ballpark stadium and other vehicles at the intersection of Rideau and Sussex and in the market.

[71] Mr. Arpin testified that shortly after he sent the letter, he received a reply that laid out their broad consent to the mayor's proposal. In cross, he said, he sent the letter to Ms. Lich as it was suggested she represented the broad moderate group of the demonstrators. He said he understood that it would be very difficult to move the trucks as they'd have to go to every truck and explain the plan, and that some might not want to leave. He said the Ottawa Police and City had to collaborate on this plan to assist moving concrete barriers. There also had to be movement on Wellington itself so they could all be parked there.

[72] Mr. Arpin agreed that he testified at POEC that 102 vehicles, including 40 heavy trucks, moved, which he viewed as a commitment to honouring the agreement. He understood it was the Ottawa Police that stopped the movement of the trucks. He agreed he apologized to counsel for the Freedom Convoy because he saw it as a failure on our side to implement the agreement.

[73] Mr. Arpin agreed that on February 9, the city changed the idling by-law so that you could only idle if it was -15 or colder and that it was done to assist with enforcement and targeted the demonstration zone.

[74] **Sarah Gawman**

[75] Sarah Gawman, a downtown resident, lived near Laurier and Lyon in a condo above the 10th floor. She also worked in the area at Albert and Lyon streets. During the

period of Jan 28 to Feb 19th, she worked from home. She described that once the trucks moved in, there was incessant honking, making it difficult to concentrate and she felt anxious trying to do work. It was put to her in cross that after February 7, the honking was not continuous. She said, “it was a mixture of what I was feeling and what I heard. But agreed after Feb 7, it was more sporadic.

[76] Ms. Gawman said that she could see from her window Slater up to Lyon Street and that there were vehicles as far as the eye could see. She said there were a variety of vehicles and a lot of trucks. She said during Feb 4 to 11, 2022, she observed what seemed that there was increased traffic, drums, fireworks, etc at Laurier and Kent. She described trucks honking all day, drumming from 8 pm to 2:00 am and Fireworks after 8 pm. She testified that due to streets being blocked or obstructed, she was not able to get a taxi to pick her up for a medical appointment or see her friends.

[77] Ms. Gawman indicated she tried to do grocery shopping near Somerset and Bank street, but there were people shouting, raising their fists, there were vehicles blocking and she did not feel comfortable. She described that Banks at Laurier and Lyon closed, and the pharmacy closed the first weekend. Only the Tim Horton’s was open. She said the second week, as things went on, she felt scared and that she left Feb 3 to 6 that week to go to her nieces. She could not identify any truck or people in them, and she never had any contact with either of the accused.

[78] **Vivian Leir**

[79] Vivian Leir testified that she was the Church Administrator at St. Andrew’s Presbyterian Church located on Kent Street at Wellington Street. She described that when the Convoy came, they surrounded the church and indicated that she was unable to take her vehicle to work as she normally did. She said she was overwhelmed by the number of Trucks, the noise and the diesel smell. She said the noise and fumes infiltrated the Church. She testified that people were urinating and defecating on Church property and that when she told them not to, she was sworn at. She said people put items of clothing on Church statues, and there was also garbage and signage. She said the church is a sanctuary and they fouled it.

[80] Ms. Leir had no direct dealings with either Mr. Barber or Ms. Lich. Ms. Leir generally testified as to the impact of the convoy on the Church. Ms. Leir testified that several regularly scheduled activities, such as choir practice, committee meetings, could not take place or had to be moved online. She said rental groups cancelled their bookings, and The Church lost considerable rental revenue during the Freedom Convoy, and Ms. Leir also indicated a decline in Church service attendance during the Freedom Convoy.

[81] Ms. Leir said she had to contact the police to escort their Minister, so that she could go in and out to conduct services. She testified that noise during the Freedom Convoy was very significant, with the sounds of rumbling of trucks, honking, and loud music, which could be heard in the Church sanctuary.

[82] In cross-examination, Ms. Leir, in response to the Question, you referred to the protest as an occupation? She replied that they were limiting our space; it was our space taken over, and we were limited in our activities. I felt it was an occupation. She agreed that the loud music playing wasn't constant and nor were the horns after the injunction of Feb 7.

[83] **Stephan Bellfooy**

[84] Mr. Bellfooy is another downtown resident who testified. He lived around Laurier and Lyon. Stephane Bellfooy said that during the period from January 28 to February 19 his commute changed a lot. He said his commute prior to that date usually took 20 minutes, but that during the protest, he had to find alternate routes and that it took 1.5 hours He described a lot of traffic and lots of obstacles getting around. He said it was difficult to engage in his usual activities, such as taking his son to hockey and visiting his parents in Quebec. He described that one day, coming back from hockey practice, he could not get into his building and that his son, in full hockey gear including his skates, had to walk 1.5 km. While they were walking back, several people were laughing and making fun of his son. He said they had to walk Bronson down Laurier, because the traffic was not moving and was full of mostly trucks. Though Mr. Bellboy's vehicle was not blocked into his residence in the same way Jorgenson's was, he testified about standstill

traffic, closed roads, and the requirement to take alternative routes, as routinely making him late for his commitments.

[85] Mr. Bellfof, like other downtown residents, heard noises at all hours of the day. He described that he heard things such as fireworks over 7- or 8-days times, car and truck horns, noisy people in the street and the revving of engines. He also smelled gas or diesel fumes. In cross, he agreed that after the injunction, the honking was sporadic.

[86] **Chantal Biro**

[87] The Court also heard from Ms. Biro, who owns a women's clothing boutique in the ByWard Market. Ms. Biro has been a small business owner for 27 years. She also has an online business through which she sells clothes all over the world. She had no direct dealings with either Tamara Lich or Chris Barber.

[88] At the time the Freedom Convoy arrived in Ottawa, Ms. Biro had recently reopened her store following the lifting of COVID-19 restrictions. She maintained regular hours and had to lay off one of her employees during the Freedom Convoy protest.

[89] Ms. Biro indicated that trucks were parked on Sussex Drive, Rideau Street and Wellington near her shop. She heard constant blaring of horns, people speaking through a Megaphone in front of her business, she heard the word Freedom a lot, swearing, especially directed at the then Prime Minister. She smelled gasoline fumes and exhaust as well as weed and cigarettes. She said that she saw lots of people, flags, megaphones, and some days Sussex was completely blocked by rigs, pick-up trucks and upside-down or F—Trudeau flags.

[90] While Ms. Biro did not report difficulties accessing her parking spot in the ByWard Market, she testified that the disruptions associated with the Freedom Convoy resulted in delayed deliveries, which had a direct impact on her online business. Ms. Biro also testified that, on the short walk from her parking spot to her boutique (for which she wore a mask), she had "uncomfortable" interactions with Freedom Convoy participants who greeted her with "foul language." And laughed at her for wearing a mask. She said her business was affected adversely by the loud honking of horns and noise associated with

the convoy and that few customers could make it downtown. She said her in store sales dropped dramatically. She was subjected to a variety of loud sounds, audible from inside her boutique, including horns, megaphones, people shouting “freedom”, and loud music.

[91] **Natalie Huneault**

[92] Natalie Huneault is the Business Projects and Events Coordinator for OC Transpo, she usually handles events such as Blues Fest, Canada Day festivities, Race Weekend and any demonstrations that affect transportation. She testified that the Freedom Convoy caused a widespread disruption to public transportation. Specifically, that bus and other OC Transpo services were impacted specifically in the area between Bronson Street and the Canal, Wellington Street to Gladstone Street, Albert Street to Terrasses de la Chaudière, and finally from Sussex Street to King Edward Avenue to Rideau Street. In response to road closures because of the Freedom Convoy and vehicles obstructing roadways, there was a complete removal of service on a number of streets and run time issues due to supplementary traffic. She said that 5 major routes were affected, and approximately 150 stops were not in use, depending on what was open. She agreed that decisions regarding road closures were made by the Ottawa Police and that buses were rerouted due to road closures. OC Transpo was not able to serve the roads that those stops were on. There were no specific examples of changes to Para Transpo. Ms Huneault said the public’s ridership was significantly affected.

[93] As with other Crown witnesses, Ms. Huneault had no personal dealings with either Tamara Lich or Chris Barber

[94] **Paul Jorgensen**

[95] Paul Jorgensen lived at the corner of Kent Street and Laurier Avenue. He also worked from home. He said his work was severely disrupted when the protestors came and that it was hard to convey how impossible it was to conduct life and meetings, etc. He said the noise was incessant and very loud. He said the smell from vehicles running stank and that it burned his throat. He observed plumes of black smoke from a vehicle he thought was burning coal.

[96] Mr. Jorgensen testified that the exit and entrance to the building where he resided were completely blocked by vehicles. He said the first weekend it was chockablock, you would not have even been able to maneuver a motorcycle. According to Jorgenson, trucks that were part of the demonstration were parked immediately in front of the exit of his parking garage, which prevented him from leaving in his vehicle. He said he did not ask them to move cause even if they wanted to move, they couldn't have. When he and his partner did leave, it was on foot. He recalled once when he and his partner did leave on foot, approximately 15 metres up Kent towards Gloucester, they felt threatened, as they were surrounded by protestors who said, "Oh you're wearing masks" and felt that they had to flee. They were not pursued. He said this occurred during the first weekend. He said when they went out on foot, most places were closed, so they went to the Glebe which was refreshing and silent.

[97] Mr. Jorgensen said they left their home from January 31 to February 9, 2022, as they had trouble sleeping and their pet was also struggling. When they returned, the noise level had significantly improved and there was no longer incessant noise. He said, "It was intermittent, it was liveable". He also said the fireworks had stopped, and they did not experience any further harassing behaviour. He said after their return, he was able to work from home and would mute himself if there was a noise flare-up up which might last from seconds to minutes, but not hours.

[98] After Feb 9 when they returned, he also recalled, there was some possible circulation going east and west – Gloucester Street and Laurier Avenue; however, circulation north and south on Kent Street was "impossible". Even with this circulation, Jorgenson explained that he was still broadly unable to come and go from his residence by vehicle throughout the demonstration period.

[99] **Zexi Li**

[100] Zexi Li, was living in the Bank and Laurier area in January/Feb 2022. Ms. Li is also one of the named plaintiffs in the injunctions before Justice McLean and part of the civil class action lawsuit against Ms. Lich and Mr. Barber, among others. She testified about her observations of traffic, honking and diesel fumes during the protest. At the time,

she was working from home. She said she found it difficult to work from home due to the noise going on outside. She testified she found it difficult to concentrate not only on work but that it was difficult to focus due to lack of sleep. Li said that she was hearing a variety of honking horns, blaring of air horns, some standard car horns also. She said from January 28 to February 4, 2022, the horns were relentless and constant. After the injunction there were efforts to honk at more organized periods. Ms. Li said that the morning prior to the injunction the honking increased and after the injunction there was minimal honking with the occasional horns.

[101] Ms. Li said that she heard other noises also such as fireworks, an air raid siren, megaphones, music blasting and roaming truck with a very loud horn. She said when she heard these sounds, she was in the parliamentary precinct area, Centertown and near her home.

[102] She said that when she would leave her home, she observed feces, urine, and garbage everywhere. She observed there were trucks, cars, and transport trucks parked in intersections and in the middle of the road and some vehicles with their wheels removed. It was at Kent and Laurier where she observed the vehicles with their wheels removed. Li made observations of intersections that were at times fully blocked off. She also said that occasionally, certain vehicles would be moved, which in turn removed the blockage.

[103] She said the engine fumes and gasoline, and diesel smells from the vehicles idling were significant and inescapable.

[104] Using Bank Street as an example, Li further observed that over time, there would be openings for emergency lanes on certain roads that were previously completely blocked off by cars and trucks. Li stated that based on her observations, the areas most affected were Bank Street between Laurier and Gloucester Streets, Kent, Wellington, and Metcalfe Streets. Li observed that certain roads were blocked for the entirety or majority of the demonstration. She said there were also lots of people milling around in the streets. She recalled at least in the third week, there was a smaller presence on weekdays than the weekends, that's when fireworks most occurred.

[105] On either Feb 17 or 18, she was taking pictures and recording video as she admitted collecting evidence. She said the demonstrators honked and shouted at her. She agreed she confronted the truckers once, saying, “Go the F...k back to where you came from.” Ms. Li also testified that there was a structure at Bank and Laurier, like a makeshift soup kitchen. She could recall exactly where it was, but it was partially on the road.

[106] In cross, she said that February 7, 2022 was a day when she heard collective honking but could not name other specific dates. Nor could she be certain of the specific dates when she heard the air raid siren or fireworks, or which intersections were blocked at any specific time or date. She also agreed that it is possible the streets weren’t blocked entirely, as she wasn’t there the entire time.

[107] She further acknowledged that the injunction before Justice McLean was focused on stopping the honking.

[108] She agreed that she had given evidence at POEC that there was a certain chaos on the streets. She also said that after the injunction, there was only intermittent honking.

[109] It was Ms. Li’s view that By-laws were being broken with trucks parking on the road, idling etc. She said she reported it to the police, but that they did not do much.

[110] The observations made by downtown residents and employees of the road blockages and obstructions were generally consistent with one another. Their evidence was confirmed by other photographic and video evidence as well as the observations of police officers working within the Police Liaison Team (“PLT”). For example, Constable Nicole Bach (“Bach”) described the Lyon Street and Queen Street area on January 30, 2022, as “a little gridlock and a section totally blocked by vehicles” Bach also indicated that as of January 31, she noticed that there were in fact some open lanes southbound on Wellington Street, except for the area between Metcalfe Street and Elgin Street.

[111] **Acting Sgt Jordan Blonde**

[112] The Crown also called acting Sergeant Blonde as a witness, a member of the PLT during the Freedom Convoy. His PLT partner was Cst. Nicole Bach. He was the secondary PLT contact with Chris Barber. He would often attend meetings with Cst. Bach and Chris Barber, and input the information. He referred to Chris Barber as one of the road captains for the Freedom Convoy. He had no dealings whatsoever with Tamara Lich. Officer Blonde testified that the Freedom Convoy was by far the largest demonstration he had ever been involved with in terms of its scope and duration.

[113] Officer Blonde viewed his role as a PLT officer as that of a conduit of information between his chain of command and stakeholders, including persons who were demonstrating. He sought to obtain information from these stakeholders and determine their intentions. He explained that the

[114] PLT unit's objectives were to do everything they could to ensure things remained peaceful, lawful, and safe. He further explained that PLT officers assume a role of neutrality and functioned in a nonenforcement capacity.

[115] Officer Blonde said that every day he would be out and about in the downtown core making observations. He observed heavy concentrations of trucks and other vehicles in the downtown core. He saw multiple campers or trailers many with generators. He saw tents serving hot food and drinks to anybody on Lyon Street south of Queen Street. He observed on January 31, 2022, there were trucks, approx. 10 on the west side of the NB lanes of Nicholas, Metcalfe Street, some trailers, some passenger cars, approx. 50 from Lisgar to Albert streets, Kent Street was backed up from 417 to Wellington with all lanes blocked. Slater Street from Lyon to Kent was also blocked.

[116] On February 3, he was at Confederation Park as people were erecting a permanent structure larger than an ice shack. In cross, he agreed that the group in Confederation Park purported to be indigenous, and he met with the Clan mother who had the most influence over that group.

[117] Feb 8, 2022, he was at Metcalfe and Slater streets, where there were several vehicles associated with the demonstrators parked there, and he saw an open fire

burning. At the baseball stadium, he observed there were trucks, camper vans and personal vehicles as well as propane tanks, saunas, wood piled up and tents erected.

[118] Generally, his testimony painted a picture of a downtown area gridlocked by trucks and other vehicles.

[119] Acting Sgt Blonde recalled meeting Chris Barber on a few occasions, he recalled meeting him Feb 2, 2022, on Kent Street. There were a number of vehicles on Kent st and there was a request to see if they could work with the demonstrators to create an emergency lane. They worked with Barber and another person and were able to open one lane Slater to Gloucester.

[120] Also, on February 4, 2022. Mr. Barber said he wanted to move trucks out of residential areas and have them fill up Wellington Street. Barber wanted visibility of trucks on Wellington. He also recalled communicating with Chris Barber on Feb 14, or what was known as “moving day”, as there had been an agreement with the city to move trucks out of the residential areas closer to parliament on Wellington. Mr. Barber texted that he had vehicles ready to move, but there was a police cruiser blocking them.

[121] Officer Blonde explained that the PLT’s actions in the latter days of the Freedom Convoy was to disseminate information, including the use of what he described as a “measured approach” which commenced on February 16. As early as February 9, 2022, police were telling persons at the Coventry Road staging area to leave. He explained that from February 15, 2022, the PLT began disseminating more formal messaging to encourage demonstrators to leave of their own accord. A notice was distributed downtown, which advised demonstrators of the potential consequences of their remaining in Ottawa, namely the possibility of arrest. The notice was outlined in blue. The next day, the PLT distributed another notice, with firmer language, indicating that those who do not leave the area will be arrested, which was outlined in a bold blue. A further notice was distributed on February 17, 2022, outlined in red. The border colour reflected the change in the urgency of the circumstances. For each notice, the paper got bigger, and the language changed.

[122] Feb 16, he distributed the second message in the Rideau and Sussex area. He said that area had always been contentious, that the crowd were yelling and screaming about the notices. He also distributed them up and down Wellington Street where he watched people put the notices in the toilets, which were in the middle of the street.

[123] A/Sgt. Blonde said he delivered the red-bordered notices Feb 17, 2022. He said the mood was not as contentious at Rideau and Sussex, but the further west they got, the more hostile the demonstrators were, there were people yelling, screaming and swearing. He said it seemed that when He attempted to speak to someone, they would blow their horns.

[124] Officer Blonde indicated that no protester expressed to him any willingness to leave, even after the distribution of these notices. Prior to the enforcement action beginning on February 18, 2022, PLT officers delivered final warnings to persons remaining at the scene of their potential arrest.

[125] In cross examination, he agreed that in one entry on the Signal chat he said, "I would agree with there were so many different groups and factions throughout the entire demonstrations (pg. 10). Also, a text exchange on the signal chat with Miranda was put to him where he texted "We have so many different convoys here in the city. It is difficult to know who is where and who is aligned with whom. I am just trying to figure out which convoys are in which areas of downtown. He agreed he was being truthful when he texted that. He also testified that there were some people there who were not aligned with any convoy organizers and had no plans to leave. (pg. 13)

[126] In re-examination, he was asked about his evidence regarding "different convoys." He was asked why he believed that. He replied that a number of people that I spoke to, as well as contacts that I had a number of dealing with, had indicated that they didn't know some of the people that were playing out either on social media or in the news. Some people were there as singular demonstrators. Then said, "I see it as one demonstration. There were multiple convoys coming in because they came from multiple areas of the country. So that is why I would refer to them as multiple convoys. There was some that came from the east. There were multiple ones that came from the west. Now I

refer to it, the totality of everything including this trial as part of the convoy (pg. 39) He said they had a similar general reasoning for being in the capital city at that point in time.

[127] He agreed he had contact with different groups of demonstrators and that none said they were there because of Tamara Lich or Chris Barber.

[128] **Cst. Nicole Bach**

[129] Cst. Bach was the primary PLT contact with Chris Barber. Notes from her police notebook and the PLT Signal chat acted as her notes throughout the protest. The text messages between the accused Chris Barber, and Cst. Bach, January 29th to February 15, 2022, were filed as Exhibit 127.

[130] Cst. Bach gave evidence that she attended the Antrim Gas Station and the Arnprior Airport and noted 248 vehicles total of those; 103 were passenger vehicles 35 were passenger vehicles with trailers, 66 tractors or bobtails with the truck portion no trailer and 44 tractors with trailers was the total she believed were part of the Western Convoy. (pg. 14) She understood those were members of the convoy travelling from Western Canada.

[131] Like her partner, A/Sgt. Blonde. Cst. Bach was out and about in the downtown core and testified about her observations during the protest.

[132] Cst. Bach made the following observations: January 28, 2022, On Wellington Street, there were multiple camping trailers with generators capable of creating electricity.

[133] January 30, 2022- Wellington and Lyon, Cst. Bach observed that there were openings on Wellington that had been fully packed on January 29. (pg. 18 Oct 19) She advised various convoy members that no trucks were to move in to fill the vacant spots. People were encouraged to walk to Parliament. People were upset with this messaging. On Lyon Street at Queen Street, Cst. Bach observed “a little gridlock and a section totally blocked by vehicles. The people she described were very agitated and verbally aggressive towards the police. (pg. 19) . She also conveyed that emergency access lanes must always be kept open and clear for emergency vehicles.

[134] January 31, 2022- Cst Bach spoke to Mr. Barber about repositioning vehicles to keep emergency lanes open. He indicated they were interested in doing “rolling Convoys” in and around the city. And he was waiting for OPS to provide further direction to relocate the vehicles.

[135] January 31, the same day on Wellington, Cst. Bach noted open lanes southbound on Wellington except for the area from Metcalfe to Elgin, where there was no open lane.

[136] On February 1st, Cst. Bach also did a vehicle count. On the Queen Elizabeth Driveway, she noted 4 tractor trailers and 5 campers. Emergency lanes were open. The SJAM from Booth to Bay Streets, 14 tractor trailers and 2 campers, westbound lane 28 tractor trailers and 5 campers and 5 to 10 personal vehicles. Queen St. from Bay to Bronson, emergency lane open, 10 tractor trailers and from Bay to Elgin was completely open.

[137] On Bank Street from Albert to Nepean Streets, the emergency lane was open, there were 18 tractor-trailers and 12 personal vehicles. On Kent Street, from Somerset to Wellington Streets, all lanes were completely full with no emergency lanes open and there were about 200 tractor-trailers; On Albert Street from Bank to O'Connor Streets, there were eight tractor-trailers (pg. 26)

[138] On Metcalfe Street from Lisgar to Albert Streets, there were 33 tractor-trailers and 19 passenger vehicles; On Wellington Street from Mackenzie King to Sussex Street, there were 10 tractor-trailers and 15 passenger vehicles; On Wellington Street from Sussex to George Streets there were eight tractor-trailers; and On Wellington Street from the Portage Bridge to Sussex Street there were approximately 400 tractor-trailers. She calculated there to be approximately 633 tractor trailers and 73 passenger vehicles when she made these observations mid-morning.

[139] Cst. Bach spoke to Mr. Barber that day. He was on SJAM parkway, there were two problem vehicles that were causing issue for police. Mr. Barber was there and did his best to have a conversation with them and identified that they wanted to be “closer to the action,” closer to downtown and parliament Hill. Cst. Bach advised Barber; the downtown was totally inaccessible pg. 28. He said the biggest issue collectively was fuel. And lack

thereof. He explained there were cabs with babies, and they were running out of fuel. They discussed using Slip tanks to avoid spillage. Barber said, “Word is getting out we’re being starved for fuel and food”. He mentioned more convoys were being organized and that we need to streamline these issues because this is not going away.

[140] Cst. Bach made observations of SJAM while she was there, SJAM was completely packed with tractor trailers and there had been issues with those tractor trailers and the people inside. She said there were a lot of agitated people not co-operating with police. Barber said there was to be a meeting at the Arc hotel with the PLT Team. The lanes were blocked, and they were to get vehicles to move to open a lane for emergency vehicles.

[141] February 2, 2022, Cst. Bach recalled a conversation with Mr. Barber, that he was trying to work with Police to open areas for it to become safer. Pg 31. She provided suggestions about how he could do that. Mr. Barber shared that he felt that the convoy was a bit out of control and that it was becoming unsafe, and therefore, he was more inclined to work with us to resolve these issues. He also said that perhaps the convoy had lost sight of the original intent of what it was meant for. Pg 33

[142] February 4th, 2022, Cst. Bach recalled sending screenshots to Mr. Barber. The screenshots Exb. 127 pg. 40 - 46 were meant to share what the Ottawa Police was putting on social media, some messaging for anyone involved in the Convoy. The 9-page document was made Exhibit 128. These were sent to Mr. Barber and were tendered not for hearsay purposes but for the fact that this information was conveyed to Mr. Barber, suggesting that it might be helpful in talking to the truckers, so they are not surprised when/ if they are doing something unlawful.

[143] The document speaks of increased enforcement measures to restore public safety and that Protestor vehicles will be directed to designated parking zones outside the downtown core. There were also indications about OPS taking steps to end the protest. Clearly, Mr. Barber received the information and understood the message from OPS, given his response. He responds, saying “We are in the opps centre planning. Can you get us commercial streets to move to instead “exh 127 pg. 50

[144] Cst. Bach recalled a conversation with Mr. Barber and another organizer later the same day. Mr. Barber was facilitating a conversation with the other organizer but there was also a conversation with Mr. Barber. Cst. Bach specifically recalled Mr. Barber saying he would sign the names of Convoy leaders to the police and have a conversation and be able to relay what it is they would say they are willing to say in Court. Transcript pg 45. Bach said, “So we are talking in terms of negotiating like moving vehicles for what they would get in return. “

[145] February 7, 2022, Cst. Bach made observations that Kent Street from Wellington Street to the north and Gloucester Street to the south was fully blocked with vehicles and that there were no lanes open for any type of movement. Laurier Avenue at Kent Street was the only opening on Kent Street for the movement of traffic. Cst. Bach said that specifically the block on Nepean Street and Gloucester on Kent were not willing to move any vehicles. Kent Street is where Cst. Bach usually worked.

[146] February 8, 2022, Cst. Bach recalled a conversation about how Mr. Barber wanted the Convoy to progress moving forward. We spoke about a strategy to move vehicles out to staging areas and conduct rolling convoys. (Pg 47) He suggested they could try moving so that the trucks could move out of the downtown core and stay in staging areas, and that the other trucks could be repositioned onto Wellington for optics, essentially, and then that would open up some of the downtown core to become much safer. (Pg 48) He also said the Convoy wasn't leaving any time soon and expressed that they hadn't been acknowledged or had action from the Government or Prime Minister that there were more trucks ready to come to Ottawa and participate in the Convoy.

[147] February 9, 2022, she recalled watching a TikTok video of Mr. Barber being brought to her attention and watching it. This video was made Exhibit 9 at trial. There was also a text exchange with Barber about this video. In the TikTok video, Mr. Barber is shown in his truck, Big Red, with another person at an intersection near the National Gallery. He says, “So we're out just scoping out the area here. Hey Mike. What do you think about this intersection? Response by M: It's Lonely: It looks a little lonely, doesn't it? It doesn't look like there's anybody here. Do you think we can fix that? M: Yeah, CB (Laughs) I don't know about you but that looks like it is lonely. Oh, Boy. Oh, boy. “

[148] Cst. Bach says, “I thought you had said yesterday that you were looking to move trucks out of the core (with the exception of Wellington) Barber respond Exh 127 pg. 76. “Careful what you see on my TikTok. I’m the guy that loves to stir the shit pot. Make people think one thing while doing the opposite. What you and I spoke about is still my plan.” “I have a few guys ready to pull out today from the downtown core. These rumours of a full-scale tactical sweep on Thursday better be bullshit. The world is watching very, very closely, and it will not be received well. Please tell me it’s not true, “Cst. Bach says OK. Although a lot of people believe you and take your words seriously on your SM CB Yup, I know. They aren’t just going to pull the stake without being physically talked to. It’s like a big game of Cat and Mouse. Cst. Bach also recalled that CB said the only way the Convoy would depart the city is if Justin Trudeau were to recognize the convoy is here and lift the mandates.

[149] At the Baseball Stadium, there were approximately 20 tractor-trailers and 60 personal vehicles. There were also campers and trailers.

[150] February 10, 2022, Cst. Bach had another conversation; it was about a rolling convoy that had occurred at the Airport. He said he had been planning rolling convoys, but that the airport was not his location. Barber said, “He would try to do his best to message anyone in support of the convoy or participating in the convoy through social media channels to avoid the airport and focus on rolling in and out as opposed to like congesting traffic and stopping, impeding traffic.” He also alluded to rolling convoys and different events popping up as a Cat and mouse game and said, “Well, if you want us to leave the downtown core, what would you expect? Where would the trucks go? because they haven’t accomplished what it is they want yet?

[151] February 11, 2022- Cst. Bach observed Kent Street between Cooper and Wellington Streets was still fully congested with all lanes blocked north and south on Kent from Cooper to Wellington. The east/west roads were open, just N/B Kent was blocked. The same day she noted SJAM westbound lanes were open and there were still four bobtails, 10 personal vehicles, and three campers parked on the shoulder; and the SJAM eastbound lanes were blocked from Vimy to Booth Streets and there was approximately

three times the tractor- trailers, 10 bobtails, and 20 passenger vehicles (some had trailers) and several porta-potties onsite.

[152] February 13, Cst. Bach recalled speaking to Chris Baber at approx. 5:21 pm. He was upset about counter-protesters and that the protest was out of control and spoke of a meeting with the city. Mr. Ayotte also spoke about that meeting.

[153] February 15, 2022, Cst. Bach recalled a conversation with Chris Barber at 9:56, that he was ready to move trucks again. Cst Bach provided the context, which was that on February 14, trucks had begun moving around so that we could open laneways, open parts of the city. Cst. Bach said that she was given the direction that it was a one-day type of agreement, and that Feb 15, they weren't looking to have that happen anymore. She described that he was quite agitated and frustrated by this especially as they had been delayed moving trucks the day before. He also explained how it was difficult to move big trucks in and that it was unreasonable to think you could move all the trucks or a large portion of them in such a short time frame. Pg 74.

[154] It is understandable that he would have been frustrated by this, given the agreement arranged with the city. Many witnesses spoke about this plan and how it ended at the direction of the Chief of Police. Ayotte testified about how he felt powerless in the situation and how an apology was made to Mr. Barber, as, from his perspective, they had kept up their end of the agreement. Inspector Lucas also indicated that he stood by his belief that this plan would have alleviated many of the concerns regarding the downtown core.

[155] On February 15, Cst. Bach observed that on Laurier Avenue and Nicholas Street, there were 15 personal vehicles (pickup truck, van, or car) with several pulling trailers. There were also five tractor-trailers, one bobtail, and one RV. There was only one live lane of traffic.

[156] Mr. Barber was arrested Feb 17, but on February 18, 2022, Cst Bach observed - Kent Street was backed up all the way to Lisgar Street, so Wellington Street to Lisgar Street to the south. Pg 78.

[157] Cst. Bach was also involved in distribution of messaging February 18, asking people to leave otherwise, they would be arrested, and their vehicles towed.

[158] As previously noted, vehicles were not the only things blocking or obstructing the roads throughout the demonstration area. Similarly, Bach observed hockey games. Further, a review of video and photographic evidence depicts numerous demonstrators congregating and walking in the middle of streets and various items throughout the downtown core.

[159] In cross, Cst. Bach confirmed that the Mission objective for the PLT during the Freedom Convoy included prioritizing public safety and public order, and respecting Charter rights, public expression, and public assembly. She was specifically told to write the Mission statement into her notebook. The goal was to ensure a lawful, peaceful safe demonstration with minimal disruption to citizens.

[160] In the Jan 30 Signal chat, Cst. Bach said there were many people with signs- very verbal, not aggressive. This is contrary to her evidence in chief, where she said people were verbally aggressive with police.

[161] Cst. Bach recalled telling Barber exhibit 127, pg. 14 and 15, Trucks must stop horns at 7. His response “Now getting them to listen is the next thing. Whether he can get them to agree is another story. She agreed that people came from different places in Canada and that Barber didn’t control everybody who was in Ottawa.

[162] Cst. Bach agreed in cross that Barber worked with her once for sure to clear Kent. Exhibit 127 pg. 38 “we cleared 3 blocks, and they plugged it again. Stupid asses”. She also agreed that he was looking to her to assist with moving trucks to some commercial streets and away from the residential ones. She did say that it was not as clear as that and that the area was mixed use. In re-examination, she indicated that there were specific times that Mr. Barber assisted with moving trucks.

[163] **Video and Social Media Evidence**

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[164] The bulk of the evidence regarding Mr. Barber and Ms. Lich’s specific involvement in the Freedom Convoy arises from Facebook posts, TikTok authored by them, texts and open-source material. The Freedom Convoy Facebook group had a lot of participants and likes and shares, but it is unclear whether those persons were all Freedom Convoy participants or just curious participants. A series of videos was entered into evidence on consent through a police intelligence analyst who had downloaded the material from open-source postings on the internet. Video evidence shows Mr. Barber leaving Saskatchewan in mid-January 2022 to his arrival in Ottawa on January 29, and then records his ongoing participation and involvement ending with his arrest on February 18.

[165] **Positions of the Crown and Defence**

[166] As noted in the Crown’s opening address and emphasized throughout the trial, Barber and Lich are not on trial for their politics. Rather, they are on trial for the alleged unlawful means they employed to pursue their political ends. It is the Crown’s position that the criminal culpability of Tamara Lich and Chris Barber is established by the overwhelming body of evidence from citizens, public officials, and police officers who made observations of what transpired on the ground in downtown Ottawa during the demonstration, in media and documentary materials, as well as in Barber and Lich’s own words given the context in which those words are spoken. The Crown says this large body of evidence, when applied to the jurisprudence, characterizes the nature of Barber and Lich’s words and actions in the protest context as criminally culpable (both as individuals and as members of a joint criminal enterprise).

[167] The Crown argues no matter how noble the cause, or peaceful and respectful the conduct, the law simply does not permit anyone to appropriate public space for a prolonged period (*Governing Council of the University of Toronto v. John Doe*, 2024 ONSC 3755, at para. 135 (“*Governing Council of U of T*”).

[168] The Crown’s position is that the activities or means used by the Freedom Convoy constituted or rapidly developed into an ongoing mischief of which Ms. Lich and Mr. Barber were among the leaders or principal organizers. Their participation and indeed their organizational and leadership activities are documented on social media in the form

of videos and texts made exhibits in this trial. The Crown relies on those to prove the charges before the Court.

[169] The position of the Defence is that the accused engaged in and encouraged a lawful and constitutionally protected peaceful protest. Defence argues that the Accused were but one group amongst many who came to Ottawa Jan/February 2022, and they could not control the actions of all the persons who came to Ottawa during this time. It is further argued that they only counselled persons to engage in peaceful protest, and to the extent some residents and businesspersons in downtown Ottawa were inconvenienced, it was said to be the fault of the police and city officials who mismanaged the situation. Further, on behalf of the accused, it is argued that the charges have not been proven on the evidence, to the criminal standard of proof beyond a reasonable doubt.

[170] **Issues**

[171] Whether the Crown has proven the charges before the Court with both reliable and credible evidence beyond a reasonable doubt. This determination is based on a review of all the evidence, including the witnesses called, the open-source videos tendered as well as the words and social media of each of the accused. Specifically, the Crown must prove beyond a reasonable doubt:

1. Did Lich and/or Barber block or obstruct a highway for the purpose of compelling others to do or not do anything that they have a legal right to do or not do, or aid or abet others to do so?
2. Did Lich and/or Barber interfere with the lawful use, operation, or enjoyment of property, or aid or abet others to do so? Does the defence to mischief under s. 430(7) apply to provide a defence.
3. Did Lich and/or Barber obstruct the police in the execution of their duties on February 18-20, 2022, or aid or abet others to do so?
4. Did Lich and/or Barber counsel anyone to commit the offences mischief, intimidation or Obstruction of Justice; and

5. Did Barber counsel anyone to honk their horns in contravention of an interlocutory injunction issued by the Superior Court on February 7, 2022?

[172] Also, the crown has brought an evidentiary application seeking a determination whether the Co-Conspirators Exception to the Hearsay rule or the Carter Exception applies in this case so that the words and actions of Mr. Barber can be used as evidence against Ms. Lich and vice versa. To do so the court must engage in a three-step process determine whether:

(1) The Crown has proven beyond a reasonable doubt the existence of a conspiracy or unlawful common design.

(2) The Crown has proven on a balance of probabilities Barber and Lich's membership in the unlawful common design; and

(3) Are the statements made, or any act or declaration made in furtherance of that common unlawful purpose.

[173] **Applicable General Legal Principles**

[174] **Proof Beyond a Reasonable Doubt**

[175] There are several legal principles that must be considered in determination of the outcome of this case. One of the cornerstone legal principles is that the Crown bears the onus of proving the charges before each respective accused beyond a reasonable doubt. The question here is whether the Crown has met its burden and proven beyond a reasonable doubt that Barber and Lich – as either principals or aiders or abettors– committed the offences of intimidation, mischief, and obstruct: Also, whether Barber and Lich also counselled these offences, with Barber additionally charged with the offence of counselling the offence of disobey of a court order.

[176] Both Chris Lich and Tamara Lich are presumed to be innocent unless and until the Crown has proven their guilt beyond a reasonable doubt. The burden of proof as in all cases rests with the Crown. There is no burden of proof on the Accused. The burden is

on the Crown to prove the constituent elements of the offense with credible and reliable evidence.

[177] The Accused remains innocent until proven otherwise.

[178] The presumption of innocence is a cornerstone of our criminal justice system, originally embedded in our common law tradition and now guaranteed as a fundamental legal right under our constitution.

[179] The presumption of innocence, and along with it the standard of proof beyond a reasonable doubt, are important safeguards to ensure that no innocent person is convicted of an offence and deprived of his or her liberty. Without these protections, there would be a serious risk of wrongful convictions -an outcome that cannot be accepted in a free and democratic society.

[180] The concept of proof beyond a reasonable doubt is not an easy one to define. The standard is clearly more rigorous than the balance of probabilities standard applied in civil cases. The balance of probabilities requires the party bearing the onus to establish that the proposition they advance is "more likely than not" -i.e., better than 50/50. In its landmark 1997 decision in *R. v. Lifchus*, the Supreme Court of Canada held that the following definition would be an appropriate instruction for a criminal jury at para 39: The same standard applies to Judges sitting without a jury.

[181] "A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence. Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt. "

[182] On the other hand, it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high. Though the Crown does not have to prove the guilt of the Accused to an absolute

certainty, its onus is much closer to that than to a balance of probabilities as cited by the Supreme Court of Canada in *R. v. Starr* 2002 S.C.R. at para. 144.

[183] The bottom line is that probable or likely guilt is insufficient. If all I can say is that the defendants in this case are likely guilty, I must acquit. It would not be safe to convict someone of a criminal offence with only that degree of confidence.

[184] Finally, in determining whether a charge has been proven beyond a reasonable doubt as set out in *R v. R.B.* [2017] O.J. 377 OCA, generally the court in any case can assess the evidence of any witness, and accept or reject, some, all, or none of that evidence. The Court must ultimately look at all the admissible evidence in reaching its decision.

[185] **Modes of Liability – Section 21 – Principal and Co-Principals**

[186] Turning now to party liability, s. 21 (1) of the Code provides as follows: Everyone is a party to an offence who actually commits it; does or omits to do anything for the purpose of aiding any person to commit it; or abets any person in committing it.

[187] Under s. 21(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

[188] The Crown must prove beyond a reasonable doubt that the accused committed the offence either as a principal or alternatively as a party to the offence along with others.

[189] In *R. v. Spackman*, 2012 ONCA 905, at para. 180, the Court described the various ways in which a person can be made culpable for an offence. Specifically, they “may be a principal, aid or abet someone else to commit the offence, or join and pursue a common unlawful purpose with another or others who commit the offence”. Further, an individual can be a principal on their own, or along with one or more other persons (*Spackman*, at para. 180).

[190] The decision in *R. v Mammolita* [1983] O.J. 151, is an important decision in evaluating party liability in the context of a protest or labour dispute.

[191] In *Mammolita* [1983] O.J. 151, the ONCA dealt with the degree of participation which will result in criminal liability for the offence of mischief where persons have wilfully obstructed or interfered with the right of access to a company's plant in the course of a labour.

[192] In *Mammolita*, there was a legal strike of the employees of the Company, there was also an injunction restraining the union from obstructing or interfering with entrance to or exit from the company plant. One morning, 75 to 100 persons formed a picket line in front of the main gate. Some picketers stood in front of vehicles. The Court of Appeal at para 12 dealt with the issue of liability as a principal." A person may be liable as a principal if he actually does or contributes to the doing of the actus reus with the requisite *mens rea* (see Smith and Hogan, Criminal Law, 4th ed., 1978, at pp. 113- 4). Accordingly, a person may be guilty as a principal of committing mischief under s. 387(1)(c) ( now s. 430(1) (c) if he forms part of a group which constitutes a human barricade or other obstruction. The fact that he stands shoulder to shoulder with other persons, even though he neither says nor does anything further, may be an act which constitutes an obstruction. The presence of a person in such circumstances is a very positive act. However, criminal liability only results if the act is done wilfully.

[193] As *Mammolita* explains, at para 13, both those standing shoulder- to-shoulder with demonstrators as well as those on the fringe may be liable as principals of an offence depending on the context: In *Mammolita*, the Court of Appeal made the following observation respecting liability as a principal: "It may not be very difficult to infer that a person standing shoulder to shoulder with other persons in a group so as to block a roadway knows that his act will probably cause the obstruction and is reckless if he does not attempt to extricate himself from the group. This is particularly the case if the person knows of the existence of a strike and is confronting a large group of police officers who are trying to clear a passage. The same conclusion could be drawn where a person is part of a group which was walking around in a circle blocking the roadway. Those who

are standing on the fringe of the group blocking the roadway may similarly be principals if they are preventing the group blocking the roadway from being bypassed.”

[194] **Modes of Liability – Sections 21(1)(b) and (c) – Aiding and Abetting**

[195] As stated in *R. v. Briscoe*, 2010 SCC 13, [2010] 1 S.C.R. 411, at paras. 14-18, and *R. v. Cowan*, 2021 SCC 45, 409 C.C.C. (3d) 287, at paras. 29, 31 and 33, pursuant to ss. 21(1)(b) and (c), a person may be liable as a party to an offence as an aider or an abettor. To aid is to assist or help the actor. Abetting includes encouraging, instigating, promoting, procuring or supporting the offence.

[196] In a recent decision of the Court of Appeal for Ontario in *R. v. I.A.*, 2023 ONCA 589, at para. 10, the court reiterated the principle: “In summary, there must be a factual finding that supports the conclusion that an accused is a principal, aider, or abettor. Otherwise, a mere bystander with previous knowledge of a crime could be convicted.”

[197] In *R. v. Mammolita* (1983), O.J. no 151 (Ont. C.A.), the Ontario Court of Appeal at para dealt with liability of aiders or abettors at para 16. The court stated the following: Quite apart from liability as a principal, a person may be guilty of wilful obstruction under s. 387(1) ( c )( now s 430 (1) ( c ) ) if that person has aided or abetted another person to commit the offence. In order to incur liability as an aider or abettor: (i) there must be an act or omission of assistance or encouragement; (ii) the act must be done or the omission take place with the knowledge that the crime will be or is being committed;(iii) the act must be done or the omission take place for the purpose (i.e., with the intention) of assisting or encouraging the perpetrator in the commission of the crime. However, the act of assistance or encouragement may be the presence of the accused at the scene of the crime during its commission, if the aider or abettor is there for that purpose. The strength of numbers may at times be an important source of encouragement. [Citations omitted.]

[198] As noted by these appellate decisions, “the strength of numbers may at times be an important source of encouragement (*Mammolita*, at para. 16; see also Remley, at para. 103; *Romlewski*, at para 164). When considering the liability of demonstrators as aiders and/or abettors in a protest setting.

[199] Ultimately, there must be a connection between the offence and the acts of alleged aiding or abetting, but authorities take a wide view of this necessary connection (*R. v. Dooley*, 2009 ONCA 910, at paras. 123-124): The authorities take a wide view of the necessary connection between the acts of alleged aiding or abetting and the commission of the offence. Any act or omission that occurs before or during the commission of the crime, and which somehow and to some extent furthers, facilitates, promotes, assists, or encourages the perpetrator in the commission of the crime will suffice, irrespective of any causative role in the commission of the crime. The necessary connection between the accessory's conduct and the perpetrator's commission of the crime is captured by phrases such as "actual assistance or encouragement," or "assistance or encouragement in fact," or, as the appellants argue, conduct that "has the effect" of aiding or abetting.

[200] As noted in the Summary conviction Appeal decisions of *R. v Remley* 2024 ONSC 543, at para. 97; and *R. v Romlewski* 2023 ONSC 5571, leave to appeal dismissed for both cases, January 10, 2025 at para. 81). Effectively, abetting will include "encouraging, instigating, promoting, procuring, or supporting the offence." Put another way, it is "doing something or omitting to do something that encourages the principal to commit the offence".

[201] As noted in *Briscoe* at para 14," the actus reus of aiding and abetting is doing something that assists or encourages the perpetrator to commit the offence. While it is common to speak of aiding and abetting together, the two concepts are distinct, and liability can flow from either one. At para 15 "Of course, doing or omitting to do something that resulted in assisting another in committing a crime is not sufficient to attract criminal liability...The aider or abettor must also have the requisite mental state or mens rea, specifically, in the words of s. 21 (1) (b), the person must have rendered the assistance for the purpose of aiding the principal to commit the crime."

[202] In *Briscoe* at para 16, the court stated the *mens rea* requirement is reflected in the word purpose and has two components: intent and knowledge.

[203] There is no requirement that the abettor actually desire that the offence be committed." And at para 17 and 25 the court said "the aider must know that the perpetrator

intends to commit, although he or she need not know precisely how the offence will be committed. The sufficient knowledge is a prerequisite for intention is simply a matter of common sense, and (para 25) willful blindness will suffice in the absence of actual knowledge as to whether the principal intends to commit the offence.

[204] In *Romlewski* 2023 ONSC 5571, Leave to Appeal denied 2024 ONCA leave to appeal dismissed Jan 10, 2025, at paras. 102 – 115, Doyle J. provides a useful overview of some jurisprudence where this issue was considered. Many of these decisions will be considered in an examination in the analysis of the charges.

[205] In brief summary, mere presence at a protest is not enough to ground party liability but presence can amount to criminal conduct in the context of protest where: presence with purpose can be a positive act, where an individual's presence offered encouragement or assistance to other protesters (even where the individual does not “hands-on” engage in mischief); where the acts lead to the conclusion that an individual equates with or tends toward showing a sense of unity or “one-ness” with the acts of the principals so that a contribution to the events complained of is proven or inferred; Where the success of a demonstration depends on having a significant number of participants; or Where the purpose of the activity in question is not simply to communicate a political idea or voice protest.

[206] At paragraph 164, Justice Doyle, having reviewed the case law dealing with protests provides a summary of the Applicable legal principles: “A review of the case law dealing with protests provides a fuller picture of the applicable principles for party liability to mischief. The principles can be summarized as follows:

- (1) Mere presence alone at a protest is not sufficient to ground party liability.
- (2) If the protest gains strength by numbers and depends on the participation of a large group, presence may be interpreted as encouragement, and
- (3) Showing a sense of unity or solidarity with the actions of the principals sheds light on the purpose behind being at the protest.”

[207] **Counselling – Section 22 (1) to (3) of the Criminal Code Counselling – Counts 1, 2, 3, and 7**

[208] It is an offence to counsel others to commit a criminal offence, and this is so even if the counselled offence is not committed. Sections 22 and 464 of the Criminal Code provide the following: Definition of counsel: For the purposes of this Act, counsel includes procure, solicit or incite.

[209] **Section 464(a) of the Criminal Code**

[210] Counselling offence that is not committed. s.464 Except where otherwise expressly provided by law, the following provisions apply in respect of persons who counsel other persons to commit offences, namely, (a) everyone who counsels another person to commit an indictable offence is, if the offence is not committed, guilty of an indictable offence and liable to the same punishment to which a person who attempts to commit that offence is liable

[211] “Counsel” is defined in s. 22(3) of the Code and includes, but is not limited to, procuring, soliciting, and inciting (*R. v. Root*, 2008 ONCA 869). To incite means to urge, stir up, or stimulate (*Mugesera v. Canada* (Minister of Citizenship and Immigration), 2005 SCC 40, at para. 63).

[212] In *Mugesera*, the SCC dealt with an appeal of a decision by the Immigration and Refugee Board finding the appellant inadmissible to Canada following allegations that a speech he delivered in Rwanda constituted an incitement to commit murder. The outcome of the appeal relied upon the Court’s characterization of the speech. In its analysis, the Court took a contextual approach that included consideration of the public location of the speech. At para. 64, the Court set out the following important principles when considering a speech and the offence of counselling:

[213] The offence of counselling requires that the statements, viewed objectively, actively promote, advocate, or encourage the commission of the offence described in them. The criminal act will be made out where the statements (1) are likely to incite, and (2) are made with a view to inciting, the commission of an offence. An intention to bring

about the criminal result, that the counsellor intends the commission of the offence counselled, will obviously satisfy the requisite mental element for the offence of counselling.

[214] Shortly following *Mugesera*, the SCC once again addressed the offence of counselling in *R. v. Hamilton*, 2005 SCC 47, where the Court stated at para. 29:

[215] In short, the actus reus for counselling is the deliberate encouragement or active inducement of the commission of a criminal offence. And the *mens rea* consists of nothing less than an accompanying intent or conscious disregard of the substantial and unjustified risk inherent in the counselling: that is, it must be shown that the accused either intended that the offence counselled be committed, or knowingly counselled the commission of the offence while aware of the unjustified risk that the offence counselled was in fact likely to be committed as a result of the accused's conduct.

[216] Further in *Hamilton* at para 74," In the inchoate scenario governed by s. 464 of the Code, proof of the index offence (e.g., mischief, intimidation, obstruction) is not required. It is not necessary for the Crown to prove that the person counselled was persuaded: "the focus on a prosecution for counselling is on the counsellor's conduct and state of mind, not that of the person counselled".

[217] In the recent Freedom Convoy appellate decision of *R. v. Pawlowski*, 2024 ABCA 342, the Alberta Court of Appeal observed at para. 18:" The law requires that the trier of fact assess the substance and nature of the communication to determine how it would be understood by the reasonable person: *R v Jeffers*, 2012 ONCA 1 at para 26; *Hamilton* at paras 72, 74 per Justice Charron (dissenting, but not on this point); *R v Sharpe*, 2001 SCC 2 at para 56 [Sharpe]. For a political speech or communication to constitute the actus reus of counselling, the Crown must prove beyond a reasonable doubt that it will be reasonably understood as in substance deliberately encouraging or actively inducing those with a political cause to engage in criminal activities in support of that cause, rather than as in substance expressing support for the political concerns or goals of the criminal actors."

[218] In *Pawlowski*, the Alberta Court of Appeal upheld the trial judge's finding that a speech inciting protestors to continue an ongoing blockade of a highway constituted an incitement to commit mischief. The Accused appealed this finding to the Supreme Court of Canada, leave to appeal was denied on March 27, 2025, and as such the Appellate decision remains.

[219] **The Right to Protest and Uneasy Balance**

[220] I have subtitled this subsection of this decision: Why this case is challenging and complex. The Crown agrees that the accused came to Ottawa to advance a noble cause and had the right to protest against COVID mandates, but argues they crossed the line with the means used to achieve their ends. On behalf of the Accused, counsel argues that this case is unprecedented as the Crown has sought to criminalize the behaviour of Tamara Lich and Chris Barber and the lawful democratic purpose that thousands of Canadians sought to achieve over a three-week period. Defence counsel argue that this was always a lawful, peaceful protest and that the repeated and consistent message was one of peaceful protest and co-operation with police. There are several competing interests at stake.

[221] At the heart of the competing interests in this case lies the question to what extent does the exercise of the right to protest protects those from criminal liability when the rights of other citizens to enjoy their property have been impacted by their actions. Even Charter-protected rights are not absolute.

[222] Principles derived from civil law are also illustrative of the bounds of protest and where the lines between constitutionally protected expressive freedoms and liability fall. In the *Governing Council of U of T*, the court was required to consider an injunction brought by the University of Toronto to end an encampment on their "Front Campus" that was erected in protest of events in Israel and Gaza. At the time of the hearing, the occupation of the Front Campus had continued for 50 days (*Governing Council of U of T*, at para. 128). The court found that save for certain evidence of a physical altercation outside the encampment, it was a peaceful demonstration (*Governing Council of U of T*, at para. 7). With that said, "the law is clear that protesters do not have a right to camp,

erect structures, or block entrances to property” and this is for good reason (Governing Council of U of T, at paras. 12). In short, if demonstrators were permitted to take power of property for themselves, “there is nothing to stop a stronger group from coming and taking the space over from the current protesters. That leads to chaos. Society needs an orderly way of addressing competing demands on space” (Governing Council of U of T, at para. 15). Indeed, courts have consistently held that there is no right for demonstrators to appropriate private or public property for their causes (Governing Council of U of T, at paras. 133, 135-136):

[223] In another civil case often quoted, *Batty v City of Toronto* 2011 ONSC 6862, the court articulates the competing interests. In this case, Occupy Toronto protestors had occupied a public park for a number of weeks, and the city served them with a trespass notice. The Protestors sought to use Charter s, 2(b) to quash a trespass notice.

[224] Justice Brown said that you cannot appropriate public property to your own use by pretending to call it speech. At para 12, Justice Brown stated “The Charter offers no justification for the protestors act of appropriating for their own use – without asking public citizens- a large portion of public common space for an indefinite period and at par 13 “The Charter does not remove the need to apply common sense and balance, to balance the way we deal with each other in our civic relationships. The Charter does not remove common sense from the process of trying to figure out how to balance competing rights, which now characterize our contemporary Canadian polity. On the contrary, the Charter speaks of reasonable limits on guaranteed freedoms, thereby signaling that common sense must still play a role – indeed, a very important role in that balancing exercise.

[225] There are many cases where courts have forced parties to leave property and/or forced them to remove structures from property when protesters were using property belonging to someone else to exercise freedom of expression. This is the case with both private and public property.

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[226] In the context of criminal law, other court decisions have relied on s 430 (1)(c) and (d) as reasonable limitations on s 2(b) of the charter. The courts emphasize that the

limitation is not on freedom of expression but rather the method and manner with which it is practiced and the resulting physical consequence.

[227] In *R v Drainville*, 1991 O.J no. 340, the accused was a priest and a member of the Ontario Provincial Parliament. The accused was charged with mischief by obstructing a roadway, contrary to s.430(1)(c) of the Criminal Code. He participated in a protest in support of the Anishnabai Nation, which claimed the Aboriginal right to lands upon which a road was being built. The accused was one of a group of protesters who sat down on the road and were removed physically by police officers. He offered no resistance other than the fact that officers had to move him. The incident caused a delay of approximately one hour. The Court found at pg. 6," In this case, it can be said that even if s. 430 (1) (c) of the code has the incidental effect of limiting the accused's freedom of expression, in not allowing him to block a roadway; it is not sufficient to show a prima facie interference with s. 2 (b) of the Charter. The basis of the decision is that although he was not able to block the road, he was not prevented from expressing his dissatisfaction by other lawful means. The Court, in finding the accused guilty of mischief, writes: "In short, the purpose of s.430(1)(c) of the Code aims to control only certain physical consequences of certain activity; in this case the obstruction of a road, and this regardless of the meaning purported to be conveyed; it is clearly not a "control" over the expression of the accused herein.

[228] The Ontario Superior Court of Justice in 2014 addressed this issue in the case of McCann. *R v McCann* was an appeal by three offenders from a conviction for attempt to commit mischief. The impugned conduct arose during the protest of a decision to cancel a rehabilitative prison farm program. The appellants were arrested after they blocked cattle trucks, removing cattle from the institution.

[229] The appellants argued that they were engaged in a peaceful protest, and their conduct was protected by section 2(b) of the Canadian Charter of Rights and Freedoms. The Trial Judge had found at para 16 "In a free and democratic society such as Canada, we welcome and encourage people to hold demonstrations if such is necessary to exercise their right of freedom of conscience, freedom of expression, freedom of peaceful assembly and their right of to freedom of association as guaranteed by s. 2 of the

Canadian Charter of Rights and Freedoms. However, society also expects demonstrators who exercise these rights to do so without violating the rights of others to move about freely or to engage in activities which they have a perfect legal right to do.”

[230] The Ontario Superior Court of Justice in McCann agreed with the trial judge that the rights of the protestors were not protected under s 2(b) of the Charter. The court stresses that s 2(b) of the Charter protects communicative ideas and political displeasure, but it does not protect the right to bring about a certain outcome. The court states at para 20 and 21; “In each of the aforesaid cases of mischief, the Judges found the demonstrators not guilty, based upon findings that the demonstrators were attempting to communicate an idea. In the case before Justice Fontana, the demonstrators were attempting to draw public attention to the plight of the homeless and the lack of government response to the issue. The learned justices found that the actions of the demonstrators were 'within the limits of tolerance in a democratic society' and they did not cross into the realm of criminal wrongdoing.

[231] The trial judge found that while the demonstration was peaceful and was clearly political, the objective was not simply to express displeasure. Specifically, the trial judge found that the demonstrators wanted to stop the Frontenac Institution from removing their cattle from the institution. The Trial Judge correctly noted that Frontenac Institute was legally entitled to remove property from their own premises. “The Court found the purpose of the act was not simply to communicate a political idea or to voice a protest; it was to halt the removal of cattle. The Court upheld the finding of the trial Judge, and the Accused were found guilty of mischief.”

[232] *R v Breen* 2023 BCPC 84 (CanLi), Breen was charged with committing criminal offences in connection with their actions while engaged in protest activities to express concerns about the logging of old-growth forests. The accused did not challenge the constitutionality of the offences of Mischief or Intimidation for which he was charged. On the facts, the accused blocked traffic at a busy time of day, they made it clear they would continue to do so indefinitely, the conduct was disruptive and caused other drivers to become upset. The locations were chosen to maximize the effect on the public.

[233] The issue was the ambit of the protestors' right of expression – does it protect blocking the public road? The accused said their only purpose to blocking the roads was to communicate their discontent, but the method used was to block roads and impede access to public property. Justice Lamperson considered several protest cases, including McCann referenced above and the case of *R v Osborne* {2007} N.B.J No 27, in that case. The accused was charged with committing mischief by willfully obstructing, interrupting, or interfering with the lawful use, enjoyment, or operation of public property. On a federal election day, the accused held a sign and had attached himself to a chain link cage that covered an overhead pedestrian crossing. This overpass spanned a busy four-lane arterial highway. Upon arriving at the scene, police officers noted that traffic approaching the overpass slowed as drivers looked at the accused. The officers were concerned about the travelling public's safety and the risk of a major accident caused by the distraction. As a result, they closed the traffic lanes over which the accused was standing and redirected traffic. It took a considerable amount of time before the accused came down. The trial judge in analyzing the conduct of the accused states at para 36 and 37:” In this case there was endangerment not only to the public using the highway but also to the accused. Further, his refusal to leave when requested to do so by the police in the circumstances cannot be viewed as consistent with public order. In my opinion, the form of expression, that is the manner and the place chosen by the accused, cannot be afforded the protection sought. Further, even if the guarantee of freedom of expression could be extended to the activities of the accused, in my opinion s. 430(1)(c) is a reasonable limit in applying the proportionality test in *R. v. Oakes* (1986), 24 C.C.C. (3d) 321 (S.C.C.) and *R. v. Big M Drug Mart Ltd* (1985), 18 D.L.R. (4th) 321(S.C.C.). The accused was not restricted from expressing himself as to his dissatisfaction with the justice system and members thereof in other lawful methods.”

[234] The accused's actions in Osborne were not protected only because they led to the highway being closed off but also because the method employed by the accused was dangerous and contrary to public order. Ultimately, in Breen, the Charter Application was dismissed, and the accused were found guilty of the offences before the court.

[235] The ongoing tension between these rights is also discussed in *R. V Puddy*, 2011 ONCJ 399 (Canlii). The accused was arrested in the course of the G20 summit in Toronto. At para 43 and 44, the court writes, “At the time of his arrest, the defendant was attending a political rally. One need look no further than the daily headlines respecting events in the Middle and Near East and North Africa to recognize how vital political demonstrations are to the celebration of a viable democracy. And how important it is that short of criminal conduct and true threats to public order, participants should be afforded broad latitude in expressing their political beliefs. Indeed, rights of expression, peaceful assembly and associations are enshrined as fundamental freedoms under s. 2 of the Canadian Charter of Rights and Freedoms.

[236] At 44, “The zealous exercise of police arrest powers in the context of political demonstrations risks distorting the necessary if delicate balance between law enforcement concerns for public safety and order and individual rights and freedoms on the other. It further risks what commentators have described as the criminalization of dissent,” ... none of this is to say that there are not occasions when forceful police action is warranted to maintain public order. However, the calculus in each case must the degree possible respect the rights and liberties of those engaged in political speech and assembly.

[237] Inspector Lucas, in his testimony, conveyed that he was seeking to find that delicate balance with the Freedom Convoy when he said “General practice is to try to find a balance between facilitating lawful protests and its impact on the community. (Sept 6 pg. 6-7) Also “pg. 15 “regardless of what people might think about any group's message that they want to get out, we want to find that right balance of allowing that message to be heard in accordance with the Charter and their rights and balancing that with reasonable impact on the city. He also added that on February 15, 2022, enforcement action was required to restore public order and so that the footprint did not spread onto other parts of the outlying neighborhoods, and to set parameters.

[238] Cst. Bach similarly said in her testimony that on February 15 at a PLT briefing they were told “using an integrated response the Ottawa Police and policing partners will keep the peace, enforce legislation, and maintain public safety for the duration of the Ottawa

Truck demonstration with the utmost respect to the individuals Charter of Rights and Freedoms with priority, for emergency service, personal safety and well-being.

[239] Counsel for both Lich and Barber repeatedly claimed that Justice Mclean's orders characterized the Freedom Convoy protest that was occurring in Ottawa at the time as "peaceful, lawful and safe. "Ms. Lich went so far in one of her posts as to suggest they had the support of a Superior Court Judge.

[240] The Crown says the Orders of Justice McLean of the Superior Court dated Feb 7 and 16 are clear. "This Court orders that, provided the terms of this order are complied with, the Defendants remain at liberty to engage in a peaceful, lawful and safe protest "Which the Crown argues is the right everyone in Canada enjoys pursuant to the Charter, but that right is not without limits, including the right to stand up for your beliefs.

[241] I have carefully reviewed the transcripts of Justice McLean's proceedings. He was only asked to address the issue of the honking of horns – and not infringements of the Charter or the criminal code with respect to the broader protest. Justice Mclean says February 7, pg. 33 "if there are other issues that the local authorities want to take issue with, that's their issue. This injunction is aimed at the horns." At pg. 39 and 40. "That's the only issue. That's the only issue before me ... there's nothing here in any of the materials that says the right of movement has been infringed, that's- it's just noise, that's it. And I'm not going to get into anything else because I'm not asked to". At pg. 47, The Affidavit evidence before Justice McLean was about noise levels, the effect of the noise – nerves frayed, can't sleep, anxiety.

[242] In his Reasons for Decision for the February 7 injunction at pgs. 64-65 Justice Mclean states, "Certainly, people have a right to protest things, particularly governmental things, that they don't like. However, in these particular circumstances, we have an issue of the fact of the manner of self-expression, that is, continual horns of – or using horns on vehicles, trucks in particular, which is having an effect on the people in the particular area of this protest. That is clear from the evidence of the plaintiff, it is clear from other evidence. ...Clearly the inference that the court draws from this is, quite frankly, that the defendants (of which the accused were a part) comprehend the fact that there is a

deleterious nature to the use of these horns. When we consider this as a whole, we are of the opinion that the balance of convenience has been made out, in that the rights of our Citizens for quiet, but a right to quiet has been made out as the overcoming or being the overriding right here.

[243] He also says at pg. 94 “But as I said when I gave my reasons earlier, the only purpose for this (meaning horns) is to bring attention to the protest. And as I said in my view from the material that has been filed, there is no need for that anymore. The public has full comprehension of what going in downtown Ottawa.

[244] In his decision of February 16, pg. 26 -27 Justice McLean clearly articulated that the right of protest is not without limits stating “I want to make sure but everybody knows from this, that when I said last week that there is a right to dissent, and there is a right to protest that exists, but it has to be balanced by the duty to the public. And that duty in this case is paramount to the duty of dissent. In other words, you can dissent as long as you don't hurt people.

[245] We have to make sure that these things are done in an orderly manner and hurting people by keeping them up all night or destroying or deciding to, or destroying their peace in their own home, is certainly not something that a peaceable country like Canada is, can put up with. But because there's a right here to protest but there is an overriding duty here for those protesters. The duty of those protesters is to protect the public generally, and they have a duty to be concerned about fellow citizens' needs and feelings.

[246] What we have here to do is to control that kind of protest. But the protesters must understand is that they can convince people to do other things however, they cannot use force of the kind of one kind or another or pain or anything else that's massively disruptive to other people in other words keeping people from going to work, keeping people from sleeping. They can't use that to put their beliefs on other members of the public. And in these circumstances, the public's rights are superior to the protesters rights in the way this has gone. And so therefore, the order will be given as amended.”

[247] Justice McLean in no way, expressly or implicitly, endorses or declares that what was going on in the streets of Ottawa was peaceful, lawful, or safe. Justice Mclean in his

decisions, is trying to grapple with the right to protest and dissent balanced against the need to protect the public. In fact, examining the words of Justice McLean above, he clearly found that the manner and effects of the Freedom Convoy from the civil standard had crossed the line saying “But the protestors must understand that they can convince people to do other things however, they cannot use force of the kind or other pain or anything massively disruptive to other people in other words keeping people from going to work, keeping people from sleeping. They can’t use that to put their beliefs on other members of the public. And in the circumstances, the public’s rights are superior in the way this has gone.’ This is in no way an endorsement of the Freedom Convoy Protest.

[248] Neither of the Accused testified or called evidence, which is their right, and there is no adverse inference drawn from that decision, but it means this court has no evidence from which to consider how either accused could have thought Justice McLean’s order authorized them to continue their protest in the manner they had.

[249] The law is clear from both the criminal and civil standards. While the rights enshrined in the Charter are important hallmarks of a free and democratic society, there are limits on those rights when they encroach on public order and the rights of other citizens.

[250] **Mischief**

[251] Both Accused are charged in Count 1 with Counselling the offence of Mischief contrary to section 464(a) of the Criminal Code and in Count 6 with Mischief contrary to s. 430(1) (c) of the Criminal Code.

[252] Section 430(1) of the Criminal Code provides: Everyone commits mischief who willfully [c...] obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property.

[253] The essence of the offence of mischief is the deliberate interference with a person’s lawful use, operation, or enjoyment of property. One can commit this offence by personal conduct, by being part of a common purpose with others who are engaging in such conduct, or by aiding and abetting others to do so.

[254] Mischief is a general intent offence committed such that where the Crown has proven the accused voluntarily committed the actus reus of mischief, the *mens rea* will be satisfied by proof of an intentional, deliberate, or reckless obstruction, interruption or interference with the lawful use, enjoyment, or operation of property.

[255] “Wilful” means knowingly or deliberately; “Obstruct” means to stand in the way of; “Interrupt” means to break the continuity of; and “Interfere” is akin to “get[ting] in each other’s way”.

[256] The term “enjoyment” of property has been interpreted expansively as “an action of obtaining from property the satisfaction that the property can provide.” Accordingly, enjoyment of property within the meaning of ss. 430(1)(d) is to be read plainly and includes mere enjoyment – there is no need for interference with property rights. The offence also captures interference with commercial properties: see *R. v. Maddeaux* (1997), 33 O.R. (3d) 378 (C.A.) and *R. v. Tysick*, 2011 ONSC 2192.

[257] However, one cannot be charged for conduct that is not illegal, simply because it may upset another individual; the conduct must be “wrongful” for it to be an offence.

[258] Charges that arise out of picketing further the analysis of what constitutes the offence of mischief under s 430(1)(c). The simple presence of the picketers does not make out the offence of mischief. There must be a physical act greater than the accused's mere presence to constitute an obstruction, interference or interruption with the said business. Justice Green from the Newfoundland Supreme Court Trial division elaborates on the threshold constituting the offence of mischief in *R. v. Dooling* 1994 CanLII 10215 at para 24 (NLCA) as follows.

[259] “In order to constitute the external circumstances of this offence, there must be some physical act on the part of the accused which operates as, or has the effect of causing, some sort of obstruction, interruption or interference with the use or enjoyment or potential use or enjoyment, of the property in question that goes beyond the mere communication of information through picketing. In *R. v. Mammolita* (1983), 9 C.C.C. (3d) 85 (Ont. CA), where a large group of picketers interfered with police who were attempting to escort personnel into a workplace, the obstruction or interference was found in the

"human barricade" that was created. It was "more than mere presence and passive acquiescence" (p. 88). In *R. v. March* (K.J.) et al (1993), 111 Nfld. & PEIR 116 (NFSC) where picketers of a struck store in a shopping mall were milling about in a circular motion "completely blocking off the front entrance" (p. 120) to the store in an intimidating atmosphere, the obstruction or interference was found in the creation of difficulty of access to and egress from the store which went "well beyond an information picket line".

[260] In ascertaining whether the offence is made out, the context is critical as noted in the Summary Conviction Appeal decisions of *R. v Romlewski* 2023 ONSC 5571 and *R. v Remley* 2024 ONSC, leave to appeal denied. Both these decisions, being Appellate decisions are binding on this court.

[261] Context was also seen as critical in ascertaining whether the offence of counselling to commit mischief was made out in the Alberta Court of Appeal decision of *R. v Pawlowski*, 2024 ABCA 342. Leave to Appeal SCC denied. In that case, the context that the speech occurred near the blockade and the fact that demonstrators were part of the crowd and that it would have been obvious a demonstration was occurring, was critical in evaluating whether the offence of inciting others to commit the offence was made out.

[262] Generally, in the group protest context, the simple presence of a protestor without more normally does not make out the offence of mischief (*R. v. Mammolita*, (1983), 9 C.C.C. (3d) 85, at para. 9 (Ont. C.A.)). Generally speaking, "more than mere presence and passive acquiescence" is required (*Mammolita*, at para. 9). However, when "presence" is no longer "mere" when relevant context is considered, presence can in fact become a positive act in the commission of the offence.

[263] In *R. v. Remley*, 2024 ONSC 543, at paras. 104-105, Somji J. set out a useful list of examples where courts have found liability for mischief in minimal forms of conduct that were held to have exceeded "mere presence" at a protest:

[264] The *R. v. Pascal*, 2002 Carswell 3838 (P.C.), aff'd 2006 BCSC 1311, case is instructive. A group of protesters, dressed in camouflage, were opposed to the development of a ski resort and set up a makeshift camp along Highway 99. They used

rocks and boards to block the highway, resulting in the blocking of vehicles and logging trucks.

[265] The accused were convicted, and the court discussed the participation of various individuals on principal and party liability.

[266] Firstly, the court commented that blocking logging trucks is not normally the activity of one person. It is usually the concerted effort of several people.

[267] However, mere presence on the road is not enough to warrant a conviction. In relation to one accused, she did not operate a camera or pull spike boards on or off the road or put up stop signs, etc. However, the court noted that she wore camouflage and her presence there would “indicate that she shared a common intention with the others and by her presence offered her encouragement, if not outright assistance, by standing on the highway. Certainly, she is a party, but one could also accurately call her a principal”: at para. 49.

[268] The court also noted her presence earlier when vehicles were being stopped and she was wearing the Mohawk flag. The camouflage emphasized the aspect that it was a “uniform” meant to show solidarity and intimidation: at para 54.

[269] *R. v. Snarch* the Quebec Superior Court found that the accused’s participation with a group of 50 students occupying a university computer centre for 13 days and restricting access by others to the school facilities made her a party to mischief. The accused’s mere presence aided and assisted the students who erected the actual barricades because the occupation’s success depended on having a significant number of participants.

[270] In *R. v. Colford*, protesters erected roadblocks on highways in what was described as a peaceful protest against legislative amendments imposing sales taxes on Indigenous persons residing on reserves. Although the decision is not a binding authority, the New Brunswick Provincial Court added a “personal addition and caveat” to the three requirements of mischief set out in *Mammolita* which is that “The acts constituting the actus reus must be such as to lead one to the conclusion that they equate with and tend towards showing a sense of unity or “one-ness” with the acts of the principals so that a

definite contribution to the events complained of is proven or necessarily inferred.”. Applying the *Mammolita* framework and additional caveat, the trial judge found four of the six accused who were present and drumming with protestors guilty of mischief.

[271] Courts have also found that the use of vehicles to form a blockade will result in liability for mischief as principle [sic] or party. In *R. v. Tysick* the Superior Court of Justice found that the Accused’s conduct in parking a truck at one entrance and setting up an encampment with tents, generators, campers, and food at a second entrance as part of a blockade during a labour protest that prevented access to a commercial property constituted mischief.

[272] Also, in *R. v. Carr*, [2024] O.J. No. 1638 (O.C.J.), an Ottawa Freedom Convoy case, Crewe J. convicted the accused of mischief for his involvement in the protest. Evidence adduced at trial included a number of posts and videos from the accused’s Facebook account over the course of several dates demonstrating his association with the protest. These posts include, among other things, photos of trucks, protest-related slogans, as well as videos depicting the accused in the downtown core on various dates throughout the offence period, including during the Removal Operation. Justice Crewe held that the evidence established that the accused “could not have failed to be aware that the actions of the Freedom Convoy was causing continuing distress to the residents of the City of Ottawa and interfering with their right to lawful access to and use of public property. As well, it contributed to repeated interruption with residents’ sleep from the incessant noise caused by, among other things, the blaring of truck horns at all hours” (*Carr*, at para. 93). Ultimately, Crewe J. found that the accused “clearly took part in activities designed to assist those contributing directly to the mischief, as well as to encourage the continuation of those activities (*Carr*, at para. 96).

[273] In another Freedom Convoy case, *R. v. David Gandzalas* (26 June 2023), Ottawa (Ont. C.J.), which is unreported. Justice Dorval found that the defendant’s actions “amounted to participation in the offence of mischief.” First, the trial judge determined that the Freedom Convoy protest itself “clearly amounted to mischief.” Second, she determined that the accused participated in that mischief. “He chose to drive protestors in and out of the downtown core, to act as security at their resupply location at Coventry.

He chose to continue to urge others to protest when, on February 18th, he faced the line of officers tasked with clearing the streets.” The trial judge found that the accused was yelling to “hold the line”, which “is manifestly an expression of participation in the overall mischief.” Justice Dorval proceeded to explain, at pp. 15-16, how the *mens rea* for the offence of mischief was satisfied:

[274] “The overall scene, which [the defendant] himself videotaped, showed that the streets of Ottawa could not be used as streets. This was not momentary but was prolonged. When Mr. Gandzalas chose to add his voice to the protest, he also added his actions, which supported the group in its activities of blocking the streets and resupplying. He intended to assist in that endeavour, and that constitutes the *mens rea* for the offence.”

[275] The appellate court in *R. v Tysick* 2011 ONSC 2192 in finding the trial judge erred in acquitting the accused found at para 38 that a finding of mischief does not require direct contact between protesters and those who experienced the interference, nor is there a requirement that the Crown lead evidence that a protester was asked to leave the scene before returning. The Court also found that the use of vehicles to form a blockade will result in liability for mischief as a principle or as a party.

[276] In *R. v Remley* 2024 ONSC at 543 para 107 found that neither the statutory elements of mischief nor the supporting jurisprudence requires that obstruction or interference with the enjoyment of property must occur for a minimum amount of time before liability for mischief can be found. What is significant is not the duration of the conduct but the context in which it arose. For example, in *R. v Drainville* (1991) 5 C.R.(4th)38, the accused argued his participation in a roadblock only accounted for a 3-minute delay. In analyzing the “de minimas” argument, the court stated at para 13,” that even where the obstruction is brief, it must be considered in the overall context of the protest.”

[277] **Count 6 – Section 430(3) Interference with the lawful use and enjoyment of Property: Principal or Aided or Abetted that offence.**

[278] The principles of party liability, are referred to earlier in this decision, are relied on but will not be reproduced.

[279] I also have considered *R. v Blackman* 2024 ONSC3595, where Justice Phillips indicated the crown cited *R v Mammolita* (1983)9 C.C.C (3d) 35 and focused its argument on the idea that Mr. Blackman was liable because he willfully participated in a group activity that displayed a common intention, or that he aided or abetted others. The trial judge did not address the Crown's argument that Mr. Blackman could be convicted of mischief as a party to the larger protest. The acquittals on mischief were set aside due to insufficient reasons, and a new trial ordered for all counts. The Accused appealed this decision, but the Ontario Court of Appeal dismissed the Application for leave to Appeal on January 10, 2025.

[280] In *R. v Romlewski* at para 164 Justice Doyle provides a summary at para 164 of the applicable principles for party liability to mischief based on the case law: The principles can be summarized as follows: 1. Mere presence alone at a protest is not sufficient to ground party liability; 2. If the protest gains strength by numbers and depends on the participation of a large group, presence may be interpreted as encouragement; and 3. Showing a sense of unity or solidarity with the actions of the principals sheds light on the purpose behind being at the protest

[281] I also have considered the case of *R. v Drainville* (1991),5 C.R. (4th)38 (OCJ). I highlight this case because of the noble cause the accused sought to protest and the fact that the protestors advocated for no violence, as they did in the case at bar. On the day before the offence date, the accused, accompanied by his friend, met with demonstrators near the blockade site and participated in various ceremonies. All involved were advised to "govern themselves with honour and dignity," and it was clear that there was no advocacy for violence. When arrested, the accused offered no resistance other than the fact that officers had to move him; it took 25 minutes to remove protesters, and the incident occasioned a delay of approximately one hour. In this case, the court at pg. 5 found "the act of obstructing the roadway did not contribute to public order, and the court found that the expression was not deserving of protection. The court ultimately found (at pg. 6) that the accused was not completely restrained from expressing his dissatisfaction with the government "in other lawful ways". Instead, the court found the accused's actions constituted an "interference with the proprietary rights of lawful occupants on the said

public lands” and an unlawful act. At pg. 7 the court stated “Notwithstanding argument that the accused’s involvement was minimal, his motives and intentions were “noble and good”, and the activities were a small contribution to a “just and honourable political solution”, the court could not find his actions constituted condonable civil disobedience. In doing so, the court cited Nutting J. as stating: “The adoption of civil disobedience methods in the promotion of a just cause does not transform illegal actions into legal ones” (Drainville, at p. 8). Ultimately, the court concluded that overlooking civil disobedience, while tempting in certain circumstances, would open dangerous floodgates (Drainville, at p. 8):

[282] Both Ms. Lich and Mr. Barber are admitted leaders of the Freedom Convoy 2022 movement. They were involved in organizing and leading trucks and other vehicles from western Canada. Both Accused are shown as being on the initial Board of Directors Freedom Convoy 2022 corporation. In Exhibit 101. Ms. Lich’s response to the Mayor Watson’s letter, Ms. Lich signs as the President of the Corporation.

[283] In one of the first news conferences, Ms. Lich is referred to as “the spark that lit the fire of the Freedom Convoy movement. There is no evidence that Ms. Lich had a vehicle emitting exhaust fumes or honked, a Ms. Lich, or blocked egress to a building. Ms. Lich set up the Freedom Convoy 2022 Facebook page, which amassed a significant following during the time the Convoy was in Ottawa, and she was involved in setting up the Gofundme page and later the Givesendgo page, which was one of the ways that donations were accepted. The ability to accept e-transfer was also created, and there was a cash jug on Parliament Hill. Ms. Lich posted on Facebook and Tik Tok and had some text exchanges with Mr. Barber. It is admitted that those statements were authored by her.

[284] Mr. Barber came to Ottawa in his Truck, “Big Red. Big Red was parked on Wellington Street for approximately 11 days. I agree there is no evidence to support that he was blocking any street, nor is it required. The Crown must prove that he participated in the obstruction. He is an admitted organizer and leader. Mr. Barber had a self-admitted sizable following on TikTok, and he posted regularly throughout the time in Ottawa. Mr. Barber dealt with the police liaison officers Bach and Blonde, and much of the evidence

considered by this court is those texts and TikTok statements admitted to being authored by him.

[285] At this trial, there were numerous witnesses, police officers and city officials who testified about their observations of what was occurring on the streets of downtown Ottawa from January 28 to February 20, 2022. Other evidence came in the form of videos or photographs taken either by these eyewitnesses or compilation posts and videos prepared by police.

[286] There is no question that the evidence adduced at this trial establishes that the Trucks and truckers and persons who came to Ottawa created a mass mischief during the protest period and that what occurred significantly interfered with the lawful use and enjoyment of property.

[287] There is unchallenged direct evidence from the civilian witnesses that the blocked streets made it difficult and at times impossible for people to come and go to and from their residences, while others could go to work or appointments, as neither public transit nor taxis could travel into the demonstration area. Other witnesses complained of the noise from the constant honking of horns that kept them up at night or made it impossible to concentrate while trying to work during the day. The smell of the diesel fuel from idling engines was described as sickening.

[288] The administrator from St. Andrew's Church described the vandalism that occurred on their property, the difficulty persons had in accessing the Church which is located facing Wellington. Their Minister needed a police escort to enter or leave the premises, and they were not able to rent out rooms in the Church, leading to a loss of revenue. Other business owners testified about issues with deliveries due to the streets being blocked and more than one witness spoke about being or feeling harassed or threatened when they ventured onto the street. None of these witnesses had any direct contact with either Ms. Lich or Mr. Barber, nor is such contact required for a finding of Mischief in this matter, as noted in the decisions of *Tysick* par 38 and *Romlewski* at 99. There is ample evidence to find that a mass mischief occurred in Ottawa January 28 to February 20.

[289] I accept, and the evidence supports that there was more than one group involved in this “Convoy” movement. Inspector Lucas confirmed that in his testimony, as groups came to Ottawa from various parts of the Country. Some people came to Ottawa on their own, affiliated with no one, and some people downtown were just curious on lookers.

[290] I also accept and the evidence supports that Mr. Barber was not able to influence or control all the truckers and perhaps even some within his own group as shown in some of the text exchanges with Cst. Bach.

[291] I am not convinced that the multiple convoys, can’t control everyone argument takes the defence very far, as there is overwhelming evidence that Ms. Lich and Mr. Barber were leaders of a significant group of truckers that arrived in Ottawa January 28 and stayed until they were removed, commencing February 18th. The Freedom Convoy 2022 group were described by Mr. Arpin as the broad moderate group.

[292] I accept the evidence of Inspector Lucas, that as part of the Operational plan, Ottawa Police prepared maps directing certain types of trucks to go to take one route and park on certain streets and vehicles coming from certain directions, etc., as set out in Exhibit 125. I accept Inspector Lucas’s evidence that they did this in an effort to balance the protestors’ right to protest and at the same time, trying to reduce the impact on the residents of Ottawa. He also authorized certain blockades to be erected to contain the footprint and funnel trucks into certain areas. I also accept the Inspector’s evidence that they were completely overwhelmed by the number of trucks that arrived.

[293] Defence Counsel suggest the fact that Ottawa police directed them in with maps etc gave them carte balance to fill out the streets and block roads and intersections as occurred from the observations of Cst. Bach, A/Sgt Blonde and the observations of Mr. Ayotte and Arpin and the civilian witnesses.

[294] An examination of exh 125 makes it clear “Take Direction from Police whenever applicable. Leave Open space for Emergency vehicles AT ALL TIMES, No closed trailers on Wellington near Parliament Hill. All staging area must keep an adjacent emergency lane clear. The map provided also set out max number of vehicle capacity and weight limits for each parking area. None of that was adhered to by the truckers. Ottawa police

did not tell the trucks arriving to gridlock the city. The Operational plan with the maps and directions attempted to do just what Inspector Lucas said to allow trucks and persons to come and exercise their Freedom of Expression while at the same time limiting the number and types and trucks to go to certain areas to lessen the impact on residents of the downtown core. Inspector Lucas agreed that the trucks were directed into Ottawa, but he also said at some point that welcome expired.

[295] Mr. Barber as early as January 29 the day after their arrival ( exh 135 Vol 1 Tab 29 pg 10) says “ We are completely messing this city up” Same day, he says ( exh 132 Vol 1 Tab 30 “ We fucked this town up “ January 30 while talking with others ( Dale ) who are talking about gridlock. Barber responds, “it’s already locked, we train wrecked it” and on February 10, 8:31 pm, speaking about a Slow roll, Barber says “Really Good Train wrecked traffic. By these texts authored by Mr. Barber, he clearly knew what was going on in the streets of Ottawa. He knew we were completely messing up this city. He says, “We train wrecked, “not some other group, but we did.

[296] I accept that both Ms. Lich and Mr. Barber came here with the noblest of intentions to simply protest their wish for the government and Prime Minister (at the time) Trudeau to end COVID mandate. I also accept that a number of factors came together that led to that initial gridlock, more trucks came than was anticipated and the number restrictions and directions to truckers in Exh 125 were not followed. But with that knowledge, they did not take steps to alleviate that until much later in the demonstration.

[297] The evidence is that Mr. Barber knew by the Sunday of the first weekend that police wanted the Trucks gone by 8:00 am Monday morning. His response was they were staying until the mandates came down. I accept that this was framed as more of a wish that they leave and was somewhat ambiguous.

[298] However, by February 4th, 2022, the Ottawa Police made their position clear and Mr. Barber clearly understood. Cst. Bach recalled sending screenshots to Mr. Barber. The screenshots Exh 127 pg. 40 - 46 were meant to share what the Ottawa Police was putting on social media, some messaging for anyone involved in the Convoy. The 9-page document was made Exhibit 128. These were sent to Mr. Barber and were tendered not

for hearsay purposes but for the fact that this information was conveyed to Mr. Barber, suggesting that it might be helpful in talking to the truckers, so they are not surprised when/ if they are doing something unlawful.

[299] Exhibit 127 is titled: The Ottawa Police Implements Increased Measures to Protect Downtown Neighbourhoods. It goes on to say that they are implementing a surge and containment policy to restore order and prevent unlawful activity. It says in connection with ongoing demonstrations, Ottawa's downtown residents and businesses continue to be severely impacted by unlawful acts, including harassment, mischief, hate crimes and noise violations. We know that additional demonstrators are coming, and we are significantly increasing our policing resources to respond to prevent and reduce the impacts of demonstrators entering the downtown core, and to improve neighbourhood safety. It also says the surge of police officers will result in enforcement to restore public safety. This includes increased investigation, enforcement and charges for all criminal acts related to hate, harassment, assaults, including spitting, intimidation and mischief. Ottawa Police is implementing the following measures effective immediately.

[300] From Mr. Barber's response to that communication, he clearly got the message. He responds, saying "We are in the opps centre planning. Can you get us commercial streets to move to instead "exh 127 pg. 50, Cst. Bach recalled a conversation with Mr. Barber and another organizer later the same day. Mr. Barber was facilitating a conversation with another organizer, but there was also a conversation with Mr. Barber. Cst. Bach specifically recalled Mr. Barber saying he would sign over the names of Convoy leaders to the police and have a conversation and be able to relay what it is they would say be willing to say in Court. Transcript pg 45. Bach said, "So we are talking in terms of negotiating like moving vehicles for what they would get in return. "

[301] As of this date, it would have been very clear that the Freedom Convoy was no longer welcome and that police would be seeking to restore public order. Mr. Barber clearly understood this from his response. It is only as of this date that the evidence shows that Mr. Barber was willing to try to alleviate the impact on the residents. The evidence from Cst. Bach and others show that the protestors were free to leave at any time and that the Police would work to assist anyone who wanted to do so.

[302] Counsel for Ms. Lich argues that there was no enforcement of any by-law. Mr. Ayotte's evidence from September 19th, 2023, testimony at page 18 said, "we were fearful for the safety of our officers, not knowing what the intent was of the protesters. That is the decision that I made based on what I was seeing, throughout North America regarding protests and civil unrests and we were reminded by the police chief to not be that single point of contact that could cause a riot" So the lack of enforcement was not because there was nothing to enforce but because of the concerns raised by Mr. Ayotte for the safety of the By-law officers.

[303] Much of the evidence comes from numerous videos across various dates that depict Barber and Lich circulating on Ottawa streets that are blocked or obstructed by demonstrators and vehicles during the demonstration period. One of many such examples includes a video posted to TikTok by Barber on February 3, 2022, where he gives an enthusiastic thumbs up to a completely blocked intersection at Kent Street and Slater Street, stating, "we're here", among other things.

[304] In Exhibit 16, there is a video of Mr. Barber walking on Wellington, pointing out, "We're going to have some stick hockey down on Wellington and Lyon. "Got a beautiful spot picked out, the trucks are parked back here (pointing to blocked street) and that way. Come down here, and we're going to make this happen. In this video, he is counselling people to come down to the blocked street and continue the blocking.

[305] Ex 17, Mr. Barber on Feb 4, TikTok, he states "there's a few people in high rises that don't like horns and I apologize for that. I don't know what else I can do to fix that." This of course shows his awareness that residents are disturbed by that date.

[306] February 9. TikTok Exh. 24, (Grab that horn tik Tok ) Mr. Barber is speaking to his followers are rumours of enforcement and he says if you see a large, vast majority of police coming towards your truck like they do, like, the, they're building up guys, lock that door, crawl into that bunk. But before you do that, grab that horn switch, and don't let go. Let that \*\*\*\*\* horn go no matter what time it is, and let it roll as long as possible until their busting your \*\*\*\*\* windows down. We want everybody to know when the time comes, and that is the best way to do it when it happens. Do that guys, please let that

horn go. Don't let go. When we see the mass force of police coming at you. OK guys, be strong, we've got this. This is Mr. Barber's rallying cry to sound the alarm if there is enforcement by police.

[307] In Exhibit 25, Mr. Barber says on TikTok, "they're coming for us. They've been instructed to clear the streets of downtown Ottawa... We have instructed them that for every trucker who is protesting in downtown Ottawa, that is arrested and has to sign. For every truck that signs to get out of custody. We will then replace that driver that truck driver with three new truckers when the call goes out, guys, everybody and their \*\*\*\*\* dog come to Ottawa cause we need all the help we can get. They think they can control the number of guys right now; you wait to see how many we bring in to replace us. be strong, hold the line.

[308] The above statement is a clear encouragement or counselling for his followers to come and continue the blocking of streets. He says that for every truck that leaves we will replace it with three more.

[309] Exb 26, Feb 10. Mr. Barber says on TikTok Tok "do you think we're leaving? Do you think we're leaving? We might move a few trucks around just a little bit, so apparently, there are a few issues at the airport this morning. I don't know. You know, we moved a few trucks out of the downtown core and then they kind of replaced somewhere else, so that's so unfortunate, you guys, my goodness. One has to watch this TikTok video, because it is clear that Mr. Barber is speaking sarcastically when he says this.

[310] There are numerous examples of Mr. Barber on video among the crowds of truckers and demonstrators. In a few of them, persons are treating him a bit like a celebrity or a rock star. In one of them, the person says I've been looking for you. I really want to take a picture with you. Again, on February 12th, Mr. Barber is out and about, and someone else says Can I get a picture with you. And Barber says even your boy, meaning him, is kind of a celebrity in Ontario. And he says to the person Keep up the fight, we're winning. Mr. Barber was not a mere bystander in the protest, his presence meant something to those who were on the ground and part of the blocking of streets. His very presence was a positive act as referred to in *Mamolita*.

[311] Both Mr. Baber and Ms. Lich carried out an organizational and leadership role for the Freedom Convoy until their arrest. Ms. Lich was primarily a spokesperson, some said the “face” of the Freedom Convoy movement. She was also primarily involved in raising and distributing funds to keep the truckers in Ottawa. Mr. Barber dealt with the Truckers on the ground and was involved in liaising with police, trying to arrange fuel distribution and, at times, the distribution of money to truckers for fuel and food so that they could continue to stay in place.

[312] Mr. Barber was also involved in “slow rolls”, which the defence argues was meant to be a better way of demonstrating. The problem is in Mr. Barber’s Feb 10 statement regarding a slow roll, he says, “Really Good Train wrecked traffic”. That shows an intentional act to interfere with the enjoyment of others driving on the highway.

[313] Defence counsel says there is no evidence that Mr. Barber ever aided or abetted or counselled any of the drivers to block the streets.

[314] In her testimony Cst. Bach recalled that on February 9, 2022, she recalled watching a TikTok video of Mr. Barber being brought to her attention and watching it. This video was made Exhibit 9 at trial, it appears to have been posted February 7, 2022. There was also a text exchange with Barber about this video.

[315] In the TikTok video, Mr. Barber is shown in his truck, Big Red with another person at an intersection near the National Gallery, Barber says, “So we’re out just scoping out the area here. Hey Mike, what do you think about this intersection? Response by Mike: It’s Lonely. Barber responds (laughing) It looks a little lonely, doesn’t it? It doesn’t look like there’s anybody here. Do you think we can fix that? M: Yeah, CB (Laughs) I don’t know about you but that looks like it is lonely. Oh, boy, Oh boy. “

[316] Watching that video, you hear Mr. Barber laughing at the empty intersection The only available inference is that he is sending a message to his followers to fix the problem of the lonely intersection or block the street. That is clearly an encouragement to his followers to commit mischief and block the road or intersection.

[317] There are a few examples of Ms. Lich out amongst the crowd and with Mr. Barber. Both he and Lich are filmed by “Papawolf” interacting with demonstrators among parked vehicles on an obstructed Wellington Street. Papawolf tells Lich that he’s been following and posting behind her, and she asks him to “keep getting the word out” and tells him that it’s “like Canada Day on steroids” in response to Papawolf explaining that it’s his “fourth time up here”. Lich is similarly captured among demonstrators on a blocked or obstructed Wellington Street in other videos, smiling in a photograph with Barber and an unknown individual beside Barber’s truck “Big Red” (in front of the Department of Justice Building on Wellington Street). As stated, “Big Red” was one of many trucks that contributed to the blockage and obstruction of Wellington Street for a period of time. Its presence there is documented in photographs, text messages and in video. I do note that on February 8, 2022, when Barber moved it to another location. Barber confirmed the departure of “Big Red” in a text message to Bach on February 9, 2022, where he stated, “Yesterday worked perfectly getting my truck off Wellington”.

[318] February 10, Ms. Lich is down amongst the crowd and says “Check out this street” pointing to a blocked road.

[319] Most of Ms. Lich’s posts for regarding fundraising and imploring people to donate to the freedom convoy movement. In one Facebook or tick tock Ms. Lich says quote “so please, if you can donate, and help us keep these truckers going, you know we plan to be here for the long haul, as long as it takes to ensure your rights and freedoms are restored”. She makes it clear that the purpose of the funds is to allow truckers to stay longer in Ottawa and keep the protest going, to allow the trucks to stay where they are blocking the roads.

[320] On February 14, on Parliament Hill, on Wellington Street surrounded by trucks and protestors, and introducing Former Premier of Nfld, Ms. Lich said, “first of all, we are not afraid. In fact, every time the government decides to further suspend our civil liberties, our resolve strengthens, the importance of our mission becomes clearer. We remain peaceful but planted on Parliament Hill until the mandates are decisively ended.... Listen to your hearts, Canadians. Is the emergency at the right response to our demonstrations of love and freedom? Now I want to address the Prime Minister. No matter what you do,

we will hold the line. There are no threats that will frighten us. We will hold the line. Lastly, to our truckers and friends on Parliament Hill, do not give in to fear and threats your courage has already exceeded all our expectations and inspired an international movement. Be strong. Show kindness love will always defeat hate. Hold the line, thank you.”

[321] February 16, Ms. Lich posts on the Freedom Convoy Facebook page,” you guys. I just want you to stay strong and I want you to continue to be unified” ... “You have to know that they're trying to provoke us. I mean, you hear their language. You hear the language and the verbiage that they're using, and not is not coming from us. And I know you guys all know that. But we can only win this with love, and we can only win this together. And it's time to stand together. If you can come to Ottawa and stand with us, that would be fantastic and if you can't pray for us. I know you are. I just want you know you to know that this is my hill. And the hill of so many brave men and women. I can't tell you how amazing these people are. And they're going to stay, and they're going to fight for your freedom as long as they possibly can. I'm just so damn proud of you every single one of you not just in Canada but all around the world so, please try not to be angry keep loving your heart stay strong. Stay unified and stay proud I want you to keep fighting the good fight. And I want you to lookout for each other so tomorrow is a new day and I'm ready I'm not afraid. And we're going to hold the line thank you.

[322] In many of Ms. Lich's posts as well as Mr. Barber's they are encouraging people and truckers to come join and participate with them.

[323] Ms. Lich often interspersed or ended her posts with the Phrase “Hold the Line “Yes I agree in different contexts it can mean different things, but it was, without doubt, a rallying cry for the demonstration for people to remain where they were on the streets and fight the good fight. The phrase was also indicative of joint participation in the protest the manner of which was the blocking of streets and roads and interfering with the property of others.

[324] As a spokesperson and President of the Freedom Convoy, Ms. Lich was present and participated in many news conferences. For example, Feb 6 where what was going

on in the streets was discussed, including the disproportionate harm to the residents complaining of harassment, noise from horns fumes etc., and given her personal walkabouts, Ms. Lich could not have failed to be aware of the actions of the Freedom Convoy was causing and the continuing distress to the residents of the downtown, interfering with their right of lawful access and use of public property. It is in that context that you have to look at her words. She was right there at the scene of the protest when she gave the speech replete with Hold the Line on Feb 14, when she was asking for donations, she was aware that the streets were blocked and resident complaining.

[325] Proof of her awareness is also found in the correspondence between she and the mayor found as Exhibit 100 and Exhibit 101. In his letter to Tamara Lich as President of the Freedom Convoy 2022, he writes, "My overarching concern is for the safety and security of our residents, business owners and workers in the downtown core, who are innocent collateral damage of this unprecedented national and international demonstration. Our residents are exhausted and on edge, and our small businesses impacted by your blockades are teetering on the brink of permanent closure. "I am writing to ask you to remove your convoy and its trucks from all our residential neighborhoods and that you restrict your presence to a limited perimeter from Wellington, where it meets Elgin and to the Sir John A McDonald Parkway. I ask that you immediately seek the support of the truckers to follow this path of de-escalation.

[326] Ms. Lich responds, "The truckers here in Ottawa have always been about peaceful protest. Many of the citizens and businesses in Ottawa have been cheering us on, but we're also disturbing others that was never our intent with the freedom convoy. We agree with your request to reduce pressure on the residents and businesses in the city of Ottawa. We have made a plan to consolidate our protest efforts around Parliament Hill. We will be working hard over the next 24 hours to get by in from the truckers. We hope to start repositioning our trucks on Monday." By her response she is aware that the protest is causing distress to residents.

[327] Clearly, on the evidence, even if Ms. Lich did not have a truck on the road, she was standing shoulder to shoulder with the demonstrators. At times, she was literally shoulder to shoulder when she was in the streets in the heart of the area where the

mischievous was occurring. Ms. Lich was also the voice of the Freedom Convoy, not only as its President, but as a leader, so when she said “Hold the Line, stay where you are it meant something. The context of the words of both accused is important. The evidence is that they were both organizers, they were leaders of what was happening, and as a result of fundraising by Ms. Lich, the Truckers could stay in place in Ottawa. The connection between the aiding and abetting is that Ms. Lich provided encouragement and assistance via funds, encouraging persons to stay in place or hold the line, knowing that the streets were blocked, and residents were affected by the actions of the blockade.

[328] The presence of both Ms. Lich and Mr. Barber was a positive act, their presence in and of itself was an encouragement, given the reaction of the public seeing them among the crowds.

[329] Counsel has raised the fact, that Ms. Lich entered into a plan with the city to reduce the footprint and that it was the police that caused that not to happen. There is no suggestion of bad faith on the part of the Freedom Convoy 2022 group. Also, there is evidence that Mr. Barber worked to implement the movement of trucks as per the agreement and on other occasions. These acts detract from the Mischievous that had already occurred, and they had both played a role in aiding it by fund raising and in Mr. Barber’s role dealing with the trucks on the ground. They both encouraged the situation to continue and in the context of what was going on in the streets. The fact that they tried to work to reduce the footprint, work with the city and the fact that they wanted a peaceful protest, to attenuate the severity of their role and may be a consideration down the line.

[330] Ms. Lich raises the argument that the fact that the police permitted the demonstrators to park on Wellington Street gave them what is called a color of right to do so. I disagree for two reasons: one, the restrictions set out by the police were not followed, and second, there is no evidence that Ms. Lich was ever told of this or knew of it. There is no evidence of any conversation with Mr. Barber about this and it was not mentioned in any of the press conferences. Ms. Lich did not testify as is her right, and there can be no inference of guilt as a result, but it means there is an absence of evidence about what information she would have received.

[331] Similarly, Mr. Barber did not testify, and while not an inference of guilt as a result, there is no evidence from which the court can assess Ms. Lich's or Mr. Barber's honest belief, as there is no evidence about what those beliefs may be and what evidence supports that honest belief. I find there is no air of reality of this color of right defence.

[332] I find that the Crown has proven beyond a reasonable doubt that Ms. Lich and Mr. Barber personally committed mischief as the leaders, and organizers and social media influencers and that they also aided and abetted that mischief and incited followers to continue that activity until the Government or Prime Minister dropped the COVID Restrictions. As noted in *R. v Pascal* at par 109 "after reviewing *Mamolita*, the court added what it called a personal additional caveat to the three requirements as an aider and abettor " the acts constituting actus reus much must be such as to lead one to the conclusion that they equate with and tend towards showing a sense of unity or oneness with the acts of the principals, so that a definite contribution to the events complained of is proven a necessarily inferred.

[333] The evidence strongly supports that Lich and Barber are principals and, in the alternative, they were aiders and abettors showing a sense of unity with the principals and by their acts they aided and encouraged those blocking the roads, with the backdrop knowledge of what was happening in the downtown core and that residents lawful use of property was affected by the actions of the protest. They are not mere bystanders.

[334] **Count 1 – Counselling the offence of Mischief**

[335] In Count 1, both Ms. Lich and Mr. Barber are charged with counselling the offence of Mischief, which offence was not committed by one or more persons contrary to s. 464 of the criminal code. Under s. 464 (a) everyone who counsels another commit and indictable offence is. If the offence is not committed, guilty of an indictable offence and liable to the same punishment as a person who attempts to commit that offence is liable.

[336] Regarding Count 1, the Crown needs to prove beyond a reasonable doubt a deliberate encouragement or active inducement of a criminal offence, the *mens rea* is a conscious disregard of the substantive and unjustified risk inherent in the counselling.

Proof of the index offence is not required because the focus is on the counsellor's conduct, the state of mind and not that of the person counselled.

[337] The law of counselling is set out earlier in this decision. The actus reus for counselling will be established where the statements made by the accused actively induce or advocate and do not merely describe the commission of an offence Counsel" is defined in s. 22(3) of the Code and includes, but is not limited to, procuring, soliciting, and inciting (*R. v. Root*, 2008 ONCA 869).

[338] To incite means to urge, stir up, or stimulate (*Mugesera v. Canada* (Minister of Citizenship and Immigration), 2005 SCC 40, at para. 63). In *Mugesera*, in its analysis, the Court took a contextual approach that included consideration of the public location of the speech. At para. 64, the Court set out the following important principles when considering a speech and the offence of counselling: "The offence of counselling requires that the statements, viewed objectively, actively promote, advocate, or encourage the commission of the offence described in them. The criminal act will be made out where the statements (1) are likely to incite, and (2) are made with a view to inciting, the commission of an offence. An intention to bring about the criminal result, that the counsellor intends the commission of the offence counselled, will obviously satisfy the requisite mental element for the offence of counselling.

[339] In *R. v. Hamilton*, 2005 SCC 47, where the Court stated at para. 29: In short, the actus reus for counselling is the deliberate encouragement or active inducement of the commission of a criminal offence. The *mens rea* consists of nothing less than an accompanying intent or conscious disregard of the substantial and unjustified risk inherent in the counselling: that is, it must be shown that the accused either intended that the offence counselled be committed, or knowingly counselled the commission of the offence while aware of the unjustified risk that the offence counselled was in fact likely to be committed as a result of the accused's conduct.

[340] In the recent Freedom Convoy appellate decision of *R. v. Pawlowski*, 2024 ABCA 342, the Alberta Court of Appeal observed at para. 18:" For a political speech or communication to constitute the actus reus of counselling, the Crown must prove beyond

a reasonable doubt that it will be reasonably understood as in substance deliberately encouraging or actively inducing those with a political cause to engage in criminal activities in support of that cause, rather than as in substance expressing support for the political concerns or goals of the criminal actors.”

[341] In *Pawlowski*, the Alberta Court of Appeal upheld the trial judge’s finding that a speech inciting protestors to continue an ongoing blockade of a highway constituted an incitement to commit mischief. The Accused appealed this finding to the Supreme Court of Canada, leave to appeal was denied on March 27, 2025.

[342] In *Pawlowski*, the accused travelled to the Smugglers Saloon adjacent to where the Coutts blockade was happening and gave a speech. The Trial Judge found that some of the protestors involved in the blockade were present and that the accused knew protestors were blocking the highway when he told the audience they were, “heroes of the solidarity movement” and that they should not “dare break the line”... “do not lose your momentum” “You can do the right thing, or pack and honk around parliament...but ..they’re not really afraid of our horns” ....” here is your opportunity to hold the fort. Do not break the line. Don’t do it “The Accused did not directly take part in the blockade of the highway.

[343] The Alberta Court at para 55 to 58 addressed the s. 2(b) issues with the nature of the speech: The expression undertaken by the appellant in this case fell within the scope of section 2 (b). His speech had significant political content. His apparent motivation was to advance political causes he deeply believes in, and to express his dissatisfaction with the government’s approach to matters of public importance. Whatever their objective merits, the sincerity and depth of the appellant’s commitment to those positions were clear. To the appellant, the COVID-19 lockdown measures and vaccine requirements presented a profound threat to individual liberty and bodily autonomy, and speaking out against them was a matter of utmost urgency and significance. Political expression is at the very heart of the values sought to be protected by the freedom of expression: *Libman v Quebec (Attorney General)*, [1997] 3 SCR 569 at para 29, 1997 CanLII 326; *Sharpe* at para 23; *R v Guignard*, 2002 SCC 14 at para 20; *Harper v Canada (Attorney General)*, 2004 SCC 33 at para 84.

[344] Para 56 “Just because a certain expressive act may also constitute an offence under the Criminal Code does not mean the expression falls outside the scope of section 2(b). In Reference re ss 193 and 195.1(1)(c) of the Criminal Code (Man), [1990] 1 SCR 1123 at 1182 [Prostitution Reference], Justice Lamer explained in his concurring reasons: “the mere fact that Parliament has decided to criminalize an activity does not render it beyond the scope of s. 2(b) of the Charter”. He noted there are many offences “whose actus reus may consist either in whole or in part of speech or other form of expression”. He provided an “incomplete list” of offences to illustrate his point, which list included section 22 counselling: s. 21(1)(b) and (c) (parties to an offence), s. 22 (counselling a party),” *Pawlowski*.

[345] At para 57, “The speech given by the appellant in this case was protected by section 2(b). However, that does not mean the appellant acted with 'legal justification' in inciting mischief. As illustrated by Justice Lamer’s list, an act of expression that is protected by section 2(b) may also constitute a criminal offence and, therefore, not be legally justified. Section 1 of the Charter allows expressive acts that fall within the protection of section 2(b) to nevertheless be criminalized so long as the subject offence constitutes a “reasonable limit” that “can be demonstrably justified in a free and democratic society”.

[346] Para 58 “As a result, the appellant cannot rely on section 2(b) for “legal justification”. Freedom of expression is subject to “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. The limit prescribed by law in this case is section 22, the counselling provision. As the appellant has not challenged the constitutionality of that provision, there is no issue as to whether it constitutes a “reasonable limit” or is “demonstrably justified”. The section 2(b) right is subject to an unchallenged limit and therefore is not a basis for finding legal justification.”

[347] The Court says at para 60-62” Section 2(b) of the Charter allows a person to disagree with government actions regarding vaccinations or pandemic lockdown measures. The ability to express one’s feelings, beliefs, ideas and views is fundamental to a democratic society. However, the rule of law is also fundamental to a democratic society.”

[348] Para 61 “There is no caselaw which finds that section 2(b) is unjustifiably infringed by criminal counselling offences under sections 22 or 464 of the Criminal Code. It is difficult to imagine an argument that it would not be a reasonable limit on freedom of expression when the counselling is intended to incite a physical act of criminal mischief. It is worth reiterating in this regard that the actus reus for section 22 has been “carefully circumscribed” to account for the constitutional protection of freedom of speech, as discussed above.”

[349] Para 62” In this case, the trial judge found the accused counselled or incited the protesters to continue to commit the criminal offence of mischief. Where an individual incites or counsels others to commit criminal acts, the right to freedom of expression is subject to the limit prescribed by section 22 of the Criminal Code. Section 2(b) cannot be used as a shield to allow the commission of criminal offences including the offence of counselling others to commit criminal offences. If the appellant wanted to argue that section 22 is not a “reasonable limit” that “can be demonstrably justified in a free and democratic society”, he needed to challenge the constitutionality of that offence. That was not done in this case.” The Alberta Court of Appeal upheld the trial judge’s decision and the conviction. An appeal was made to the SCC, but leave was denied March 27, 2025.

[350] When you review the statements of Ms. Lich and the context with in which they were given they are of a very similar nature, to that of Mr. Pawlowski.

[351] On February 14, on Parliament Hill, on Wellington Street surrounded by trucks and protestors, and introducing Former Premier of Nfld, Ms. Lich said “first of all, we are not afraid. In fact, every time the government decides to further suspend our civil liberties, our resolve strengthens the importance of our mission becomes clearer. We remain peaceful but planted on parliament hill until the mandates are decisively ended.... Listen to your hearts, Canadians. Is the emergency the right response to our demonstrations of love and freedom? Now I want to address the Prime Minister. No matter what you do, we will hold the line. There are no threats that will righten us. We will hold the line. Lastly to our truckers and friends on parliament hill do not give in to fear and threats your courage has already exceeded all of our expectations and inspired an international movement. Be strong. Show kindness love will always defeat hate. Hold the line thank you.”

[352] February 16, Ms. Lich posts on the Freedom Convoy Face Book page,” you guys. I just want you to stay strong and I want you to continue to be unified” ... “You have to know that they're trying to provoke us. I mean you hear their language. You hear the language and the verbiage that they're using and not is not coming from us. And I know you guys all know that. But we can only win this with love, and we can only win this together. and It's time to stand together. If you can come to Ottawa and stand with us, that would be fantastic and if you can't pray for us. I know you are. I just want you know you to know that this is my hill. And the hill of so many brave men and women. I can't tell you how amazing these people are. And they're going to stay and they're going to fight for your freedom as long as they possibly can. I'm just so damn proud of you every single one of you not just in Canada but all around the world so, please try not to be angry keep loving your heart stay strong. Stay unified and stay proud I want you to keep fighting the good fight. And I want you to lookout for each other so tomorrow is a new day and I'm ready I'm not afraid. And we're going to hold the line thank you.

[353] Feb 10, posts a video known as the “Papa Wolf video “Ms. Lich is out an about on Wellington, a group including Chris Barber are talking about various convoy activities, slow roll at the airport ect Papa Wolf introduces himself says he's following her on social media . She says keep getting the word out. Lich referring to what is going on behind her protest crowds etc “it's like Canada Day on steroids “

[354] In her testimony Cst. Bach recalled that on February 9, 2022, she recalled watching a Tic Tok video of Mr. Barber being brought to her attention and watching it. This video was made Exhibit 9 at trial. There was also a text exchange with Barber about this video. In the Tic Tok video Mr. Barber is shown in his truck Big Red with another person at an intersection near the National Gallery, He says “So we're out just scoping out the area here. Hey Mike. What do you think about this intersection? Response by M; It's Lonely: It looks a little lonely, doesn't it? It doesn't look like there's anybody here. Do you think we can fix that? M: Yeah CB (Laughs) I don't know about you but that looks like it is lonely. Oh, Boy Oh, boy. “

[355] Barber posts on TikTok platform for which he admits he has a large following: Exhibit 25, this was also cross posted on Face Book. “they've been instructed to clear the

streets of downtown Ottawa; they're going to use whatever force possible. We have instructed them forever every Canadian truck driver that is protesting in downtown Ottawa that is arrested we will then replace that truck driver with three new truckers. When the call goes out, guys, everybody and their \*\*\*\*\* dog, get coming to Ottawa cause we need all the help we can get. They think they could control the numbers of guys right now. You wanna see how many we bring in to replace us. This ain't no \*\*\*\*\* drill either. Be strong, hold the line we have the F liberal government fractured right now, provinces are falling.

[356] February 10, 2022, Exh 26, Barber states again on Tik Tok” Do you think we're leaving? Do you think we're leaving? We might move a few trucks around just a little bit, so

[357] In another Tik Tok dated February 7, 2022 Barber says “you come here and you \*\*\*\* this city. I don't give a \*\*\*\* if the entire country of Canada comes to \*\*\*\*\* Ottawa. That's what we're living right now. Government tyranny”

[358] When you take into account that both Lich and Barber were leaders and organizers, that they were out and about in the downtown core seeing that streets were blocked. There was an awareness of the affect their actions were having on the residents of Ottawa. Ms. Lich acknowledged it in her response to the mayor's letter. Barber was told by Cst. Bach about the affect the blocking of streets was having.

[359] When you consider their statements against that backdrop, there is no doubt that their statements telling people to stay strong. Hold the line, to stay united, not to give in to fear, to come stand with them in Ottawa, is meant to incite their followers to continue to do what they were doing which was the blocking of streets or continue the mischief. They said these types of things to their followers on a regular basis. Given that, these statements were not off the cuff statements, they said these things with a conscious disregard of the substantial or unjustified risk inherent in the counselling which as per Hamilton at para 29 makes out the *actus reus* and *mens rea* for the offence of counselling. These statements were made to incite or rally the followers of the Freedom Convoy to stay or come to Ottawa to continue the protest. The Charge of counselling to commit the offence of mischief has been proven beyond a reasonable doubt for both accused.

[360] The Crown acknowledges, that the evidentiary foundation for the charge of counselling to commit Mischief and the substantive offence of mischief is the same. Given that this court has found that the offence of counselling by both accused has been committed and that the offence has occurred, they are liable as parties to the offence of counselling under s. 22 and the as a result the Charge on count one will be stayed as requested by the Crown.

[361] **Offence of Mischief – Statutory Defence in Section 430(7)**

[362] Section 430(7) of the Code provides a statutory defence to mischief. The provision provides that no person commits mischief “by reason only that he attends at or near or approaches a dwelling-house or place for the purpose only of obtaining or communicating information.”

[363] Defence counsel argue that the defence to mischief under s. 430 (7) applies to the accused and the facts of this case, as the purpose of the “mischief” was communication to end the COVID mandates.

[364] In *Tremblay*, the ONCA overturned a mischief conviction that flowed from a neighbour dispute between the accused and complainant. In short, the accused parked a van bearing the message “I AM NOT RESPONSIBLE FOR YOUR BASEMENT FLOODS” alongside the property line that he shared with the complainants (*Tremblay*, at para. 3). As a result of the accused’s actions, the complainants had to cancel an open house (*Tremblay*, at para. 4). In defence of his actions, the accused relied upon s. 430(7), arguing that he acted solely for the purpose of communicating information (*Tremblay*, at para. 7). In rendering their decision, the Court needed to interpret s. 430(7), which it found had a “genuine ambiguity” in the meaning and scope of the words “communicating information” (*Tremblay*, at para. 26).

[365] The Court found that s. 430(7) “protects acts done for the purpose of communicating information that would otherwise constitute mischief regardless of whether the intended results were to interfere with or interrupt the use or enjoyment of another person’s property” (*Tremblay*, at para. 21). With that said, the Court made clear

that the applicability of the provision does not come without limitation (*Tremblay*, at para. 28):

[366] The communication must be peaceful and non-violent, to be entitled to protection. And it must not simply be a mask or subterfuge for conduct that is not solely communicative and that has some entirely different purpose. This line will not always be easily drawn and will depend upon the circumstances of the case.

[367] The Court then went on to provide a few examples of communication held “not to be for the purposes only of ... communicating information” which are summarized as follows (*Tremblay*, at paras. 28-30): Anti-nuclear protesters climbed an anchor chain of a United States aircraft carrier intending to display a radiation symbol flag. Two of them fastened themselves to the anchor chain. Their acts “went beyond trespass” and “seriously interfered with a very crucial part of the moorings of a very large vessel”.

[368] In another case, an individual told a court official that he had a bomb to blow the courthouse up and showed a device which caused the courthouse to be evacuated; and in another case, an indigenous protester blocked a private parcel of land and was convicted of mischief on the basis that freedom of expression did not include a right to use someone else’s property without permission and did not justify forms of expression that were inconsistent with public order. [Citations omitted.]

[369] Ultimately, the Court held at para 31 “that – the accused’s acts constituted no more than communication of his message: “[the message] did not constitute trespass or harassment ... did not endanger anyone and posed no potential risk of damage to the [complainant’s] property”. The Accused’s sign was on his property.

[370] Recently, the parameters of s.430(7) were discussed by the Alberta Court of Appeal in *R. v. Pawlowski* 2024 ABCA 342. This was an appeal from *R. v. Pawlowski*, 2023 ABCJ 131, the accused attended at a site close to the Coutts blockade and gave a speech. The speech was given to a group of people, some of whom were blockading a nearby highway. The Accused did not participate in the mischief directly, but the trial judge found his speech incited the protesters to carry on the blockade or carry on the mischief. The accused was therefore found guilty of inciting mischief contrary to sections 22 and

430 (1) (c) of the Criminal code. The accused appealed his conviction, arguing the trial judge erred in finding his speech amounted to inciting mischief and in not finding s 429(2) or s. 430(7) of the criminal code applicable.

[371] The Alberta Court of Appeal dismissed the Appeal. A further Appeal was made by the Accused to the Supreme Court of Canada, leave to appeal was denied March 27, 2025.

[372] In the Appellant decision the Court wrote commencing at para 35-38 “The trial judge said his conclusion that the appellant intended to incite the protesters to continue the blockade did not logically allow him to also conclude that the appellant’s actions were solely communicative: *Pawlowski* at paras 61–64. On appeal, the appellant argues that this does not follow. The appellant argued that this reasoning was contrary to the direction in *R v Tremblay*, 2010 ONCA 469 at para 16 [Tremblay] that section 430(7) “only comes into play – by definition – where it is applied to communication that would otherwise be culpable as mischief”.

[373] The Court at para 36 stated “The Ontario Court of Appeal in Tremblay stated that for section 430(7) to apply, “the communication of information will already carry with it the willful intention or purpose to interrupt or interfere with the lawful use or enjoyment of property, or recklessness in that regard”: Tremblay at para 17. Therefore, it held, where section 430(7) speaks of a communication being “for the purpose only of... communicating information”, that should include “communication with the intention of accomplishing some other purpose as a consequence”, including a “willful intent to interfere” with property: *Tremblay* at paras 26, 27”. Essentially, it this reasoning in Tremblay that the accused rely on in the case at bar.

[374] The Alberta Court of Appeal distinguished *Tremblay* saying at para 37 “*Tremblay* was a case about non-physical mischief involving two neighbors. One parked a broken-down van near his property line with the other. The van had written on it, “I am not responsible for your basement floods”. This resulted in cancelling an open house which affected the sale of the other neighbour’s home. The neighbour was charged with mischief. He testified that his use of the van was only to communicate a message to the

complainants. The Ontario Court of Appeal held that section 430(7) applied because the actions of the accused were solely for the purpose of communicating information, even though the intended result of that communication may have been interference with property: *Tremblay* at paras 21, 31.

[375] At para 38 “Although the court allowed for intended mischief as a consequence, it emphasized that the communication could not be for some entirely different purpose (*Tremblay* at para 28):

[376] “Of course, the communication must be peaceful and non-violent, to be entitled to protection. And it must not simply be a mask or subterfuge for conduct that is not solely communicative and that has some entirely different purpose. This line will not always be easily drawn and will depend upon the circumstances of the case.”

[377] The court identified a number of cases where protesters attended at certain places and physically interfered with the use of property as examples of conduct that went beyond attendance at a site for the purpose of only communicating information: *Tremblay* at paras 29-31, citing *R v Tan*, 15 BCAC 231, 1992 CanLII 312 (BCCA), *R v Conforti*, 8 WCB (2d) 106, [1989] OJ No 3151 (QL) (ONPC), *R v Drainville*, 5 CR (4th) 38, [1991] OJ No 340 (ONCJ). As the purpose was not “solely communicative”, section 430(7) did not apply in those cases.”

[378] In *Pawlowski*, the accused did not testify and allow himself to be cross-examined on his intent and, therefore, intent had to be inferred by the trial judge. The trial judge did not find the appellant attended for a purpose that was “solely communicative”. The Judge found that the accused “intended to incite the audience to continue the blockade” and that his “comments were designed to spur on the protesters to continue the blockade”: In other words, the appellant’s intention was to incite others to continue physically interfering with the highway. This was a fundamentally different intention than the “solely communicative” intention at issue in *Tremblay*.

[379] At Paragraph 40 , the Court writes “The appellant cites additional cases where individuals picketing or protesting, but only communicating information, led the courts to conclude that they were not guilty of mischief: *R v Dooling*, [1994] NJ No 390 (QL), 1994

CanLII 10215 (Nfld SC); *R v Lévesque*, 2022 QCCA 510, *R v Pearson*, 43 WCB (2d) 205, [1999] MJ No 311 (QL) (MBPC). None of those cases dealt with physical actions of interference with property or inciting others to commit mischief pursuant to section 22 of the Criminal Code.

[380] The Court of Appeal found there was no error with the trial judge holding that his conclusion as to intent was inconsistent with finding that the appellant had attended Coutts “for the purpose only of... communicating information” within the meaning of section 430(7). The conviction was upheld.

[381] Mr. Pawlowski, sought leave to appeal to the Supreme Court of Canada primarily on the basis that the Appellate Court erred in their interpretation of *Tremblay*, arguing that this was an important issue of national importance that warranted reviewed by the Supreme Court of Canada. However, leave to appeal was denied on March 27, 2025.

[382] In *R. v McCann*, Justice Johnson found the defence did not apply as the purpose of the activity was not simply to communicate a political idea or to voice a protest, the purpose was to halt the removal of Cattle from the Frontenac Institution.

[383] Defence in their submissions relies on the decision of *R. v. Wagner* 2010 O.J no. 5018 (OCJ). In *Wagner*, the accused attended an abortion clinic carrying a bouquet of flowers. On leaving the clinic a nurse encountered the accused and recognized her from the day before at another clinic where she was employed. The Nurse returned to the clinic and alerted staff. The accused followed, she was advised she had to leave, she did not leave but remained outside in an area open to the public and left pamphlets behind. Her presence led to the clinic closing for a short period of time. The court concluded that it was a confluence of other activity that led to the decision to close the clinic. The Court found her conduct objectively to be passive and could justify the closing of the clinic. The Court looked at the context of her encounter with the nurse, there was no aggression, no threats and no physical contact. The Court found her acts in the context of what occurred were for the purpose of communication only, even though her actions constituted mischief as they interfered with the enjoyment of the property.

[384] Defence in this case argue but if Ms. Lich is in any way linked to the conduct of the protesters in the downtown core that it was one of many factors that led to the gridlock that it was not the contributing factor, and the defence should apply.

[385] In this case, one of ways the mischief was carried out to which the Accused were either principals or aiders or abettors, was the use of horns. Clearly the purpose of horns was to bring attention to the protest, and to aggravate the enjoyment of those around. Honking a horn is not an expression or communication. A horn is not an expression of any great thought.

[386] I note at par 40 of *Pawlowski*, the Appellate Court notes “the appellant cites additional cases where individuals picketing or protesting, but only communicating information, led the courts to conclude that they were not guilty of mischief. [Citations omitted] None of those cases dealt with physical actions of interference with property or inciting others to commit mischief pursuant to s. 22 of the criminal code “

[387] In the case at bar, the words of Ms. Lich, were markedly similar to that of Mr. Pawlowski. He told his audience they should not dare break the line, don't lose your momentum, here is your opportunity to hold the fort, do not break the line. Don't do it. Ms. Lich in numerous speeches – implored persons to come stand with us, repeated phrases like “Hold the line”, “be strong”, “no matter what hold the line”. She implored people to donate to keep truckers in Ottawa as we are here for the long haul. February 14, on Parliament Hill surrounded by thousands of persons and trucks on Wellington st., she said “Lastly to our truckers and friends on Parliament Hill. Do not give in to fear and threats. Your courage has already exceeded our expectations and inspired an international movement. Be strong, show kindness. Love will defeat hate. Hold the line.

[388] In the context of where those words were spoken, on parliament Hill where in the back drop, trucks were blocking roads in the area , where there were physical actions of interference with property and where the audience was supporters , truckers and demonstrators those words had the intended purpose to stir up or incite the audience to continue the mischief, I cannot find that the purpose was solely communicative . As noted in *Tremblay*, the word can't be a mask or subterfuge for conduct that is not solely

communicative and that has some entirely different purpose such as to keep the streets blocked to keep the pressure on the government to end the COVID mandates.

[389] As in *R. v Pawlowski*, Ms. Lich and Mr. Barber were not merely engaging in political speech, rather they were inciting Freedom Convoy Protestors to continue their ongoing blockade of downtown Ottawa inciting criminal mischief to put pressure on the government to drop COVID restrictions. I find the defence under s. 430(7) thus does not apply.

[390] **Intimidation**

[391] The offence of intimidation is defined in section 423 of the *Criminal Code*, as follows: 423 (1) Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing, .... (g) blocks or obstructs a highway.

[392] Exception (2) A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

[393] **Offence of Intimidation – Section 423(1)(g) – Counts 2 and 5**

[394] Section 423(1)(g) of the *Criminal Code*, R.S.C., 1985, c. C-46 (“the Code”) in essence makes it an offence to block or obstruct a highway with the intent to intimidate or compel someone to act or abstain from something they have the lawful right to do. The Blocking of a road or highway will be intimidation if it’s done with the intent to compel someone into taking or not taking a specific action that they have the lawful right to do .

[395] In Count 2, the Accused are charged with counselling the offence of Intimidation by the Blocking or Obstructing of Roads and Highways contrary to s. 464(a) the Crown to prove that Chris Barber and Tamara Lich counselled to commit the offence of Intimidation

contrary to section 464(a) of the Criminal code. In Count 5, the Crown must show the accused wrongfully intimidated persons by engaging in conduct proscribed in s. 423(1)(g) blocking or obstructing a highway.

[396] This offence is often engaged in relation to protest or strike activity. Many of the reported cases deal with blocking roads to prevent logging or other development often on indigenous lands, where colour of right or ownership of the land is argued. The Crown must establish beyond a reasonable doubt that the criminal act of intimidation occurred, and that the accused was a party to it.

[397] In *R. v. Stockley* (1977), 36 C.C.C. (2d) 387 (Nfld. C.A.), two accused appealed their convictions for intimidation by blocking or obstructing a highway (formerly s. 381(1)(g) of the Code) after it was found that they – along with a crowd numbering in approximately 50 to 70 people – prevented a vehicle from proceeding along a road during a labour strike. The grounds of appeal advanced were that the trial judge erred in finding the road was a highway within the meaning of the Code as the road was a company road, but it was one over which the public had a right of access. The second issue was whether the accused did in fact block or obstruct it (*Stockley*, at pp. 1-2). In dismissing the appeal, the Newfoundland Court of Appeal held that the Crown only needed to prove the accused's association with the group who obstructed the roadway in question (*Stockley*, at p. 2):

[398] An important element here is that the mob or group of people surrounded the vehicle, did damage to it and made threatening gestures.

[399] In *R. v. Sauls*, 2002 BCPC 638 (affirmed, 2004 BCSC 1476), four accused were convicted of intimidation by blocking or obstructing a highway after they, along with others, set-up a roadblock on a two-lane road that led in and out of a resort. The roadblock was erected in protest of the development and expansion of the resort. The roadblock effectively halted traffic in and out of the resort for a period of approximately three or more hours. During this time, protesters communicated their reasons for the blockade, negotiated, and sometimes argued with the individuals affected by it. Notwithstanding the fact that some vehicles were permitted passage – for example, tour busses or ambulance,

a considerable amount of traffic backed up (*Sauls*, at para. 8). Following some negotiation with the Royal Canadian Mounted Police, the protesters eventually removed the roadblock and proceeded to march onto the site of the development (*Sauls*, at para. 9). All accused were found to have participated in the roadblock, as well as prevented a developer from operating machinery at the site of the development (*Sauls*, at para. 10). Their defence of colour of right was rejected by the court as having no air of reality in the circumstances (*Sauls*, at para. 60). In convicting the accused, the court stated that the “police had reasonable grounds to make arrests and dismantle the roadblock upon their arrival; instead, they showed restraint and patience with the protesters, attempting to negotiate an end to the blockade. The conduct of the protesters was marked by aggression, intimidation and inflammatory language” (*Sauls*, at para. 62).

[400] The key component here appears to be the conduct of the protestors was aggression, intimidation and inflammatory language.

[401] The Ontario Court of Appeal in *R. v Boast* 2017 ONCA 602 (CanLii), dealt with the offence of Intimidation under s. 423(1)(b). In this case the accused was charged that he did wrongfully and without lawful authority, for the purpose of compelling the complainant to proceed in public without fear, intimidate by threats that punishment would be inflicted on the complainant contrary deception 423(1) (b). The Court agreed that the accused’s purpose in attempting to intimidate the complainant is one of the essential ingredients of the offence. And the onus rests upon the Crown to prove the Accused’s purpose beyond a reasonable doubt. At par 10 the Court said that s. 423 (1) (b) specifically requires, as an essential element, in addition to a finding that the accused attempted to intimidate a person, that the attempted intimidation had been for the purpose of compelling another person to abstain from doing anything that she (or he) has a lawful right to do.

[402] In *R. v Martin* 2006BCSC 1874 (CanLii), the accused was charged with both Mischief and Intimidation under s. 423(1) (a). The Crown directed a stay of the charge of Mischief and the trial proceed on the charge of Intimidation. The issue on appeal was the *mens rea* of Intimidation. At para 14 the court says “it will be seen as a specific intent offence that is; it requires proof, not only of what the accused did, but as well, the purpose

in doing it. ... That purpose must be to compel another person to abstain from doing something she had the right to do or something she had the right to abstain from.

[403] The Crown argue the Freedom Convoy attempted to pressure and intimidate the government to withdraw its COVID-19 mandates. The method of achieving this, it was argued, was to disrupt and occupy downtown Ottawa, in part by blocking highways and thereby pressuring residents and businesspeople in that area. They the protesters were attempting by their presence in Ottawa, as Ms. Lich and Mr. Barber stated in many online social media statements, news conferences to pressure, convince the government to end its COVID19 mandates. Of that there is no issue.

[404] That being said, the Crown relies on the same evidence with respect to the charge of Intimidation and the offence of counselling to commit Intimidation as they relied on for the offences of Mischief see their written submissions para 82 to 101. They ask the court to consider the context and to accept the evidence of the civilian witnesses, city officials and the PLT officers and to find the roads were blocked and the parties knew or had to know that had occurred.

[405] They say the evidence establishes is beyond a reasonable doubt the Barber and Lich were part of a group of people who unlawfully and without authority blocked and obstructed streets throughout the offence period for the purpose of compelling the government to end COVID-19 mandates. They say that there are multiple routes to liability as both co-principles, aiders and abettors.

[406] When I reviewed those submissions, I felt I was having a Deja-Vu moment, because I had read that same evidence and the same reasoning for the offence of mischief. In fact, I have accepted that evidence and that reasoning in finding the Accused guilty of Mischief.

[407] So, either the charges of Intimidation should be stayed because, it the same underlying evidence as the offence of mischief or we must carefully examine what makes the charge of Intimidation different.

[408] I do note in the decision of *R.v Manuel* 2008 BCCA 143 at para 6 The appellants were charged with Mischief, contrary to s. 430(1)(c) of the Code, as well as Intimidation by blocking roads. The Court found the evidentiary foundation of the mischief by blocking roads and the intimidation by blocking roads to have the same factual underpinning and stayed the charge of Intimidation following the trial, in accordance with *R. v. Kienapple* [1975] 1 S.C.R. 729

[409] The word “Intimidation” is by definition is different from mischief. The Cambridge English Dictionary defines intimidation as follows “the act of frightening or threatening someone, usually in order to persuade them to do something that you want them to do. Mischief in law is wilful destruction of property, rendering it dangerous or useless or obstructing someone’s lawful use or enjoyment of property.

[410] When you examine the cases of Intimidation referred to above and relied on by the Crown, they all have elements of threatening or aggression or violent behaviour.

[411] S. 423 (1) (a) to (f) all contain that type of menacing or threatening behavior often in the context of criminal harassment and or, watching besetting type behavior.

[412] Ms. Lich and Mr. Barber consistently said this was to be a peaceful protest. There are no messages, Tik TOK or otherwise where they used violence or threats of same. They did not incite or aid supporters in engaging in intimidating, aggressive or threatening behaviors by their mischief or blocking roads. they were not trying to intimidate the downtown residents.

[413] The conduct of Ms. Lich and Mr. Barbour in my view does not fall within what is intended by the count of Intimidation s. 423 (1) (g), the conduct which interfered with the use and enjoyment of property was not intended to intimidate by violence or otherwise to persuade the Government of Canada or the Prime Minister to drop COVID restrictions. There is no evidence the accused or the Freedom Convoy intended to intimidate. I have found that the tactic of mischief was used to highlight the issue and pressure the Government.

[414] Similarly, there is no evidence of counselling same. If I am wrong, then the counts of Intimidation and Counselling to commit Intimidation same should be stayed as the evidentiary foundation is the same for both offences.

[415] I find the accused, Tamara Lich and Chris Barber not guilty of the offences of Intimidation and Counselling to commit Intimidation.

[416] **Obstructing Police Counts 3 and 4**

[417] The Accused are charged in count 3 that between January 26 and February 19, 2022, they did counsel to commit the offence of Obstruct Police contrary to s. 464(a) of the *Criminal Code* and in count 4, that they did resist or willfully obstruct a peace officer in the execution of his duty or any person lawfully acting in aid of such an officer, contrary to s. 129(a) of the criminal code. The Crown, in their written submissions, says the issue is can the court find beyond a reasonable that the accused obstructed the police conducting the removal orders February 18 and onward.

[418] Counsel has conceded that during February 18 to 20 the police were acting in execution of their duty.

[419] In *R. v Tortolano* (1975)28 C.C.C 562 ONCA, the court set out the elements of the offence of Obstruct: That there was an obstruction of an officer; that the obstructing affected the officers in the execution of a duty that they were then executing; and that the person obstructing did so willfully. Importantly, obstruction can still be made out even if it does not “wholly prevent” the officer’s execution of their duty (Tortolano, at para. 12).

[420] In *R. v Nasser* [2002] O.J. No 6073 at para 40, Justice Parfett held that the act or omission constituting the offence must obstruct the officers in an appreciable way and not in a fleeting fashion. It need not amount to a major inconvenience of the officers.

[421] In *R. v. Yussuf*, 2014 ONCJ 143, at para. 52, Paciocco J., as he then was, explained the essential elements of the offence in the following way:

[422] Element 1 – There must be peace officer who is in the execution of a lawful duty as a peace officer when he or she is obstructed.

[423] Element 2 – The accused person must know or be willfully blind to the fact that this person is a peace officer and must know or be willfully blind to the act the officer is executing.

[424] Element 3 – The alleged obstructive conduct must be an intentional act by the accused person, or an intentional omission by the accused person, constituting a failure by the accused to comply with a legal duty.

[425] Element 4 – That act or omission must make it more difficult for a peace officer to carry out their duties; and

[426] Element 5 – The accused person must intend to make it more difficult for the police to execute their duty.

[427] In *Yusuf* at para 48, Justice Paciocco writes, “In other words, the accused must intend the act or omission that amounts to the obstruction. I agree that this is all that is needed. “He later states in the same paragraph,” In my view, what must be willed is the outcome of making it more difficult for the police to carry out their duties.”

[428] In *Yusuf* at para 49, Justice Paciocco further writes, “In other words, the offence is only committed by those who act intentionally and do so intending to make it more difficult for the police to execute their duty. With respect, I therefore disagree with the conclusion expressed in *R. v Bentley* 2003 Carswell 1994, where it was said that “it is sufficient that the offender has the general intent to do an act which has, in fact, obstructed a peace officer. This aggressive reading of the section does not, in my view, serve its purpose of preventing offences against the administration of law and justice.

[429] In *R. v. Blackman*, 2024 ONSC 3595, Justice Phillips, a summary conviction appeal case relating to a Freedom Convoy demonstrator, Evan Blackman agreed that the five essential elements noted above are the elements of the charge of obstructing a peace officer.

[430] Mr. Blackman was acquitted at trial, and the Crown appealed his acquittals. The trial, the judge held that there was reasonable doubt on the question of whether the

accused knew he had to leave the demonstration area and was not satisfied that he had been told to leave or given sufficient opportunity to do so (Blackman, at para. 6). Effectively, the trial judge characterized the offence of obstruct as requiring proof of a breach of some clearly articulated police order or instruction (Blackman, at para. 6). In granting the appeal, Phillips J. held that this characterization was in error and no such proof was required to make out the obstruct offence.

[431] The Court said in paragraph 10, “That in the circumstances, the act of kneeling at the front of the protester line could be construed as a willful act of obstruction. By kneeling, as here, a person takes his legs out of commission, rendering himself non-ambulatory. Mr. Blackman arguably wished to convert his body into an obstacle for the police to have to work around, to perhaps have to move with lifting force rather than be ushered along with words.”

[432] The police officers involved in the removal of protestors were clearly acting in the lawful execution of their duties. They were involved as part of a legitimate police operation and were acting in execution of their duties at common law to preserve the peace, prevent crime and protect life and property.

[433] As indicated by the Supreme Court of Canada in *R. v. Mann*, 2004 SCC 52, a case regarding the scope of police powers and investigative detention, the court at para 26 indicated that police powers are recognized as deriving from the nature and scope of police duties, including those at common law, “ the preservation of the peace, prevention of crime and the protection of life and property “ (Deadman at par 32) Other duties are set out by federal and provincial statutes including the criminal code.

[434] Both Mr. Barber and Ms. Lich had been arrested by the time the police commenced the removal of trucks and demonstrators on February 18, 2022, so they were not personally involved in the obstruction of police during the “removal action”.

[435] **Count 4 – Obstruction of Justice as Aiders or Abettors**

[436] The Crown argues their guilt in the obstruction can be grounded both as principals and as parties. As principals, because metaphorically they stood shoulder to shoulder

with those who remained downtown February 18 onward and as parties because each of their acts of encouragement for the protestors to “hold the line” or to remain in place, etc.

[437] The crown argues that, notwithstanding requests by police for demonstrators to leave and warnings of criminal liability that could attach to those who remained, many demonstrators remained in place and instead obstructed police efforts to maintain public order and prevent the continuation of criminal offences. The Crown says there is direct evidence that both Lich and Barber circulated publicly throughout the downtown and influenced the placement of vehicles and encouraged demonstrators to “Hold the Line and remain in place. The Crown says the effect, or their influence, continued even after their arrest.

[438] This court heard evidence about the removal operation from AC/Sgt Blonde who observed the public order unit move from Laurier Ave to Nicholas Street towards Rideau to Sussex, continuing west to Parliament Hill. He was behind the Public Order Units who were pushing the crowd or demonstrators westward. He described that some people were refusing to move.

[439] The Court also heard from Captain Etienne Martel, who described the difficulty his squad had in clearing the street. He described the crowd’s resistance to move that when police tried to move forward, the demonstrators would push back. He said they were not clearing. No projectiles were thrown or anything. He agreed in cross-examination that there were demonstrators singing and chanting the word “Freedom”.

[440] In cross, he was shown other videos taken from the same time (Exhibit 6 and 7) He agreed that during the removal, there were police officers saying “Hold the Line” on the police radio. He said when he relayed that phrase to his officers, it meant don’t move forward. Not to move. We keep the line where we were up to.”

[441] The evidence before this court is that both Ms. Lich and Mr. Barber were entirely cooperative with police when they were arrested. The video of Mr. Barber’s arrest shows him already cuffed and being searched, asking someone to let his wife know. Exh 135 Tab 62 pg. 12. Someone says to him Hold the line, my friend. We are proud of you, although this statement is hearsay, it is an example of what the phrase can mean. In that

context, I find the phrase clearly meant “Stay strong or don’t give up. It was not an entreaty to obstruct the police. He went willingly.

[442] On February 17, 2022, Ms. Lich was arrested. There is a video posted on social media of the arrest. Ms. Lich was with others. The officer queries: Miss Lich? TL: Yes, PO: How are you? TL I’m good, how are you? PO: Can I talk to you for a second? Yes of course. PO: So, you’re going to be placed under arrest. TL: Okay. PO2: (Talking to others in the group) Just ask you to back up a little bit, just need you guys to back up, please. Just backup. Thank you. TL: My coat’s wet. PO Your coats wet? TL Yes. There is some conversation with the others saying to arrest them too. ... TL: See you later guys. Sean Thiessen says Hold the Line: TL replies: Hold the Line “TL ‘s last words are It’s all good, it’s all good. Be respectful. Thank you.”

[443] There is no evidence that either Ms. Barber or Mr. Barber acted as principals or personally obstructed the police in any way at the time of their arrest. There is no evidence that Ms. Lich ever interacted with police other than on the day of her arrest. Both Tamara Lich and Chris Barber were in custody at the time of the police removal activity which occurred commenced February 18, 2022

[444] The issue is whether Ms. Lich and Mr. Barber respective use of the phrases such “Hold the line, “love over Fear” or statements that the Freedom Convoy was staying until mandates were removed before February 18, 2022, were made with the intention to make it more difficult for police to execute their duties. The effect was that they were aiders or abettors by inciting or encouraging obstruction of police.

[445] As examples of Mr. Barber’s encouragement, the Crown points to Vol 2 Tab 4 Feb. 16 chat 584 “Police are getting heavy handed. They’re handing out papers stating people must leave. At pg. 8.9 Mr. Barber says “Hold the Line ...How about we all get arrested. Also, on Feb 16 Exh 135 Vol 1 Tab 51 at pg. 80. A person,” Mike” asks Chris Barber about getting a notice from the police. Barber responds, “Hold the line. We are a peaceful protest”. The fellow explains, he’s in a truck now, by me now with a camper at the intersection. So, thinking some have tucked tails and left. Barber responds I’m on my way.

I'll have the radio "Lots of lawyer shit today. Watch my TikTok. The hearsay words of others are for narrative only.

[446] The Crown also relies on the comments set out respectively by Lich and Barber, found at paragraph 129 of their written submissions. A review of these comments confirms they are iterations of hold the line, for everyone who leaves or is arrested other people and trucks will replace them, we will continue our protest until we see a clear path to the elimination of Covid mandates.

[447] In examining the evidence, it is also important to consider specific statements made by each accused to their followers, asking them to co-operate with law enforcement.

[448] The evening before Ms. Lich's arrest on February 16, 2022, exhibit 59 on a Facebook live, Ms. Lich says, ... You guys I want you to stay strong. And I want you to continue to be unified. Spread the love. You know? I have to ask you. I've seen people right, well maybe not rightfully so, I, I can't tell you what to do, but you know when you see reporters in the streets, be kind and show them love. ... Show respect to our police officers. A lot of these men and women, although I know it is not an excuse, are just trying to feed their families. I said it from the start, and I'll say it again. Please pray for them and forgive them for they know not what they do. At least I believe that (crying) "She says she says it is inevitable that she will be arrested tomorrow. But says just stay peaceful. And the only way this is going to succeed is from a place of love.... I pray you will make choices based on love. We can only win this from love. "Keep love in your heart. Stay strong. Stay unified. Stay proud. .... So, tomorrow is a new day. And I'm ready. I am not afraid. And we're going to hold the line. Thank you I love you guys see you soon. "Time to stand together. If you can come to Ottawa and stand with us fantastic, if you can't pray for us" We make choices from Love and Choices from fear. I choose to make choices form Love".

[449] The crown argues that during the removal action seen in video C0019 05:45 to 07:05 you hear a protestor say "Love over Fear "and you see a drum and guitar playing in the background. The Crown says this phrase is taken from Ms. Lich's February 16 FB live video, suggesting the repeating of this phrase shows her metaphorical reach to the

protestors who did resist arrest on February 18, 2022. In essence that she is with them in spirit, standing shoulder to shoulder.

[450] Mr. Barber also told his social media followers to respect law enforcement. In Appendix A #1,2.9.12-13,15 Mr. Barber says to his followers, “We do not engage. If they have a gun against your head, you ask how you can comply. You remember, we are all peaceful. I’ve said it before, I’ll say it again, they arrest you, put your hands behind your back and comply. The only thing we need to do, and they are saying something’s coming. When it does, put your hands behind your back, take it like a man.”

[451] In exhibit 104 in a Facebook video, Mr. Barber says:” trying to open up a lane of traffic, trying to let police know we are acting in good faith. Please, no matter what, work with law enforcement. This is one of the world’s greatest rallies... we don’t need violence. We need peace. Keep your eye on the prize. We need emergency lanes open at all times. Clear access to ambulances and hospitals “

[452] As noted at para 16 of *Mamolita* “Quite apart from liability as a principal, a person may be guilty of willful obstruction (then) s. 387 (1) (c) if that person has aided or abetted another person to commit the offence. In order to incur liability as an aider or abettor: (i) there must be an act or omission of assistance or encouragement;(ii) the act must be done or the omission take place with the knowledge that the crime will be or is being committed and (iii) the act must be done or the omission for the purpose or intention of assisting or encouraging the perpetrator in the commission of the offence.

[453] The Crown argues that the act of assistance or encouragement may be the metaphorical presence of the Accused as leaders of the Freedom Convoy. The Crown points out that in *R. v. Mamolita* at par 16, where the Court writes “However the act of assistance or encouragement may be the presence of the Accused at the scene of the crime during its commission, if the aider or abettor is there for that purpose, *Dunlop and Sylvester* (1979)47C.C.C. (2d) 93 per Dickson J. pp106, *R. v Clarkson* and others (1971) 3 All E.R. 334. The strength of numbers may at times be an important source of encouragement. *Re A.C.S* (1969) 7 C.R.N.S 42 at pp59-60.

[454] The statement made in par 16 of *Mamolita*, is made of course in the context someone can be present physically standing shoulder to shoulder with others at a barricade and even though they do not say or do anything, there very being there may be an act that amounts to obstruction as the very presence of the person is itself an overt act. At par 12, the court says that criminal liability only results if the act is done willfully.

[455] When considering the liability of demonstrators as aiders or abettors in a protest setting, *Mamolita* at para 17, sets out a. there must be an act or omission of assistance or encouragement; b. the act must be done, or the omission take place for that purpose (i.e. with intention) of assisting or c. encouraging the perpetrator in the commission of the crime.

[456] There must be a connection between the offence and the acts of alleged aiding or abetting; the non-perpetrator's conduct must have the effect of assisting or encouraging the perpetrator in the commission of the offence. Liability as an aider or abettor has both a conduct component and a culpable mental state component. Both components tie the accessory's liability for the substantive crime to the actual commission of that crime by another. Accessorial liability is not inchoate as per *R. v. Dooley* 2009 ONCA 910 para 116-117.

[457] We know neither Ms. Lich nor Mr. Barber was physically present, as was the case in *Mamolita*. Ms. Lich never told her followers to make it more difficult for the police. Feb 16, she says I can't tell you what to do...Show respect to our police officers". Feb 17, when she is being arrested, she responds to someone else saying Hold the Line. responding with "Hold the Line, It's all good, It's all good. Be respectful."

[458] What the phrase "Hold the line means is somewhat contextual; figuratively to maintain your position or state of affairs, in some cases it can be inferred to mean stay strong in your beliefs, stay and pursue the purpose of the demonstration or don't give up; in others remain in place or at your line. Hold the line has been historically a phrase used by the military and then adopted by striking miners strikes in the 1970's.

[459] I agree that this phrase became a rallying cry during the Freedom Convoy protest. It was a phrase used by both Ms. Lich and Mr. Barber. It was repeated by those on the

street and was used during a speech on Parliament Hill February 14, 2022, by former Premier of Newfoundland Brian Peckford, who was a spokesman for the Canadian Convoy Truckers. (Ex 74) I accept it was a rallying cry both for the purpose of the demonstration to end the COVID mandates and the means to maintain your stay in Ottawa. Blocking the roadways or maintaining the mischief is a distinct offence to obstruct justice. Inciting or encouraging the ongoing state of affairs or mischief, yes, but not obstruction of justice.

[460] I do not find that the only inference that can be made by the accused's use of the terms is to encourage or incite others to commit the offence of obstruct the police in the execution of their duty or make it more difficult for them to do so. The offence of obstruct peace officer has five very specific elements as set out in *Yussuf*.

[461] The Accused were not present during the removal and complied in every respect with the police on their arrest, which was prior to that date. When the words hold the line, etc were spoken, there was no police action underway. The fact that they used this phrase as a rallying cry prior to the police execution of the removal order, in the absence of more, cannot be proven as an intentional act or encouragement to make it more difficult for police to carry out their duties.

[462] Each of the accused encouraged their followers to co-operate with police if arrested, to respect police, be peaceful. There are no words spoken where they suggested to make it difficult for police to do their lawful duties. The actions of the Accused on their respective arrests were consistent with what they told their followers; their actions led by example.

[463] I find the Crown has not met their burden of proof beyond a reasonable doubt that the Accused either as principals or aider or abettors did resist or willfully obstruct a peace officer in the execution of their duty contrary to s. 129 (a) of the criminal code of Canada.

[464] **Count 3 – Counselling to Commit the offence of Obstruct Justice.**

[465] Count 3 in the Indictment alleges Mr. Barber and Ms. Lich “did counsel to commit the indictable offence of Obstruct Police, which offence was not committed contrary to s.

464(a) of the Criminal Code by one or more persons, contrary to section 464, clause (a) of the Criminal Code.

[466] Counselling is defined in s. 22(3) of the criminal code and includes procuring, soliciting and inciting. In *Mugesera v Canada* 2005 SCC 40 at para 63, to incite means to urge, stir up or stimulate.

[467] In *R. v Root* 2008 ONCA 869 at para 83 and 84, the Court of Appeal adopts the reasoning in *R. v Hamilton* and states, “Counselling includes but is not limited to procuring, soliciting and inciting. What is essential is an active inducement or advocacy, not merely the description of the commission of an offence. *R. v Hamilton* [2005] 2 S.C.R 432 at para 15,22 and 23: *R. v Sharpe* [2001] 1 S.C.R 45 at para 56. In other words, the actus reus of counselling requires deliberate encouragement or active inducement of the commission of a criminal offence. *Hamilton* at para 29

[468] The mental element or *mens rea* in counselling is set out in *R. v. Hamilton* 2005 SCC 47, at para. 29, the Supreme Court of Canada held “in short, the actus reus for counselling is the deliberate encouragement or active inducement of the commission of a criminal offence. And the *mens rea* consists of nothing less than an accompanying intent or conscious disregard of the substantial and unjustified risk inherent in the counselling; that is, it must be shown that the accused either intended that the offence counselled be committed or knowingly counselled the commission of the offence while aware of the unjustified risk that the offence counselled was in fact likely to be committed as result of the Accused conduct”

[469] The issue is therefore whether Ms. Lich and Mr. Barber counselled obstruction of police, as charged in count 3. I consider the evidence of each of the accused set out above regarding count 4 on the information as both counts on the information relate to the same time period, February 18, to February 20, 2022, during the removal hearings.

[470] Similarly, the law regarding the offence of Obstructing Justice remains the same and is applicable to the offence of counselling to commit the same offence. Did the statements of counselling create an unjustified risk that police efforts to encourage

protestors to leave the city would be resisted and was it the accused specific intention to do so.

[471] As noted, the videos or social media postings of Ms. Lich and Mr. Barber shared with online followers repeatedly stated it was to be a peaceful protest, that there must be no violence, they were not leaving until the COVID mandates were lifted to “hold the line”. They also specifically state that persons should respect and co-operate with police if there is to be an arrest.

[472] I have found that the phrase “holds the line” means different things depending on the context. I agree that it was a rallying cry both for the purpose of the demonstration to end the COVID mandates and the means used to stay in Ottawa. But blocking the roadways or maintaining the mischief or Intimidation are separate and distinct offences with different essential elements than the offence to obstruct justice.

[473] I agree there was evidence of the counselling or inciting or encouraging of the offence of mischief. Admonition to continue to protest is not the same as admonition to obstruct police in the execution of their duty. Particularly, given the statements of the respective accused to ensure no violence, peaceful, lawful protest, to co-operate with police if arrested and to respect police, they are just doing their job and given their own actions on arrest etc.

[474] I cannot find that the Crown has proven beyond a reasonable doubt the *mens rea* of the offence. I cannot find accompanying intent or conscious disregard of the substantial and unjustified risk is made out for the offence of counselling the obstruction of justice given those statements by the Accused. Both Accused will be found not guilty of both Counts 3 and 4 on the information.

[475] **Disobey Court Order s. 127 of the Criminal Code**

[476] Mr. Barber is charged with counselling to commit the offence of disobey court order contrary to s.464(a) of the Criminal code. The order may be either a civil or criminal court order. Section 127 states “Everyone who, without lawful excuse, disobeys a lawful order made by a court of justice... other than an order for the payment of, is, unless a

punishment or other mode of proceeding is expressly provided by law, guilty of an indictable offence or an offence punishable by summary conviction.

[477] The law of counselling set out above at para 473 to 475 above applies following the dicta of the Supreme Court of Canada in *Hamilton* regarding the *actus reas* and *mens rea* of counselling pursuant to s. 22 (1) of the *Criminal Code*.

[478] In *R. v Gibbons*, Trotter J., as he then was, considered a conviction appeal related to the enforceability of an interlocutory injunction regarding protest activities around Toronto abortion clinics. In dismissing the appeal, Trotter J. addressed the scope of s. 127 (*Gibbons*, at para. 11):

[479] The provision is broad in its scope, applying to orders made under provincial and federal legislation by both courts and tribunals. The availability of the inherent power to punish for contempt is not a “punishment or other mode of proceedings expressly provided by law”: see *R. v. Clement* (1981), 61 C.C.C. (2d) 449 (S.C.C.). Accordingly, the ability to supervise a court order through the contempt power is not a bar to a charge being laid under s. 127. This was recently confirmed by the Supreme Court in *R. v. Gibbons* (2012), 283 C.C.C. (3d) 295 (S.C.C.), a case relating to the identical charge laid against Ms. Gibbons within days of the charge in this case. [Emphasis added.]

[480] In a subsequent appeal by Mr. Gibbons following a further conviction under s. 127 for breaching an interlocutory and permanent injunction related to protest activities, Trotter J. stated that “[i]ndividuals cannot be subject to criminal liability for breaching the spirit or intention of a court order (whether it is a probation order, bail order, prohibition order or a civil injunction); liability only lies where it has been proved that a specific term of an order has been infringed (*R. v. Gibbons*, 2014 ONSC 4269, at para. 14).

[481] Applying the dicta of *R. v Hamilton* at para 29, the *actus reus* being the deliberate encouragement or active inducement by the accused to commit the offence of disobey court order. The Crown must prove that Mr. Barber counselled the breach of Justice McLean’s order of February 7, 2022. It must be proven beyond a reasonable doubt that Mr. Barber’s post deliberately encouraged or actively induced the commission of breaching the court order.

[482] The *mens rea* consists of “nothing less” than an accompanying intent or conscious disregard of the substantial and unjustified risk inherent in the counselling, it must be shown that the accused either intended that the offence counselled be committed or knowingly counselled the commission of the offence while aware of the unjustified risk that the offence counselled was in fact likely to be committed as result of the accused conduct.

[483] The court order in question is the interlocutory injunction granted by MacLean J. on February 7, 2022, and subsequently continued on February 16, 2022. The order was granted in a civil proceeding commenced by residents of downtown Ottawa. Chris Barber was a defendant named in the application and was represented by counsel at the hearings. His counsel, Keith Wilson played a key role in drafting the order and made representations to the court regarding the injunction.

[484] The order of Justice McLean dated February 7, 2022, is Ex 122(b). The order prohibits any person having notice of the order “from using air horns or train horns other than those on a motor vehicle of a municipal fire department, in the geographic location anywhere in Ottawa, in the vicinity of downtown Ottawa being any streets north of Highway 417, otherwise known as the Queensway for 10 days from the date of this order.

[485] The order also requires Mr. Barber and three other named Freedom Convoy leaders to communicate this order through their social media channels and other channels to all persons they know are or who have been participating in the Freedom Convoy Protest in Ottawa, Ontario, from January 28, 2022, to the present day.

[486] The order further provides that, “provided the terms of this order are complied with, the defendants and other persons remain at liberty to engage in a peaceful, lawful, and safe protest.”

[487] Counsel for Mr. Barber argues that the order must be clear and free from ambiguity and that the defendant must readily be able to determine their obligations and responsibilities. A review of the Order of February 7 is clear and not ambiguous.

[488] Counsel also argues that the context and timing of the video must be examined in light of other social media posts and texts that Mr. Barber posted leading up to Tik TikTok video.

[489] Further, the Defence counsel argues that we don't have the entire statement. There was no cross-examination when this exhibit was tendered to suggest that we do not have the entire TikTok statement posted by Mr. Barber. Defence counsel in submissions suggested that there is no evidence the order was explained to him and that this was a true misunderstanding.

[490] Mr. Barber did not testify at this trial as is his right, but it means I have no other evidence except the statement and the context in which it was made to evaluate the statement and its content. In the absence of testimony from Mr. Barber the inferences suggested by counsel are speculative and in fact contrary to the evidence.

[491] The video the Crown relies on to support this count is found at Exhibit 24. This is a TikTok video posted by Mr. Barber, who had a wide following on TikTok by his own admission. There is no evidence that this is not the complete posting made by Mr. Barber.

[492] The video states as follows: Chris Barber says, "Hi kids. Live from Ottawa. So, just want to go over a few things. We've got a lot of rumors, a lot of rumblings about, um, internet blackouts coming, and riot police are coming, indications are probably saying Thursday at, our our, earliest blah blah, blah. Maybe we're just giving everything up for law enforcement here, but then they're probably watching and listening to us anyway. Uh, rumours are, they have the phones tapped, la, la, la. This is our Canadian Fuckin government. I thought for a minute we were in China there, and then all of a sudden, it's "Boom". So, this word is going out to everybody in trucks around the city. Right now, there's an order in place to keep the horns down, horns have to be quiet, okay? If you see a large, vast majority of police coming towards your truck like they do, like, the, the .like they are building up... Guys, lock that door, crawl into that bunk. But before you do that, grab that horn switch and don't let go. Let that fuckin' horn go no matter what time it is, and let it roll as long as possible until they're bustin your fuckin windows down. We want everybody to know when the time comes, and this is the best way to do it when that

happens. Do that guy, please. Let that horn go. Don't let it go. When we see that mass force of police coming at you. Okay guys? Be Strong. We've got this. We've got more announcements coming up. It's going to be pretty cool here. We'll see if we can fire some shit up “

[493] On February 9 there is a text exchange with Cst. Bach. Barber texts “I have a few guys ready to pull out today from the downtown core. These rumours of a full-scale tactical sweep on Thursday better be bullshit. The world is watching very, very closely, and it will not be received well. Bach responds, saying she wasn't aware of any kind of sweep. She would keep him informed.

[494] Defence counsel suggest that it can be inferred from these posts that there was a buildup of fear of being swarmed by a mass of riot police and that this created a dangerous and hazardous situation. With all due respect, I must disagree.

[495] Police coming to arrest is not the type of dangerous or hazardous situation that might authorize the use of the horn and disobeying the court order. A review of the transcript of the proceedings before Justice McLean in which the Accused's counsel participated indicates that what was discussed was if the truck is driving on the road and a child darts across the road, then using the horn would be warranted. That is the perfect example of using the horn for its intended purpose, which is to prevent an injury or harm, not to warn others that police were moving in to enforce.

[496] A review of Mr. Barber's TikTok video shows that he is aware of both the existence and terms of Justice Mclean's order. He says in ex 24,” Right now, there's an order in place to keep the horns down, horns have to be quiet, okay?

[497] Barber acknowledged in texts that he had a sizeable following on Tik Tok, and he says he wants this information conveyed to everyone in trucks around the city. A review of the post clearly shows Barber intended the horns to be sounded at the sight of riot police “if you see a large, vast majority of police coming towards your truck like they do” He asks everyone to lock the door, crawl into the bunk grab the horn and don't let do.

[498] The only purpose is to alert others, as he says, “We want everybody to know when the time comes, and this is the best way to do it. Mr. Barber’s statement shows that he has an awareness that there is an order in place and that the prohibition is on the use of the horns. Barber says, “horns have to be quiet, okay?” He tells his followers to raise the alarm by using your horn. He says Do that, please. Let that horn go. He repeats, “do that, please”.

[499] I find this statement shows a deliberate encouragement to disobey the order in place, and that there is an accompanying intent or conscious disregard of the substantial and unjustified risk inherent in the counselling. I find both the actus reus and *mens rea* of the offence of counselling to disobey a court order are made out. The Accused, Chris Barber, will be found guilty of count 7 on the information.

[500] **Summary**

[501] For the reasons set out above, The Accused Tamara Lich and Chris Barber are each found Guilty of Count 6 Mischief, Count 1- Counselling to Commit Mischief is therefore stayed as requested by the Crown, Count 5 – Intimidation Accused are each found Not Guilty and on Count 2 – Counselling to commit Intimidation – Each of the Accused is found Not Guilty. Count 7 – Disobey Court Order, Mr. Barber only is charged. He is found Guilty.

**Released:**

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Signed: Justice Heather Perkins-McVey