Court File No.: COA-25-CR-1029

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HIS MAJESTY THE KING

Respondent

-and-

JEFFREY EVELY

Appellant

APPELLANT'S FACTUM

October 14, 2025

CHARTER ADVOCATES CANADA
[redacted]

Christopher Fleury (LSO No.: 67485L)
[redacted]

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Counsel for the Appellant
Jeffrey Evely

I. STATEMENT OF THE CASE AND OVERVIEW

1. In the early morning hours of February 19, 2022, police maintained a perimeter around a large sector of the downtown core of Ottawa. Police enforced checkpoints where all passersby were stopped and required to show identification. Members of the public were only allowed into the perimeter if they proved to police that they lived or worked in the area.

2. Police actions were in response to what has been widely termed the Freedom Convoy protest of January and February 2022. The protest was largely in reaction to the legislative response by Federal and Provincial Governments to Covid-19.

3. The Appellant, Jeffrey Evely, is a military veteran. He was responsible for organizing a sentry duty to guard the Ottawa War Memorial after it was vandalized at the outset of the Freedom Convoy protest. Mr. Evely regularly took the least popular shifts himself which were in the pre-dawn hours.

4. The Appellant was arrested and charged with mischief and obstructing a peace officer after he entered the perimeter and did not stop in response to police demands, while attempting to attend at his sentry duty shift.

5. He was tried before Justice L. Miles of the Ontario Court of Justice (the "**Trial Judge**") on August 26 and 27, 2024. On September 17, 2025, the Trial Judge found the Appellant guilty of two counts of mischief and one count of obstructing a peace officer.

6. The Appellant appealed his convictions to the Superior Court of Justice. He argued that the Trial Judge failed to apply the ancillary powers doctrine in finding that police had common law powers to lockdown the downtown core. He argued that, as police were acting outside the scope of their authority, he had no obligation to stop when demanded. Accordingly, police had no grounds to arrest him for obstruction and, similarly, the conviction for obstruction must be quashed.

7. Further the Appellant argued that the police lacked grounds to arrest him for mischief, given their limited and innocuous observations of the Appellant. In the absence of reasonable grounds to arrest, the Appellant argued that his arrest and subsequent searches infringed ss. 8 and 9 of the *Charter*. The Appellant sought to exclude social media evidence and drone footage which was obtained using his identity under s. 24(2). In the absence of that evidence, there was no factual basis to support the convictions for mischief.

8. On July 18, 2025, Justice P. Roger of the Superior Court of Justice (the "**SCAJ**") dismissed his appeal, approving and adopting the reasoning of the Trial Judge. The Appellant appeals to this Court, arguing that the SCAJ's decision perpetuated the errors of the court below, without providing any further supporting analysis.

9. This appeal raises the significant issue of whether common law police powers authorize police to lockdown a large section of a city and enforce checkpoints at the perimeter, only allowing the public to enter according to limited exceptions. The decisions below set a precedent which severely curtails the civil liberties, not just of would be demonstrators, but all members of the public whose freedom of movement is restricted by such sweeping police lockdowns. The court's dangerous conclusion was reached without considered analysis and without application of the rigorous analytical steps required by binding Supreme Court jurisprudence. Accordingly, the Appellant submits that the SCAJ's decision must be overturned.

10. The Appellant makes the following arguments:

a. the SCAJ erred in finding that common law police powers authorized police to lockdown downtown Ottawa and establish checkpoints to regulate entry;

b. the SCAJ erred in finding that police were acting in the course of their lawful duty when restricting access to downtown Ottawa;

c. the SCAJ erred in finding that the Appellant's arrest did not breach to s. 9 of the *Charter*;

d. the SCAJ erred in finding that s. 8 of the *Charter* was not breached when the Appellant was searched incident to his unlawful arrest;

e. the SCAJ erred by failing to conduct a s. 24(1) analysis and failing to exclude evidence obtained as a result of the *Charter* breaches; and

f. leave to appeal on the foregoing grounds ought to be granted.

II. SUMMARY OF THE FACTS

A. Evidence at Trial

11. The trial and the defence motion to exclude evidence proceeded in a blended fashion with all evidence being heard together over the course of the two-day trial.

12. The Crown's evidence consisted of three witnesses, namely: Cst. Christopher Meuleman, Cst. Matthew Purton, and Cst. Wade Walker. It also included an agreed statement of fact, two maps of downtown Ottawa, and video evidence obtained from Mr. Evely's social media, open sources, and a police drone. The videos were admitted without the need for authentication but subject to the exclusion motion under section 24(2) of the *Charter*.

13. Overall, the police witnesses describe an incident occurring on February 19, 2022, at approximately 4:25 a.m., in a locked down area of downtown Ottawa near the Chateau Laurier. All three officers agreed that the area in question was locked down with civilian access restricted and residents being forced to provide proof that they lived or worked in the area.[1] They described

[1] Appeal Book, Tab 4A, Transcript of Proceedings dated August 26, 2024, p. 103, ll. 5-13 (Meulman); p. 117, ll. 1-9 (Purton); p. 138, ll. 27-31 (Walker) (note that all page references for documents contained in the Appeal Book refer to the Appeal Book's pagination).

a short, approximately 15-second, pursuit[2] of Mr. Evely after he refused to stop and speak with police.

14. Cst. Meuleman is a member of the York Regional Police. He was deployed to Ottawa on February 17, 2022, as part of a community response unit, to assist in removing the Freedom Convoy.[3] He testified that in the early morning hours of February 19, he was stationed behind a police line near the Chateau Laurier, monitoring a crowd separated by temporary fencing.[4] At around 4:25 a.m., Cst. Meuleman heard yelling and saw an Ottawa police vehicle following a man—later identified as Mr. Evely—running southbound toward the police line on Wellington Street.[5] Cst. Meuleman and Cst. Purton intercepted him.[6]

15. Cst. Meuleman further testified that he shouted for Mr. Evely to stop when he was 5-10 meters away. He tackled Mr. Evely with a bear hug, bringing him to the ground.[7] Post-arrest, Mr. Evely was handcuffed and turned over to Ottawa police.[8] Meuleman testified that Mr. Evely yelled, "I want to go to the War Memorial," both while running and after arrest.[9]

16. Constable Purton, also a member of the York Regional Police, arrived in Ottawa on February 17, 2022, as part of the quick reaction team.[10] On February 19, he was stationed with Cst. Meuleman south of Wellington Street, facing the Chateau Laurier[11]. His evidence essentially mirrored that of Cst. Meuleman's. At around 4:25 a.m., Purton heard someone yelling and saw an

[2] *Ibid*. at p. 138, ll. 18-20.
[3] *Ibid*. at p. 76, ll. 12-14.
[4] *Ibid*. at p. 79, ll. 4-22.
[5] *Ibid*. at p. 81, ll. 7-20.
[6] *Ibid*. at p. 82, ll. 11-14.
[7] *Ibid*. at p. 84, ll. 6-23.
[8] *Ibid*. at p. 85, ll. 20-23.
[9] *Ibid*. at p. 82, ll. 21-23 and p. 85, ll. 20-22.
[10] *Ibid*. at p. 106, ll. 15-21.
[11] *Ibid*. at p. 108, ll. 5-14.

Ottawa police officer chasing Evely, who was running westbound on the north sidewalk of Wellington near Sussex.[12]

17. Cst. Purton intercepted Mr. Evely with Cst. Meuleman. The pair took Mr. Evely to the ground in a controlled manner.[13] Mr. Evely was then handcuffed by Cst. Walker.[14] Purton emphasized the takedown was not excessively forceful.[15]

18. Post-arrest, Cst. Purton noticed that Mr. Evely wore a leather vest with a military name tag and military medals.[16] On cross-examination Cst. Purton acknowledged seeing other veterans with medals during the protests.[17]

19. Cst. Walker was a member of the Ottawa Police in February of 2022 (although he later transferred to OPP). In the early morning hours of February 19, he was put on cordon security at the intersection of Rideau and Sussex.[18] The area was cordoned with barriers, police cruisers, and officers to prevent unauthorized entry.[19]

20. At 4:25 a.m., Cst. Walker was standing in the intersection and heard a female officer yell "Stop" from north on Sussex. He saw Mr. Evely running southbound on the west sidewalk, pursued by officers at the cordon.[20] Walker yelled "Stop" and moved to intercept. Evely turned west onto Rideau.[21]

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[12] *Ibid*. at p. 109, ll. 11-16.
[13] *Ibid*. at p. 111, ll. 7-11.
[14] *Ibid*. at p. 112, ll. 5-10.
[15] *Ibid*. at p. 111, ll. 25-30.
[16] *Ibid*. at p. 112, ll. 11-20.
[17] *Ibid*. at p. 114, ll. 15-24.
[18] *Ibid*. at p. 124, ll. 9-11.
[19] *Ibid*. at p. 125, ll. 1-10.
[20] *Ibid*. at p. 126, ll. 20-30.
[21] *Ibid*. at p. 127, ll. 1-3.

21. Mr. Evely reached the intersection of Mackenzie and Rideau, where Cst. Meuleman and Cst. Purton intercepted him. Cst. Walker testified that Mr. Evely attempted to push through, after which the officers took him down.

22. On cross-examination Cst. Walker acknowledged that following his arrest Mr. Evely identified himself, mentioning his service and wearing a black leather jacket with medals.[22] He also acknowledged that veterans had arranged with Ottawa Police to guard the War Memorial against vandalism.[23]

23. An agreed statement of fact was submitted to the Trial Judge which provided some background regarding significant events in the timeline of the Freedom Convoy in January and February of 2022.[24] It essentially acknowledged that some elements of the Freedom Convoy interfered with the use and enjoyment of property between January 28 and February 18, 2025. It included the caveat, "For clarity: it is not admitted that any freedom convoy protestor, or the accused Jeffrey Evely, committed mischief or any other criminal offence on or about February 19, 2022."[25]

24. The Crown also relied on 6 videos submitted on a USB.[26] Referring to them in the order they were entered, the first video is an ariel drone video showing a line-up of police officers dressed in riot gear attempting to remove protestors from downtown Ottawa. Protestors are seen resisting police efforts. The second video is an open-source video which appears to show the same scene from the ground level. The final four videos show Mr. Evely making public statements during the

[22] *Ibid*. at p. 143, ll. 24-28.
[23] *Ibid*. at p. 136, ll. 15-23.
[24] Trial Exhibit 1 – Agreed Statement of Fact, Appeal Book, Tab 6.
[25] *Ibid*. at para 9.
[26] Appeal Book, Tab 4G, Trial Exhibit 3 – USB containing map and 6 videos.

Freedom Convoy. The videos were admitted on consent without the need to authenticate them but being subject to the *Charter* application to exclude evidence.

25. Mr. Evely testified on the exclusion motion only. Mr. Evely's evidence differed from and expanded on the police witnesses' evidence as follows:

i. Mr. Evely is a military veteran. He was responsible for organizing a sentry duty to guard the Ottawa War Memorial after police had fenced off the area following some vandalism. Mr. Evely regularly served the least popular shifts himself which were in the pre-dawn hours.[27]

ii. A sentry duty is a watch or a guard conducted by military members or veterans. To Mr. Evely, a sentry duty is an "expression … of solidarity amongst veterans in support of the dignity of our fallen." In the context of the War Memorial in Ottawa a sentry duty expresses that "we stand on guard for thee."[28]

iii. The particular sentry duty organized by Mr. Evely during the Freedom Convoy was in reaction to and in opposition to police action fencing off the war memorial and preventing veterans from accessing it. Mr. believes that the War Memorial was being used as a "political prop" at that time.[29]

iv. During the interaction described by police he only heard the female officer say "stop" initially and did not hear other officers until near Mackenzie Street.[30]

[27] Appeal Book Tab 4E, Transcript of Proceedings dated August 27, 2024, p. 173, ll. 1-5. p. 158, ll. 7 – p. 159, ll. 11.
[28] *Ibid*. at p 161, ll. 17-27.
[29] *Ibid*.
[30] *Ibid*., p. 173, ll. 1-5.

v. During the takedown and arrest Mr. Evely raised his hands and went to the ground voluntarily as officers approached. The two officers guided him down. He assisted in the handcuffing by turning his thumb down and putting has hands behind his back.[31]

B. Decisions at Trial

i) Ruling on *Charter* Application

26. The rulings on both the exclusion motion and the trial were issued on the same day, September 17, 2024.[32] The Trial Judge ruled against the Appellant's *Charter* application finding that there was no breach of his rights under sections 8 or 9 of the *Charter*. Given that finding, the Trial Judge did not engage in an analysis under section 24(2) of the *Charter* regarding whether the evidence ought to have been excluded.

27. The thrust of the Appellant's argument on the *Charter* application was that police did not have authority under common law to set up a large exclusionary zone in downtown Ottawa, preventing the public from access. Where Mr. Evely's arrest was based primarily on his entrance into that zone and refusal to stop for police, the Appellant asserted that his detention was arbitrary.

28. On the issue of common law police powers, the Trial Judge did not agree. Her reasoning was as follows:

> It would be illogical and contrary to their objective if, after clearing the area, [police] could not restrict movement so as to prevent the protesters and vehicles from reoccupying the space they had just cleared. To say otherwise would allow for the absurd situation where protesters would be permitted to re-occupy the secured area to continue their illegal activities, and thereby, force police to start over each morning in their efforts to clear the protesters, secure the area, and restore order.[33]

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[31] *Ibid*. at p 162, l. 10 – p. 163, 1. 20.
[32] Appeal Book, Tab 4F, Transcript of Reasons for Judgment dated September 17, 2024.
[33] *Ibid*. at p. 226, l. 23 – p. 227, l 9.

29. The Trial Judge went on to distinguish the case of *Stewart*[34] on the basis that this was not police "restricting access to a planned protest". Rather it was police acting to "maintain order in the area they had already secured."[35]

30. Although the Trial Judge relied on decisions which address the *Waterfield* test set out *Dedman v The Queen*[36],it is noteworthy that she did not identify the test or apply it to the facts of the case at bar. Given, the finding that police had the authority to create checkpoints and prevent access to downtown Ottawa, the Trial Judge concluded that Mr. Evely's refusal to stop when demanded by police constituted grounds for arrest for obstructing a peace officer.

31. The Trial judge also found that grounds for arrest existed for the charge of mischief. This was based primarily on the fact that Mr. Evely was running in the direction of the protesters, towards the backs of officers who were maintaining the barricade and who were unaware of his approach and attempting to join the protest.[37]

32. Where evidence of accused and the police officers differed, the evidence of the officers was preferred.[38]

33. Given that the arrest was found to be lawful, the subsequent search of Mr. Evely was found to be reasonable. The Trial Judge agreed with the position of the Crown and dismissed the application. The video evidence described above was admitted.

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[34] *Stewart v. Toronto (Police Services Board),* 2020 ONCA 255 [*Stewart*]; overturning: *Stewart v. The Toronto Police Services Board*, 2018 ONSC 2785.
[35] Appeal Book, Tab 4F, Transcript of Reasons for Judgment dated September 17, 2024 at p. 227, ll. 10-25.
[36] *Dedman v. The Queen*, 1985 CanLII 41 (SCC), [1985] 2 SCR 2 [*Dedman*].
[37] Appeal Book, Tab 4F, Transcript of Reasons for Judgment dated September 17, 2024 at p. 231, ll. 6-9.
[38] *Ibid*. at pp. 231-32.

ii) Reasons for Judgment

34. The Trial Judge began her reasons by reviewing the evidence of the 3 police witnesses described above.

35. She then reviewed the video evidence filed as exhibit three. The Ottawa Police Service drone footage (Video 1) and open-source video (Video 2) from February 18, 2022, captured clashes between police and protesters.[39] The court compared these videos to footage from Evely's social media, identifying him by his appearance—a red baseball cap with white writing ("Lest we forget" with "Lest" crossed out), a black vest with medals, and other unique features—allowing for identification of the man in the videos as Mr. Evely.[40]. This evidence was crucial in establishing Mr. Evely's participation and intent, linking his actions on both February 18 and 19.[41]

36. On the mischief charges, the Trial Judge examined Mr. Evely's physical resistance and presence at the protest, as shown in the videos and described by police witnesses.[42] She concluded that these actions indicated a shared intention to aid and abet other protesters in disrupting the lawful use of property, satisfying the elements of the charge. She concluded that not only did Mr. Evely's actions on February 18 (as captured on video) constitute mischief, but that his actions of fleeing police on February 19 did as well. She found that these actions constituted "encouragement or assistance" of other protestors at the scene, as "strength in numbers can be found to be an important source of encouragement."[43]

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[39] *Ibid*. at p. 237, ll. 25-30; p. 238, ll. 1-15.
[40] *Ibid*. at p. 245, ll. 5-25; p. 246, ll. 1-15; p. 248, ll. 5-25.
[41] *Ibid*. at p. 249, ll. 5-20.
[42] *Ibid*. at p. 242, ll. 15-30.
[43] *Ibid*. at p. 249, ll. 18-27.

37. On the obstruct police charge the Trial Judge considered Mr. Evely's refusal to stop when ordered by Cst. Walker.[44] These actions were found to have made it more difficult for police to carry out their duty to secure the area, clearly constituting an offense. The findings on the *Charter* application regarding police duties applied to this charge.

C. Decision of Summary Conviction Appeal Court

38. On appeal, the Appellant argued that the Trial Judge's failure to apply the ancillary powers doctrine was a legal error. The Appellant argued that the failure to apply the test led to the erroneous conclusions that the police had the authority under common law to lockdown the downtown core of Ottawa and, thus, the police were acting in the course of their lawful duties in demanding that the Appellant stop. The Appellant argued that, in the absence of lawful authority to establish checkpoints, the police had no reasonable grounds to arrest the Appellant for obstruction and the conviction on that charge must be quashed.

39. The Appellant further argued that the Trial Judge erred in finding that the police had reasonable grounds to arrest the Appellant for mischief. In the absence of any reasonable grounds for arrest, the arrest and subsequent searches of the Appellant were unlawful and breached ss. 8 and 9 of the *Charter.* The Appellant argued for the exclusion of the social media evidence and drone footage, without which there was no evidence to convict the Appellant of mischief.

40. With respect to the application of the ancillary powers doctrine, the SCAJ agreed with the Trial Judge's reasoning, finding:

> Furthermore, it is also apparent at pages 12 and 13 of the trial judge's reasons for decision that she assessed whether this action involved a justifiable exercise of police powers. We see, at these pages, that the trial judge assessed whether the action was reasonably necessary in the circumstances, engaging in the appropriate balancing exercise. She described a carefully orchestrated operation with the area restricted limited to the protest footprint, distinguishing *Stewart*. She therefore

[44] *Ibid*. at p. 249, ll. 30-36; p. 250, ll. 1-15.

considered the ancillary powers doctrine and considered whether the police action was justifiable within the meaning of that doctrine.[45]

41. Given the SCAJ's finding with respect to the police powers, he also found that police had reasonable grounds to arrest the Appellant for obstruction.[46] The SCAJ also found that the police had reasonable grounds to arrest the Appellant for mischief, finding that the Trial Judge was "entitled to consider all the relevant circumstances known to the officer."[47] The SCAJ held that "considering the context, the trial judge's findings were reasonable and her analysis of this issue correct."[48] Accordingly, the SCAJ found no s. 8 or 9 breach and did not exclude the social media evidence or drone footage.

42. Ultimately, the SCAJ upheld the convictions and dismissed the appeal.

III. ISSUES AND LAW

43. The Appellant's issues fall within three categories: 1) errors with respect to police authority to lockdown the downtown core of Ottawa and exclude the public; 2) errors with respect to the *Charter* applications; and 3) whether leave to appeal ought to be granted. The Appellant raises the following issues:

Police Authority to Lockdown the Downtown Core

a. whether the SCAJ erred in finding that common law police powers included the ability to lockdown the core of downtown Ottawa and establish checkpoints to regulate entry;

[45] Appeal Book, Tab 3, Reasons for Decision of SCAJ dated July 18, 2025, at p. 15, l. 27 – p. 16, l. 10.
[46] *Ibid*, at p. 17, ll. 4-6.
[47] *Ibid*, at p. 16, l. 28-29.
[48] *Ibid*, at p. 17, l. 1-3.

b. whether the SCAJ erred in finding that police were acting in the course of their lawful duty when restricting access to downtown Ottawa;

Charter Issues

c. whether the SCAJ erred in finding that the Appellant's arrest was not arbitrary contrary to s. 9 of the *Charter*;

d. if so, whether the SCAJ erred in finding that the Appellant's s. 8 right to be free from unreasonable search and seizure was not infringed when he was searched incident to arrest;

e. if so, whether the SCAJ erred by failing to conduct a s. 24(1) analysis and failing to exclude evidence obtained as a result of the *Charter* breaches; and

Leave to Appeal

f. whether leave to appeal on the foregoing grounds ought to be granted.

A. Standard of Review

44. Section 839(1) of the *Code* provides that appeals of a Summary Conviction Appeal Court may only be made "on any ground that involves at question law alone."[49] The Appellant submits that the SCAJ committed multiple legal errors in the course of His Honour's decision. Where an appeal raises pure questions of law, the standard of review is correctness.[50]

B. SCAJ Erred in Finding that Common Law Police Powers Authorized the Police to Lockdown Downtown Ottawa

[49] *Criminal Code*, R.S.C., 1985, c. C-46, s. 839.
[50] *Housen v Nikolaisen*, 2002 SCC 33 at para 8.

45. At trial the Appellant argued that the actions of police in locking down downtown Ottawa and preventing all civilians from accessing public areas exceeded their powers at common law. Police did not have the power to stop every single person entering that area.

46. The SCAJ erred in upholding the Trial Judge's decision. Both judges failed to apply the ancillary powers doctrine and failed to identify or apply the test required by the binding cases of *Fleming v. Ontario*,[51] *Dedman v. The Queen*,[52] and *Figueiras v. Toronto (Police Services Board)*.[53] The total lockdown of the downtown core of Ottawa enforced by the police was excessive and unjustified under the balancing analysis required by the ancillary powers doctrine.

iii) Governing Principles

47. Police powers must be authorized by either statute or the common law. When police rely on the common law to authorize novel exercises of police power, "courts should tread lightly" in establishing police powers because "the rule of law requires that strict limits be placed on police powers in this regard in order to safeguard individual liberties."[54] The Supreme Court warned that "it does not sit well for the courts, as the protectors of our fundamental rights, to widen the possibility of encroachments on these personal liberties."[55]

48. The governing test is the ancillary powers doctrine which requires that police actions which interfere with individual liberty be ancillary to the fulfilment of police duties and reasonably necessary for the fulfilment of those duties.[56] Test involves two preliminary issues, and then a two-

[51] *Fleming v. Ontario*, 2019 SCC 45 [*Fleming*].
[52] *Dedman*, *supra*.
[53] *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208 [*Figueiras*].
[54] *Fleming*, *supra*, at paras. 38, 41.
[55] *Ibid*, at para. 4, cit'g *R. v. Wong*, 1990 CanLII 56 (SCC), [1990] 3 S.C.R. 36 at p. 57.
[56] *Fleming*, *supra*, at para. 45.

step analysis. The preliminary issues the court must address are to "clearly define the police power that is being asserted and the liberty interests that are at stake."[57]

49. In characterizing the liberty interests at stake, both *Charter*-protected rights and common law liberty are relevant.[58] The Ontario Court of Appeal has noted that the ancillary powers doctrine has been modified to emphasize the importance of *Charter*-protected rights.[59] Apart from constitutional rights, everyone has a common law right to liberty. This entails "the civil liberty to move unimpeded on public highways [which] is part of a long common law tradition."[60]

50. If there is a *prima facie* interference with liberty, the analysis proceeds by asking:

1) Does the police action at issue fall within the general scope of a statutory or common law police duty? and
2) Does the action involve a justifiable exercise of police powers associated with that duty?[61]

51. Three factors to be weighed at the second stage are:

1) the importance of the performance of the duty to the public good;
2) the necessity of the interference with individual liberty for the performance of the duty; and
3) the extent of the interference with individual liberty.[62]

52. The Supreme Court's description of the test sets a high bar for justifying police powers that limit individual liberty. The Court held that the onus is always on the state to justify the existence of the powers.[63] Also, the second stage of the test must be applied "with rigour to ensure that the

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[57] *Ibid*, at para. 46, cit'g *Figueiras*, *supra*, at paras. 55-66.
[58] *Fleming*, *supra*, at para. 46.
[59] *Figueiras*, *supra*, at para. 50.
[60] *Ibid*, at para. 79.
[61] *Ibid*.
[62] *Fleming*, *supra*, at para. 47.
[63] *Ibid*, at para. 48.

state has satisfied its burden of demonstrating that the interference with individual liberty is justified and necessary."[64] In particular, when a police power at issue affects those under no suspicion of unlawful conduct, "a stringent and exacting justificatory analysis" is mandated.[65]

53. Overall, the Court must ask whether the police power is "reasonably necessary." The Supreme Court gave the following guidance for conducting the balancing at the second stage:

> If the police can reasonably attain the same result by taking an action that intrudes less on liberty, a more intrusive measure will not be reasonably necessary no matter how effective it may be. An intrusion upon liberty should be a measure of last resort, not a first option. To conclude otherwise would be generally to sanction actions that infringe the freedom of individuals significantly as long as they are effective. That is a recipe for a police state, not a free and democratic society [emphasis added].[66]

iv) Principles Applied

54. The SCAJ erred in finding that the ancillary powers doctrine authorized the police to lockdown the downtown core of Ottawa. The SCAJ's reasons merely adopted the reasoning of the Trial Judge and, therefore, suffers from the same fundamental error. Neither judge applied the steps of the *Waterfield* test to the facts of the case. Had either judge applied the steps of the rigorous analysis required by the Supreme Court in Fleming, they would have concluded that the police lockdown of the downtown core was not justified for the following reasons.

55. The courts below were required to address the preliminary issues by clearly defining the police power at issue and the liberty interests at stake. First, the case law requires the court to define the police power. Here, the police set up a perimeter around a large area in the downtown of Ottawa and enforced checkpoints, stopping anyone trying to enter. Members of the public were required to provide ID and justify their entry by proving they lived or worked in the area.[67]

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[64] *Ibid*, at para. 75.
[65] *Ibid*, at para. 80.
[66] *Ibid*, at para. 98.
[67] See e.g. Appeal Book, Tab 4A, Transcript of Proceedings dated August 26, 2024, p. 103, ll. 5-13.

56. Second, the courts below were required to identify the liberty interests at stake. A clear definition of the impact on the public's liberty was necessary to inform the ultimate balancing analysis. The police lockdown interfered with the common law liberty to move unimpeded on public highways was significantly curtailed. Everyone was stopped, regardless of any suspicion of criminal activity. For the individuals who worked or lived in the downtown core, their liberty was made subject to a mandatory police stop and a requirement to provide identification and proof of their place of work. For everyone else, their freedom of movement was completely restricted because they were barred entry into the downtown core, regardless of what legitimate activity they sought to engage in.

57. A *prima facie* liberty infringement being established, it was incumbent on the lower courts to proceed to apply the two-step *Waterfield* test. First, the courts had to assess whether the police activity fell within the scope of a recognized police duty. The Appellant does not dispute that the police had a duty to clear obstructions on the roadway and the lockdown of the downtown core was enforced for this purpose.

58. Second, the courts had to ask whether the police action was a justifiable exercise of power in execution of the duty. The Appellant submits that it was not because it was excessive and unnecessary. While the performance of the duty was important to the public good, the extreme measures taken in this case were unnecessary and severely intruded into the fundamental civil liberties of every member of the public.

59. With respect to the necessity of the lockdown measures taken by police, the Appellant submits that less severe measures could have been taken. Rather than stopping every single person from passing on the public streets, police could have targeted their action to preventing large gatherings. Police could have stopped crowds, vehicles, or individuals who otherwise aroused a

reasonable believe that they were entering the downtown core to aid and abet the mischief that had taken place.

60. Instead, the police adopted a practice of stopping every single person and permitting entry only to the limited subset that satisfied the police that they lived or worked in the area. This poses two particular problems. First, it subjects everyone to a restriction of liberty regardless of suspected criminal activity or likelihood of breaching the peace. The Supreme Court described such a power as "extraordinary" and one which "would constitute a major restriction on the lawful actions of individuals in this country." The Supreme Court added that it "is especially important for the courts to guard against intrusions on the liberty of persons who are neither accused nor suspected of committing any crime."[68]

61. The second problem is that the predetermined exceptions for permitting people into the downtown core – residence and place of work – exclude the wide array of other legitimate activities members of the public may engage in, including, visiting a family member, volunteering, or attending monuments of personal significance, such as the National War Memorial. Notably, the Superior Court found that even during the active operation to clear protesters from the street, members of the public had the right to protest lawfully and peacefully in the area and that not everyone present was either a principal or party to the mischief occurring.[69]

62. With respect to the extent of the interference with individual liberty, it was on the very high end of the spectrum. For people who did not live or work in the downtown core, they were completely barred from entering, as is their common law liberty. For those who did live or work in the area, they were still subject to an arbitrary stop, questioning, and required to provide ID or proof of residence or place of work. This lockdown applied to a large section of the City of Ottawa.

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[68] See *Fleming*, *supra*, at para. 78.
[69] *R. v. Decaire*, 2024 ONSC 4713 at para. 31.

It represented a complete inversion of common law liberty which grants freedom, subject to grounded reasons to restrict it. On February 19, 2022, the default was restriction, subject only to limited exceptions permitting passage.

63. The SCAJ's reliance on *R. v. Romlewski* is misplaced. In *Romlewski*, the police were in the course of clearing demonstrators out of the downtown core and Mr. Romlewski stood in their way.[70] By contrast, in the present case, the crowds had been removed. The issue was not whether police could disperse a disruptive crowd, but rather, whether they could continue to exclude all members of the public, disruptive or not, unless they fell within the narrow exceptions defined by police.

64. Instead, the Appellant submits that the present matter is analogous to *Figueiras* and *Stewart*. In *Stewart*, a police perimeter, including baggage searches, around a public park where demonstrators were gathering to protest a meeting of the G20 was found not to be within the general scope of any common law duty. Police were found not to have legal authority to impose such conditions on entry. The protest at issue in *Stewart* was characterized by peaceful protests intertwined with protestors intent on violence and property destruction. Such violence and property destruction presented "unprecedented peacekeeping and security challenges".[71]

65. Virtually identical issues were raised in another case involving the Toronto G20 protest: *Figueiras v. Toronto (Police Services Board)*.[72] With reasons mirroring *Stewart*, the Court of Appeal applied the *Waterfield* test and found that the creation of checkpoints and bag searches did not fall within the ambit of common law ancillary police powers. Further, in preventing Mr.

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[70] *R. v. Romlewski*, 2023 ONSC 5571 at paras. 10, 250-52.
[71] *Ibid*, at para 13.
[72] *Figueiras*, *supra*, at para 59.

Figueiras' from protesting for his chosen cause (animal rights), police conduct violated his freedom of expression under the *Charter*.

66. The SCAJ accepted the Trial Judge's basis for distinguishing *Stewart*; namely, that the case at bar did not involve police restricting access to a planned protest.[73] Rather, it involved police acting to "maintain order in the area they had already secured."[74] There is no principled reason to distinguish the two cases on that basis.

67. In many ways, the present case is more egregious than either *Stewart* or *Figueiras*. There was no evidence before the Trial Judge that Freedom Convoy protesters engaged in violence or property destruction. Also, unlike *Figueiras*, where individuals could pass a bag search to be permitted entry, in the present case only people with pre-approved reasons for entry were allowed within the police perimeter.

C. The SCAJ Erred in Finding that the Police were Acting in the Course of a Lawful Duty

68. If, as argued above, police did not have the legal authority to establish the perimeter that around the downtown core, then the Appellant was under no legal obligation to stop when police demanded he do so. It follows, that the Appellant was not committing the offence of obstructing a peace officer and ought to be acquitted on that charge. The impact on the lawfulness of the arrest and s. 9 of the *Charter* is described below.

[73] Appeal Book, Tab 3, Transcript of Reasons for Decision dated July 18, 2025, at p. 15, l. 27 – p. 16, l. 10.
[74] Appeal Book, Tab 4F, Transcript of Reasons for Judgment dated September 17, 2024 at p. 227, ll. 10-25.

D. The SCAJ Erred in Finding that the Appellant's Right to be Free from Arbitrary Detention was not Infringed

69. Section 9 of the *Charter* provides that "Everyone has the right not to be arbitrarily detained or imprisoned." A detention, including an arrest, will be considered arbitrary within the meaning of section 9 of the *Charter* if it is not authorized by law.[75]

70. A warrantless arrest requires a subjective and objective component. An arrest without a warrant is lawful if the police officer has reasonable grounds to believe that the person arrested has committed an indictable offence. The subjective requirement requires that the police officer believes that he has reasonable grounds. The objective component requires that the belief be based on information that would lead a reasonable and cautious person in the position of the officer to conclude that reasonable grounds existed for the arrest.[76]

71. The arresting officer, Cst. Walker, asserted reasonable grounds to arrest Mr. Evely on both mischief and obstructing a peace officer. The Appellant does not take issue with subjective belief of Constable Walker. Rather the objective basis for that belief is at issue in this appeal.

72. With respect to the objective basis to arrest Mr. Evely for obstructing a peace officer, the Appellant repeats the analysis above that police were acting outside the scope of any common law duty. There was no objective basis to believe that he was obstructing a peace officer *in his lawful duties*.

73. With respect to mischief as a basis for arrest, the Appellant submits that the facts, as known to the arresting officers, is insufficient to objectively lead to a reasonable belief that the Appellant was committing mischief. The SCAJ held that the context established the basis for arresting the Appellant for mischief. To the contrary, the context known to police was that the Appellant was

[75] *R v Le,* 2019 SCC 34 at paras. 30, 38.
[76] *R. v. Storrey*, 1990 CanLII 125 (SCC), [1990] 1 SCR 241 at pp. 250-51.

running down Sussex Avenue at approximately 4:25 am. He was alone. Vehicle and pedestrian traffic were blocked by police. Police were the only other people present around the Appellant. While mischief had occurred in downtown Ottawa, nothing known to police connected the Appellant to that mischief.

74. Not everyone who was in downtown Ottawa on February 18-19 was committing mischief simply by being present, and particularly not merely by travelling there. This Court found as much in upholding an acquittal in similar circumstances in *Decaire*:

> the trial judge's suggestion that Ms. Decaire could have been there to passively protest or out of curiosity were reasonable theories. There was at this time a large-scale protest in Ottawa. Many citizens went to various protest to sites to observe, to peacefully protest, or in some cases, to passively support those who were protesting. That the trial judge suggested that Ms. Decaire might be one of those persons is not a speculative proposition but rather reasonable one and in accordance with the evidence before him regarding the Freedom Convoy.[77]

75. At the time of his arrest Mr. Evely was unknown to the officers. Simply travelling to the scene of criminal activity is not evidence of an attempt to join others in its commission. At best it is circumstantial evidence, which on its own, would not lead a reasonable and cautious person in the position of the Cst. Walker to conclude that reasonable grounds existed for the arrest.

76. There is no objective basis on which to form reasonable and probable grounds that Mr. Evely was interfering with anyone's lawful use, enjoyment or operation of their property or that he was attempting to do so.

E. The SCAJ Erred in Finding that the Appellant's Right to be Free from Unreasonable Search and Seizure was not Infringed

77. A warrantless search that follows an unlawful arrest is unreasonable. Counsel at trial conceded that, if the arrest is found to be lawful, the search incident to arrest was lawful, and vice

[77] *Decaire*, *supra*, at para 42.

versa.[78] The Trial Judge agreed that the section 8 breach "rises and falls" on the determination of whether Mr. Evely's arrest was lawful.[79]

78. Where the Appellant's arrest and detention was arbitrary any subsequent searches, including the search of his person for identification,[80] were not reasonable.

F. The SCAJ Erred in Failing to Exclude Evidence Obtained as a Result of the *Charter* Breaches

79. Given their findings with respect to ss. 8 and 9, neither court below engaged in a s. 24(2) analysis. The Appellant submits that the social media evidence and drone video ought to be excluded as admitting it would bring the administration of justice into disrepute.

i) The evidence was "obtained in a manner"

80. Evidence can only be excluded if it is "obtained in a manner" that infringed the Applicant's Charter rights.[81]

81. Evidence that satisfies the "obtained in a manner" requirement of s. 24(2) where it has a temporal, contextual, or causal connection to the *Charter* breach or some combination of the three. The approach is to be a generous one.[82]

82. Here, the social media evidence, and in turn the drone video, was only found using the Applicant's name which was obtained by the arresting officer's search of his person after he had been unlawfully arrested. There is a direct casual connection between the evidence and the breach. But for the Applicant's arrest, the evidence would not have been obtained. Further, there is a

[78] Appeal Book, Tab 4F, Transcript of Reasons for Judgment dated September 17, 2024 at p. 223, ll. 24-27.
[79] *Ibid*. at p. 223, ll. 3-6.
[80] *R. v. Harris*, 2007 ONCA 574 at para 40.
[81] *R. v. Grant*, 2009 SCC 32 at para 59 [*Grant*].
[82] *R v Davis*, 2023 ONCA 227 at para. 28.

contextual connection in that the social media searches were made as part of searches related to individuals arrested at the Freedom Convoy protest.

ii) Admitting the evidence would bring the administration of justice into disrepute

83. First, the *Charter*-infringing conduct is serious. The decision of police to lockdown downtown Ottawa resulted in the creation check points and roadblocks surrounding the downtown core. Anyone wishing to enter was forced to show identification. Anyone who could not prove that they lived or worked in the area would be turned back and not permitted entry. Downtown Ottawa was subject to a type of martial law for a period of days. This infringement of rights falls at the extreme end of egregious conduct.

84. Second, the impact on the Applicant's *Charter*-protected interests was significant. The analysis on the second factor requires assessing "the interests engaged by the infringed right" and "the degree to which the violation impacted on those interests."[83]

85. The infringement of the Applicant's freedom of expression described above was total. He was not permitted to stand guard at the War Memorial as part of his sentry duty. This was a matter of great personal importance to the Applicant.

86. As a result of attempting to attend at the War Memorial, the Applicant was arrested. He was taken to the ground and handcuffed. His liberty was further curtailed as he was handcuffed and moved about from officer to officer. The seriousness of the breach was compounded by the infringement of the Applicant's section 8 right to privacy.

87. Cumulatively, these breaches pose a serious impact on the Applicant's *Charter*-protected interests.

[83] *Grant*, *supra*, at para. 77.

88. Third, society's interest in adjudication on the merits does not strongly weigh in favour of admission. The Freedom Convoy protests were political protests which arose in response to divisive legislation of questionable utility. Further, the invocation of the *Emergencies Act* was an unlawful use of government power.[84] Society's overall interests are in moving on from a politically divisive time of Canadian history. At best, this branch of the test is neutral.

89. The SCAJ ought to have excluded the video and social media evidence on this basis. This evidence largely formed the basis of the Appellant's conviction for mischief. If it is excluded, there are not sufficient facts to support a finding of guilt for mischief. Therefore, the conviction for mischief should be quashed and an acquittal entered.

G. Leave to Appeal Ought to be Granted

i) The Test for Leave in Summary Conviction Appeals

90. Under s. 839(1) of the *Code*, appeals from summary conviction appeals may be made with leave of the Court "on any ground that involves a question of law alone."[85] The appeal is from the decision of the summary conviction appeal court, not a second appeal of the decision of the trial court.

91. The two key variables guiding the leave decision are:

a. the significance of the legal issues raised to the general administration of criminal justice; and
b. the merits of the proposed grounds of appeal.[86]

92. Issues of significance beyond the four corners of the case may "warrant leave to appeal, provided the grounds are at least arguable, even if not especially strong."[87] Conversely, leave may

[84] See *Canadian Frontline Nurses v. Canada (Attorney General)*, 2024 FC 42.
[85] *Criminal Code*, R.S.C., 1985, c. C-46, s. 839(1).
[86] *R. v. Lam*, 2016 ONCA 850 at para. 10.
[87] *Ibid*.

also be granted even if the issues lack general importance, if "the merits appear very strong, especially if the conviction is serious and an applicant is facing a significant deprivation of his or her liberty."[88]

ii) The Grounds of Appeal are of Strong Merit and Likely to Succeed

93. This appeal is of strong merit and likely to succeed. On this point, the Appellant relies on paragraphs 40-88 of this factum. The SCAJ's analysis has disregarded binding Supreme Court and appellate jurisprudence and, in doing so, authorized sweeping police powers that severely curtail the liberty of the public.

iii) The Grounds of Appeal are Important Beyond the Appellant's Case

94. The SCAJ's holding has harmful implications for the liberties of every member of the public, demonstrator or bystander. Binding Supreme Court jurisprudence cautions that courts must be guarded in authorizing new common law police powers when they come at the expense of individual liberty. The SCAJ's decision stands for the proposition that police can lockdown entire sectors of a city and enforce perimeter checkpoints where the public is forced to justify their presence.

95. If left undisturbed, the SCAJ decision sets a precedent that erodes the common law civil liberty of free movement on public highways and inverts the presumption of freedom in Canadian society. Whereas, the common law has protected the freedoms of individuals, subject only to justified limitations, the SCAJ decision authorized police powers which prohibit free passage, subject only to exceptions pre-determined by the police. As the Supreme Court warned in *Fleming*, this "is a recipe for a police state, not a free and democratic society."[89]

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[88] *Ibid*., cit'g *R. v. R.R.*, 2008 ONCA 497 at para. 37.
[89] *Fleming*, *supra*, at para. 98.

IV. ORDER REQUESTED

96. The Appellant respectfully requests that:

a. Leave to appeal be granted;

b. The appeal be allowed;

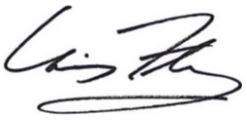
c. All *Criminal Code* charges be dismissed; and

d. In the alternative, all charges be sent back to the Ontario Court of Justice for a new trial.

V. SEALING ORDERS, PUBLICATION BANS, OR OTHER RESTRICTIONS ON PUBLIC ACCESS

97. There were no restrictions on public access at the courts below and the Appellant is not requesting any.

All of which is respectfully submitted this 14h day of October, 2025



Christopher Fleury

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Counsel for the Appellant
Jeffrey Evely

Schedule A - Authorities to be Cited

Canadian Frontline Nurses v. Canada (Attorney General), 2024 FC 42

Dedman v. The Queen, 1985 CanLII 41 (SCC), [1985] 2 SCR 2

Figueiras v. Toronto (Police Services Board), 2015 ONCA 208

Fleming v. Ontario, 2019 SCC 45

Housen v. Nikolaisen, 2002 SCC 33

R v. Davis, 2023 ONCA 227

R v. Le, 2019 SCC 34

R. v. Decaire, 2024 ONSC 4713

R. v. Grant, 2009 SCC 32

R. v. Harris, 2007 ONCA 574

R. v. Lam, 2016 ONCA 850

R. v. Romlewski, 2023 ONSC 5571

R. v. Storrey, 1990 CanLII 125 (SCC), [1990] 1 SCR 241

R. v. Wong, 1990 CanLII 56 (SCC), [1990] 3 S.C.R. 36

R. v. R.R., 2008 ONCA 497

Stewart v. The Toronto Police Services Board, 2018 ONSC 2785

Stewart v. Toronto (Police Services Board), 2020 ONCA 255

Schedule B - Relevant Legislative Provisions

*The only relevant legislative provisions cited in this factum are contained in the *Criminal Code*, R.S.C., 1985, c. C-46, and are therefore omitted per Rule 40(3)(g) of the *Criminal Appeal Rules*.

Form 2
BACKSHEET

COA-25-CR-1029
Court File No. (if known)

M
Motion No. (if known/applicable)

COURT OF APPEAL FOR ONTARIO

HIS MAJESTY THE KING

- and -

JEFFREY EVELY
(specify name)

APPELLANT'S FACTUM
(specify title of document)

(if an affidavit, specify name of deponent and date sworn/affirmed)

Chris Fleury, Charter Advocates Canada, [redacted]
(specify name and contact information of person serving or filing the document)