

**ONTARIO COURT OF JUSTICE**  
(East Region)

**HIS MAJESTY THE KING**

- and -

**CHRISTOPHER BARBER & TAMARA LICH**

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**CROWN'S CLOSING SUBMISSIONS**

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## **PART I: Overview of the Crown’s Position**

- [1] Tamara Lich (“Lich”) and Christopher Barber (“Barber”) were arrested on February 17, 2022 and charged with offences relating to their involvement in the so-called Freedom Convoy 2022 (“Freedom Convoy”) which occupied downtown Ottawa between January 28 and February 20, 2022. The pair are jointly charged with all but one of the seven counts on Information #23-11401103.
- [2] The Crown has met its burden and proven beyond a reasonable doubt that Barber and Lich – as either principals or parties – committed the offences of intimidation, mischief, and obstruct: directly, publicly, and repeatedly. Barber and Lich also counselled these offences, with Barber additionally counselling the disobedience of a court order.
- [3] As noted in the Crown’s opening address and emphasized throughout trial, Barber and Lich are not on trial for their politics. Rather, they are on trial for the *unlawful means* they employed to pursue their political ends. Their criminal culpability 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 occupation, in media and documentary materials, as well as in Barber and Lich’s own words. This overwhelming body of evidence, in addition to a large body of jurisprudence discussed in detail below, 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).
- [4] 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 of time (*Governing Council of the University of Toronto v. John Doe*, 2024 ONSC 3755, at para. 135 (“*Governing Council of U of T*”).

**PART II: (i) Issues, (ii) Law, and (iii) Application**

**(i) Issues**

[5] Findings of guilt rest on a determination of the following issues:

- a. Did Lich and/or Barber block or obstruct a highway for the purpose of compelling others to do nor not do anything that they have a legal right to do or not do, or aid or abet others to do so;
- b. Did Lich and/or Barber interfere with the lawful use, operation, or enjoyment of property, or aid or abet others to do so;
- c. Did Lich and/or Barber make it more difficult for the police to execute their duties on February 18-20, 2022, or aid or abet others to do so?
- d. Did Lich and/or Barber counsel anyone to commit the offences outlined in bullets a, b, or c; and
- e. Did Barber counsel anyone to honk their horns in contravention of an interlocutory injunction issued by the Superior Court on February 7, 2022?

[6] In addition to the *viva voce*, documentary, and media evidence, one further factor of assistance in this determination is whether Barber and Lich were working as partners in a criminal venture such that they bound one another with their acts and words (the “*Carter* exception”). This will require the court to consider:

- a. Whether the Crown has proven beyond a reasonable doubt the existence of a conspiracy;
- b. Whether the Crown has proven on a balance of probabilities Barber and Lich’s membership in the conspiracy; and
- c. Their subsequent guilt based on any act or declaration in furtherance of the shared criminal objective.

[7] Importantly, the *Carter* exception is but one factor in the constellation of evidence that establishes Barber and Lich’s guilt. The exception is not the only path to findings of guilt. Therefore, even if this court cannot conclude that the *Carter* exception applies,

both Barber and Lich can be found guilty of the offences charged based on their own words and actions in addition to other admissible evidence adduced at trial.

**(ii) Law**

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

[8] Section 423(1)(g) of the *Criminal Code*, R.S.C., 1985, c. C-46 (“the *Code*”) makes it an offence for a person to block or obstruct a highway for the purpose of compelling another person to do or not do anything that they have a legal right to do or not to do. Highway is defined in s. 2 of the *Code* as “a road to which the public has the right of access, and includes bridges over which or tunnels through which a road passes.” Throughout reported jurisprudence, this offence is more often than not engaged in relation to protest or strike activity, and as seen in the following examples, the Crown must establish beyond a reasonable doubt that the criminal act of intimidation occurred, and that the accused was a party to it (*R. v. Millwood*, [2008] O.J. No. 3161, at para. 25 (S.C.)).

[9] 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* and that there was an absence of evidence that proved 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):

I shall deal firstly with the second ground which, in my view, has no merit and can be disposed of rather quickly. In relation to this ground, counsel for the appellants has argued that there was no evidence adduced to prove that any of the appellants did in fact block the highway by standing in front of the Burlington vehicle, thus impeding or preventing its forward progress. There was however quite definite evidence adduced that all of the appellants were part of the group of persons who walked or ran toward and then milled around the vehicle; that that group, by doing

so, prevented the vehicle from proceeding; and, further, that they were active members of the group. In my view, this was all that the Crown need prove ... There was sufficient evidence of the identity of the appellants as members of the group that obstructed the roadway in question ... [Emphasis added.]

[10] The roadway in question was corporation owned, but one to which the public had access. The court ultimately held that it was clear there was “at least a *de facto* right” for the public to utilize the road and that it met the definition of “highway” as contemplated in the *Code* (*Stockley*, at p. 2).

[11] 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 (*Sauls*, at paras. 5-6). 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 (*Sauls*, at paras. 4, 6). During this time, protesters communicated their reasons for the blockade, negotiated, and sometimes argued with the individuals affected by it (*Sauls*, at para. 8). 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).

***Offence of Mischief – Section 430 – Counts 6 and 1***

[12] The offence of mischief is established upon proof of wilful obstruction, interruption, or interference with the lawful use, enjoyment, or operation of property. Of note, the word “lawful” in ss. 430(1)(c) and (d) of the *Code* qualifies each of the words “use”, “enjoyment”, and “operation” (*R. v. Soranno*, 2024 BCCA 5, at para. 18).

[13] In *R. v. Hnatiuk*, 2000 ABQB 314, at para. 46, the court acknowledged the language in s. 430 as broad; however, offered the following useful interpretations:

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

[14] Additionally, the word “enjoyment” has been interpreted expansively by appellate courts as an “action of obtaining from property the satisfaction that the property can provide” (*R. v. Nicol*, 2002 MBCA 151, at para. 14; see also: *R. v. Maddeaux* (1997), 33 O.R. (3d) 378 (C.A.)). Enjoyment of property within the meaning of ss. 430(1)(c) and (d) includes interference with commercial properties and is to be read plainly and include mere enjoyment; there is no need for interference with property or related rights (*Nicol*; *Maddeaux*; *R. v. Tysick*, 2011 ONSC 2192). Lastly, “property” is defined in s. 2 of the *Code* to include real or personal property of every description.

[15] Where the Crown has proven the accused voluntarily committed the *actus reus* of mischief, which is a general intent offence, the requisite *mens rea* will be met by proof of an intentional or reckless causing of the *actus reus* (*R. v. Schmidtke* (1985), 19 C.C.C. (3d) 390, at p. 3 (Ont. C.A.)).



[16] In ascertaining whether the offence is made out, context is critical. For example, 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, “presence” is no longer “mere” when relevant context is considered, and can in fact become a positive act. 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:

... In *R. v. Pascal*, the BC Supreme Court found that the presence of a group of protesters dressed in camouflage and who had set up a makeshift camp along Highway 99 that blockaded vehicles and logging trucks were liable for mischief. In *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. 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.

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. [Citations omitted.]

[17] A further example occurred in *R. v. March* (1993), 111 Nfld & P.E.I.R. 116 (Nfld S.C.) (cited in *R. v. Romlewski*, 2023 ONSC 5571, at paras. 95-97), where four accused (two “main agitators” plus two who were “peripherally” involved) appealed convictions for mischief for

their involvement in an informational picket line inside a mall (*March*, at paras. 5, 10, 18). There was shouting and yelling in the course of picketing that created “an intimidating atmosphere for the mall manager and its customers” (*March*, at para. 8). Although business at the mall was disrupted and the mall was difficult to access, business was still conducted (*March*, at paras. 15-16). While some individuals chose not to enter the mall, it remained possible to access it (*March*, at paras. 23-26). The court restated the trial judge’s findings that the picket line went “well beyond an information picket line” and that police warnings were “drowned out by the hysteria that had overtaken the situation” (*March*, at para. 17). The trial judge found that “while the initial purpose may have been to obtain or communicate information ... it got out of hand” (*March*, at para. 19). All convictions were upheld (*March*, at para. 39).

[18] Also, in *R. v. Carr*, [2024] O.J. No. 1638 (C.J.), a Freedom Convoy case, Crewe J. convicted the accused of mischief for his involvement in the occupation. 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 (*Carr*, at paras. 27-38, 86). 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). Justice Crewe was also not persuaded with argument that video evidence should be disregarded due to an absence of positive proof of the poster or accuracy of the date and time. His Honour held that the date of a video is not an essential element to prove, and it was “irrefutably clear from the content ... that [the videos] were filmed during the Freedom Convoy” (*Carr*, at para. 94). 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).

[19] Still in the vein of protest, 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 (*Tysick*, at para. 38; *Remley*, at para. 111; *Romlewski*, at para. 99). Furthermore, in cases where roads are obstructed or blocked, “the fact that there were other crossroads open and passable is not determinative” (*Remley*, at para. 110). There is also no requirement that obstruction or interference with the enjoyment of property must occur for a minimum amount of time for liability to attach to mischief – it’s “not the duration of the conduct but the context in which it arose” that is of significance (*Remley*, at para. 107). For example, in *R. v. Drainville* (1991), 5 C.R. (4<sup>th</sup>) 38 (Ont. C.J.) (cited with approval in *R. v. Tremblay*, 2010 ONCA 469, at para. 30), mischief was found where an accused obstructed a road by sitting on it briefly. The accused had to be removed by police as he passively resisted. In making a finding of guilt, the court held that it could not assess the accused’s activity “in a vacuum” but instead had to give regard to the overall “collective and cumulative effect of this activity, combined with similar activity on the part of a great many others, similarly minded” (*Drainville*, at p. 3). Lastly, a blockade does not have to be on a property, interference can occur even where it is on an adjacent property (*Maddeaux*, at p. 3; *Tysick*, at para. 13; *Romlewski*, at para. 99). For example, in *Maddeaux*, the Ontario Court of Appeal (“ONCA”) held up a conviction for mischief in relation to excessive noise coming from an apartment below the complainant (*Maddeaux*, at pp. 1, 3).

[20] 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 *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 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):

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.

...

The respondents have not, however, pointed me to a single case in which a court has allowed someone to appropriate private or public property for a prolonged period of time to exercise their rights of freedom of expression.

On the contrary, courts have found exactly the opposite. However laudable their case, protesters do not have the right to take property from its owner and put it into the hands “of an ad hoc, self-appointed, albeit well-meaning group of individuals.” Even the case that protesters cite as authority for the proposition that a peaceful encampment conveys a power political meaning is one where the court held that protesters were not entitled to erect tents on Parliament Hill. [Emphasis added.]

[21] Demonstrators simply do not have a right to occupy property that doesn’t belong to them no matter how much more effective their message is made by it (*Governing Council of U of T*, at para. 181). There is a public interest element to this limitation in that “communities have an interest in maintaining the public character of shared spaces, which requires the use of legislation and regulation to prevent individuals and groups from using public space in a way that renders it unfit for the reasonable use of others” (*Governing Council of U of T*, at para. 182). A world where a constitutional right to appropriate public space exists would invariably lead to a “tragedy of the commons”, as the court describes (*Governing Council of U of T*, at para. 96):

Further, if Protesters possess a constitutional right to occupy the Park and appropriate it to their use, then the next protest group espousing a political message

would have the right to occupy another park ... and the next group the next park, and so on, and so forth. So would result a “tragedy of the commons”, another ironic consequence of a movement advocating general popular empowerment.

[22] To take over and appropriate public space to the exclusion of the rest of the public from enjoying that property’s *traditional use* and contend that there is no obligation to leave is against the law; this is activity that attracts consequences (*Governing Council of U of T*, at para. 244)

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

[23] 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.”

[24] 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 was required 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). 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):

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. [Emphasis added.]

[25] 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):

- a. 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”;
- b. An individual told a court official that he had a bomb to blow the place up and showed a device which caused the courthouse to be evacuated; and
- c. 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.]

[26] Ultimately, the Court held that – in contrast to the aforementioned three examples – 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” (*Tremblay*, at para. 31).

[27] Other instances where actions *exceeded* a simple communication of message include:

- a. A speech given at a saloon that was intended to incite demonstrators to continue a blockade. The person giving the speech did not directly participate in the blockade (*R. v. Pawlowski*, 2023 ABCJ 131, at para. 64);
- b. Animal rights activists who surreptitiously recorded conditions of pigs at a private farm and sat along a wall in the pigsty, refusing to leave the property (*R. v. McQueen*, 2022 QCCQ 2801); and
- c. Protesters, who in response to a federal government decision to cancel a prison farming program, attempted to block cattle trucks from removing a herd of cattle from the institution until government changed its policy (*R. v. McCann*, 2014 ONSC 2987).

[28] Though not a case that addressed the statutory defence in s. 430(7) of the *Code* specifically, the court in *Drainville* provided useful commentary in considering the constitutional validity of s. 430 and any impingement on freedom of expression that flows from it. In that case, the accused was charged with mischief for obstructing a roadway by briefly sitting on it (and subsequently being removed by police) during a land dispute protest. The road in question had been plagued by blockades which prevented construction crews from completing their work to the extent that the Ontario government sought an injunction. The accused, a priest, became involved given his concerns for “people who are oppressed or in need” (*Drainville*, at p. 2). 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 (*Drainville*, at p. 2). 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 (*Drainville*, at p. 2). In this case, the act of obstructing the roadway did not contribute to public order and the expression was not deserving of protection (*Drainville*, at p. 5). The court ultimately found that the accused was not completely restrained from expressing his dissatisfaction with the government “in other lawful ways” (*Drainville*, at p. 6). 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 (*Drainville*, at p. 7). 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 (*Drainville*, at p. 7). 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):

Finally, let me reiterate this Court’s position. Is “civil disobedience” or even “passive resistance” such a small infraction, or such a minimal use of force, that the “*actus reus*” ought to be overlooked? Should such activity as obstructing a road, be

justified by some sort of approval by the courts, on the grounds that the motives are good and noble, or that the situation is really a “political” one? In light of the existing circumstances of this case, where it seems a just and appropriate political solution appears to have been found, this might be a tempting proposition. But certainly, that would be tantamount to a declaration that in some instances, at the discretion of some judge, and irrespective of the “rule of law”, there are times when “the ends justify the means”. Even in this case, where it appears that the Government of Ontario may be about to change its policies, and perhaps admit to a previous error in judgment, where it appears that a Memorandum of Agreement termed a viable “political solution” is now in place and that those protesters may have been morally right, surely, the process of legitimizing previously unlawful acts, after the fact, is an inherently dangerous concept which is simply not acceptable as an alternative to the “rule of law”.

To permit this process to replace the “rule of law”, would be to grant permission to anyone to arrogate himself with the powers of a judge and determine for himself or herself, and from time to time, what is acceptable or just, and what is not, on behalf of the majority. As such, anyone could adjudicate himself or herself above the law, and no one would be equal before the law. Such a situation would surely lead to anarchy, and very quickly so.

For these reasons, this Court is of the view, that an inherently insignificant or harmless step taken without respect for the “rule of law”, is indeed one which is made of the very same substance that disrespect, insult, mischief, filibuster, insurrection, mutiny and ultimately, outright war, are made of. For these reasons “civil disobedience” cannot be condoned. Those who wish to resort to it as a means of expression, are able to do so in our free and democratic society, but they may also suffer the consequences of their actions. They must be made to suffer the sanctions which are provided for as Mr. Chief Justice Howland stated “defiance of the law is not the answer”. [Emphasis added.]

[29] It is important to note, and *Tremblay* makes clear, that s. 2(b) of the *Charter* is not a defence to the conduct in question. In *R. v. Gandzalas*, (June 25, 2023), Ottawa, 22-15605 (Ont. C.J.), at p. 11, Doyle J. made clear that the *Charter* offers no protection if an accused’s actions constitute criminal activity. Offences that appear in the *Code* are presumptively constitutional. *Tremblay* relies on s. 2(b) of the *Charter* to interpret s. 430(7) because, as the court held, the provision was ambiguous (*Tremblay*, at para. 14). It is a principle of statutory interpretation that *Charter* values may be relied upon only where there is ambiguity, and having found ambiguity in s. 430(7), the Court properly relied on s. 2(b) principles to interpret it (*Tremblay*, at para. 14, 23). That interpretation is explained at paras. 26-27 of the decision. It does not follow – and is wrong to assert – that s. 2(b) offers some other or independent assessment or



defence to mischief. Absent a constitutional challenge, s. 2(b) does not offer a defence to mischief (*Tremblay*, at para. 23):

Charter factors only come into play in the statutory interpretation exercise where there is a genuine ambiguity in the language of the statute. That is, where the language permits of two different, but equally plausible interpretations – each equally consistent with the apparent purpose of the statute – the interpretation that accords with *Charter* principles is to be preferred.

Here, there is a genuine ambiguity in the language of s. 430(7) concerning the meaning and scope of the words “communicating information”, in my opinion. It is not clear whether the phrase “for the purpose only of ... communicating information” means for the purpose only of engaging in the act of expression without regard to the information conveyed or its underlying purpose, or whether the phrase includes communication with the intention of accomplishing some other purpose as a consequence of that communication – in this case the wilful intent to interfere with the lawful enjoyment by [the complainants] of their property in order to persuade them to settle their lawsuit.

The latter interpretation is the one that is more consistent with s. 2(b) Charter value of freedom of expression, in my view, and should be favoured for that reason. But it is also the one that most accords with the language of s. 430(7) of the Criminal Code and with the purpose and object of that provision – for the reasons outlined above – and is therefore one that conforms to the overarching principle of statutory interpretation ... [Citations omitted.] [Emphasis added.].

### ***Offence of Obstruct Police – Section 129(a) – Counts 4 and 3***

[30] Like mischief, the willful obstruction of a peace officer is a general intent offence (*R. v. Gunn*, 1997 ABCA 35, at para. 45, leave to appeal to the SCC refused [1997] S.C.C.A. No. 175; *R. v. Nasser*, [2020] O.J. No. 6073, at para. 41 (Ont. S.C.)). It does not require the further formation of ulterior motive necessary in specific intent offences (*Gunn*, at para. 51). Importantly, the act of obstruction does not have to completely frustrate a peace officer’s actions in carrying out their duties (*Gunn*, at para. 22; *R. v. Tortolano*, (1975), 28 C.C.C. (2d) 562, at paras. 6-7, 12 (Ont. C.A.); *Nasser*, at para. 37).

[31] 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:

- a. **Element 1** – There must be peace officer who is in the execution of a lawful duty as a peace officer;
- b. **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;
- c. **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;
- d. **Element 4** – That act or omission must make it more difficult for a peace officer to carry out their duties; and
- e. **Element 5** – The accused person must intend to make it more difficult for the police to execute their duty

[32] Recently, these five essential elements were cited with approval by Phillips J. in *R. v. Blackman*, 2024 ONSC 3595, at para. 8, which was a summary conviction appeal relating to a Freedom Convoy demonstrator who had been acquitted at trial of mischief as well as obstruct peace officer. At 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 (*Blackman*, at para. 7).<sup>1</sup> Phillips J. went on to describe what the court should have instead considered (*Blackman*, at paras. 9-10):

The trial judge was obliged to consider the act of kneeling in a way broader than how it coincided timing-wise with the police movement forward that immediately preceded the arrest. The trial judge clearly held the view that the police had a duty to inform the accused of their intentions and that he could only be obstructing them

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<sup>1</sup> The acquittal on mischief was set aside due to insufficient reasons and a new trial ordered for all counts (*Blackman*, at paras. 15-16).

if he both received their message and then defied it. This is not the law. What communications the police managed to get through to Mr. Blackman was not the point. His kneeling on its own could constitute as an act to obstruct the police. The trial judge had to consider whether Mr. Blackman could have been at least willfully blind about what the police were doing and that his kneeling could have been intended by him to make the police job harder.

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. Was Mr. Blackman willfully blind about whether the police were engaged in the execution of a lawful duty and did he intend his act of kneeling to make their task more difficult? The trial judge did not say. He focused instead on a timing issue related to what he apparently saw as a necessary pre-arrest warning and dismissed the obstruct count because he had doubt about that non-essential element. [Emphasis added.]

[33] The degree of obstruction required to make out the offence was addressed in *Tortolano*, at para. 8, where the ONCA citing Lord Chief Justice Goddard instructed that obstruction means “making it more difficult for the police to carry out their duties”. 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). The act or omission constituting the offence must obstruct an officer in an “appreciable way” and not in a fleeting fashion, but it need not amount to a “major inconvenience” (*Nasser*, at para. 40).

[34] In the analysis, it is helpful to recognize the distinction between police officers’ duties from that of their authority. Police officers’ duties compel them to act, while their authority empowers them to do so (*R. v. Simpson* (1993), 12 O.R. (3d) 182, at para. 34 (C.A); *R. v. Mann*, 2004 SCC 52, at para. 35). Various police duties, such as “the preservation of the peace, the prevention of crime, and the protection of life and property” are recognized at common law (*Mann*, at para. 26). Other duties are recognized in statute. For example, s. 42 of the *Police*

*Services Act*, R.S.O. 1990, c. P. 15 (“the *PSA*”), which was in effect during the offence period, provides as follows:<sup>2</sup>

**42(1)** The duties of a police officer include:

- (a) preserving the peace;
- (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
- (c) assisting victims of crime;
- (d) apprehending criminals and other offenders and others who may lawfully be taken into custody;
- (e) laying charges and participating in prosecutions;
- (f) executing warrants that are to be executed by police officers and performing related duties;
- (g) performing the lawful duties that the chief of police assigns;
- (h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-laws;
- (i) completing prescribed training;
- (j) a police officer has authority to act as such throughout Ontario;
- (k) a police officer has the powers and duties ascribed to a constable at common law.

[35] It is clear on a review of these sources that police enjoy broad, far ranging, and ever-changing duties. They exceed the enforcement of any specific legislation, and rather, speak to an officer’s role within society. The language in the *PSA* is revelatory in this sense in that it does not purport to identify every single one of an officer’s duties, but rather sets out some of the duties that this role includes. Courts have similarly long opted to not restrictively define officers’ duties, recognizing that “it would be difficult ... to reduce within specific limits the

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<sup>2</sup> The *PSA* was replaced on April 1, 2024 by the *Community Safety and Policing Act, 2024*, c. 2, Sched. 4, s. 1-6. See ss. 82(1), (2) and (3) (which are effectively identical).

general terms in which the duties of police constables have been expressed” (*R. v. Dedman*, [1985] 2 S.C.R. 2, at para. 20).

### ***Offence of Disobey Court Order – Section 127 – Count 7***

[36] The purpose of s. 127 of the *Code* is to ensure public order and confidence in the administration of justice (*R. v. Gibbons*, 2013 ONSC 1403, at para. 18). In *R. v. Clement*, [1981] 2 S.C.R. 468, the Supreme Court of Canada (“SCC”) dealt with the issue of jurisdiction where a criminal charge is laid for disobeying a Superior Court order in a civil matter. The Court found that the expression “lawful order made by a court of justice” contained in s. 127 of the *Code* (formerly s. 116(1)) “may refer to an order made by a court with reference to any proceeding, criminal or civil” (*Clement*, at p. 2):

There is nothing in the section or any related provision of the *Code* to which the attention of the Court was drawn which would indicate that the words “lawful order” should be given a restricted meaning and be made to apply only to an order made by a court in a proceeding with reference to the *Criminal Code*, *supra*, or any other penal statute of Canada. The restriction “other than an order for the payment of money” would appear to indicate that the order of the court referred to in the opening words of the subsection includes any court order, criminal or civil ... there is no limitative rule invalidating the proscription of the violation of a “lawful order made by a court of civil justice”. I would conclude that the words “a lawful order made by a court of justice” as employed in s. 116(1) refer to an order of a court either criminal or civil in nature. [Emphasis added.]

[37] In *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):

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.]

[38] 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).

### ***Modes of Liability – Overview of Section 21(1) – All Counts***

[39] Section 21(1) of the *Code* addresses the various modes of liability that apply to all seven counts charged in this case. 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).

[40] In *R. v. Briscoe*, 2010 SCC 13, at para. 13, the SCC made it clear that the law “does not distinguish between the principal offender and parties to an offence” for the purposes of determining criminal liability. The *Code* makes all offenders equally liable whether they are the perpetrators, aiders, or abettors (*Briscoe*, at para. 13). Effectively, under s. 21 of the *Code*, anyone who participates in a crime in any manner described in the section is a “party to an offence” (*R. v. Srun*, 2019 ONCA 453, at paras. 57). In other words, “persons who participate in the offence actually committed, whether as principal, or as an aider, or an abettor, have their culpability determined under s. 21(1) (*Srun*, at paras. 57-59). Section 21 of the *Code* therefore abolishes any distinction between principals and secondary parties (*Srun*, at para. 57).

### *Modes of Liability – Section 21(1)(a) – Principal and Co-Principals*

[41] As previously noted, a person can be a solo principal, or alternatively a principal alongside others. Section 21(1)(a) governs the liability of principals (*Spackman*, at para. 181). As *Spackman*, at para. 181 explains:

The provision applies where two or more people “actually commit” an offence and makes both persons individually liable for that crime. The provision also applies where two or more persons together form an intention to commit an offence, are present at its commission, and contribute to it, although each does not have to commit all the essential elements of the offence. Provided the trier of fact is satisfied beyond a reasonable doubt that an accused committed all elements of a crime, it is of no moment whether another person may also have committed it. [Citations omitted.] [Emphasis added.]

[42] Notwithstanding different labels by different courts (for example: “co-principals”, “joint-principals”, “co-perpetrators”, or “joint-perpetrators”), the SCC in *R. v. Strathdee*, 2021 SCC 40, at para. 4, echoed the explanation provided in *Spackman* regarding “joint / co-principal liability”. By way of illustration on this point, in *R. v. Strathdee*, 2020 ABCA 443, at para. 66 (cited with approval by the SCC in *Strathdee*, at para. 4) the Alberta Court of Appeal described liability in the context of a group assault on multiple victims finding that the only requirement for it is common participation – not common purpose:

A person participating in a group assault, whether involving a single victim or more than one, must accept the consequences which flow from this group action. Each assailant is not permitted to offer his or her individual involvement alone, ignoring for liability purposes, the effect of their collective actions. After all, each assailant necessarily advances and encourages the violence of the others and may also prevent or hinder others from coming to the aid of each other. All that is required for liability is common participation. [Citations omitted.] [Emphasis added.]

[43] Context is critical, particularly when examining liability in a group protest. In *Mammolita*, the ONCA was required to determine the degree of participation required for criminal culpability for mischief in the context of a legal labour dispute, where individuals wilfully obstructed or interfered with a right of access to a company plant (*Mammolita*, at para. 3). Liability as a principal could flow simply by an individual who forms part of a group which

constitutes a human barricade; standing shoulder-to-shoulder alone may constitute an obstruction (without saying or doing more) (*Mammolita*, at para. 12). The very presence of person in the context of a protest could – depending on the circumstances – constitute a positive act (*Mammolita*, at para. 12). 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:

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 by-passed. [Emphasis added.]

### ***Modes of Liability – Sections 21(1)(b) and (c) – Aiding and Abetting***

[44] Those who participate in a common act can be liable even if they don't participate in each act of the offence. Put in the context of mischief, even if a person does not participate in each act of “parking trucks, blaring horns, screaming or making loud noises” they can still be held criminally responsible (*Romlewski*, at para. 46). Aiding and abetting includes two requirements: conduct and fault (*R. v. Almarales*, 2008 ONCA 692, at para. 65). In *Almarales*, at paras. 65-66, the ONCA makes clear that aiding is not limited to offences committed by a single principal and a person can be party to a crime as an aider if the person:

- a. Does something that helps the (or, a) principal to commit the offence [the conduct requirement]; and
- b. Provides the assistance with the intention of helping the (or, a) principal to commit the offence [the fault requirement].

[45] Conduct for both aiding or abetting can include acts, omissions (where there is a legal duty to act), words, and gestures (*Almarales*, at para. 65). The fault requirement consists of two



elements: (1) an intention to help (aiding) and/or encourage (abetting) the principal, and (2) knowledge of the principal's intention (*Almarales*, at paras. 70, 72). Though knowledge requires an aider to know that the principal intends to commit the crime, they need not know precisely how it will be committed (*Briscoe*, at para. 17). Knowledge can be acquired in any number of ways, and the means by which an aider obtains it is irrelevant for the purposes of determining culpability (*Almarales*, at para. 70).

[46] Similar to aiding, abetting is not confined to offences committed by a single principal. Abetting includes conduct and fault elements similar to those of aiding, as held in *Almarales*, at para. 67:

- a. Says or does something that encourages the (or, a) principal to commit the offence [the conduct requirement]; and
- b. Offers the encouragement by words or conduct with the intention of encouraging the (or, a) principal to commit the offence [the fault requirement].

[47] Importantly, for party liability to attach when determining whether an individual abetted, the Crown is not required to prove the identity of “the principal” or their specific role in the commission of the offence (*R. v. Cowan*, 2021 SCC 45, at para. 33). Effectively, abetting will include “encouraging, instigating, promoting, procuring, or supporting the offence” (*Remley*, at para. 97; *Romlewski*, at para. 81). Put another way, it is “doing something or omitting to do something that encourages the principal to commit the offence” (*Cowan*, at para. 32). Though the *mens rea* of abetting requires both intent and knowledge; specifically, that the abettor intended to assist the principal in committing the offence, there is no requirement that the abettor actually desire that the offence be committed (*Briscoe*, at para. 16). Further, there is no requirement that the abettor know the precise details of how the offence will be committed and willful blindness will suffice in the absence of actual knowledge as to whether the principal intends to commit the offence (*Briscoe*, at paras. 17, 25).

[48] As with principal liability, context is critical in determining whether an individual participated in an offence by aiding or abetting. In the context of a protest, as *Mammolita*, at para. 16 explains, “the act of assistance or encouragement may be the presence of the accused

at the scene of the crime during its commission, if they aider or abettor is there for that purpose”. Rightly stated, “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, *Mammolita*, at para. 17 instructs:

- a. There must be an act or omission of assistance or encouragement;
- b. The act must be done or the omission must take place with the knowledge the crime will be or is being committed; and
- c. The act must be done or the omission take place for the purpose (i.e., with intention) of assisting or encouraging the perpetrator in the commission of the crime.

[49] 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. 122, 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.

While the phrases set out above, and others, I am sure, could be used to explain the necessary connection between the accessorial act and the perpetrator’s commission of the crime, often the plain words “assistance”, “encouragement” or “help”, without more, will convey the same message. This is especially true where it is accepted that the alleged perpetrator was aware of the alleged acts of aiding or abetting when he or she committed the offence ... [Citations omitted.] [Emphasis added.]

[50] Distinguishing those who are “merely present at a scene” from those engaging in criminal conduct requires careful consideration of context, and particularly the overall effect of the activity (*Remley*, at para. 107). In *Romlewski*, at paras. 102 – 115, Doyle J. provides a useful

overview of some jurisprudence where this issue was considered. In brief summary, a few examples of presence amounting to criminal conduct in the context of protest can occur where:

- a. An individual's presence offered encouragement or assistance to other protesters (even where the individual does not "hands-on" engage in mischief);
- b. 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;
- c. Where the success of a demonstration depends on having a significant number of participants; or
- d. Where the purpose of the activity in question is not simply to communicate a political idea or voice protest.

[51] In another case, *Gandzalas*, the accused was convicted of mischief for his participation in the Freedom Convoy. The accused formed a daisy chain where a number of protesters linked arms and sat down while refusing to leave (*Gandzalas*, at p. 5). The accused was heard yelling "hold the line" as well as "tyranny" (*Gandzalas*, at p. 5). In that case, Dorval J. held that the Accused's yelling "hold the line" was "manifestly an expression of participation in the overall mischief" (*Gandzalas*, at pp. 12-13).

[52] The finding in *Gandzalas* and other cases appears to be consistent with the applicable principles for grounding party liability in the protest context set out in *Romlewski*, at para. 164:

- a. Mere presence alone at a protest is not sufficient to ground party liability (however presence alone may not be "mere when taken in context with a demonstration and may form a positive act);
- b. If the protest gains strength by numbers and depends on the participation of a large group, presence may be interpreted as encouragement; and
- c. Showing a sense of unity or solidarity with the actions of the principals sheds light on the purpose behind being at the protest.

[53] It is trite that something more than mere presence at a scene or passive acquiescence to the commission of an offence is not enough to establish liability under s. 21 of the *Code*. The

“something more must be something showing the party’s desire to associate themselves with the principal’s acts” (*R. v. Underwood*, 2022 ABKB 709, at para. 135; see also *R. v. Ouellette*, 2022 ABCA 40, at para. 135)

***Modes of Liability – Section 22 – Counselling – Counts 1, 2, 3, and 7***

[54] “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).

[55] In *Mugesera*, the SCC considered overturning 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 (*Mugesera*, at para. 94). 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 he counsellor intend the commission of the offence counselled, will obviously satisfy the requisite mental element for the offence of counselling. [Citations omitted.] [Emphasis added.]

[56] 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:

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. [Emphasis in original.]

[57] 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 counseled was actually persuaded: “the focus on a prosecution for counselling is on the counsellor’s conduct and state of mind, not that of the person counselled” (*Hamilton*, at para. 74). Furthermore, counselling by procuring or inciting does not require the inciter to have originated or initiated the transaction; a person may be convicted even where the plan originates from the person alleged to have been incited (*Root*, at para. 85).

[58] As noted throughout the Crown’s submissions, context is critical. *R. v. Jeffers*, 2012 ONCA 1, is informative as to what is not counselling, as assessed contextually. At paras. 26-27, the Court spoke of the necessity to consider the circumstances in which counselling occurs:

The trial judge was required to approach her analysis of the poster from the perspective of the ordinary, reasonable person. In doing so, she was required to look beyond the words on the page to consider the context or circumstances in which the poster was made, including the manner in which the words were communicated and the relationship between the writer and the subject of the alleged invitation to kill.

She was also required to inquire into Mr. Jeffers subjective state of mind. She had to take account of not only Mr. Jeffers’ direct evidence, but as well of the various pieces of circumstantial evidence that told of his intention. [Citations omitted.] [Emphasis added.]

[59] *Jeffers* involved an accused who was charged and convicted of counselling murder and mischief after he was discovered gluing posters to road signs that read: “the Jeffers family fear for their life” and – on a poster featuring a photograph of the city councilor - “Murder ... help” as well as “Councilor Thompson. Help black. We black”. The accused maintained that his intent was to draw attention to his family’s economic issues. In overturning his conviction and finding that the trial judge erred in conclusion, the ONCA noted that her analysis did not consider “the context of the alleged offence, including the collective message of the posters, the appearance of the words, the lack of motive, the steps Mr. Jeffers took to ensure that he could be identified, and Mr. Jeffers’ personal background” (*Jeffers*, at para. 31).

[60] Conversely, in *Pawlowski*, the accused was charged and ultimately convicted of a number of offences in relation to his involvement at a protest in Coutts, Alberta. The accused did not participate in a blockade of the highway, but did give a speech at a nearby venue (*Pawlowski*, at para. 17). At the time the accused gave his speech, the court held that he would have been aware of the blockade, which was confirmed by his opening remarks: “Don’t you dare break the line” (*Pawlowski*, at para. 29). In ascertaining whether the accused was communicating information only, the court examined the context of the speech (where, when, to whom it was delivered), as well as its content (*Pawlowski*, at paras. 38, 42). The court rejected the argument that there can be no counselling for an offence already in progress, relying in part on ONCA jurisprudence (*Pawlowski*, at paras. 55-56):

Our courts have consistently held that counselling by procuring or inciting another person does not require that the inciter originate or initiate the transaction. In other words, a person may be convicted of incitement and thus counselling, although the plan originated with the party alleged to have been incited. I disagree that counselling requires a causal connection between the words spoken and the commencement of the mischief.

As well, in situations such as the blockade, the offence is ongoing, lasting for a period of over two weeks. In such cases, inciting individuals to continue with the offence is no less serious than inciting individuals to initiate the offence. The harm counselled remains the same. [Citations omitted.] [Emphasis added.]

[61] It should also be noted that pursuant to s. 22(1) of the *Code*, where a person counsels another person to be a party to an offence, and that offence is ultimately committed, it makes the person who counselled the offence a party to that offence notwithstanding that the offence was committed in a way different from that which is counselled. This marks a substantial difference between counselling and aiding or abetting. The counselling is complete once the solicitation or incitement occurs, even if accused’s audience rejects or merely feigns assent to it (*Root*, at para. 86).

### *Co-conspirators Exception to the Hearsay Rule – The “Carter Exception”*

[62] For ease of reference, the Crown’s statement of law from its “*Carter* Application” is replicated in this section.<sup>3</sup>

[63] It is long accepted that partners in a criminal venture bind one another with their acts and words (*R. v. Carter*, [1982] 1 S.C.R. 938). The co-conspirators exception to the hearsay rule – a traditional exception – survived the shift to the principled approach developed over years of jurisprudence. Both the ONCA in *R. v. Chang*, (2003), 173 C.C.C. (3d) 937 (Ont. C.A.) and the SCC in *R. v. Mapara*, [2005] 1 S.C.R. 358, at para 3, considered the issue and concluded that the exception passed muster. Statements that meet the test set out in *Carter* continue to be presumptively admissible (*R. v. N.Y.*, 2012 ONCA 745, at para. 67). The Courts did, however, create a narrow opening for the defence to object on the basis that the necessity and/or reliability of the principled approach were not met, notwithstanding the traditional *Carter* criteria having been satisfied (*Mapara*, at para. 34). With that said, in *Mapara*, at para. 34, the SCC notes that this would be a rare and limited exception to the general operation of the co-conspirators exception.

[64] In *Mapara*, at para. 27, the Court concluded that the conditions of the *Carter* rule provide sufficient guarantees of trustworthiness required to permit the evidence to be received. Of this conclusion, McLachlin C.J.C. (as she then was) wrote at para. 28:

This conclusion makes practical sense. First, the rule does not operate unfairly to accused persons. Indicia of reliability exist. In this way, unreliable evidence that is likely to mislead the jury can be excluded. It remains open to the accused to cross examine the deponent, call contrary evidence, and argue the unreliability of the co-conspirators’ evidence before the jury. Moreover, it is not unfair to expect people who enter into criminal conspiracies to accept that if they are charged, the evidence of their co-conspirators about what they said in furtherance of the conspiracy may be used against them. Finally, the hearsay rule is supplemented by the discretion of the trial judge to exclude evidence where its prejudicial effect outweighs its probative value ... [Emphasis added.]

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<sup>3</sup> **Note:** Cases relied upon for the *Carter* portion of these materials have not been replicated in the Table of Authorities nor the Crown Closing Book of Authorities. Please refer to the Crown’s “*Carter* Application Book of Authorities” for them.

[65] The co-conspirators exception to the rule against hearsay is based in agency law; that each party to a conspiracy or criminal venture has implicitly authorized the other parties to act or speak on their behalf in furtherance of the conspiracy (*Chang*, at para. 55). Thus, acts and declarations of one party can therefore be admitted as evidence against the others (*Chang*, at para. 55). In *Mapara*, at para. 8, the rule was described by McLachlin C.J.C. (as she then was) as follows:

The co-conspirators' exception to the hearsay rule may be stated as follows: "Statements made by a person engaged in an unlawful conspiracy are receivable as admissions against all those acting in concert if the declarations were made while the conspiracy was ongoing and were made towards the accomplishment of the common object." Following *Carter*, co-conspirators' statements will be admissible against the accused only if the trier of fact is satisfied beyond a reasonable doubt that a conspiracy existed and if independent evidence, directly admissible against the accused, establishes on a balance of probabilities that the accused was a member of the conspiracy.

[66] The leading case setting out the requirements for admissibility of such evidence remains *Carter*, where a three-part process was outlined at pp. 4-5, as follows:

- a. The Crown must prove *beyond a reasonable doubt* that there was a conspiracy or a common criminal enterprise;
- b. The Crown must prove on a *balance of probabilities* that the individual accused was a member of the conspiracy or criminal enterprise; and
- c. The trier of fact may then consider any act or declaration of any of the members made in furtherance of the conspiracy or enterprise in determining the accused's guilt.

[67] The essence of a conspiracy is an agreement. The offence was described in *Papalia v. The Queen*, [1979] 2 S.C.R. 256, at pp. 276-77 (S.C.C.) by Dickson J. (as he then was) as follows:

The word "conspire" derives from two Latin words, "con" and "spirare", meaning "to breathe together". To conspire is to agree. The essence of criminal conspiracy is proof of agreement. On a charge of conspiracy, the agreement itself is the gist of the offence. The actus reus is the fact of agreement. The agreement reached by the co-conspirators may contemplate a number of acts or offences. Any number of



persons may be privy to it. Additional persons may join the ongoing scheme while others may drop out. So long as there is a continuing overall, dominant plan there may be changes in methods of operation, personnel, or victims, without bringing the conspiracy to an end. The important inquiry is not as to the acts done in pursuance of the agreement, but whether there was, in fact, a common agreement to which the acts are referable and to which all of the alleged offenders were privy. [Emphasis added.] [Citations omitted.]

[68] In *Root*, at para. 68, Watt J.A. emphasized that the roles of conspirators may differ widely and participants “need not know each other, nor need they communicate directly with one another”. Further, the parties are not required to know the details of the common scheme, though must be aware of the nature of the common design and be adherent to it (*Root*, at para. 68). Lastly, each conspirator does not have to commit or intend to commit personally the offence agreed upon (*Root*, at para. 68).

[69] In the context of the co-conspirators exception to the hearsay rule, it is important to note that an accused *need not* face a conspiracy charge to rely on this exception. The exception can apply where there is a common intention, design, or enterprise in prosecutions of substantive offences (*N.Y.*, at para. 88). In *N.Y.*, the ONCA found the trial judge’s application of the co-conspirators exception to the hearsay rule to the participation in or contributions to a terrorist group appropriate, stating at para. 88:

In any event, although this is a case involving participation in or contribution to the activities of a terrorist group, I am satisfied that the trial judge’s application of the co-conspirators’ exception to the hearsay rule was correct. The principles rendering out-of-court acts and declarations of co-conspirators done or made in furtherance of the conspiracy presumptively admissible can apply, by analogy, to similar acts and declarations of participants in the activities of the terrorist group where a common criminal intent or joint criminal enterprise relating to the activities of the terrorist group is established. I agree with the trial judge’s view that the co-conspirators’ exception extends beyond conspiracies to other situations where there is a common criminal intent or design or a common criminal enterprise. [Emphasis added.] [Citations omitted.]

[70] It should also be noted that the scope of the conspiracy or common intent need not be the same as the offence charged, but will depend on the nature of the agreement, which may be broader in scope. For example, in *R. v. Trudel* (2004), 182 C.C.C. (3d) 321, at para. 118 (Ont.

C.A.) a common design was held to be more than a simple conspiracy to murder; it was also made for the purpose of intimidating other drug dealers, to ensure they paid their debts.

[71] The SCC in *R. v. Starr*, [2000] 2 S.C.R. 144 made clear that the principled approach to the admission or exclusion of hearsay evidence reigns supreme over the traditional exceptions to the hearsay rule, which must only be maintained if they can be justified on the basis of the governing principles of necessity and reliability (*Starr*, at para. 38; *Chang*, at para. 91). With that said, if a traditional exception is maintained, such as the co-conspirators exception, it should “be the unusual or exceptional situation only, in which evidence that comes within the exception would be excluded because of failure to satisfy the necessity and reliability criteria” (*Chang*, at para. 96; see also *Mapara*, at para. 34). The co-conspirators exception to the hearsay rule indeed meets the requirement of the principled approach to the hearsay rule (*Mapara*, at para. 31)

[72] Necessity can be “clearly” met in cases where the declarant is not available to testify – for example, because they can’t be located or are deceased, or where they are a co-accused and therefore not compellable to give evidence by either Crown or accused (*Chang*, at para. 102). In cases of co-accused, it cannot be argued that the Crown could have charged each declarant separately as it is within its discretion to proceed against alleged co-conspirators jointly (*Chang*, at para. 103).

[73] In terms of reliability, statements which satisfy the co-conspirators exception also usually meet the reliability criteria, most crucially because of the “in furtherance” requirement. This component of the rule restricts its application to speech, which is intrinsically part of, or closely connected to, the commission of the crime at the heart of the conspiracy. As McLachlan C.J.C. explained in *Mapara*, at para. 26:

... the final *Carter* requirement, i.e., only those hearsay statements made in furtherance of the conspiracy can be considered, provides guarantees of reliability in the more immediate circumstances under which the statement is made. “In furtherance” statements “have the reliability-enhancing qualities of spontaneity and contemporaneity to the events to which they relate”. They have *res gestae*-type qualities, being “the very acts by which the conspiracy is formulated or

implemented and are made in the course of the commission of the offence” This “minimizes the motive and opportunity for contrivance”. [Citations omitted.]

### **(iii) Application<sup>4</sup>**

#### *The Evidence, Generally<sup>5</sup>*

[74] The Freedom Convoy was not a lawful protest. Nor was it peaceful. The testimony from Ottawa residents, business owners and employees, city officials, and police officers was confirmed in large part by media and documentary evidence and overwhelmingly established the existence of a large-scale group mischief occasioned upon the city of Ottawa between January 28, 2022 and February 20, 2022. It is irrefutable that:

- a. Numerous downtown streets were either fully blocked or partially obstructed throughout the protest period by large trucks, vehicles, makeshift structures, and demonstrators;
- b. For extended periods of time there was excessive noise generated from the honking of horns, fireworks, and parties;
- c. There was air pollution in the form of diesel fumes from the running trucks; and
- d. There were certain demonstrators who acted in an intimidating, harassing, or threatening manner toward Ottawa residents, business owners, and their employees.

[75] The result of this activity over an extended period created intolerable conditions for some downtown residents, employees, and business owners and deprived others of their right to the peaceful and lawful enjoyment of public and private spaces. Inferences regarding the severity of the interference caused by the occupation can also be drawn from the various states of emergencies that were declared, the multiple injunctions granted as a result of the mischief, negotiations between demonstrators and city officials, and the unprecedented police response

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<sup>4</sup> **Special Note:** Examples from evidentiary sources contained in these materials are non-exhaustive and do not represent the entirety of the evidence that may be relied upon to prove an offence. This factum simply provides examples. The whole body of evidence must still be considered.

<sup>5</sup> **Special Note:** Specific examples from the evidence will be identified further in these materials. This section simply provides an overview.

required to restore public order.<sup>6</sup> Even for the most noble cause, there exists no right to occupy a city in this manner because there is no constitutional protection for “gatherings that employ physical force, in the form of enduring or intractable occupations of public space that block local residents’ ability to carry out the functions of their daily lives in order to compel agreement [with the protestors’ objective]” (*Canadian Frontline Nurses v. The Attorney General of Canada*, 2024 FC 42, at para. 313). Put another way, “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).

[76] The evidence adduced at this trial is consistent with evidentiary records in other related proceedings, where courts have found, among other things:

- a. The Freedom Convoy created “intolerable conditions for many residents and workers in the district” (*Canadian Frontline Nurses*, at para. 35)
- b. The Freedom Convoy “[p]laced downtown Ottawa in a standstill affecting private citizens and businesses” (*Romlewski*, at para. 264).
- c. The Freedom Convoy deprived residents “of the most basic use and enjoyment of their property – the right to a peaceful night’s sleep and the right to move freely in their own neighbourhood” (*Romlewski*, at para. 25 (citing Wadden J.’s findings)).
- d. The Freedom Convoy “interfered with property by blocking streets, creating excessive noise and harassing residents” (*Romlewski*, at para. 26 (citing Wadden J.’s findings)).
- e. The Freedom Convoy “was not a peaceful assembly protected by s. 2 of the *Charter*” (*Romlewski*, at para. 202).
- f. “It is indisputable that the Freedom Convoy obstructed, interrupted, and interfered with the lawful enjoyment or use of property of thousands of residents of the City of Ottawa. It is further indisputable that the extent of this harm, considering but not limited to, the number of persons affected, the length of time over which it occurred, the economic harm caused to persons in businesses, the massive if not unprecedented use of police and emergency resources, the stress and anxiety experienced by numerous citizens, the risk to public safety, the effect of the Freedom Convoy was to commit mischief on a

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<sup>6</sup> Exhibit 1 – Admissions #1, at para 2.

massive scale” (*R. v. Decaire*, 2023 CarswellOnt 12939, at paras. 170-171 (C.J.)).

- g. “The Freedom Convoy was not peaceful” (*Gandzalas*, at p. 13).
- h. In the context of a “Freedom” demonstration in April 2022 with a convoy of vehicles blocking public roads in downtown Ottawa and protesters facing-off against police, “Hold the Line” is an encouragement to commit mischief (*R. v. Blanchfield*)

[77] Further, while the Freedom Convoy was generally comprised of convoys from all over Canada, the only positive evidence (discussed in greater detail below) that exists of the occupation’s overarching purpose is in relation to pressuring the Government of Canada to end COVID-related restrictions. While it is reasonable to assume that other individuals may have been present for other reasons, there is no evidence of exactly what those reasons are. There is no evidence that these other individuals represented the majority or even many of the demonstrators in Ottawa. In fact, social media posts from Barber and Lich as well as the Freedom Convoy 2022 Facebook page, a review of the signage present in downtown Ottawa (in photos and videos), the list of demands presented by demonstrators, as well as the nature of speeches that were made on Parliament Hill make clear that the overwhelming reason of thousands of those who congregated in downtown Ottawa was in relation to ending the COVID-19 restrictions. With that said – at the very minimum – it is irrefutable that Barber and Lich’s purpose for attending Ottawa was to pressure the Canadian government to end COVID-19 restrictions. The Crown maintains that both Barber and Lich had great influence on demonstrators; however, there is no requirement that the Crown prove that the pair had influence over every, or even any, individual who attended the city for the Freedom Convoy in order to make out the offences charged.<sup>7</sup>

[78] It is admitted that Lich was a leader, an organizer, and an authorized spokesperson for the Freedom Convoy.<sup>8</sup> The same admission does not exist for Barber; however, the evidence establishes beyond a reasonable doubt that he too was a leader, organizer, and spokesperson

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<sup>7</sup> Ultimately, if convicted, the Court’s findings in relation to influence become a matter for sentencing.

<sup>8</sup> Exhibit 1 – Admissions #1, at para. 4.

for the group. There is direct evidence of this: Barber acknowledges his role as an organizer in his own words at a press conference, as well as in various text message exchanges.<sup>9</sup> In addition, Barber’s leadership role can also be inferred from circumstantial evidence: individuals address him as a leader in his text messages and press conferences (and he does not correct them); he is a point of contact for journalists (Sean Hannity, Tucker Carlson, and Wall Street Journal, for example); he and Lich were directly involved in negotiations with the mayor of Ottawa’s office; he was a point of contact for police (Police Liaison Team (“PLT”) members) and other city officials (Kim Ayotte (“Ayotte”)); and he acted as a liaison between them and certain demonstrators. Further, in his text messages and Tik Tok videos, Barber makes frequent reference to attending meetings with other Freedom Convoy leadership as well as comments suggesting that he works around the clock. Lich, an admitted leader and organizer, asks Barber to join her at a meeting to discuss gridlocking the city and indicates that she does not want to make decisions without him. Barber (along with Lich) is also on the Board of Directors in the Freedom 2022 Human Rights and Freedoms Corporation.<sup>10</sup> In addition to being a leader and organizer, the evidence overwhelmingly establishes that like Lich, Barber is no lone, ordinary demonstrator. The pair did not attend Ottawa to simply convey a message. They were anything but mere bystanders.

[79] With that said, it is also evident that Barber and Lich wielded a tremendous amount of influence over many demonstrators in Ottawa – their voices and messages were amplified via a (figurative) megaphone. Again, the Crown need not prove that the pair influenced every or any demonstrator throughout the occupation to make out the offences charged. For example, the evidence is clear that they did not control Farfada, the group planted at the intersection of Rideau and Sussex. However, Barber and Lich’s prominence and reach, or “megaphone”, becomes evident when examining their own words, in conjunction with other circumstantial and direct evidence. A non-exhaustive list of examples is as follows:

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<sup>9</sup> Exhibit 30 – Press Conference, February 7, 2022 (Transcript at Exhibit 30A, p. 7).

<sup>10</sup> Exhibit 133 – Incorporation Documents.

- a. **Text Messages:** Individuals seeking and receiving direction from Barber, news outlets seeking interviews, other demonstrators requesting assistance and direction, politicians requesting meetings, individuals reacting to “jokes” put out on social media by Barber;
- b. **Negotiations:** The Mayor’s office only negotiated with the Freedom Convoy (Lich, Barber, *et al*) and no other group (and Barber was subsequently able to influence individuals to move trucks to Wellington Street), Ottawa Police Service (“OPS”) negotiated extensively with Barber. Ayotte had a direct line with Barber;
- c. **The Freedom Convoy 2022:** There is no evidence of any other group present with their own team of lawyers, command centers, dedicated individuals responsible for public relations, security, a finance committee (and other functions), as well as conducting press conferences, intelligence and daily updates;
- d. **Finances:** Ability to generate millions of dollars in donations. Evidence of distribution of some funds to truckers on the ground;
- e. **Public Perception:** References to Lich as “the spark that lit the fire”, meetings with politicians and journalists, “Big Red” appearing in Southwest Booster, Barber being treated as a celebrity by demonstrators while circulating in downtown Ottawa;
- f. **Social Media:** Thousands of followers and interactions with posts on the Freedom Convoy 2022 Facebook page, as well as on Barber and Lich’s social media accounts;
- g. **Rallying Cries:** “Hold the Line” was a prominent phrase used throughout the occupation, as was “Freedom”, and “Love over Fear”, which were phrases used by both Barber and Lich. Similarly, signs featuring the slogans like “Fuck Trudeau” as well as “Mandate Freedom” were also seen throughout downtown Ottawa;
- h. **Litigation:** Barber and Lich are both named, among others, as defendants in multiple injunctions related to honking, as well as in a civil lawsuit for damages;
- i. **Audience:** Barber and Lich do not direct any of their messages to a particular group or specify their requests to a particular demographic of demonstrator (or convoy). Instead, they address demonstrators broadly. For example, in a Tik Tok video dated February 4, Barber states “guys, share this, get this out there. All those trucks in the yards need to hear this message ...”.<sup>11</sup> In another video, Barber states “this word is going out to everybody in the trucks around the city”.

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<sup>11</sup> Exhibit 17.

Barber acknowledges starting a worldwide movement.<sup>12</sup> Barber also claimed that “we have the truckers, and we have the farmers”.<sup>13</sup> The only time that a particular “group” is identified in messaging is if a reference to Freedom Convoy 2022 is made, for example, on February 2, 2022, Barber posted a Tik Tok video stating “so, um, Freedom Convoy 2022, I’d like everybody to see somebody ...” before introducing Lich and explaining that “she’s not ran away with the money ... we’re trying to organize”.<sup>14</sup> It can be inferred that Freedom Convoy 2022, given its size and prominence, signifies the demonstration at large. Furthermore, in a Tik Tok video dated February 4, discussing donations, Lich states “they’re going to make sure that we get that money to the truckers that are on the ground that need it the most”, again not identifying a specific group but rather speaking broadly.<sup>15</sup> This broad language is evidenced again in a further Tik Tok on the same date, where Lich refers to “truckers” broadly.<sup>16</sup> On February 11, Lich publicly thanks “all the truckers who came out here who are fighting for your rights and freedoms”.<sup>17</sup> In posts to the Freedom Convoy 2022 Facebook page, Lich addresses her “fellow freedom loving Canadians”, and after explaining her observations of the demonstration, she explains that “we are all one big family now” and “Canada, we got this.”<sup>18</sup>

[80] The only reasonable inference that can be drawn from this constellation of evidence is that Barber and Lich were individuals with significant influence. In other words, they were much more than ordinary demonstrators. They were leaders of a movement, which Lich herself described in possessive terms: “*our* movement has grown in Canada and across the world because common people are tired of the mandates and restrictions.”<sup>19</sup> Without their megaphone, the Mayor’s office would not have seen fit to negotiate with them – it would have accomplished nothing; the police would not have liaised with them – it would have accomplished nothing; millions of dollars in donations would not have been possible; there would be no requirement for press conferences, command centers, lawyers; and politicians and the media would not have been inclined to speak to them. Through their influence, Barber and Lich were able to bring demonstrators to Ottawa and keep them here in order to pressure the government to drop COVID- restrictions. Indeed, that is exactly what they instructed others to

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<sup>12</sup> Exhibit 18.

<sup>13</sup> Exhibit 20.

<sup>14</sup> Exhibit 21.

<sup>15</sup> Exhibit 35.

<sup>16</sup> Exhibit 36.

<sup>17</sup> Exhibit 46.

<sup>18</sup> Exhibit 39A, at p. 10.

<sup>19</sup> Exhibit 57 – Press Conference, February 3, 2022 (Transcript at Exhibit 57A, at p. 2) [Emphasis added].



do. Further to this, it is through their prominence in the occupation that they, along with other figureheads, were named in two injunctions and a lawsuit. As Barber stated in a Tik Tok video he posted on February 2, 2022 with Lich “we are, uh, absolutely overwhelmed with all of the attention and all of the stuff that’s going on”.<sup>20</sup> In a Tik Tok video posted on February 12, 2022, a demonstrator tells Barber “I cannot thank you enough ...thanks to people like you, who I now know are heroes ... from the bottom of my heart, with all of my heart and soul, I will never be able to thank you enough or express my gratitude”.<sup>21</sup> This, in addition to numerous text messages on Barber’s phone thanking him and hailing him a hero.

[81] Not only did Barber and Lich metaphorically stand shoulder-to-shoulder with other Freedom Convoy demonstrators through their assistance, encouragement, organization, and influence, but they also *physically* stood alongside them. Throughout the occupation, both Barber and Lich circulated through the downtown core and met with demonstrators. Barber’s truck, “Big Red”, was among those that blocked and obstructed Wellington Street. Barber and Lich were not mere bystanders. They did not even remain at an arm’s length from what was transpiring in downtown Ottawa. Through their words and actions, both Barber and Lich played an active role in holding the line and advancing the cause they shared with thousands of others. In so doing, they crossed the line.

***Count #5– Section 423(1)(g) – Barber and Lich Unlawfully and without Authority, Blocked and/or Obstructed Highways for the Purpose of Compelling the Government of Canada to Drop COVID-19 Related Mandates***

[82] The obstructing and blocking of streets to which the public would ordinarily have a right of access in downtown Ottawa during the offence period is chronicled in the evidence through *viva voce* testimony of witnesses, as well as media and documentary materials. One need only look to the Compilation Video and various photographs to see numerous streets in the demonstration area over several offence dates that are either completely blocked or obstructed by vehicles, demonstrators, and miscellaneous items like tents and makeshift structures.<sup>22</sup>

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<sup>20</sup> Exhibit 21.

<sup>21</sup> Exhibit 50 (Transcript at Exhibit 50A, at pp. 3-4).

<sup>22</sup> Exhibit 3 – Compilation Video; And see for example: Exhibits 98 and 115.

These blocked or obstructed streets are also depicted in video posts made on social media and photographs featuring Barber and Lich circulating among demonstrators and parked vehicles in the demonstration area.<sup>23</sup> One of the vehicles depicted in media includes “Big Red”, Barber’s truck that was parked on Wellington Street from his arrival on January 28, 2022 until he ultimately removed it on February 8, 2022.<sup>24</sup> For daily examples of blocked or obstructed roads in downtown Ottawa, see **APPENDIX A**.

[83] Numerous witnesses testified about the gridlock of vehicles and obstruction on Ottawa streets caused by the Freedom Convoy. Detective Craig Barlow (“Barlow”), who reviewed days of video footage related to the Freedom Convoy testified that he observed things like children playing hockey on Wellington Street, as well as a bouncy castle set up.<sup>25</sup> Inspector Russell Lucas (“Lucas”), the OPS Incident Commander, stated that Freedom Convoy organizers were 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”.<sup>26</sup> Lucas believed that the emergency lanes “were gone more than we had them”.<sup>27</sup> Kim Ayotte, the city’s Manager of Emergency and Protective Services, also observed that all of Wellington was blocked with no emergency lanes open.<sup>28</sup> Ayotte recalled seeing “various different activities set up, speakers ... people playing music right in the middle of the road and dancing” for which permits would have been required, and bouncy castles and hot tubs being put on sidewalks.<sup>29</sup> The evidence from Ayotte and Lucas is confirmed by numerous photographs and

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<sup>23</sup> See for example: Exhibit 13, 14 (Barber walking down Wellington), Exhibit 19 (Barber showing a slow roll of honking tractor-trailers), Exhibit 20 (Barber filming a number of trucks at an intersection honking), Exhibit 26 (Barber filming a number of trucks parked along Wellington), Exhibit 31 (Lich showing trucks blocking Rideau and Sussex), Exhibit 32 (Lich on Wellington Street), Exhibit 37 (“Papawolf” video featuring Barber and Lich on Wellington Street among parked vehicles), Exhibit 50 (Barber filming blocked intersection), Exhibit 54 (Lich with demonstrators on Wellington Street), Exhibit 39A at page 132 (Barber and Lich in front of the Justice Building on Wellington Street), and Exhibit 135, Volume I, Tab 32 (Text #1284), page 11 (Barber and Lich in front of “Big Red” on Wellington Street).

<sup>24</sup> Exhibit 127, at pp. 59-60, 79; Exhibit 125.

<sup>25</sup> Transcript of Proceedings, September 5, 2023, at p. 39.

<sup>26</sup> Transcript of Proceedings, September 6, 2023, at p. 80.

<sup>27</sup> Transcript of Proceedings, September 6, 2023, at p. 99.

<sup>28</sup> Transcript of Proceedings, September 20, 2023, at p. 18.

<sup>29</sup> Transcript of Proceedings, September 20, 2023, at p. 18, 25.

videos that show Wellington Street and elsewhere completely blocked by traffic and demonstrators at various points throughout the offence period.<sup>30</sup>

[84] Several downtown residents and employees also confirmed the existence of blocked or obstructed streets and the impact it had on their ability to conduct day-to-day tasks. Sarah Gawman (“Gawman”), a downtown resident, 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.<sup>31</sup> Natalie Huneault (“Huneault”), the Business Projects and Events Coordinator for OC Transpo, confirmed that the Freedom Convoy caused a widespread disruption to public transportation. Specifically, that bus and other OC Transpo services were impacted 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.<sup>32</sup> In response to road closures as a result 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.<sup>33</sup> Approximately 150 stops were not in use because OC Transpo was not able to serve the roads that those stops were on.<sup>34</sup>

[85] Zexi Li (“Li”), another downtown resident, also testified as to her observations of traffic during the offence period. Li recalled that there were trucks, cars, and transport trucks parked in intersections and some vehicles with their wheels removed.<sup>35</sup> Li made observations of intersections that were at times fully blocked off. She also stated that occasionally certain vehicles would be moved which in turn removed the blockage.<sup>36</sup> 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.<sup>37</sup> Li stated that based on her observations, the concentrated areas appeared to be Bank Street between Laurier

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<sup>30</sup> See for example: Exhibits 3, 31, 37, 85, 98, and 115.

<sup>31</sup> Transcript of Proceedings, October 12, 2023, at p. 6.

<sup>32</sup> Transcript of Proceedings October 13, 2023, at p. 33-34.

<sup>33</sup> Transcript of Proceedings, October 13, 2023, at pp. 31, 32, 37, 38, 45.

<sup>34</sup> Transcript of Proceedings, October 13, 2023, at p. 36-37.

<sup>35</sup> Transcript of Proceedings, October 16, 2023, at p. 14.

<sup>36</sup> Transcript of Proceedings, October 16, 2023, at pp. 22-23.

<sup>37</sup> Transcript of Proceedings, October 16, 2023, at pp. 22-23.

and Gloucester Streets, Kent, Wellington, and Metcalfe Streets.<sup>38</sup> Li observed that certain roads were blocked for the entirety or majority of the demonstration.<sup>39</sup>

[86] It was vehicle blockades like this that prevented Paul Jorgenson (“Jorgenson”) from leaving his residence at the corner of Kent Street and Laurier Avenue. Jorgenson testified that the exit and entrance to the building where he resided was completely blocked by vehicles.<sup>40</sup> 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.<sup>41</sup> Jorgenson explained that he made a number of unsuccessful attempts at departing in this manner.<sup>42</sup> At times, he 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”.<sup>43</sup> 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: “It was chockablock full. There was not any space to manoeuvre anything. You wouldn’t have even been able to manoeuvre a motorcycle in between those vehicles. It was chockablock full. The entire street north of Gloucester entirely blocking my ability to leave.”<sup>44</sup> The “chockablock” traffic was similarly confirmed by another downtown resident, Stephane Bellfof (“Bellfof”) who testified as to having observed a lot of traffic that “wasn’t moving”.<sup>45</sup> Though Bellfof’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.<sup>46</sup> The same was true for Vivian Leir (“Leir”), a Church Administrator at St. Andrew’s Presbyterian Church on Kent Street at Wellington Street, who indicated that she was unable to take her vehicle to work as she normally did and described the street as “gridlock” and difficult for traffic to move.<sup>47</sup> Serge

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<sup>38</sup> Transcript of Proceedings, October 16, 2023, at p. 23.

<sup>39</sup> Transcript of Proceedings, October 16, 2023, at p. 33.

<sup>40</sup> Transcript of Proceedings, October 16, 2023, at p. 79.

<sup>41</sup> Transcript of Proceedings, October 16, 2023, at p. 91.

<sup>42</sup> Transcript of Proceedings, October 16, 2023, at p. 82.

<sup>43</sup> Transcript of Proceedings, October 16, 2023, at p. 84.

<sup>44</sup> Transcripts of Proceedings, October 16, 2023, at p. 85, and October 17, 2023, at p. 7.

<sup>45</sup> Transcript of Proceedings, October 12, 2023, at p. 65.

<sup>46</sup> Transcript of Proceedings, October 12, 2023, at p. 67.

<sup>47</sup> Transcript of Proceedings, October 12, 2023, at p. 33, 41.

Arpin (“Arpin”), Chief of Staff to the former City of Ottawa mayor Jim Watson, described what he felt while walking in the demonstration area as “an uncomfortable place in which to be”.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> Arpin observed that some of the vehicles were 18-wheeler trucks, some were 2-axle trucks, and others were small delivery trucks.<sup>51</sup> Arpin believed that the vehicles on Metcalfe Street “were parked in a coordinated fashion all the way down the avenue”.<sup>52</sup> Arpin also stated that some of these vehicles were vacant, while others were occupied.<sup>53</sup>

[87] The observations made by downtown residents and employees of the road blockages and obstructions were consistent with one another. They were confirmed by photographic and video evidence and also 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”<sup>54</sup> Bach also indicated that as of January 31, she noticed that there were in fact some open lanes southbound on Wellington Street, with the exception of between Metcalfe Street and Elgin Street.<sup>55</sup> Across several dates, Bach, and Acting Sergeant Jordan Blonde (“Blonde”), another PLT member, made the following traffic observations:<sup>56</sup>

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<sup>48</sup> Transcript of Proceedings, September 21, 2023, at p. 63, 68-69.

<sup>49</sup> Transcript of Proceedings, September 21, 2023, at p. 63.

<sup>50</sup> Transcript of Proceedings, September 21, 2023, at p. 64, 65.

<sup>51</sup> Transcript of Proceedings, September 21, 2023, at p. 65.

<sup>52</sup> Transcript of Proceedings, September 21, 2023, at p. 65.

<sup>53</sup> Transcript of Proceedings, September 21, 2023, at pp. 65-66.

<sup>54</sup> Transcript of Proceedings, October 19, 2023, at p. 19.

<sup>55</sup> Transcript of Proceedings, October 19, 2023, at p. 23.

<sup>56</sup> Transcripts of Proceedings, Bach on October 19 and November 20, 2023, Blonde on October 27, 31, and November 1, 2023.

DATE	OBSERVATIONS
January 28, 2022	<ul style="list-style-type: none"> <li>- On Wellington Street, there were multiple camping trailers with generators capable of creating electricity.</li> </ul>
January 30, 2022	<ul style="list-style-type: none"> <li>- On Lyon Street at Queen Street, there were food tents with propane fryers.</li> </ul>
January 31, 2022	<ul style="list-style-type: none"> <li>- On Nicholas Street, there were 10 tractor-trailers on the west side of the northbound lanes. Other lanes were open;</li> <li>- On Metcalfe Street between Lisgar and Albert Streets, there were 50 tractor-trailers and passenger vehicles, but there was an emergency lane open on Metcalfe Street;</li> <li>- On Bank Street from Lisgar to Albert Streets, southbound emergency lane was open;</li> <li>- Kent Street was backed up from the 417 highway north to Wellington Street. All three lanes were completely blocked.</li> <li>- On Slater Street, all three lanes were blocked from Lyon Street to Kent Street.</li> <li>- On Nicholas Street northbound, there were 10 tractor-trailers and other lanes open.</li> </ul>
February 1, 2022	<ul style="list-style-type: none"> <li>- There were a grand-total of 633 tractor-trailers and 73 passenger vehicles;</li> <li>- The Sir John A. MacDonald (“SJAM”) from Booth to Bay Streets had 14 tractor-trailers and two campers on the on the eastbound lane, and 28 tractor-trailers and five campers on the westbound lane. This, in addition to approximately 10 to 15 personal vehicles;</li> <li>- SJAM emergency lanes were blocked;</li> <li>- On Queen Street from Bay Street to Bronson Avenue there were 10 tractor-trailers;</li> <li>- On Bank Street from Albert to Nepean Streets there were 18 tractor-trailers and 12 personal vehicles.</li> </ul>

	<ul style="list-style-type: none"> <li>- 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;</li> <li>- On Albert Street from Bank to O'Connor Streets, there were eight tractor-trailers;</li> <li>- On Metcalfe Street from Lisgar to Albert Streets, there were 33 tractor-trailers and 19 passenger vehicles;</li> <li>- On Wellington Street from Mackenzie King to Sussex Street, there were 10 tractor-trailers and 15 passenger vehicles;</li> <li>- On Wellington Street from Sussex to George Streets there were eight tractor-trailers; and</li> <li>- On Wellington Street from the Portage Bridge to Sussex Street there were approximately 400 tractor-trailers.</li> </ul>
February 2, 2022	<ul style="list-style-type: none"> <li>- Laurier Avenue and Kent Street were congested (were always quite congested).</li> </ul>
February 7, 2022	<ul style="list-style-type: none"> <li>- Kent Street from Wellington Street to the north and Gloucester Street to the south was fully blocked with vehicles. There were no lanes open for any type of movement; and</li> <li>- Laurier Avenue at Kent Street was the only opening on Kent Street for the movement of traffic.</li> </ul>
February 8, 2022	<ul style="list-style-type: none"> <li>- On Kent Street, there was no change from February 7, 2022. The roadway was completely blocked with vehicles; and</li> <li>- Demonstrators on Kent Street between Nepean and Gloucester Streets made it very known that they were not willing to move any vehicles.</li> </ul>
February 9, 2022	<ul style="list-style-type: none"> <li>- At the Baseball Stadium there were approximately 20 tractor-trailers and 60 personal vehicles. There were also campers and trailers.</li> </ul>
February 10, 2022	<ul style="list-style-type: none"> <li>- On Slater Street between Bank and O'Connor Streets, there were three camper vans, four personal vehicles and one bobtail. Only one lane was open; and</li> <li>- On Bank Street between Albert and O'Connor Streets, there were five bobtails, a mobile diesel truck (appeared to be carrying fuel</li> </ul>

	or had the ability to carry fuel), and a camper on a truck as well as personal vehicles.
February 11, 2022	<ul style="list-style-type: none"> <li>- Kent Street between Cooper and Wellington Streets was fully congested with all lanes blocked north and south.</li> <li>- The SJAM westbound lanes were open and there were still four bobtails, 10 personal vehicles, and three campers parked on the shoulder; and</li> <li>- 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.</li> </ul>
February 15, 2022	<ul style="list-style-type: none"> <li>- 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.</li> <li>-</li> </ul>
February 18, 2022	<ul style="list-style-type: none"> <li>- Kent Street was backed up all the way to Lisgar Street, so Wellington Street to Lisgar Street to the south.</li> </ul>

[88] As previously noted, vehicles were not the only things blocking or obstructing the roads throughout the demonstration area. Barlow observed a bouncy castle and a hockey game. Similarly, Bach observed hockey games.<sup>57</sup> Blonde testified that he was called to attend Confederation Park on February 3, 2022 in response to individuals erecting a permanent structure, which was also observed by Ayotte.<sup>58</sup> At the same location, Ayotte observed a kitchen and logistics centre set up on the road, just next to Confederation Park as well as firewood piles.<sup>59</sup> In the middle of the intersection at Wellington Street at Metcalfe Street, Blonde observed a water-cooler bottle that people were placing money into.<sup>60</sup> 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.<sup>61</sup>

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<sup>57</sup> Transcript of Proceedings, November 20, 2023, at p. 64.

<sup>58</sup> Transcript of Proceedings, October 27, 2023, at p. 23.

<sup>59</sup> Transcript of Proceedings, September 20, 2023, at p. 20, 21.

<sup>60</sup> Transcript of Proceedings, October 27, 2023, at p. 32.

<sup>61</sup> See Appendix A for examples.



[89] In addition to the *viva voce* evidence from eyewitnesses, photographs, and videos, perhaps the most compelling evidence of the obstruction and blocking of Ottawa streets comes from Barber and Lich themselves in the form of social media posts and text messages. Numerous videos across various dates depict Barber and Lich circulating on Ottawa streets that are blocked or obstructed by demonstrators and vehicles during the demonstration period.<sup>62</sup> One of many such examples includes a video posted to Tik Tok 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.<sup>63</sup> In another example, 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”.<sup>64</sup> 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).<sup>65</sup> “Big Red” was one of many trucks that contributed to the blockage and obstruction of Wellington Street. Its presence there is documented in photographs, text messages and in video.<sup>66</sup> It remained there from January 28 until February 8, 2022 when Barber moved it to another location.<sup>67</sup> 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”.<sup>68</sup>

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<sup>62</sup> See for example: Exhibit 13, 14 (Barber walking down Wellington), Exhibit 19 (Barber showing a slow roll of honking tractor-trailers), Exhibit 20 (Barber filming a number of trucks at an intersection honking), Exhibit 26 (Barber filming a number of trucks parked along Wellington), Exhibit 31 (Lich showing trucks blocking Rideau and Sussex), Exhibit 32 (Lich on Wellington Street), Exhibit 37 (“Papawolf” video featuring Barber and Lich on Wellington Street among parked vehicles), Exhibit 50 (Barber filming blocked intersection), Exhibit 54 (Lich with demonstrators on Wellington Street).

<sup>63</sup> Exhibit 20. See Transcript at Exhibit 20A, at p. 1.

<sup>64</sup> Exhibit 37. See Transcript at Exhibit 37A, at p. 6.

<sup>65</sup> Exhibit 32; Exhibit 54; Exhibit 135, Volume 1, at Tab 32, p. 11; Exhibit 39A, at p. 132.

<sup>66</sup> See for example: Exhibit 10; Exhibit 64, at page 21; Exhibit 135, Volume 1, Tab 29 (Text #1200), at pp. 11, 20; Exhibit 135, Volume 1, Tab 32 (Text #1284), at p. 11; Exhibit 127, at p. 60.

<sup>67</sup> Exhibit 127, at pp. 59-60, 79; Exhibit 125.

<sup>68</sup> Exhibit 127, at p. 79.

[90] The evidence firmly establishes that, like in *Stockley*, both Barber and Lich were active members of a group of individuals who were responsible for blocking and obstructing Ottawa streets. Barber himself admitted to the interference with Ottawa streets in various text messages throughout the demonstration period where he made numerous references to “train wrecking” and “gridlocking” traffic in the city.<sup>69</sup> On January 30, 2022, Lich texted Barber to advise him that the Command Center called and requested that he attend with her because “they have a strategy to gridlock the city”, and that she didn’t want to make decisions on her own.<sup>70</sup> Barber responded in the affirmative: “ok Ill [*sic*] get dressed.”<sup>71</sup> There is no ambiguity in this language. It is clear that Barber and Lich were very active participants in the blocking and obstruction of streets.

[91] Barber and Lich’s role in the blocking and obstructing of downtown streets is further evidenced in their negotiations with the former Ottawa mayor, Jim Watson (“Watson”). In his letter to Lich dated February 12, 2022, Watson expressed concern for the safety and security of those in the downtown core as a result of, among other things, the “blockades”.<sup>72</sup> Watson requested that Lich “remove your convoy and its trucks” from residential neighbourhoods.<sup>73</sup> In exchange for cooperation, Watson offered “to meet with you to discuss your protesters’ concerns”.<sup>74</sup> The deal involved the departure of over 400 trucks from residential areas.<sup>75</sup> In response to this letter, Lich confirmed that the “Freedom Convoy Board” agreed with Watson’s request to reduce pressure on the residents and businesses and consolidate protest efforts around Parliament Hill.<sup>76</sup> Lich indicated that the “truckers here in Ottawa have always been about peaceful protest”, but acknowledged that they were “disturbing” some citizens and businesses.<sup>77</sup> Lich further stated that she looked forward to working with authorities to “ensure

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<sup>69</sup> See for example (but no limited to): Exhibit 135, Volume 2, Tab 51, p. 3; Exhibit 135, Volume 1, Tab 29, at p. 33.

<sup>70</sup> Exhibit 135, Volume 2, at Tab 74, at p. 121.

<sup>71</sup> Exhibit 135, Volume 2, at Tab 74, at p. 121.

<sup>72</sup> Exhibit 100, at p. 1.

<sup>73</sup> Exhibit 100, at p. 1.

<sup>74</sup> Exhibit 100, at p. 1.

<sup>75</sup> Exhibit 100, at p. 2.

<sup>76</sup> Exhibit 101, at p. 1.

<sup>77</sup> Exhibit 101, at p. 1.

the safe movement of our trucks to their new locations”.<sup>78</sup> Lich’s letter was drafted on “The Freedom Convoy 2022” corporate letterhead, and she copied legal counsel and the Board of Directors, one of whom is Barber.<sup>79</sup> Importantly, absent from Lich’s response to Watson was an indication that any of the 400 trucks referenced in his letter were *not* part of their group. In a text message from Barber to Bach on February 12, 2022, he stated “We have city negotiations now. Things are starting to move”.<sup>80</sup>

[92] Arpin confirmed that the letter from Watson was sent to Lich on February 12, 2022, and that “the mayor’s office did not exchange correspondence with *other* groups on the issue of removing trucks from demonstration sites”.<sup>81</sup> Following this correspondence, there were efforts made to consolidate protest activity to Wellington Street.<sup>82</sup> On February 14, 2022, or “moving day”, Ayotte understood that approximately 102 vehicles, including heavy trucks were moved out of residential areas, but not onto Wellington Street.<sup>83</sup> Ayotte also observed that while some trucks had moved, there was not a lot of movement out of town and that smaller vehicles would take the place of those that had been moved.<sup>84</sup> As of February 15, 2022, Barber confirmed that tractor-trailers parked on Nicholas Street were part of his convoy, but that he was focussing efforts on south Wellington.<sup>85</sup> Ultimately, the posture changed, and direction from OPS prevented any movement of trucks onto Wellington Street.<sup>86</sup> Throughout the demonstration, and with full knowledge that attempts were made to reduce the “footprint” in the downtown core, Barber continued to invite demonstrators to Ottawa, including on February 16 when he texted “Need bodies. Things are heating up with police today”.<sup>87</sup>

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<sup>78</sup> Exhibit 101, at p. 1.

<sup>79</sup> Exhibit 101, at p. 1; Exhibit 133.

<sup>80</sup> Exhibit 127, at p. 87.

<sup>81</sup> Transcript of Proceedings, September 21, 2023, at pp. 58, 60 [Emphasis added].

<sup>82</sup> See for example: Exhibit 129 (texts between Barber and Blonde); Exhibit 99 (texts between Barber and Ayotte).

<sup>83</sup> Transcript of Proceedings, September 21, 2023, at p. 48.

<sup>84</sup> Transcript of Proceedings, September 20, 2023, at p. 11.

<sup>85</sup> Exhibit 127, at p. 90.

<sup>86</sup> Transcript of Proceedings, September 21, 2023, at p. 33 (Ayotte); Transcript of Proceedings, September 22, 2023, at p. 3. (Arpin).

<sup>87</sup> See for example: Exhibit 7; 9; 16; 17; and Exhibit 135 – Volume 2, Tab 14, at p. 2; Exhibit 135 – Volume 1, Tab 4, at p. 4; Exhibit 135 – Volume 1, Tab 31, at p. 5; Exhibit 135 – Volume 1, Tab 53, at p. 44; Exhibit 135 – Volume 2, Tab 15, at p. 3; Exhibit 135 – Volume 2, Tab 71, at p. 16.

[93] On this evidence alone, it is patently obvious that Barber and Lich were not “merely present” and did not “passively acquiesce” during the Freedom Convoy – they were very actively involved in many facets of it. Generally speaking, it is undeniable that:

- a. Barber and Lich were leaders and organizers of the Freedom Convoy movement;<sup>88</sup>
- b. Barber and Lich were both on the board of directors for the Freedom 2022 Human Rights and Freedoms Corporation, which was incorporated on January 30, 2022;<sup>89</sup>
- c. The Freedom Convoy was a sophisticated group that had had lawyers, accountants, a public / media relations team; war rooms, road captains, security and intelligence people, a “hotline” for truckers, among other things;<sup>90</sup>
- d. Barber and Lich were present and remained in Ottawa between January 28 until their arrests on February 17, 2022, despite numerous warnings to cease demonstration activities;<sup>91</sup>
- e. Barber and Lich appeared in multiple press conferences related to the Freedom Convoy, where messages about ending government mandates were broadcast;<sup>92</sup>
- f. Barber and Lich posted Freedom Convoy related content across various publicly-accessible social media platforms regularly throughout the offence period;<sup>93</sup>
- g. Barber and Lich engaged in negotiations with the City of Ottawa to relocate trucks in exchange for dialogue and were the only group to do so (using their corporation’s letterhead);<sup>94</sup>

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<sup>88</sup> Exhibit 1 – Admissions #1, at para. 4(c) (for Lich).

<sup>89</sup> Exhibit 133.

<sup>90</sup> Exhibit 17 (Transcript at Exhibit 17A); Exhibit 46; Exhibit 63 – Press Conference dated February 9, 2022 (Transcript at Exhibit 63A, at pp. 13-14); Exhibit 62 – Press Conference dated February 6, 2022 (Transcript at Exhibit 62A); Exhibit 135, Volume 2, at Tab 74, at p. 124, 128, 136.

<sup>91</sup> Exhibit 1 – Admissions #1, at paras. 2, 3(a), 4(a).

<sup>92</sup> Exhibit 1 – Admissions #1, at paras. 3(c), 4(e).

<sup>93</sup> Exhibit 1 – Admissions #1, at paras. 3(c), 4(f), 10, 15(a), (b), 16, 18, 22.

<sup>94</sup> Exhibit 1 – Admissions #1, at para. 28; Exhibit 100; Exhibit 101, Transcript of Proceedings, September 21, 2023, at p. 60.

- h. Lich set-up a GoFundMe and other crowdfunding campaigns to assist in funding registered truckers to attend and participate in the Freedom Convoy. Those crowdfunding efforts raised millions of dollars;<sup>95</sup>
- i. Barber and Lich actively disseminated information about crowdfunding efforts. Lich had some involvement with management of funds. Barber participated in the distribution of funds to truckers on the ground;<sup>96</sup>
- j. Barber and Lich were named as defendants on a class action lawsuit as well as injunctions related to honking of horns;<sup>97</sup>
- k. Barber parked his truck “Big Red” on Wellington Street across from the Supreme Court of Canada from January 28 until February 8 when he moved it out of the city;<sup>98</sup>
- l. Barber and Lich circulated among the demonstrators on the ground;<sup>99</sup> and
- m. Barber was actively involved in the relocation of trucks around Ottawa.<sup>100</sup>

[94] It would be a legal error to focus narrowly on Barber and Lich’s conduct, without taking the full context of the Freedom Convoy into consideration. Their conduct cannot be assessed in a “vacuum” but instead requires acknowledgment of the collective and cumulative effect of their behaviour (*Drainville*, at p. 3). Again, context is critical. The Freedom Convoy would have been nothing without its participants, many of whom came together due to Barber and Lich’s efforts. This is truly a case where the success of the movement depended on its numbers, which were enormous<sup>101</sup> (*Romlewski*, at paras. 102 – 115). This support was acknowledged by Lich, who told Barber in a text message dated January 23, 2022: “We do have a nation behind us”.<sup>102</sup>

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<sup>95</sup> Exhibit 1 – Admissions #1, at para. 4(d); Exhibit 18; Exhibit 63 – Press Conference dated February 9, 2022 (Transcript at Exhibit 63A, at p. 30); Exhibit 60; Exhibit 134, Volume 2, Tab 74, at p. 48.

<sup>96</sup> Exhibits 8, 10, 18, 28; Exhibit 135, Volume 2, at Tab 74, at p. 74, 81.

<sup>97</sup> Exhibits 15, 22.

<sup>98</sup> Exhibit 127, at pp. 59-60, 79; Exhibit 125.

<sup>99</sup> Exhibits 31, 32, 37; Numerous Barber Tik Tok Videos.

<sup>100</sup> Exhibit 127, p. 50: “We are in the opps center planning. Can you get us commercial streets to move to instead of residential?” and p. 87: “We have city negotiations now . Things are starting to move”.

<sup>101</sup> See for example: Transcript of Proceedings, September 6, at p. 13 (there were well over 5,000 vehicles by the end of the first weekend).

<sup>102</sup> Exhibit 135, Volume 2, at Tab 74, at p. 67.

[95] As previously mentioned, while there were multiple convoys present in Ottawa, the only evidence that exists of the occupation's purpose is in relation to pressuring the Government of Canada to end COVID-related restrictions. Both Barber and Lich made multiple public statements in the form of press conferences and social media posts about this purpose. For example, in a press conference on February 3, 2022, Lich stated "we are therefore calling on all levels of government in Canada to end all COVID mandates and restrictions. We will continue our protest until we see a clear plan for their elimination ... our departure will be based on the Prime Minister doing what is right, ending mandates and restrictions on our freedoms".<sup>103</sup> In this press conference, Lich describes the scope of "our" movement, as having "grown in Canada and across the world because common people are tired of the mandates and restrictions in their lives".<sup>104</sup> Lich also thanks the "hundreds of residents of Ottawa" who have shown support by providing food, friendship, and accommodations to members of "our" convoy.<sup>105</sup> Lich later assures residents of Ottawa that the Freedom Convoy has "no intent to stay longer than necessary".<sup>106</sup> When asked at a press conference on February 6, 2022 whether the convoy would be willing to come back to "pressure" government again in the event that mandates are re-imposed, Lich responds "I think you would see that happening ... in short order."<sup>107</sup> These are only a couple examples of many such press conferences and posts where Lich discusses the Freedom Convoy's purpose as specifically being to end mandates.<sup>108</sup> Though Barber is present in press conferences where this mandate is discussed, the majority of his messaging in relation to it is done on his social media platforms and in text messages. For example, on January 30, 2022, Barber sends a text message to Bach stating that "Need Trudeau to end the mandates and we all head home united. So easy to fix this" and repeats on January 31, "we need to resolve the issues with the mandates before we leave".<sup>109</sup> On February 4, 2022, Barber confirms that the Freedom Convoy is in Ottawa to end mandates.<sup>110</sup> Later, on February 6, Barber addresses the citizens of Ottawa directly in a post to his Tik Tok account

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<sup>103</sup> Exhibit 57 (Transcript at 57A, at p. 2).

<sup>104</sup> Exhibit 57 (Transcript 57A, at p. 2).

<sup>105</sup> Exhibit 57 (Transcript 57A, at p. 3).

<sup>106</sup> Exhibit 57 (Transcript 57A, at p. 3).

<sup>107</sup> Exhibit 42, Press Conference, February 6 (Transcript at Exhibit 42A), at pp. 28, 33, 34.

<sup>108</sup> See for example: Exhibits 38, 46, 51, 56, 57, 58, 63.

<sup>109</sup> Exhibit 127, at pp. 6, 7.

<sup>110</sup> Exhibit 17.

requesting that they “put pressure on your government” and apologizing that “[the demonstration] had to happen in your city” before confirming that “this can be over with a drop of a hat and [the Freedom Convoy] will be gone” but that “pressure needs to be put on someone else.”<sup>111</sup> As with Lich, these are just a couple of many similar messages.<sup>112</sup>

**APPENDIX B** highlights statements made by Barber and Lich regarding the protest’s purpose.

[96] This theme of ending mandates is also present outside of Barber and Lich’s public statements, which suggests it being the predominate purpose of the occupation. For example, Brian Peckford and Danny Bulford gave a speech on Parliament Hill voicing their dissatisfaction with government mandates.<sup>113</sup> Members of Parliament, including Cheryl Gallant and Arnold Vierson both attended Parliament Hill, and in an interview, spoke about standing up against mandates.<sup>114</sup> Multiple residents reported being mocked or harassed by demonstrators for wearing masks.<sup>115</sup> An inference about the purpose of the Freedom Convoy can also be drawn from the “Stage Line Up” posts on their Facebook page, which feature numerous speakers who appear to be medical professionals.<sup>116</sup> Witnesses such as Lucas and Arpin understood the purpose of the occupation was to oppose mandates, with Arpin believing that these individuals represented the “broad moderate centre” and majority of demonstrators.<sup>117</sup> This is consistent with Blonde’s evidence that notwithstanding there being multiple convoys, he saw it as one demonstration: the people he spoke with during the three weeks “all had the same wishes and desires. They had a similar general reasoning for being in the capital city at that point in time.”<sup>118</sup> Arpin, Lucas and Blonde’s evidence is also confirmed by signage widely seen throughout the protest such as “Mandate Freedom”, “Freedom”, “No

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<sup>111</sup> Exhibit 12.

<sup>112</sup> See for example: Exhibits 7, 17, 18, 23, 25, 27, 38; see also para. 78 of these materials.

<sup>113</sup> Exhibit 85.

<sup>114</sup> Exhibit 94.

<sup>115</sup> See for example: Transcript of Proceedings, October 12, 2023, at pp. 11 and 13 (Gawman); Transcripts of Proceedings, October 12, 2023, at pp. 68-69 and October 13, 2023, at p. 1 (Bellfof); Transcript of Proceedings, October 13, 2023, at p. 12 (Biro); Transcript of Proceedings, October 16, at pp. 79-82 (Jorgenson).

<sup>116</sup> Exhibit 39, at p. 6, 33.

<sup>117</sup> Transcript of Proceedings, September 6, 2023, at pp. 10-11 (Lucas); Transcript of Proceedings, September 21, 2023, at p. 77 (Arpin).

<sup>118</sup> Transcript of Proceedings, November 1, 2023, at p. 39, 40.

xxe Mandates”, “Freedom Convoy, End all Mandates, Hold the Line”, “No Coercion, Yes Choice”, “Get our Freedom Back”, “All for Freedom, Freedom For All”, and “Fuck Trudeau”, among others, which align with this theme, and the stated purpose of Barber and Lich on behalf of the Freedom Convoy.<sup>119</sup>

[97] Within this context, Barber and Lich’s “megaphone” and role within the overarching demonstration becomes readily apparent. The Freedom Convoy Facebook page, as well as Barber’s Tik Tok account, where many messages routinely were posted, both had followers in the hundreds of thousands and in certain instances, posts that received thousands of comments and shares.<sup>120</sup> In a text message to Lich, Barber expressed that one of his Tik Toks received 1000 views in 20 minutes.<sup>121</sup> We also know that on occasion, these platforms would also cross-post videos (for example, Barber’s Tik Tok videos were occasionally posted to Facebook, or Freedom Convoy messaging posted to Barber’s Tik Tok). The Freedom Convoy movement, thanks to the efforts of Barber and Lich, raised millions of dollars through crowdfunding efforts, and attracted the attention of politicians (Cheryl Gallant, Brian Peckford, Arnold Vierson, Candace Bergen, and others (who requested to meet)) and journalists, who sought to interview Barber.<sup>122</sup> Both Barber and Lich became board of directors of the Freedom 2022 Human Rights and Freedoms Corporation, whose purpose was consistent with their messaging in Ottawa: “advocacy against government, agents of government and any other organization person or individuals’ of class systems through mandates, social credit systems (rewards and punishments for government compliance), passport systems, and more.”<sup>123</sup> The Freedom 2022 Corporation came into existence on January 30, 2022 – one day after Barber and Lich’s arrival in Ottawa.

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<sup>119</sup> See Exhibit 3 at the following times: 00:49, 03:06, 05:24, 03:22, 03:26, 03:59, 04:03, 05:33, 05:36, 05:52, 06:39, 07:49, 10:48.

<sup>120</sup> Exhibit 1, at para. 20; Exhibit 39, at p. 212; Exhibit 40.

<sup>121</sup> Exhibit 135, Volume 2, Tab 74, at p. 60.

<sup>122</sup> See Footnotes 26, 39, 40 for certain references; Exhibit 135, Volume 2, at Tabs 6, 38, 74 (at p. 60); Exhibit 135, Volume 1, at Tab. 7, Tab 28 (at p. 1), 33,

<sup>123</sup> Exhibit 133.



[98] The Freedom Convoy, as previously mentioned, presented itself as highly sophisticated with its own team of lawyers, accountants, individuals responsible for public relations, as well as safety and security.<sup>124</sup> As Barber remarked in a text to Bach on February 3, 2022: “So we have a huge team here now. I’ve been asked to let you all know. JCCF. Justice center for Constitutionally [*sic*] Freedoms. We have a contact I’ll attach”.<sup>125</sup> Barber then passed on the contact information for their lawyer.<sup>126</sup> These individuals routinely appeared in Tik Tok videos posted by Barber, or alongside Lich and/or Barber in press conferences.<sup>127</sup> The “team” was by and large a product of the success of the movement. In addition to the millions of dollars raised, a review of evidence quickly reveals how very busy Barber and Lich were during the Freedom Convoy. For example, in a Tik Tok video posted by Barber on February 2, 2022, he shows Lich and explains that she did not run away with money and that the pair have been trapped in “nonstop meetings”.<sup>128</sup> Barber went on to explain that they were “trying to organize” and that the pair were “absolutely overwhelmed with the stuff that’s going on ... we’ve ... moved mountains so far.”<sup>129</sup> In a text to “Tammy” that same day, Barber expressed that he and Lich are “so overwhelmed”.<sup>130</sup> In a video posted February 11, 2022, Lich introduced Dagny Pawlak as a new member of the team.<sup>131</sup> Dagny then explained that she is has joined “the team of original organizers” to assist with media relations “because poor Tamara can’t handle it all by herself”.<sup>132</sup> This theme of being busy and overwhelmed permeated throughout both Barber and Lich’s messaging. In text messages between them, Lich discussed finances and organizing and disseminated instructions to group chats about attendance for meetings, including at the Swiss

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<sup>124</sup> See for example: Exhibit 39A per Lich at p. 206: “I will have a finance committee formed hopefully by this evening but at the latest tomorrow morning. I am bringing on a book keeper and an accountant to assist to form the committee”; Exhibit 46A at p. 1: “I’m here to do media stuff and media relations because poor Tamara can’t handle it all by herself. So, I’m happy to join the team. I’m happy to join the team of original organizers”; Exhibit 47 at pp. 3 and 7 (see “Official Daily Event and Safety Report”) and p. 21 (see “Press Contacts” in footer); Exhibit 127 at p. 30: “So we have a huge team here now. I’ve been asked to let you all know . JCCF . Justice center for Constitutionally Freedoms.” And at p. 33: “They are here to help us find our ways through this legally. Bring more organized skills to the movement”.

<sup>125</sup> Exhibit 127, at p. 30.

<sup>126</sup> Exhibit 127, at p. 31.

<sup>127</sup> See for example: Exhibit 56; Exhibit 57; Exhibit 63; Exhibit 81; Exhibit 83.

<sup>128</sup> Exhibit 21.

<sup>129</sup> Exhibit 21.

<sup>130</sup> Exhibit 135, Volume 1, at Tab 37, p. 2.

<sup>131</sup> Exhibit 46.

<sup>132</sup> Exhibit 46 (Transcript at Exhibit 46A, at p. 1).

Hotel, which was one of the “Command Centres”.<sup>133</sup> Recall, it is at one of these “Command Centers” that Lich invited Barber to join her to make decisions about gridlocking the city. Barber confirmed to Bach that they were using two different hotels – the Arc Hotel and the Swiss Hotel as “war rooms” to meet, plan, and organize.<sup>134</sup>

[99] On the evidence, it would be impossible for Barber and Lich not to know that Ottawa city streets were being blocked and/or obstructed. Blockades were something that Lich actually supported as evidenced in her February 14, 2022 statement about the Windsor blockade, where she introduced “our” Quebec road captain, and then went on to state that “I wish we could take credit for the [Windsor] blockades, but we cannot” ... we are keeping an eye out on the protests and blockades happening nationwide and insofar as we are concerned, it only strengthens our demonstrators’ resolve”.<sup>135</sup> That said, it is also clear that OPS invited demonstrators to park on Wellington Street in an attempt to facilitate their *Charter* rights. Lucas testified that the general practice when dealing with protests is to “find a balance between facilitating ... lawful protest and the community and the impacts.”<sup>136</sup> Lucas spoke of this balancing in his evidence when asked about whether OPS takes the protesters’ requests into consideration when coming up with plans and mitigating impact to the city:

*So, regardless of what people might think about any groups 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 impacts on the city. This is the nations capital. These are things that we deal with on a daily basis and there is a variety of impacts. Whether they are the trucker convoy or any of the other social movements we have seen over the last decade, we try and find ways to facilitate that. To allow those people to march through the street to get their message out, and then, how do we mitigate those impacts to ensure that those message can get out. We can find safety for everybody that is attending or impacted, and then hopefully deescalate and resolve the situation.*<sup>137</sup>

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<sup>133</sup> Exhibit 135, Volume 2, at Tab 74, at pp. 74, 81, 100-109.

<sup>134</sup> Transcript of Proceedings, October 19, 2023, at pp. 22, 57.

<sup>135</sup> Exhibit 51, see Transcript at Exhibit 51A, at p. 1.

<sup>136</sup> Transcript of Proceedings, September 6, 2023, at p. 6.

<sup>137</sup> Transcript of Proceedings, September 6, 2023, at p. 15 [Emphasis added].

[100] With that said, what ultimately transpired exceeded what OPS and the City of Ottawa had anticipated.<sup>138</sup> Ayotte testified that it was the City’s impression from the early stages that the Freedom Convoy would be a two-day event.<sup>139</sup> By the end of the first weekend, there were well over 5,000 vehicles. As the event grew, Lucas conceded that OPS were not going to stop it, and so they began to look at ways to minimize the impacts on the city as a whole.<sup>140</sup> Although it is apparent on the evidence that there was effort between the City of Ottawa and OPS to negotiate and work with demonstrators to “shrink the footprint”, at the end of the day, an offence was still being committed. This is similar to *Sauls*, at para. 62, where the court held an offence was committed notwithstanding the fact that police delayed arrests and attempted negotiations to end the blockade. Metaphorically, you cannot reason with a tiger when your head is in its mouth. The magnitude of the Freedom Convoy and its impact on both the City of Ottawa and OPS placed them in an impossible position. Barber, Lich, and thousands of other demonstrators held the city hostage. Police did not anticipate the extent to which the Freedom Convoy would overtake the city and consume its resources. As a result, OPS was “stretched incredibly thin” and ensuring the safety of the public and de-escalating conflicts took priority over managing traffic.<sup>141</sup> As the demonstration progressed, police became increasingly prone to being “swarmed by crowds” while attempting to perform enforcement actions which required OPS to assign more officers to respond to incidents in those areas.<sup>142</sup> The fact that negotiations took place between municipal government, OPS, and Barber and Lich offers confirmatory evidence that a criminal offence was indeed taking place. But for the intimidation, mischief, and other offences that were taking place, this negotiation would not have been required. Although Barber and Lich negotiated with stakeholders and made certain efforts to reduce the impact of the occupation on residents and businesses, making the crime you are committing less impactful for a short while does not mean you are not committing a crime.

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<sup>138</sup> Transcript of Proceedings, September 6, 2023, at pp. 22 (Lucas).

<sup>139</sup> Transcript of Proceedings, September 20, 2023, at pp. 31, 33, 51.

<sup>140</sup> Transcript of Proceedings, September 6, 2022, at p. 9, 13.

<sup>141</sup> Transcript of Proceedings, September 6, 2023, at p. 25 (Lucas).

<sup>142</sup> Transcript of Proceedings, September 6, 2023, at p. 34 (Lucas).

[101] Over the course of the occupation, police escalated messaging to demonstrators advising them of the consequences for remaining in Ottawa. For example, on February 4, 2022, Bach sent Barber a series of screenshots from OPS social media regarding the implementation of increased measures to protect downtown neighbourhoods.<sup>143</sup> On February 6 and 9, 2022, the Freedom Convoy Facebook page re-posted a warning from OPS that anyone bringing material supports to demonstrators could be arrested in addition to other warnings.<sup>144</sup> Over three consecutive days (February 15-17, 2022), OPS commenced physically distributing bilingual messaging to demonstrators.<sup>145</sup> With each passing day, the messages escalated, eventually culminating in a warning of the severe penalties may flow from failing to immediately remove vehicles and property from all unlawful protest sites.<sup>146</sup> The messages were distributed throughout the downtown core and many flyers were left on vehicles or handed directly to people.<sup>147</sup> Various PLT officers testified about the reaction of demonstrators to this messaging. Blonde described the mood of the crowd as being “very upset” and “quite hostile”, and that on Wellington Street, he observed many demonstrators placing the notices in a toilet.<sup>148</sup> Isabelle Cyr (“Cyr”) explained that on February 17, 2022, while delivering messaging, she along with another officer were swarmed by “a bunch of truckers” and had to leave the area because it was unsafe.<sup>149</sup> Barber was contacted by individuals over text about these messages and sent a copy of one of the notices. In response, Barber instructed: “Hold that line” and “Hold the line. We are in a peaceful protest”.<sup>150</sup>

[102] Not a single post on any social media account associated to Lich, Barber or the Freedom Convoy urged people to go home. In fact, they did the opposite.<sup>151</sup> In the face of notices, injunctions, declarations of a state of emergency, and invocation of the *Emergencies Act*, Barber and Lich’s resolve to hold the line only grew stronger as evidenced in the repeated

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<sup>143</sup> Exhibit 127, at pp. 46-49; Exhibit 128.

<sup>144</sup> Exhibit 47, at pp. 10-11, 18.

<sup>145</sup> Transcript of Proceedings, October 27, 2023, at p. 49 (Blonde).

<sup>146</sup> Exhibit 130; Exhibit 131; Exhibit 132.

<sup>147</sup> Transcript of Proceedings, October 31, 2023, at p. 8.

<sup>148</sup> Transcript of Proceedings, October 27, 2023, at p. 37, 38 (Blonde).

<sup>149</sup> Transcript of Proceedings, October 18, 2023, at pp. 86-87 (Cyr).

<sup>150</sup> Exhibit 135, Volume 1, Tab 4, at p. 9; Exhibit 135, Volume 1, Tab 51, at p. 80.

<sup>151</sup> See for example: Exhibit 39; Exhibit 47; Exhibit 61; Exhibit 64.

messages and calls for people to continue coming to Ottawa.<sup>152</sup> On February 17, 2022 – the same day that Barber and Lich were arrested – Barber received a text message from “Danny” suggesting that “we take the trucks out from blocking wellington [*sic*] which is what they are complaining about and find a spot in embrun [*sic*] ...” to which Barber replied, “Ya we have the right to peaceful assembly”.<sup>153</sup> There was no intention to leave.

[103] The evidence establishes beyond a reasonable doubt that Barber and Lich were part of the 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. There are multiple routes to their liability as both co-principals, aiders, and abettors. As co-principals, both Barber and Lich contributed to the commission of the offence. Both were present on the ground, “standing shoulder-to-shoulder” with demonstrators and otherwise contributing to the blocking and/or obstruction of various streets. Additionally, Barber parked “Big Red” on Wellington Street for 12 days which in and of itself makes out the offence when considered in tandem with his stated purpose for being in Ottawa. Like in *Stockley*, both Barber and Lich’s association with the broader group of demonstrators who were blocking and obstructing streets is clearly supported in the evidence. Also, consider Barber’s language.<sup>154</sup> He does not speak for himself, but rather for the collective group’s activity of which he is a part. The blockages that occurred were not insignificant and had an impact on travel through the downtown core. The fact that an emergency lane was periodically opened, or an intersection occasionally cleared out, does not absolve Barber or Lich from culpability. The fact that an emergency lane had to be opened means there were closed lanes and the street was obstructed, which is an offence. Recall in *Sauls*, the accused were convicted notwithstanding the fact that certain vehicles were permitted passage along the road where the

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<sup>152</sup> See for example (non-exhaustive list): Exhibit 7; Exhibit 47; Exhibit 135 – Volume 2, Tab 14, at p. 2; Exhibit 135 – Volume 1, Tab 4, at p. 2; Exhibit 135 – Volume 1, Tab 53, at p. 44; Exhibit 135 – Volume 2, Tab 15, at p. 3; Exhibit 135 – Volume 2, Tab 71, at p. 16.

<sup>153</sup> Exhibit 135, Volume 1, Tab 1, at pp. 1-2.

<sup>154</sup> For example [with emphasis added]: Exhibit 135 – Volume I, Tab 29 (Text #1200) at p. 10: “We are completely messing this city up” and Tab 30 (Text #1221) at p. 6: “We fucked this town up” and Tab 36 (Text #1434) at p. 16: “Today we roll to cause grief” and Tab 53 (Text #2370) at p. 35: “Yup lol we fucked the 417 up tonight. 8km long 3 lanes wide 5km per hour”; Exhibit 135 – Volume II, Tab 51 (Text #1630) at p. 3: “It’s already done. We train wrecked [*sic*] it” in response to “We need to grid lock this town. Only leave one lane open.”

demonstration was taking place (*Sauls*, at para. 8). The fact of the matter is that the actions of Barber, Lich, and other demonstrators clearly impeded traffic, and they must accept the consequences the flow from this group action (*Strathdee*, at para. 66). In addition to the Freedom Convoy having a significant impact on travel, the blocking and obstructing of roads was not fleeting or temporary. But for the actions of the police during the Removal Operation, the blockages and obstructions may have gone on for an indefinite period of time. It was certainly clear in both Barber and Lich’s own words that they had no intention on departing until the government complied with their demands. In that vein, it is also irrelevant for the purposes of culpability that they attempted to negotiate with city and law enforcement officials. As stated, making a crime less impactful doesn’t mean a crime is not being committed. Hostage-takers don’t get to say, “we were acting in good faith”. In the vein of “good faith”, the Crown submits that someone who frequently mentioned playing “cat and mouse games”, doing things to “mess cops up”, and “fuck[ing] back” with cops, as Barber did, was not dealing with honest intention.<sup>155</sup> In response to being told that a Tik Tok joke Barber made to “mess cops up” had the effect of closing down Queen’s Park Circle and companies sending alerts to employees in Toronto, he said “Omg that’s awesome”.<sup>156</sup> With that said, even if the court accepts that somehow Lich, Barber, and other demonstrators were given permission to remain in place, that permission was eventually clearly and unequivocally revoked by police, and they still remained.

[104] In addition to being joint-principals, Barber and Lich aided and abetted the offence of intimidation. The pair aided the commission of the offence in the following ways:

- a. By fundraising to assist truckers in Ottawa with expenses such as fuel, food, and lodgings;
- b. By using their social media platforms to promote the Freedom Convoy, provide guidance to demonstrators, encourage attendance in Ottawa, and to broadcast demands;
- c. By engaging in organization and planning with other demonstrators;

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<sup>155</sup> Exhibit 135, Volume 1, at Tabs 7 (p. 3); 10 (pp. 1-2); 11 (p. 3); 12 (pp. 3-4); 15 (p. 4); 16 (p. 9); 19 (pp. 3-4); 22 (pp. 3-4); 41 (pp. 13-14); 52 (p. 31).

<sup>156</sup> Exhibit 135, Volume 1, at Tab 7 (pp. 3-4).

- d. By engaging in negotiations with OPS and city officials in order to move trucks up to Wellington Street; and
- e. By liaising with demonstrators to provide direction and answer questions, and in Barber's case, physically assisting with the movement of vehicles.

[105] Barber and Lich provided this assistance with the full knowledge that streets were being blocked and/or obstructed and with the full knowledge that the Freedom Convoy's welcome to Ottawa had worn out. Everything that Barber and Lich did to assist Freedom Convoy demonstrators was done so that they could remain firmly planted in place until such time as the COVID-19 mandates and restrictions were dropped.

[106] In addition to their assistance, Barber and Lich's unequivocal support and encouragement for Freedom Convoy demonstrators is evident in their words, as well as their mere presence in Ottawa from January 28 right up until their arrests on February 17, 2022.

***Count #2 – Section 464(a) – Barber and Lich Counselling the Blocking or Obstructing of Highways, which was not Committed by One or More Persons***

[107] The evidentiary foundation in support of the counselling charge remains the same as the substantive offence for intimidation outlined above. In the event that this court finds that Barber and/or Lich counselled the intimidation offence, and that the offence occurred, they are liable as parties to the offence pursuant to s. 22 of the *Code*, and the Crown would accordingly request a stay of this charge.

[108] When reviewing the statements and actions of Barber and Lich objectively, it is clear that they are of a nature that actively sought to encourage or induce their audience to block or obstruct downtown streets to pressure the government to end COVID-19 mandates and restrictions (*Hamilton*, at para. 74). As previously noted, this court has the benefit of hearing Barber and Lich's words directly from their mouths. There is no ambiguity in the language, or in their intent.

[109] It is important to take into account the collective message that can be gleaned from Barber and Lich's statements (*Jeffers*, at para. 31). A review of even a few of the statements included

in argument on the offence proper leave no doubt that Barber and Lich's objective was to encourage or induce demonstrators to come to or remain in Ottawa, which had the obvious effect of causing obstruction or outright blocking downtown streets. The purpose of this was to put pressure on the government of Canada to drop COVID-19 mandates. In addition to those already mentioned, just five of many further examples from the evidence are as follows:

- a. In a video posted on Rumble on February 4, 2022, Lich stated: "So please, if you can donate, uh, 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".<sup>157</sup>
- b. In a video posted to Facebook on February 16, 2022, Lich stated: "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 ...I can't tell you how amazing these people are. And they're gonna stay and they're gonna fight for your freedom as long as they possibly can".<sup>158</sup>
- c. In a Tik Tok video, Barber states: "They've been instructed to clear the streets of downtown Ottawa, they are going to use whatever force possible. We have instructed them for 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 fuckin' dog, get comin' to Ottawa cuz we need all of the help we can get. They think they can control the number of guys right now? You want to see how many we bring in to replace us. This ain't no fuckin' drill either. Be strong, hold the line, we have the f-...liberal government fractured right now, uh, provinces are falling".<sup>159</sup>
- d. In a Tik Tok posted on February 10, 2022 Barber states: "Do you think we're leaving? Do you think we're leaving? We might move a few trucks around just a little bit, so".<sup>160</sup>
- e. In a Tik Tok posted on February 7, 2022 Barber states: "... You come here and you flood this city. I don't give a shit if the entire country of Canada comes to fucking Ottawa. That's what we're living right now, government tyranny".<sup>161</sup>

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<sup>157</sup> Exhibit 60 (reposted to Twitter: see Exhibit 61, at p.3).

<sup>158</sup> Exhibit 59, see Transcript at Exhibit 59A, at pp. 2-3.

<sup>159</sup> Exhibit 25, see Transcript at Exhibit 25A (and cross-posted to Facebook (Exhibit 39A)).

<sup>160</sup> Exhibit 26, see Transcript at Exhibit 26A at Tab 20.

<sup>161</sup> Exhibit 17, see Transcript at Exhibit 17A at Tab 11.



[110] In concluding that Barber and Lich counselled intimidation, the court must also consider the context in which the statements were made. These statements were made throughout the demonstration period while downtown streets were very clearly blocked and/or obstructed. Given Barber and Lich’s presence in Ottawa at that time, it would have been impossible not to know this, as they would have seen it with their own eyes (as evidenced in Tik Tok videos), and the very nature of their negotiations with the City of Ottawa and police suggested that road blockages and congestion were an issue. Further, it is clear that Barber and Lich intended their message to reach as wide an audience as possible. This is evidenced in the fact that they counselled this offence in press conferences (with media present) as well as across various publicly accessible social media platforms with large audiences. In this vein, Barber and Lich’s status, which has been extensively referenced, must be considered given that any public statement they make will be more impactful by virtue of who they are. At very minimum, Barber and Lich showed a conscious disregard of the substantial and unjustified risk inherent in their requests for demonstrators to come and remain in Ottawa until government mandates were lifted in light of what was transpiring on the ground (*Hamilton*, at para. 29). In the end, the court can find that the offence was indeed not committed “by one or more persons”, as not every person present in downtown Ottawa was present for the purpose of committing a criminal offence.

[111] The occupation marked a substantial interference with the use of Ottawa streets not for minutes, hours, or days – but weeks. As stated in *Pawlowski*, at para. 56: “In such cases, inciting individuals to continue with the offence is no less serious than inciting individuals to initiate the offence. The harm counselled remains the same.”

***Count #6 – Section 430(3) – Barber and Lich Interfered with the Lawful Use and Enjoyment of Property and/or Aided or Abetted those who did. They were not simply Communicating a Message***

[112] As previously noted, evidence adduced at this trial irrefutably established that the Freedom Convoy created a mass mischief in downtown Ottawa during the protest period that significantly interfered with (any person in) the lawful use and enjoyment of property. There is direct evidence from residents, business owners and employees, police, and city officials of

obstructed or blocked streets, noise and air pollution, harassment, and intimidation that is confirmed in large part by videos; specifically, compilation videos and Barber and Lich's own social media posts.<sup>162</sup>

[113] The Crown has included a chart at **APPENDIX C** that provides a summary of the evidence from these witnesses of mischief observed or experienced and regarding interference to lawful use and enjoyment of property. There is little reference to the blockage or obstruction of streets in that chart, because the bulk of that evidence was dealt with at paragraphs 82-111 of these materials. Notwithstanding its absence in the chart, interference with the public streets in this manner (see Appendix A for examples) also constitutes mischief.

[114] The Crown respectfully submits that the court should accept this testimonial evidence. Notwithstanding certain witnesses inability to recall a precise date that a firework went off, or a horn blared, or exactly what date a particular street was blocked: that level of precision is not required to make out the offence and goes to weight. When considering the evidence in its entirety, it is clear that those who experienced the Freedom Convoy from the other side of the line had extremely similar experiences. The witnesses largely confirm each other's evidence. Further, although there is no evidence of any resident, business owner, or employee seeing or having direct contact with Barber or Lich, such contact is not required; a finding of mischief does not require direct contact between protesters and those who experienced interference (*Tysick*, at para. 38; *Romlewski*, at para. 99).

[115] The resulting impact on the city of Ottawa from the Freedom Convoy created intolerable conditions for many residents and business owners, who described issues with sleeping, concentration, disruption to work, re-routing of public transit services, appointments being cancelled, financial losses, interference with commutes and blocked in vehicles, and sore throats from diesel and gas fumes, among other things.<sup>163</sup> As previously noted, the dire situation created by the demonstration resulted in injunctions to stop the incessant horn

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<sup>162</sup> For photos and videos depicting honking or obstructed / blocked streets, see for example: Exhibits 3, 13, 14, 15, 19, 20, 26, 31, 37, 50, and 115.

<sup>163</sup> See Appendix C.

honking, as well as the declaration of a state of emergency on the part of the City of Ottawa.<sup>164</sup> Barber and Lich (along with others) were specifically named as defendants in the injunction, which they initially opposed. As previously noted, the presence of a demonstrator without more normally doesn't make out mischief; however, it is undeniable Barber and Lich were so much more than merely present (*Mammolita*, at para. 9). Their role as leaders and organizers is well-established in paragraphs 82-111 of these materials.

[116] Both Barber and Lich were active participants in this mischief and their liability can be grounded either as principals or parties to it. Importantly, Barber and Lich were present throughout the entirety of the Freedom Convoy, until their respective arrests on February 17, 2022. They circulated among demonstrators, engaged in negotiations with police and the mayor's office, they planned and organized, raised and distributed funds. Specific examples of their words and actions were provided in paragraphs 82-111 of these materials. As a result of their presence and participation, as was the case in *Carr*, "they 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" (*Carr*, at para. 93). In fact, both Barber and Lich were not only told about the harm being occasioned upon the city, but in their own words, also acknowledged the harm that was being caused:

- a. In a letter dated February 12, 2022, Watson expressed his concern with residents, business owners, and workers in the downtown core stating that "Our residents are exhausted and on edge, and our small businesses impacted by your blockades are teetering on the brink of permanent closure". Watson later expressed his hope that progress could be made to "alleviate the extreme and undue burden this protest and occupation of our residential districts in the core and elsewhere, have had on the residents and businesses of downtown Ottawa. In a reply to this letter dated the same day, Lich acknowledged that "Many of the citizens and businesses in Ottawa have been cheering us on but we are also disturbing others."<sup>165</sup>
- b. In a press conference dated February 3, 2022, in the presence of Barber and Lich, a reporter stated "people in this town are terrified. They're fed up. They're

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<sup>164</sup> Exhibit 1 – Admissions #1, at para. 2; Exhibit 122.

<sup>165</sup> Exhibit 100, at pp. 1-2; Exhibit 101 [Emphasis added].

- tired of the noise, blaring horns late at night, in early morning. The harassment of people on the streets. They want to know when are you going home". Wilson responded, "as you just heard, Tamara Lich answered that question" [not leaving until mandates lifted].<sup>166</sup>
- c. In a Tik Tok video posted February 4, 2022, Barber stated "There's a few people in the high rises that don't like the horns and I apologize for that. I don't know what else I can do to fix that."<sup>167</sup>
- d. In a Tik Tok video posted February 6, 2022, Barber stated "I kind of find it hilarious, everybody, that the city of Ottawa has been freaking out. Law enforcement's getting more pushy, the citizens are pissed off. I can understand why. I absolutely 100% am on your side but we've been here for over a week now ... We need an audience. So, citizens of Ottawa, put pressure on your ... government. Come on. We're all here for a reason. We're sorry it had to happen in your city ...".<sup>168</sup>

[117] Notably, when Lich responded to Watson's letter, in which he described the mischief being occasioned as a result of "your blockades", she did not deflect any blame. Instead, she acknowledged that they are disturbing some residents. In addition to the above-examples, text messages were received by Barber from individuals expressing concern about the effect of the demonstration on residents, conflicts between truckers and residents, and bad behaviour on the part of truckers. For example, Barber's response to being told that someone is afraid to leave the house, doesn't feel safe to go outside, and that "it's not a fun party" among other things was: "Well everyone is entitled to an opinion. I'm sorry she feels that way but I can't do anything to help her. We where [*sic*] sopost [*sic*] to be taken to a staging area but that was a lie and then boom. All over the city".<sup>169</sup> This conversation occurred over the course of February 6-7, 2022, and after this time there is evidence that Barber instructed people to come to the city and to honk horns.<sup>170</sup>

[118] When examining Barber's text messages, a number of themes become apparent. Firstly, Barber is no "mere bystander" or ordinary demonstrator. For example, there are many text

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<sup>166</sup> Exhibit 57, see Transcript at Exhibit 57A, at pp. 3, 6 [Emphasis added].

<sup>167</sup> Exhibit 18, see Transcript at Exhibit 18A, at p. 1 [Emphasis added].

<sup>168</sup> Exhibit 12, see Transcript, at Exhibit 12A, at p. 1 [Emphasis added].

<sup>169</sup> Exhibit 135, Volume 1, at Tab 14, pp. 6-8.

<sup>170</sup> Exhibits 24 and 25 on February 9, 2022.

messages from individuals thanking Barber for his efforts and what the group started, encouraging him to “keep up the good work”, and referring to he and others as “heroes”.<sup>171</sup> In addition, there is a lot of evidence of organizing: plans, calling out for more demonstrators to come to Ottawa, instructions on how to join, arranging for fuel and finances, calls to “hold the line”.<sup>172</sup> But most importantly, the texts inform some of Barber’s knowledge and provide insight into his mindset. For example, Barber frequently discusses his observations, events happening on the ground (whether it be police, issues with demonstrators, parties, etc.) and his feelings about them, as well as his reaction to certain police actions.<sup>173</sup> What also becomes apparent is Barber’s awareness that the police in fact do not want demonstrators in Ottawa. In both his Tik Toks and text messages, Barber made reference to police becoming increasingly aggressive, and to plans for the removal of demonstrators. As much as Barber claims that he wants to work with law enforcement, as stated above at paragraph 103, his words and actions state otherwise.

[119] Certain protesters may have been present in downtown Ottawa for other reasons; however, there is no evidence as to what those reasons are. It is a common-sense inference that in a demonstration comprised of thousands of individuals there might be some differences in opinion or purpose. With that said, there is also no evidence as to what percentage these “other” individuals represented. Instead, the evidentiary record shows that the Freedom Convoy was the most prominent group in Ottawa during the demonstration period who represented a large majority of those present. In any event, the Crown is not required to prove that Barber or Lich had influence over any demonstrator to find them liable as principal or parties to the offence of mischief.

[120] With respect to section 430(7) of the *Code*, neither Barber nor Lich was present in Ottawa to merely communicate information. Barber and Lich were not entitled to a “captive audience”, and their actions and resulting impact of the Freedom Convoy resulted in just that. The businesses and residents in the downtown core were not free to avoid receiving their message.

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<sup>171</sup> Exhibit 135, Volume 1, at Tabs 4 (p. 2, 9), 11 (p. 2), 20 (p.1), 31 (p. 3), 38 (1), 42, 52 (to name a few).

<sup>172</sup> Exhibit 135, Volume 1, at Tabs 2 (2), 4 (p.2), 31 (p.5), 53 (p.44); Volume 2, at Tabs 14 (p.2), 15 (p.3), 71 (p. 16).

<sup>173</sup> Exhibit 135, Volume 1, at Tabs 3 (p.2), 4 (p.2, 9), 5 (p. 2), 6 (p.4), 7 (p. 3), 8 (p. 4), 9, 10.

The method and location of their activity removed the expressive content required by section 430(7). Mindful of their contextualized misconduct highlighted above in paragraphs 82-111, section 430(7) offers them no protection. As ACJ McWatt held in *City of Ottawa v. Persons Unknown*, 2022 ONSC 1151, at para. 57 of the Freedom Convoy, “there is ample evidence that the respondent’s current actions and flagrant disregard for the City’s by-laws go far beyond exercising their right to protest. The Respondents’ actions are significantly impacting the City’s ability to perform essential functions.” When examining jurisprudence on the limitations of lawful protest, it becomes clear that Barber and Lich’s actions far exceeded any right of expression that they would have ordinarily enjoyed (*Persons Unknown*, at paras. 58-59):

[...] expressive conduct by lawful means enjoys strong protection in our system of governance and law, expressive conduct by unlawful means does not. No one can seriously suggest that a person can block freight and passenger traffic on one of the main arteries of our economy and then cloak himself with protection by asserting freedom of expression.

Freedom of expression and association do not provide a legal basis to illegally deprive others of enjoyment of their legal rights to use their land, operate their businesses, or travel. Neither does it guarantee the right to amplify one’s voice by trammeling others’ rights. The rule of law must be the dominant policy. If people do not respect the law, then our rights become meaningless.

The Freedom Convoy 22’ participants’ rights to freely express themselves do not allow that their activities can deny fundamental rights and freedoms to all those detrimentally affected by the Demonstration. [Emphasis added.] [Citations omitted.]

***Count #1 – Section 464(a) – Barber and Lich Counselling the Interference with Lawful Use and Enjoyment of Property which was not Committed by One or More Persons***

[121] The evidentiary foundation in support of the counselling charge remains the same as the substantive offence for mischief outlined above. In the event that this court finds that Barber and/or Lich counselled the mischief offence, and that the offence occurred, they are liable as parties to the offence pursuant to s. 22 of the *Code*, and the Crown would accordingly request a stay of this charge.

[122] Again, when reviewing the statements and actions of Barber and Lich objectively, it is clear that they are of a nature that actively sought to persuade their audience to obstruct, interrupt, or interfere with (any person in) the lawful use, enjoyment, or operation of property (*Hamilton*, at para. 74). As previously noted, this court has the benefit of hearing Barber and Lich’s words directly from their mouths. There is no ambiguity in the language.

[123] It is important to take into account the collective message that can be gleaned from Barber and Lich’s statements (*Jeffers*, at para. 31). A review of even a few of the statements included in argument on the offence proper leave no doubt that Barber and Lich’s objective was to encourage or induce demonstrators to come to or remain in Ottawa, which had the obvious effect of causing obstruction or outright blocking of downtown streets and continuing the harmful impact on downtown residents, business owners and employees. Their statements were made throughout the demonstration period while downtown streets were very clearly blocked and/or obstructed and made notwithstanding their knowledge of the ongoing harmful impact.

***Count #4 – Section 129(a) – Barber and Lich Obstructed Police in the Lawful Execution of their Duties and/or Aided or Abetted those who did***

[124] Though Barber and Lich had been arrested by the time the police commenced the large-scale clear-out of the occupation on February 18, 2022, their guilt in the obstruction that followed can be grounded as principals or parties to it. Notwithstanding repeated 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 (described in greater detail below). What culminated on February 18, 2022, when the police commenced the Removal Operation, was by and large a continuation of what had been going on in Ottawa since January 28, 2022, when demonstrators arrived in the city. As has been discussed in these submissions, there is direct evidence that establishes that throughout the occupation, both Barber and Lich circulated publicly throughout downtown Ottawa, influenced the placement of vehicles throughout the city, and encouraged demonstrators to “hold the line” and remain in place. The effects of their actions continued even after their arrest. As noted in *Strathdee*, where

a group offence occurs, the only requirement for liability is common participation: “each assailant is not permitted to offer his or her individual involvement alone, ignoring for liability purposes, the effect of their collective actions” (*Strathdee*, at para. 4). The obstruction of police that occurred on February 18, 2022, and onward was the direct product of Barber and Lich’s collective efforts with demonstrators to have the convoy remain in place, or “hold the line”, until such time as the COVID-mandates were lifted. It could have ended as easily as it began, as Barber noted in a Tik Tok video dated February 6, 2022: “this can be over with a drop of a hat, a drop of a hat we will be gone”.<sup>174</sup>

[125] On October 31, 2023, Blonde testified about the Removal Operation that occurred on February 18-20, 2022. Blonde observed the Public Order Units (POU) move from Laurier Avenue and Nicholas Street towards Rideau Street and Sussex Street, continuing west to Parliament Hill.<sup>175</sup> Blonde was standing behind the line of POU officers as they pushed the crowd of demonstrators westward.<sup>176</sup> At times, Blonde observed the resistance to the westward movement of police, characterizing it as “people refusing to move”.<sup>177</sup> Blonde’s evidence in this regard was consistent with Captain Etienne Martel’s (“Martel”), who described the difficulty his squad from Sûreté du Québec had in attempting to move forward to clear a street.<sup>178</sup> Martel explained that a heavy presence of demonstrators prevented his squad from moving forward, describing the crowd’s resistance to the progress of police; “like pushing back”.<sup>179</sup> When shown a video of the Removal Operation (Exhibit 4), Martel commented “when the officers try to move forward, the demonstrators, they push in the opposite direction.”<sup>180</sup> While commenting on the same exhibit, Martel additionally pointed out that “there was an order to move forward and continue to push back the demonstrators and then you can see there is a clear pressure coming from the demonstrators.”<sup>181</sup> Martel described the

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<sup>174</sup> Exhibit 12 – Tik Tok Video dated February 6, 2022.

<sup>175</sup> Transcript of Proceedings, October 31, 2023, at pp. 9-10.

<sup>176</sup> Transcript of Proceedings, October 31, 2023, at p. 5.

<sup>177</sup> Transcript of Proceedings, October 31, 2023, at p. 11.

<sup>178</sup> Transcript of Proceedings, September 18, 2023, at pp. 15-16.

<sup>179</sup> Transcript of Proceedings, September 18, 2023, at p. 17.

<sup>180</sup> Transcript of Proceedings, September 18, 2023, at p. 28; Exhibit 4, at 29:50 to 30:20.

<sup>181</sup> Transcript of Proceedings, September 18, 2023, at pp. 29-30; Exhibit 4, at 37:30 to 38:00.



crowd as “a crowd that was resisting” and that “they refused to leave.”<sup>182</sup> Martel’s evidence in this regard is confirmed by multiple videos depicting the Removal Operation filed as part of these proceedings where demonstrators are seen actively pushing back on police, or failing to leave the area when asked to.<sup>183</sup> Of note, in *Blackman*, at para. 4, Phillips J. characterizes the roadway between the old train station and the Rideau Centre as ordinarily busy.

[126] This resistance and refusal to move during the Removal Operation occurred notwithstanding “three consecutive days of messaging” by police on February 15, 16, and 17, 2022, when notice was being provided to protesters of the consequences for remaining.<sup>184</sup> This, in addition to messaging that commenced on February 9, 2022.<sup>185</sup> The majority of the PLT members participated in the messaging.<sup>186</sup> For example, Bach warned of “arrest” and “towing” and testified that she delivered this message “upwards of 100 times”.<sup>187</sup> In addition to verbal warning, flyers were distributed during these three consecutive days that clearly articulated that demonstrators needed to leave, and the consequences that followed for non-compliance.<sup>188</sup> The reaction by some demonstrators to these notices, as well as earlier police requests that no trucks move to Wellington Street was consistent with what ultimately transpired during the Removal Operation: resistance. Bach described reactions from demonstrators in this regard as “unwilling”, “upset with messaging”, “agitated”, “verbally aggressive with police”, “they weren’t welcoming of messaging walking into the downtown core”.<sup>189</sup> As previously mentioned, Blonde testified that he observed demonstrators on Wellington Street placing notices in a toilet, which was in the middle of the road.<sup>190</sup> Blonde also described horns going off when the PLT team entered the Rideau Street and Sussex Street area to deliver messaging

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<sup>182</sup> Transcript of Proceedings, September 18, 2023, at pp. 16, 20.

<sup>183</sup> See for example: Exhibits 3, 4, 5, 96, 97.

<sup>184</sup> Transcript of Proceedings, October 27, 2023, at p. 49.

<sup>185</sup> Exhibit 1 – Admissions, at para. 2; Exhibit 47 – OPS Messaging on February 6, at p. 18; Exhibit 128 – OPS Messaging on February 9 (see also Exhibit 47 at pp. 10-11).

<sup>186</sup> Transcript of Proceedings – October 31, 2023, at p. 4.

<sup>187</sup> Transcript of Proceedings, October 19, 2023, at pp. 76-77.

<sup>188</sup> Exhibits 130-132 – OPS Notice.

<sup>189</sup> Transcript of Proceedings, October 19, 2023, at p. 19.

<sup>190</sup> Transcript of Proceedings, October 27, 2023, at p. 38.

on February 17, 2022, and that the team had to ultimately pull out of the area as they continued west on Wellington Street due that day to the hostility of the crowd.<sup>191</sup>

[127] The refusal to move during the Removal Operation occurred notwithstanding the “slow and methodical” progress of POU officers.<sup>192</sup> Martel characterized the movement of his squad as “very, very slow”.<sup>193</sup> This slow progress gave time to the demonstrators to back up or to withdraw.<sup>194</sup> Their refusal to move during the Removal Operation also occurred notwithstanding the messages broadcast via loudspeaker during the progression of police past Parliament, which included: “You must leave. You will be arrested. Anyone found within the zone will be arrested. Exit via Bank Street South”.<sup>195</sup> The resistance from demonstrators was accompanied by certain demonstrators periodically yelling “hold the line”, or chanting “freedom”.<sup>196</sup>

[128] This refusal to move on the part of demonstrators was previously instructed and encouraged by both Barber and Lich. They also led by example (ultimately not leaving themselves until they were arrested). A non-exhaustive list of examples from the evidence include:

LICH		BARBER	
EX	EVIDENCE	EX	EVIDENCE
60	Rumble (Feb 4) (reposted to Twitter: see Exhibit 61, at p. 3):  “So please, if you can donate, uh, and help us keep these truckers going, you know, we plan to be here for the long haul, as long as it	25	Posted to Tik Tok on Feb 9 (Transcript at Exhibit 25A, and cross-posted to Facebook (Exhibit 39A) – see Exhibit 48):  “They’ve been instructed to clear the streets of down Ottawa, they are going to use whatever means force

<sup>191</sup> Transcript of Proceedings, October 27, 2023, at p. 40.

<sup>192</sup> Transcript of Proceedings, September 18, 2023, at p. 10.

<sup>193</sup> Transcript of Proceedings, September 18, 2023, at p. 15.

<sup>194</sup> Transcript of Proceedings, September 18, 2023, at p. 52.

<sup>195</sup> Exhibit 3 – OPS Compilation Video, at 08:43.

<sup>196</sup> Exhibit 4 – C0018 Video, at 02:25 to 02:55 (“Hold the Line” at 02:39), 05:35 to 06:05 (“Hold the Line” at 05:49), 15:30 to 16:00 (“Hold the Line” at 15:43 – see demonstrator in black toque), 29:50 to 30:20 (“Hold the Line” at 30:01 – see demonstrator wearing yellow hat), 37:30 to 38:00 (“Hold the Line” at 37:36); Exhibit 5 – C0019 Video, at 05:45 to 07:05 (“Love over fear” at 5:56 to 7:05 – see protestors with guitar and drum), 12:55 to 13:35 (“Hold the Line” at 13:05 to 13:26 – see demonstrator wearing black toque, sunglasses and red shirt); Exhibit 3 – OPS Compilation Video.

	takes to ensure your rights and freedoms are restored.”		possible. We have instructed them for every Canadian truck driver that is protesting in downtown Ottawa that is arrested and has to sign ... the detainment form ... if you sign it, you get to go free but you’re not allowed to come back here ... for every trucker that signs that to get out of custody, we will then replace that truck driver with three new truckers.  When the call goes out, guys, everybody and their fuckin’ dog, get comin’ to Ottawa cuz 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 ... This aint no fuckin’ drill either ... Be strong, hold the line, we have the f...liberal government fractured right now, uh provinces are falling. We’re winning guys. We’re winning and they’re scared shitless”.
62	Posted on Facebook at p. 92/212 of Exhibit 39A and 17/37 of Exhibit 47 on February 6 at 40/47  “This is my hill” [in response to the question: “are you guys willing to go to jail even if it’s arbitrarily to fight for your cause, to restore your freedoms for Canadians?”]	10	Posted to Tik Tok @bigred19755 on February 7  “So, we have to win this guys. There is no option for going home without answers. That is my goal, personally ... be strong people, no matter what gets thrown at us”
56	Posted on Facebook on February 14 (Facebook Live: see Exhibit #47 at p. 32/37)  “Now, I want to address the prime minister. No matter what you do, we will hold the line”. And “we will hold the line”. And “hold the line”.	11	Posted to Tik Tok @bigred19755 on February 7  “We’re holding the line” [in response to a demonstrator saying “you guys hold the line”].

59	<p>Posted on Facebook on February 16 (see Exhibit 47 at p. 36/37)</p> <p>“We make choices from love or we make choices from fear”. And “I just want you to know that this is my hill” and “and we’re gonna hold the line”.</p>	26	<p>Posted to Tik Tok @bigred19755 on February 10:</p> <p>“Do you think we’re leaving? Do you think we’re leaving ... we might move some trucks around a little bit” [showing trucks near Rideau Street and Wellington]</p>
54	<p>Facebook on February 17 (posted to Facebook: see Exhibit #47, at p. 34/37)</p> <p>[shortly before arrest] “What my response would be if I get arrested? Hold the line”</p>	135	<p>Text messages:</p> <p>Volume 2, at Tab 63, p. 74: “Yup and its our last stand”</p> <p>Volume 2, at Tab 63, p. 79: “Yup and we aint’ leaving”</p> <p>Volume 2, at Tab 19, p. 11: “Things are great. Holding the line. Not giving up”</p> <p>Volume 2, at Tab 62, p. 15: “We have this Tim. Hold the line”</p> <p>Volume 1, at Tab 2, p. 2: “We are doing what we can. Hold that line.</p> <p>Volume 1, at Tab 4, p. 9: “Hold that line” [in response to a comment about “cops handing out paper stating to leave”].</p> <p>Volume 1, at Tab 51, p. 80: “Hold the line. We are in a peaceful protest” [in response to being sent the “Notice to Demonstration Participants (Exhibit 130)"]</p> <p>Volume 1, at Tab 31, p. 5: Head for Ottawa lol we need bodies” (in response to “what can I do to help).</p> <p>Volume 1, at Tab 53, p. 44: “I heard. We need help” (in response to: Lots of ppl heading to Ottawa I hear”).</p>

			<p>Volume 2, at Tab 15, p. 3: “We are wanting bodies fast”.</p> <p>Volume 2, at tab 71, p. 16: “Oh sweet. Need bodies. Things are heating up with police today”.</p>
53	<p>Facebook on February 17 (posted to Facebook: see Exhibit 47, at p. 33/37)</p> <p>[during arrest] “Hold the line”</p>	83	<p>Posted to Tik Tok @bigred19755 on February 16.</p> <p>Barber nods while Keith Wilson states “if you come and stand with protesters it will make it harder for police to act on what they are being told to do”.</p> <p>“We’ll be here, guys. Remember, peace is the only way out of this. The only way to win with a tyrannical government like what we have right now is to stand up to them. We can’t back down. We’ve come too far. We have to follow this through. Thank you, guys.” [In response to “the letters that have been left on everybody’s doorsteps by Ottawa City police” and invoking of Emergencies Act].</p>
46	<p>Posted to Tik Tok @bigred1977 on February 11</p> <p>“I know there’s a lot of negativity and outside forces that are trying to come in, which happens when you, when you, uh, are in something that has grown into what, what this has grown into, but it’s really important that we stay unified. Please keep spreading love. Please keep keeping it as peaceful. That is what we’re here for. We’re eye on the prize. We’re in it to win it”.</p>	24	<p>Posted to Tik Tok @bigred19755 on February 9</p> <p>“If you see a large, vast majority of police coming towards your truck like they do, like ... 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 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 that is the best way to do it is when that happens. Do that guys, please. Let that horn go. Don’t let it go. When we see that mass force of</p>

			police coming at you. Okay, guys? Be strong. We've got this."
57	Freedom Convoy Press Conference – February 3, 2022 (Exhibit 57A, at p. 2, 3)  "We are therefore calling on all levels of government in Canada to end all COVID mandates and restrictions. We will continue our protest until we see a clear plan for their elimination."  "Our departure will be based on the prime minister doing what is right, ending all mandates and restrictions on our freedoms".	17	Posted to Tik Tok @bigred19755 on February 7:  "The rumours are the riot police are on their way to Ottawa right now, riot police, okay?"  "If you see this, if this video gets to you and we go dark all of a sudden, that means they're here rounding us up. That means you need to get to Ottawa. Whatever means you can, you come in peaceful protest. You peaceful and you protest. You come here and you flood this city. I don't give a shit if the entire country of Canada comes to fucking Ottawa. That's what we're living right now, government tyranny."
56	Freedom Convoy Press Conference – February 14, 2022 (Exhibit 56A, at pp. 2-3)  "... we have faith that those politicians, police officers, and military will listen to their conscience. Remember "I'm just following orders" has always been an excuse used by those who ignore their moral intuition."  "Now, I want to address the prime minister. No matter what you do, we will hold the line [prompts "hold the line" response from member of audience]. 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 of our expectations		

	and inspired an international movement. Be strong. Show kindness. Love will always defeat hate. Hold the line.”		
59	<p>Video posted to Facebook, February 16 (Exhibit 59A, at pp. 2-3)</p> <p>“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 cant, pray for us. I know you are. I just want 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 thse people are. And they’re gonna stay and they’re gonna fight for your freedom as long as they possibly can.”</p> <p>“I want you to keep fighting the good fight”.</p> <p>“We make choices from love, or we make choices from fear”.</p> <p>“I just want you to know that this is my hill”.</p> <p>“Tomorrow is a new day. And I’m ready. I’m not afraid. And we’re gonna hold the line”.</p>		

[129] There is no ambiguity as to the intent of either Barber or Lich’s statements: they not only demonstrated their own resolve to “hold the line”, but they also actively instructed and encouraged their followers not to give up until the government mandates are dropped. This messaging was dalso consistently broadcasted on social media and in press conferences they

were party to, and in what the public understood their goals to be. Some examples include but are not limited to:

- a. At a press conference dated February 6, 2022, Lich stated “we’ve never come here with an agenda to be violent or aggressive or threatening. We come here with a simple message. Let’s end mandates”. At that same press conference, a reporter asks if the convoy would be willing to come back to “pressure” the government again in the event that the mandates get dropped, the demonstrators leave, and then mandates are reimposed because of a new variant. Lich responds, “I think you would see that happening ... in short order.”<sup>197</sup>
- b. At a press conference dated February 3, 2022, after Lich indicated that departure of the demonstrators would depend on mandates being dropped (see reference to Exhibit 73 in table above), a reporter stated that the Prime Minister was not prepared to meet with the group, and expressed concerns about the impact of the mischief on residents. He then asked, “when are you going to go home” – to which Keith Wilson (“Wilson”) responded, “as you just heard, Tamara Lich has answered that question ... she answered it twice in her statement”.<sup>198</sup>
- c. At a press conference dated February 14, 2022, while addressing the intention on the part of government to invoke the *Emergencies Act*, Lich stated “we are not afraid. In fact, every time the government decides to further suspend our civil liberties, our resolve strengthens, and the importance of our mission becomes clearer. We will remain peaceful but planted on Parliament Hill until the mandates are decisively ended.”<sup>199</sup>
- d. At a press conference dated February 17, 2022, Lich lays out the “Roadmap to Freedom” (Barber is present) outlining a list of demands on behalf of “Freedom Convoy 2022”. The list was comprised from what the group heard from “Canadians about what they would like to see and happen next”, one of which is to end all vaccine mandates.<sup>200</sup>
- e. In a Tik Tok video dated February 6, 2022, Barber stated “so, citizens of Ottawa, put pressure on your, your government. Come on. We’re all here for a reason. We’re sorry it had to happen in your city, but this is where the politicians asked us to come or forced us to come, I should say for policies that we want changed. So, going forward, this can be over with a drop of a hat, a drop of a

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<sup>197</sup> Exhibit 42 – Press Conference, February 6 (Transcript at Exhibit 42A), at pp. 28, 33, 34.

<sup>198</sup> Exhibit 57 – Press Conference, February 3, 2022 (Transcript at Exhibit 57A), at pp. 6-7.

<sup>199</sup> Exhibit 56 – Press Conference, February 14, 2022 (Transcript at Exhibit 56A), at pp. 1-2.

<sup>200</sup> Exhibit 84 – Press Conference, February 17, 2022 (Transcript at 84A), at pp. 1-2.



hat we will be gone.” And “this is preventable, and this is fixable, but the pressure needs to be put on somebody else, not a group of somebody’s”<sup>201</sup>

- f. In a Tik Tok video dated February 4, 2022, Barber stated “... that’s exactly what we’re here for. We want no mandates”.<sup>202</sup>
- g. In a Tik Tok video dated February 9, 2022, Barber stated “Hi, provinces of Canada. A few of you have fallen already to the mandates. A few of you are holding on. When we’re done in Ottawa here, we have the resources to come to you. Remember that, please. Quebec you’re first ... Manitoba you’ll be second. Just so you know, B.C.”<sup>203</sup>

[130] The only evidence before the court of what it means to “hold the line” came from Martel, who interpreted the expression as follows: “In that context of this event, it was not to move. We keep the line where we were up to.”<sup>204</sup> This is the interpretation that makes sense in the context. This same interpretation can be readily inferred from both Barber and Lich’s use of the phrase, not only in light of the circumstances and context in which it was used by both of them, but also how it was used by other demonstrators. Again, context is critical. In addition to references already made throughout these materials, some further examples include, but are not limited to:

- a. Exhibit 3, at 02:30- 02:46: During a speech on Wellington Street on February 10, 2022, a demonstrator over a loudspeaker states: “this is our Vimy, this is our [indiscernible], this is our Trudeau beach. We have taken the Hill, we are holding the line”.
- b. Exhibit 3, at 07:46: During the Removal Operation a demonstrator wearing a Guy Fawkes mask is holding a sign that states: “Freedom Convoy End All Mandates”, “Respect the Charter of Rights and Freedoms”, “Hold the Line”, “Truckers Freedom”.
- c. Exhibit 4: Various demonstrators are heard yelling “hold the line” while resisting during the Removal Operation at 02:39, 05:49, 15:43 (see demonstrator in black toque), 30:01 (see demonstrator wearing yellow hat), and 37:36.

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<sup>201</sup> Exhibit 12 – Tik Tok Video dated February 6, 2022.

<sup>202</sup> Exhibit 24 – Tik Tok Video dated February 4 (cross-posted on Facebook: see Exhibit 47 at p. 29, and Exhibit 37A, at p. 107).

<sup>203</sup> Exhibit 23 – Tik Tok Video dated February 9 (Transcript at Exhibit 23A).

<sup>204</sup> Transcript of Proceedings, September 18, 2023, at p. 51.

- d. Exhibit 5, at 5:56 to 7:05 (“Love over fear”– see protestors with guitar and drum); and at 13:05 – 13:26 (Demonstrator yelling “Hold the Line” – see demonstrator wearing black toque, sunglasses and red shirt).

[131] What is important to consider in the analysis is that Barber and Lich were not ordinary demonstrators or mere bystanders. They held an almost celebrity status, as Barber remarked on a number of occasions and was evident in some of his Tik Tok videos.<sup>205</sup> Lich was referred to by Brian Peckford as “one of the great leaders of the ... truckers movement”.<sup>206</sup> As *Mammolita* and other protest-related jurisprudence instructs, context is critical when determining the degree of participation required to ground culpability for criminal conduct in such a setting. In this case, the court can find beyond a reasonable doubt that police were obstructed by demonstrators when conducting Removal Operation on February 18, 2022, and onward. The question becomes – how much, if at all, were Barber and Lich involved or had something to do with that?

[132] In order to determine that, the court must consider – not only the nature and scope of the demonstration in question – but who Barber and Lich are in the context of it. As established, they are among the most prominent leaders of the occupation. Their words and actions therefore carried with them greater weight than an ordinary demonstrator. In *Mammolita*, at para. 13, the Court explained that a person’s presence at a protest could constitute a positive act and gave the example of a person “standing shoulder to shoulder” with others in a group to block a roadway. In this case, prior to their arrests, Barber and Lich physically stood shoulder-to-shoulder with demonstrators. Direct evidence establishes that Barber and Lich used their megaphone to repeatedly call for demonstrators to stay strong, hold the line, and keep up the “fight” until the government mandates were no more. The effect of this when considering their prominence, was lasting. Despite multiple police warnings, a declaration of a state of

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<sup>205</sup> See for example: Exhibit 50 – Live Video on February 12, 2022 (cross-posted to Facebook – Exhibit 47, at p. 26) where demonstrators request a photo with Barber and say “Oh my god ... it’s such a pleasure to meet you”); Exhibit 29 (Transcript at Exhibit 29A) where demonstrator says they’ve been looking for Barber “I need to take a picture with you”.

<sup>206</sup> Exhibit 56 – Press Conference, February 14, 2022 (Posted to Facebook on February 14, see: Exhibit 47, at p. 28).

emergency by the City of Ottawa and Province of Ontario, multiple injunctions, a lawsuit, and with full knowledge of the disruption the occupation was causing in Ottawa, there is no evidence that they instructed anyone to leave. It is for this reason, although unable to be physically present on February 18 and onward, Barber and Lich continued to metaphorically stand shoulder-to-shoulder with those who remained in the downtown core. There was already obstruction of police leading up to the Removal Operation. This did not end upon the arrests of Barber and Lich. Instead, the offence continued until police were ultimately able to secure the downtown core on February 22, 2022.

[133] In the event this court cannot find Barber and Lich liable as principal offenders, the court can certainly find they both aided and abetted the obstruction of police. Barber and Lich are not required to have participated in each act of the offence, nor is it required, again, that a single principal committed it (*Romlewski*, at para. 46; *Almaras*, at paras. 65-66).

[134] When looking at whether Barber and Lich aided the demonstrators in obstructing police, again the context is critical. In the circumstances of the Freedom Convoy, the obstruction that culminated on February 18, 2022 (and prior) was successful due to the sheer number of demonstrators who remained in Ottawa. Their ability to do so was in large part due to the efforts of Barber and Lich, who were not only able to fundraise large sums of money to assist with fuel and other logistical expenses, but in their ability to lead and use their megaphones to mobilize large groups of people to come together and assist one another in achieving their common cause. In addition, they made efforts to negotiate with police and city officials. It is abundantly clear that their assistance was offered with the intention of allowing demonstrators to remain in Ottawa, which even prior to February 18, obstructed law enforcement. As *Mammolita*, at para. 16 explains – assistance or encouragement may be made out by the presence of an accused at the scene of a crime during its commission – if they are there for that purpose. As previously stated, it is undisputed that Barber and Lich were present in Ottawa from January 29 right up to their arrests on February 17. There is direct evidence – their own words – that their intent was to remain “firmly planted” in Ottawa until such time as the mandates were lifted. In fact, they were both participants in a press conference on the date of their arrest, which set out a list of demands that the Freedom Convoy group had for the

government.<sup>207</sup> There is also direct evidence that prior to their arrests, police and government had loudly signalled that the occupation needed to end. Barber and Lich’s continued assistance only strengthened the resolve of demonstrators to do the same which was evidenced in their reactions to police notices, as previously mentioned, and as well as their continued numbers. Barber and Lich were not “mere bystanders”.

[135] Again, there is no evidence that Barber or Lich instructed those that followed them to go home. In fact, just before her arrest, Lich invited people to come stand in solidarity with the Freedom Convoy, and encouraged people to “keep fighting the good fight” and “hold the line”.<sup>208</sup> This was in the face of comments that infer she knew she was about to be arrested (and indeed at the time of her arrest, she exclaimed “hold the line”).<sup>209</sup> Similarly, right up until his arrest, Barber also encouraged people to continue demonstrating. As late as February 16, Barber sent a series of texts instructing individuals to “head for Ottawa” in response to being asked “What can I do to help”, expressing that “we” need help, and “need bodies ... things are heating up with police today”.<sup>210</sup> In a text message to “James” on February 9, Barber stated “Need bodies if they start arresting.”<sup>211</sup> In fact, more directly than Lich, he encouraged demonstrators to lock their doors and sound their horns until police have to break their windows. On February 16, Barber nodded in approval when Wilson stated that those who come and stand with protesters will make it more difficult for police to act. Further to those comments, Barber expressed that “we can’t back down ... we’ve come too far ... and we have to follow this through”. Particularly armed with the knowledge that police and government wanted demonstrators gone, that there were various states of emergencies, and that residents were upset, it was clear that there is no other inference that can be drawn from Barber and Lich’s words or actions other than an intention to assist in stopping or obstructing the authorities from exercising their duties to restore public order at all costs. The two prongs of the test outlined in *Almarales*, at paras. 65-66 for aiding are therefore satisfied.

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<sup>207</sup> Exhibit 84 – Press Conference dated February 17, 2022 (Transcript at Exhibit 84A).

<sup>208</sup> Exhibit 59 – Facebook Live, February 16, 2022.

<sup>209</sup> Exhibit 53 – Facebook Video, February 17, 2022 (posted to Facebook: see Exhibit 47, at p. 33).

<sup>210</sup> Exhibit 135 – Volume 1, Tab 31, p. 5, Tab 53, p. 44; Volume 2, Tab 15, p. 3, Tab 71, p. 16.

<sup>211</sup> Exhibit 135 – Volume 2, Tab 10, at p. 3.

[136] When considering whether Barber and Lich abetted, it is important to consider the language utilized by both parties is not ambiguous. It is eminently clear. More so than in other trials, this court has the benefit of hearing both Barber and Lich's words directly from their mouths (as opposed to being led through witnesses) and so there is no mistake about what they said, when they said it, or where they were when they said it. For abetting to be made out, there is no requirement that Barber or Lich knew those who obstructed police or what role they played (*Cowan*, at para. 33). The Crown need only show that either party said or did something that encouraged the demonstrators to commit the offence and that they offered their words or conduct with the intention of encouraging the offence (*Almarales*, at para. 67). Non-exhaustive lists of statements have been provided in these materials; however, what is clear even just on the sampling provided, are that Barber and Lich's words not only encouraged, but instigated, promoted, procured, and supported the offence of obstruction (*Remley*, at para. 97; *Romlewski*, at para. 81). Both Barber and Lich, in different statements, encouraged individuals to "hold the line" (among other things), they promoted their views in this regard across multiple social media platforms, in text messages, as well as in press conferences, the procured by continuing to invite demonstrators to attend the city, and the ultimately supported the offence so much so, that they themselves were arrested. In further ascertaining Barber and Lich's liability in this regard, principles outlined in *Romlewski*, at para. 164 are applicable, namely: (1) if the protest gains strength by numbers and depends on the participation of a large group, presence may be interpreted as encouragement; and (2) showing a sense of unity or solidarity with the actions of the principals sheds light on the purpose behind being at the protest.

[137] In the circumstances, the success of the Freedom Convoy was predominantly due to the strength in its numbers. Barber and Lich's role in the demonstration, their words, and their mere presence given their prominence can only be interpreted as encouragement. Further, though Barber and Lich did not condone violence, they showed an unwavering solidarity with the actions of those on the ground which came out in almost all of their public messaging. Their purpose throughout the occupation was not only to lead the demonstration but to stand shoulder-to-shoulder with those "holding the line".

***Count #3– Section 464(a) – Barber and Lich Counselling the Obstruction of Peace Officers, which was not Committed by One or More Persons***

[138] The evidentiary foundation in support of the counselling charge remains the same as the substantive offence outlined above. In the event that this court finds that Barber and/or Lich counselled the offence of obstruct peace officer, and that the obstruction occurred, they are liable as parties to the offence pursuant to s. 22 of the *Code*, and the Crown would accordingly request a stay of this charge.

[139] Again, when reviewing the statements and actions of Barber and Lich objectively, it is clear that they are of a nature that actively sought to persuade their audience to obstruct the police (*Hamilton*, at para. 74). As previously noted, this court has the benefit of hearing Barber and Lich’s words directly from their mouths. There is no ambiguity in the language.

[140] In considering the required contextual factors, it is important to highlight the collective message that can be gleaned from Barber and Lich’s collection of statements (*Jeffers*, at para. 31). A review of even a few of the statements included in argument on the offence proper leave no doubt that Barber and Lich’s objective was persuade demonstrators to remain in Ottawa, or for those not in Ottawa to attend and support the demonstration. The purpose of this was obstruct police in effecting their duty to return public order to Ottawa so that the demonstration could continue. Certain of Barber’s statements very overtly made this purpose clear (*e.g.*, Exhibit 24 and 49: get in your truck and lock the door; or Exhibit 83: nodding in agreement with Keith Wilson that more demonstrators will make it more difficult for police to carry out orders and then asking attend or remain at the demonstration).

[141] In coming to this conclusion, the court must recall that context is critical. As previously noted, some of these statements were made after the police and government had clearly indicated that it was time for the occupation to come to an end, which both Barber and Lich respectively were not prepared to do without the mandates being lifted. This was made clear time and time again, which speaks to their motive in requesting demonstrators “hold the line”, remain in or attend Ottawa in the face of repeated requests by police and the government to go home. Further, Barber and Lich intended their message to reach as wide an audience as

possible. This is evidenced by the fact that they counselled this offence in press conferences (with media present) as well as across various publicly accessible platforms with large audiences. In this vein, Barber and Lich’s status, which has been extensively referenced, also must be considered – including the weight attached to their public statements by virtue of who they were, in that place, at that time.

***Count #7 – Section 464(a) – Barber Counselled the Disobeyance of a Court Order which was not Committed by One or More Persons***

[142] As previously mentioned, the ability to supervise a court order through the contempt power is not a bar to a charge being laid under s. 127 of the *Code* because the provision is applicable to civil or criminal orders (*Clement*, at p. 2; *Gibbons*, at para. 11). As such, this court can find criminal liability in a breach of what has been colloquially described as the “honking injunction”.<sup>212</sup> In this case, the court has direct evidence of Barber counselling individuals to breach this order through a post on his Tik Tok account “@bigred19755” on February 9, 2022.<sup>213</sup> It is admitted that this is Barber’s account which was publicly available, and that the screenshots and captures from it are accurate.<sup>214</sup>

[143] On February 7, 2022, McLean J. ordered that any persons having notice of his Order were restrained and enjoined from using air horns or train horns in downtown Ottawa for 10 days.<sup>215</sup> This was in response to a motion brought by civilian witness Li in relation to horn honking against Barber, Lich, Dichter, King, and other unnamed individuals, who opposed it.<sup>216</sup> Among other things, Barber, Lich and the other defendants were also directed to provide notice of the Court’s Order to others participating in the “Freedom Convoy Protest”. While the Order confirmed that the protesters “remain[ed] at liberty to engage in a peaceful, lawful, and safe protest”, *the Order did not in any way affirm the “Freedom Convoy Protest” was meeting this standard*. A further injunction of this nature was issued on February 16, 2022.<sup>217</sup>

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<sup>212</sup> Exhibit 122.

<sup>213</sup> Exhibit 24 (Transcript is Exhibit 24A).

<sup>214</sup> Exhibit 1, at para. 16-17.

<sup>215</sup> Exhibit 122, s. 2.

<sup>216</sup> See: Transcript of Proceedings Before McLean J. February 7, and 16.

<sup>217</sup> Exhibit 122.

[144] On September 7, 2022, Sergeant Pilotte (“Pilotte”) testified that she downloaded a video on February 11, 2022, that had been posted on the Tik Tok account @bigred19755.<sup>218</sup> Pilotte noted that the video had been posted on the account on February 9, 2022, and that the account had 146,200 followers and 2,600,000 “likes”.<sup>219</sup> On September 12, 2022, Pilotte testified that she downloaded the same video once again (*i.e.* a cross-posting) on February 13, 2022 from the Freedom Convoy 2022 Facebook page,<sup>220</sup> created by Lich, which was also publicly accessible and had 343,760 followers.<sup>221</sup> Again, it is admitted that the screenshots from the Freedom Convoy Facebook page are accurate and the dates and times represent the date and time the post was made.<sup>222</sup> By February 13, the cross-posting on Facebook (dated February 9 at 6:33 p.m.) had received 1,300 “likes”, which represents the number of individuals who interacted with it.<sup>223</sup> In the video, Barber indicates that he is “live from Ottawa” before discussing rumours of blackouts and riot police and then stating the following:<sup>224</sup>

*So, this word is going out to everybody in the 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’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 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 that is the best way to do it is when that happens. Do that guys, please. Let that horn go. Don’t let it go. When we see that mass force of police coming at you ...*

[145] The phrase “live from Ottawa” suggests that Barber filmed the video on the posting date, February 9, 2022. Regardless, the video was posted to Barber’s account on that date, which was just two days following McLean J.’s Order prohibiting the very conduct that Barber is

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<sup>218</sup> Exhibit 24 (Transcript is Exhibit 24A).

<sup>219</sup> Exhibit 6 (see top); Transcript of Proceedings, September 7, 2023, at pp. 13-14; Exhibit 1 – Admissions #1, at para. 14.

<sup>220</sup> Exhibit 49.

<sup>221</sup> See: Transcript of Proceedings – September 11, at p. 6 & September 12, at pp. 29-30; Exhibit 1 – Admissions #1, at paras. 15(a), 20.

<sup>222</sup> Exhibit 1 – Admissions #1, at paras. 11, 13.

<sup>223</sup> Exhibit 1 – Admissions #1, at para. 14; Exhibit 49 – Video (Transcript is Exhibit 49A, Tab 27). The notation of “1.3K” of “likes” appears on Barber’s post in Exhibit 39A at p. 51 and Exhibit 47 at p.13.

<sup>224</sup> Exhibit 24 (with transcript at 24A, Tab 18) and Exhibit 49 (with transcript at 49A, Tab 27) [Emphasis added].



encouraging or inducing demonstrators to do. It is clear by Barber’s reference to the Order, and particularly that it is “to keep the horns down”, that he was aware of its existence and conditions. Barber’s instruction to “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 ...” – from the perspective of the ordinary, reasonable person – can be interpreted as nothing other than a “deliberate encouragement or active inducement” to breach McLean J.’s Order and therefore commit a criminal offence (*Hamilton*, at para. 74; *Jeffers*, at para. 27).

[146] As *Jeffers*, at para. 27 instructs, the context or circumstances in which Barber made the post, as well as the manner in which his words were communicated and his relationship with the recipients of his message are important in order to ascertain his intent. By February 9, Barber had been in Ottawa for approximately 12 days. Ottawa had declared a state of emergency, and the OPS began issuing notices to protesters.<sup>225</sup> Barber himself references “riot police coming”. On February 4, Barber received nine screenshots from Constable Nicole Bach (“Bach”) notifying him of the police concerns with the occupation and enforcement actions that were planned to bring it to an end.<sup>226</sup> Barber also advised Bach on February 5, 2022, that he was being sued for 4 million – this was “for horns”.<sup>227</sup> Though Barber eventually relocated his truck from Wellington on February 8, his resolve to remain in place and continue the occupation was clear – this is evidenced in Exhibit 25. Furthermore in Exhibit 24, Barber’s instruction to breach McLean J.’s order (in the event of police action and effectively obstruct police and warn other demonstrator’s when they come) is consistent with his clear intention at the time that people remain in place.

[147] In addition to this, Barber delivered his message from his Tik Tok account, which has a sizeable following. The video was reposted to the “Freedom Convoy 2022” Facebook account, which also has a large following. There is no evidence that Barber himself posted the video to Facebook, but it being posted to his own public Tik Tok account showed an intention that the message reach a wide audience; and in particular, “everybody in the trucks around the city”.

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<sup>225</sup> Exhibit 1 – Admissions #1, at para. 2.

<sup>226</sup> Exhibit 128 – Screenshots; Exhibit 127 – Texts Between Bach and CB, at pp. 46-49.

<sup>227</sup> Exhibit 127 – Texts Between Bach and CB, at p. 54; Exhibit 15 – February 5 Video (Transcript at Exhibit 15A).

The very fact that his post was subsequently re-posted to Facebook demonstrates that his message was being disseminated. No post followed correcting or nuancing his remarks. Most importantly, there is no ambiguity in the language used, and Barber repeated the instruction to honk multiple times in his post. There can be no doubt in the circumstances that Barber actively sought to persuade individuals to breach the order (*Hamilton*, at para. 74). With that said, it is not necessary for the Crown prove that Barber’s audience was *actually* persuaded (*Hamilton*, at para. 74). It is Barber’s intent that matters, not the effect.

[148] Notwithstanding some evidence of “sporadic” honking that followed the injunction, no evidence in this trial was advanced showing the court Order was actually disobeyed given the absence of evidence as to whether those that continued to honk had notice of McLean’s Order (as required).<sup>228</sup> In addition, given the reduction in horn honking following the injunction, the court can infer that the offence was indeed not committed “*by one or more*” persons, as particularized.

#### ***R. v. Carter – Step #1 – A Conspiracy Existed***

[149] As noted in the Crown’s *Carter* application, the evidence in this case supports five distinct conspiracies or common unlawful purposes beyond a reasonable doubt:

- a. Intimidation of government officials by blocking or obstructing roads
- b. Obstruction, interruption, or interference with (any person in) the lawful use, enjoyment, or operation of property
- c. Obstruction of police
- d. Assembling with others (with the intent to pressure government officials) in such a manner as to cause persons in the neighbourhood of assembly to fear (on reasonable grounds) that they will disturb the peace tumultuously
- e. Counselling and/or aiding and/or abetting any of the above

[150] As emphasized throughout these materials, it is irrefutable that for three weeks in January and February 2022, demonstrators congregated and blocked and/or obstructed roads in

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<sup>228</sup> Transcript of Proceedings, September 20, 2023, at p. 64.

downtown Ottawa.<sup>229</sup> As early as January 28, 2022, convoys of trucks and other vehicles started arriving in Ottawa.<sup>230</sup> At the beginning of the demonstration, honking of horns featured prominently in downtown Ottawa until injunctions were imposed.<sup>231</sup> As discussed in these materials and summarized in Appendix C, the presence of vehicles impacted the delivery of service by OC Transpo as well as certain residents' ability to leave their homes or attend appointments. Other residents who could leave their homes faced delays getting to where they needed to go due to the traffic caused by road blockages and obstruction. In addition to the traffic and noise, residents and those who worked in the downtown core complained of diesel fumes, garbage and other waste, as well as harassment and intimidation.

[151] From the public's perspective, the stated purpose of the occupation was to pressure government officials to repeal COVID-19 vaccine mandates and passports. This was evidenced, in part, by the signage in the downtown area as well as in the nature of some of the guest speakers and speeches on Parliament Hill.<sup>232</sup> The crowds, vehicles, structures, and horns were the principal tools of the common unlawful purpose that existed throughout the three weeks – to put pressure on government officials. The video and photographic evidence adduced at trial depicting hundreds if not thousands of demonstrators congregated together over a lengthy period of time is in and of itself proof of the common unlawful purposes alleged. Again, **APPENDIX B** highlights statements made by Barber and Lich regarding the protest's purpose. Again, context is critical.

[152] The evidence at this trial establishes beyond a reasonable doubt that there was an agreement reached among demonstrators to attend Ottawa in protest government mandates related to COVID-19.<sup>233</sup> At the earliest stage, that simple agreement among the parties to come

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<sup>229</sup> See for example: Exhibits 3; 14; 19; 20; 26; 31; 37; 50; 115. And see also Appendix A.

<sup>230</sup> Transcript of Proceedings, September 6, 2023, at p. 10.

<sup>231</sup> See for example: Exhibits 3; 13; 14; 15; 19; 20; 50; 122.

<sup>232</sup> See for example: Exhibit 3 (00:49 – “Freedom not Fear”, 03:06 – “Fuck Trudeau”; 03:22 – “Mandate Freedom”; 03:26 – “Freedom over Fear”; 03:29 – “Freedom”; 04:03 – “All for freedom, freedom for all”; 05:24 – “Fuck Trudeau”; 05:33 – “No xxxe Mandates”; 05:36 – “Get our freedom back”; 06:39 – “Trudeau must go”; 07:49 – “Freedom Convoy, End all mandates, Hold the Line”; 10:48 – “No coercion. Yes Choice”).

<sup>233</sup> *Ibid.* See also Appendix A, B, and C. See also the table in para. 128 with instruction and encouragement from Barber and Lich. See Appendix D for examples of videos posted on the “Freedom

demonstrate in Ottawa did not constitute an unlawful act; however, upon arrival the nature of the agreement quickly shifted and instead turned into an agreement to commit the unlawful purposes outlined above. Specifically:

- a. There was an agreement that trucks were to remain in Ottawa and demonstrators remain firmly planted, thereby obstructing and blocking Ottawa streets;
- b. Stemming from that agreement was an agreement to obstruct or interfere with the lawful use and enjoyment of property, as evidenced in the testimony of residents and employees, video and documentary evidence, and evidence from police and city officials;
- c. There was an agreement to assemble in a manner which caused persons in the areas of assembly to reasonably fear that their peace would be disturbed tumultuously;
- d. There was an agreement to obstruct police officers; and
- e. By virtue of Barber and Lich's participation and encouragement of the demonstration, as well as the actions they took to support it – there was an agreement to counsel, aid, and/or abet the above.<sup>234</sup>

[153] It does not matter that certain individuals joined or left the Freedom Convoy as it progressed, nor does it matter that Barber and Lich did not know or communicate with everyone who was involved in it (*Papalia*, at pp. 276-277; *Root*, at para. 68). That is not what is required at law. In this case, the obstruction and blocking of roads, the interference with the lawful use and enjoyment of property, the unlawful assembly, and the obstruction of police officers, are all acts that are all referable to the common agreement that both Barber and Lich were privy to: to remain firmly planted and hold the line (*Papalia*, at pp. 276-277). Indeed, it was their idea.

[154] To be co-conspirators, neither Barber or Lich were required to commit or intend to commit personally the offences agreed upon (*Root*, at para. 68). As already discussed extensively

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Convoy 2022” Facebook page; See *Carter* tables in Appendix E for instances of Barber’s videos and texts encouraging others to “Hold the Line” and “Holding the Line” and “Hold that Line” and “Hold Wellington”.

<sup>234</sup> *Ibid.*

throughout these materials, publicly, both Barber and Lich appeared to be leaders of the protest. According to this Facebook page (with 347,337 followers as of February 13), the “Freedom Convoy 2022” had its own website and a team of people including a finance committee, bookkeeper, accountant, lawyers, spokespeople, coordinators, as well as a War Room, a Command Centre, and road captains. The organization appeared to fundraise, publish daily updates, share police notifications and legal updates, and hold press conferences. Lich authored 11 posts on the “Freedom Convoy 2022” Facebook page: see pages 10, 179, 186, 186-187, 188, 189, 190, 196, 202, 204, 206. **APPENDIX D** identifies the videos from this Facebook page that Barber and Lich appeared in.

[155] Further, on a number of occasions, Barber and Lich were together in Ottawa between their arrival on January 29 and ultimate arrests on February 17, 2022.<sup>235</sup> Together, they organized, communicated about attending a meeting to discuss strategy to “gridlock the city”, disseminated information to demonstrators, participated in press conferences, among other things.<sup>236</sup> Both acting together and separately, the pair extensively both participated in and counselled each common unlawful purpose.

[156] At the beginning of the occupation, police did not block the protesters’ access to downtown Ottawa. As Lucas testified, the police sought to strike a balance between the protesters’ *Charter* rights and the impact that the demonstration was having on the city until the event exceeded the expectations of police and completely overwhelmed them.<sup>237</sup> The mayor’s office attempted negotiations with Barber and Lich to minimize the impact the demonstration was having on members of the public. As time passed there was an escalation in police messaging as well as push back from Ottawa residents who began to take legal action against demonstrators, including Barber and Lich.<sup>238</sup>

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<sup>235</sup> See for example: Exhibits 21, 37; 46; 47; 57; 58; and Exhibit 135 – Volume 1, Tab 32 (Text #1284), at p. 11.

<sup>236</sup> Exhibit 135 – Volume 2, at Tab 74, p. 121. See also Appendices C, D, and E.

<sup>237</sup> Transcript of Proceedings, September 6, 2023, at pp. 15, 25, 31.

<sup>238</sup> Exhibit 3 at 8:43: “You must leave. You will be arrested. Anyone found within the zone will be arrested. Exit via Bank St South”; Exhibit 47 at pp. 10-11 and 18; Exhibits 122, 128, 130, 131, 132.

[157] Notwithstanding this escalation in resistance to the activities of the Freedom Convoy, and Barber and Lich's own awareness that residents were being disturbed, the group persisted, eventually culminating in the Removal Operation and large-scale police obstruction commencing February 18, 2022, the details of which are discussed previously.

***R. v. Carter – Step #2 – Barber and Lich were Members of the Conspiracy***

[158] Once a conspiracy or common unlawful purpose is proven beyond a reasonable doubt, the Crown need only prove Barber and Lich's membership in it on a balance of probabilities (*Carter*, at p. 4-5). In this case, the evidence firmly establishes their membership in it.

[159] The evidence that has extensively been set out throughout these materials in the form of photos, videos, social media posts, press conferences, etc., without question demonstrates both Barber and Lich's connection to, allegiance to, encouragement of, and membership in, a common unlawful design to: block and/or obstruct Ottawa streets; obstruct or interfere with the lawful use and enjoyment of property; assemble in a manner which caused persons in the areas of assembly to reasonably fear that their peace would be disturbed; and obstruct police officers. By virtue of Barber and Lich's participation and encouragement of the demonstration, as well as the actions they took to support it, there was an agreement to counsel, aid, and abet the above.

***R. v. Carter – Step #3 – The Statements of Barber and Lich were made “in furtherance”***

[160] For ease of reference, please refer to **APPENDIX E** for a duplication of the three tables that were filed on November 30, 2023 identifying the statements the Crown submits are in furtherance of the various common unlawful designs alleged.

**PART III: Conclusion and Requested Disposition**

[161] In light of the aforementioned argument, the Crown respectfully requests that this court find Mr. Barber and Ms. Lich guilty on all counts as charged.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of July, 2024

A handwritten signature in blue ink, appearing to be 'S. Wetscher' or similar, written in a cursive style.

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Siobhain Wetscher and Tim Radcliffe  
Assistant Crown Attorneys

## **SCHEDULE OF AUTHORITIES**

### **LEGISLATION**

*Criminal Code*, R.S.C., 1985, c. C-46

*Canadian Charter of Rights and Freedoms*

*Police Services Act*, R.S.O. 1990, c. P. 15

### **JURISPRUDENCE**

*Governing Council of the University of Toronto v. John Doe*, 2024 ONSC 3755

*R. v. Millwood*, [2008] O.J. No. 3161 (S.C.)

*R. v. Stockley* (1977), 36 C.C.C. (2d) 387 (Nfld. C.A.)

*R. v. Sauls*, 2002 BCPC 638 (affirmed, 2004 BCSC 1476)

*R. v. Blanchfield*, Verdict and Reasons of Legault J, July 17, 2024

*R. v. Soranno*, 2024 BCCA 5

*R. v. Hnatiuk*, 2000 ABQB 314

*R. v. Nicol*, 2002 MBCA 151

*R. v. Maddeaux* (1997), 33 O.R. (3d) 378 (C.A.)

*R. v. Tysick*, 2011 ONSC 2192

*R. v. Schmidtko* (1985), 19 C.C.C. (3d) 390 (Ont. C.A.)

*R. v. Mammolita*, (1983), 9 C.C.C. (3d) 85 (Ont. C.A.)

*R. v. Remley*, 2024 ONSC 543

*R. v. March* (1993), 11 Nfld & P.E.I.R. 116 (Nfld S.C.)

*R. v. Romlewski*, 2023 ONSC 5571

*R. v. Carr*, [2024] O.J. No. 1638 (C.J.)

*R. v. Drainville* (1991), 5 C.R. (4<sup>th</sup>) 38 (Ont. C.J.) (cited with approval in 2010 ONCA 469)

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*R. v. Pawlowski*, 2023 ABCJ 131  
*R. v. McQueen*, 2022 QCCQ 2801  
*R. v. McCann*, 2014 ONSC 2987  
*R. v. Gunn*, 1997 ABCA 35, at para. 45, leave to appeal refused [1997] S.C.C.A. No. 175  
*R. v. Nasser*, [2020] O.J. No. 6073 (Ont. S.C.)  
*R. v. Tortolano*, (1975), 28 C.C.C. (2d) 562 (Ont. C.A.)  
*R. v. Yussuf*, 2014 ONCJ 143  
*R. v. Blackman*, 2024 ONSC 3595  
*R. v. Simpson* (1993), 12 O.R. (3d) 182 (C.A.)  
*R. v. Mann*, 2004 SCC 52  
*R. v. Dedman*, [1985] 2 S.C.R. 2  
*R. v. Gibbons*, 2013 ONSC 1403  
*R. v. Clement*, [1981] 2 S.C.R. 468  
*R. v. Gibbons*, 2014 ONSC 4269  
*R. v. Spackman*, 2012 ONCA 905  
*R. v. Briscoe*, 2010 SCC 13  
*R. v. Srun*, 2019 ONCA 453  
*R. v. Gong*, 2023 ONCA 230  
*R. v. Strathdee*, 2021 SCC 40  
*R. v. Strathdee*, 2020 ABCA 443  
*R. v. Almarales*, 2008 ONCA 692  
*R. v. Cowan*, 2021 SCC 45  
*R. v. Dooley*, 2009 ONCA 910  
*R. v. Gandzalas*, (June 25, 2023), Ottawa, 22-15605 (Ont. C.J.)  
*R. v. Underwood*, [1998] 1 S.C.R. 77  
*R. v. Ouellette*, 2022 ABCA 40  
*R. v. Patel*, 2017 ONCA  
*R. v. Kelly*, 2017 ONCA 920

*R. v. Vang* (1999), 132 C.C.C. (3d) 32 (Ont. C.A.), leave to appeal refused, [1999] SCCA No 203

*R. v. Root*, 2008 ONCA 869

*Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40

*R. v. Hamilton*, 2005 SCC 47

*R. v. Jeffers*, 2012 ONCA 1

*Canadian Frontline Nurses v. The Attorney General of Canada*, 2024 FC 42

*R. v. Decaire*, 2023 CarswellOnt 12939 (C.J.)

*City of Ottawa v. Persons Unknown*, 2022 ONSC 1151

## **APPENDIX A – DAILY EXAMPLES OF BLOCKED OR OBSTRUCTED ROADS**

1. January 28 @ various times – Wellington St – Vehicles (Exhibit #98, pages 1-10)
2. January 29 @ various times – Wellington St – Vehicles (Exhibit #98, pages 11-16)
3. January 30 @ unknown time– SJAM – “Fifty to sixty trucks” (Cyr, October 18, page 54, line 1)
4. January 30 @ 0805 hrs – Ottawa generally – ‘It’s already [grid]locked. We train wrecked it” (Barber, Exhibit #135, Volume 2, text #1630, page 3)
5. January 30, @ 1212 hrs – Lyon St/Queen St – “a little gridlock and a section totally blocked by vehicles (Bach, October 19, page 19, lines 25-26)
6. January 31 @ 1120 – Nicholas St – approx. 10 tractor-trailers on west-side of northbound lane (Blonde, October 27, page 17, lines 5-9)
7. January 31 @ approx. 1130 – Metcalfe St (from Lisgar to Albert) – approx. 50 vehicles (Blonde, October 27, page 17, lines 14-17)
8. January 31 @ 1144 hrs – Slater St (from Lyon to Kent) – “blocked, all three lanes” (Blonde, October 27, page 18, lines 5-6)
9. January 31 @ approx. 1227 hrs – Wellington St – “Congested from Sussex to Lyons” (Cyr, October 18, page 91, line 15)
10. January 31 @ approx. 1227 hrs – Kent St – “It’s from the 417 to Wellington. All three lanes completely congested. No emergency lanes.” (Cyr, October 18, page 92, lines 6-8)
11. January 31 @ 1536 hrs – Wellington St – No open southbound lanes “between Metcalfe and Elgin Street” (Bach, October 19, page 23, lines 14-16)
12. February 1 @ mid-morning – Queen Elizabeth Driveway – “four tractor-trailers and five campers” (Bach, October 19, page 25, line 1)
13. February 1 @ mid-morning – SJAM (from Booth to Bay) – 14 tractor-trailers and 2 campers in eastbound lane and 28 tractor-trailers and 5 campers in westbound lane and approximately 10-15 personal vehicles (Bach, October 19, page 25, lines 6-10 and 20-21)
14. February 1 @ mid-morning – Queen St (from Bay to Bronson) – 10 tractor-trailers (Bach, October 19, page 25, line 25)
15. February 1 @ mid-morning – Bank St (from Albert to Nepean) – 18 tractor-trailers and 12 personal vehicles (Bach, October 19, page 25, lines 29-30)
16. February 1 @ mid-morning – Kent St (from Somerset to Wellington) – “All lanes were completely full. There were no emergency lanes open. And there were about 200 tractor-trailers” (Bach, October 19, page 26, lines 6-8)
17. February 1 @ mid-morning – Albert St (from Bank to O’Connor) – 8 tractor-trailers (Bach, October 19, page 26, lines 9-10)
18. February 1 @ mid-morning – Metcalfe St (from Lisgar to Albert) – 33 tractor-trailers and 19 passenger vehicles (Bach, October 19, page 26, lines 11-12)
19. February 1 @ mid-morning – Wellington St (from McKenzie to Sussex) – 10 tractor-trailers and 15 passenger vehicles (Bach, October 19, page 26, lines 16-17)
20. February 1 @ mid-morning – Wellington St (from Sussex to George) – 8 tractor-trailers (Bach, October 19, page 26, lines 17-18)
21. February 1 @ mid-morning – Wellington St (from Portage Bridge to Sussex) – approx. 400 tractor-trailers (Bach, October 19, page 26, lines 18-20)
22. February 1 @ various times – Wellington St – Vehicles (Exhibit #98, pages 17-20)

23. February 1 @ 1304 hrs – SJAM – Blocked emergency lanes (Bach, October 19, page 31, lines 5-7)
24. February 3 @ unknown time – Kent St – Vehicles (and horns) (Exhibit #20)
25. February 3 @ unknown time – Metcalfe St/Slater St – Vehicles (and horns) (Exhibit #19)
26. February 4 @ unknown time – Drone over Wellington St – Vehicles (Exhibit #115, pages 1-3)
27. February 4 @ unknown time – Drone over Bank St – Vehicles (Exhibit #115, pages 5-7)
28. February 4 @ unknown time – Drone over SJAM – Vehicles (Exhibit #115, page 8)
29. February 5 @ unknown time – Metcalfe St/Wellington St – Vehicles, Crane (and horns) (Exhibit #14)
30. February 5 @ unknown time – Wellington St – Vehicles and tent (Exhibit #120)
31. February 5 @ various times – Wellington St – Vehicles (Exhibit #98, pages 21-25)
32. February 5 @ 1830 hrs – Laurier Ave/Kent St – Vehicles (and horns) (Exhibit #3, 00:32-1:06)
33. February 5 @ 1832 hrs – Kent St/Slater St – Vehicles (and horns) (Exhibit #3, 1:07-1:37)
34. February 5 @ 1849 – Kent St/Albert St – Vehicles (and horns) (Exhibit #3, 00:17-00:31)
35. February 5 @ 1910 – Wellington St/Elgin St – Vehicles (and horns) (Exhibit #3, 00:003 – 00:16)
36. February 6 @ early morning – Just next to Confederation Park – Kitchen and logistics centre, “on the road” (Ayotte, September 20, page 20, lines 1-14)
37. February 6 @ 1412 hrs – Slater St/Kent St – Vehicles (and horns) (Exhibit #3, 1:38-2:21) (Note: protestor chanting “We’re not leaving” from 2:10-2:20)
38. February 7 @ unknown time – Wellington St/Kent St – Mr Barber in “Big Red” (Exhibit #10, note view through windshield at 00:33)
  - a. See photo sent on January 29 (Exhibit #135, Volume 1, text #1284, page 11)
  - b. See photo sent on January 30 (Exhibit #135, Volume 1, text #1200, page 11)
  - c. See Facebook post on January 31 at 12:40am (Exhibit #64, page 21)
  - d. See text to Cst Bach on February 6: “Tomorrow is a day I fire up my truck and lead some of the ones out.” (Exhibit #127, page 62)
39. February 7 @ 1401 hrs – Kent St (from Wellington to Gloucester) – “... fully blocked with vehicles, so there was absolutely no lanes open for any type of movement” (Bach, October 19, page 46, lines 1-2)
40. February 8 @ 1217 hrs – Kent St (from Wellington to Gloucester) – “... there is no change. The s – the road way was completely blocked with vehicles” (Bach, October 19, page 46, lines 21-22)
41. February 8 @ unknown time – Drone over Wellington St – Vehicles (Exhibit #115, page 9)
42. February 10 @ various times – Wellington St/Metcalfe St – Vehicles (Exhibit #98, pages 26-29)
43. February 10 @ unknown time – Wellington St/Mackenzie Ave – Vehicles (Exhibit #26)
44. February 10 @ unknown time – Rideau St/Sussex Ave – Vehicles (Exhibit #31)
45. February 10 @ unknown time – Rideau St/Sussex Ave – Vehicles (Exhibit #37)
46. February 10 @ 1112 hrs – Slater St (from Bank to O’Connor) – 3 camper vans, 4 personal vehicles, 1 bobtail (Blonde, October 27, page 30, lines 23-25)
47. February 10 @ 1121 hrs – Bank St (from Albert to O’Connor) – 5 bobtails, a mobile diesel truck, a camper on a truck, and personal vehicles (Blonde, October 27, page 31, lines 14-18)

48. February 10 @ 1253 hrs – Wellington St – Vehicles and wooden structure and food tent (Exhibit #3, 02:21-2:55)
49. February 11 @ 1209 hrs – Kent Street (from Cooper to Wellington) – “still fully congested, all lanes blocked, north and south on Kent Street” (Bach, October 19, page 67, lines 30-32)
50. February 11 @ 1302 hrs – Kent St – Vehicles (Exhibit #3, 02:55 – 03:26)
51. February 11 @ 1311 hrs – SJAM – 4 bobtails, 10 personal vehicles, and 3 campers parked on the shoulder of westbound lanes and “eastbound lanes were blocked from Vimy to Booth Street” with 3 tractor-trailers, 10 bobtails, and 20 passenger vehicles (Bach, Oct 19, page 69, lines 12-17)
52. February 11 @ 1434 hrs – Slater St/Metcalf St – Vehicles, tents, dance music (Exhibit #3, 03:27 – 04:21)
53. February 12 @ unknown time – Wellington St/Metcalf St – Stage (Exhibits #85 and #86)
54. February 12 @ unknown time – Kent St – Vehicles (and horns) (Exhibit #50)
55. February 13 @ 1152 hrs – Wellington St/Colonel-By Dr – Vehicles (Exhibit #3, 6:26-6:30)
56. February 14 @ unknown time – Downtown Ottawa – “... Everyone was still trying to get closer to Wellington but that there wasn’t a lot of movement out of town.” (Ayotte, September 20, page 11, lines 15-17)
57. February 15 @ unknown time – Drone over Nicholas St – Vehicles (Exhibit #115, pages 10-11)
58. February 15 @ 1021 hrs – Nicholas St – Vehicles and tents (Exhibit #3, 5:11-6:26)
59. February 16 @ 1705 hrs – Wellington St – Vehicles (Exhibit #3, 6:30-6:35)
60. February 16 @ unknown time – Drone over Wellington St – Vehicles (Exhibit #115, page 12)
61. February 16 @ unknown time – Drone over Slater St – Vehicles (Exhibit #115, pages 13-14)
62. February 17 @ 1016 hrs – Wellington St – Vehicles (Exhibit #3, 6:35-6:39)
63. February 18 @ 1012 hrs – Wellington St/Colonel-By Dr – Vehicles (Exhibit #3, 6:40-6:44)
64. February 18 @ 1047 hrs – Wellington St/Colonel-By Dr – Vehicles and tent (Exhibit #3, 6:44-6:49)
65. February 18 @ 1525 hrs – Kent – “... still all the way backed up to Lisgar, so that would be Wellington to Lisgar Street to the south” (Bach, October 19, page 78, lines 2-3)
66. February 18 @ 1622 hrs – Wellington St/Mackenzie Ave – Vehicles (Exhibit #3, 6:49-6:58)

## **APPENDIX B – STATEMENTS REGARDING THE PROTEST’S PURPOSE**

### **Public statements by Ms Lich regarding the purpose of the protest**

1. Exhibit #57 – Facebook on Feb 3 – “We are therefore calling on all levels of government in Canada to end all COVID mandates and restrictions. We will continue our protest until we see a clear plan for their elimination.” And “Our departure will be based on the prime minister doing what is right, ending all mandates and restrictions on our freedoms.”
2. Exhibit #62 (posted on Facebook at page 92/212 of Exhibit 39A and 17/37 of Exhibit #47) on Feb 6 at 25/47 – “Yes” in response to question: “Last weekend you said it is all about the mandates. You just want all the mandates dropped. Um, is that still the case?”
3. Exhibit #62 (posted on FB at page 92/212 of Exhibit 39A and 17/37 of Exhibit #47) on Feb 6 at pages 33-34/47 – “I think you would see that happening in short order” in response to question: “Would you be willing to come back to Ottawa to pressure them again?”
4. Exhibit #62 (posted on FB at page 92/212 of Exhibit 39A and 17/37 of Exhibit #47) on Feb 6 at pages 28/47 – “We come here with a simple message. ‘Let’s end the mandates. Let’s get our people all back to work. Let people open up their businesses. Let children have birthday parties.’”
5. Exhibit #46 - @bigred19755 on Feb 11 – “We got lots goin’ obviously. There’s a lot of moving parts here, but it’s all coming together beautifully and I just want to say a big thank you to all the truckers who came out here who are fighting for your rights and freedoms. Uh, I gotta say thanks to all, we’ve got so many wonderful team members that are helping out here. It’s just been an amazing experience” [Emphasis added]
6. Exhibit #56 – Facebook on Feb 14 (Facebook Live: see Exhibit #47 at page 32/37) – “We will remain peaceful but planted on Parliament Hill until the mandates are decisively ended”
7. Exhibit #51 – “Freedom Convoy Statement” on Facebook (see Exhibit #47 at page 28/37) on Feb 14 – “We are aware that Canadians nationwide are feeling inspired by the truckers’ resolve here in Ottawa and are starting their own convoy demonstrations as a means to show support for ending mandates. We wish them well and are so heartened to see how organically this movement is spreading.” And “It is within everyone’s right to speak out and stand up for freedom. And that is what our convoy is about.” [Emphasis added]
8. Exhibit #57 – Facebook on Feb 3 (see Exhibit 37A at pages 118/212 and Exhibit #47 at page 31/37) “This protest be, began because of the federal government’s restrictions on trucker freedoms.” And “We are therefore calling on all levels of government in Canada to end all COVID mandates and restrictions. We will continue our protest until we see a clear plan for their elimination.” And “Let me assure the people of Ottawa that we have no intent to stay one day longer than necessary. Our departure will be based on the prime minister doing what is right, ending all mandates and restrictions on our freedoms.” [Emphasis added]
9. Exhibit #58 – Facebook on Feb 17 (posted to Facebook: see Exhibit #47 at page 37/37) – “Our message to all government has been clear from the start. We want our freedoms restored.” And “We are calling on all governments in Canada to restore the rights and freedoms of Canadians and set concrete limits so governments can’t easily abuse our rights and limit our freedoms again. It is now time for serious and immediate action by

our governments. We call upon our governments to restore the rights and freedoms to all Canadians. How? One. End all vaccine mandates for all Canadians, truckers, travellers, employees, healthcare workers, law enforcement agents, and soldiers. Number two. Cancel provincial and municipal vaccine passports and masking requirements.”

### **Public statements by Mr Barber regarding the purpose of the protest**

1. Exhibit #17 - @bigred19755 on Feb 4 (cross-posted on Facebook: see Exhibit #47 at 29/37 and Exhibit #37A at 207/212) “... that’s exactly what we’re here for. We want no mandates.”
2. Exhibit #18 - @bigred19755 on Feb 4 “So, the Canadian people stood up and they wanted to support a bunch of truck drivers to go to Ottawa, to send a message to Ottawa for the Canadian people.”
3. Exhibit #12 - @bigred19755 on Feb 6 “So, citizens of Ottawa, put pressure on your, your government. Come on. We’re all here for a reason. We’re sorry it had to happen in your city, but this is where the politicians asked us to come or forced us to come, I should say for policies that we want changed. So, going forward, this can be over with a drop of a hat, a drop of a hat we will be gone.” And “This is preventable and this is fixable, but the pressure needs to be put on somebody else, not a group of somebody’s.”
4. Exhibit #7 - @bigred19755 on Feb 7 “We have the government on their head right now”
5. Exhibit #38 – Press conference on Feb 7 – “I think we’re moving mountains here right now. When you look at the provincial mandates are being lifted all across the country. We’re seeing lots of changes come. Wait for more.”
6. Exhibit #27 - @bigred19755 on Feb 8 - “This is not about vaccinations; this is about mandates” and “We need to address these issues, and so far, the liberal government’s just still hurdling insults, and calling us names, and running back into their chambers. So, there you go, guys. And yet another one to just sit down at the table and have the conversation, please.”
7. Exhibit #23 - @bigred19755 on Feb 9 - “Hi, provinces of Canada. A few of you have fallen already to the mandates. A few of you are holding on. When we’re done in Ottawa here, we have the resources to come to you.”
8. Exhibit #25 - @bigred19755 (and Facebook) on Feb 9 - “We have the liberal government fractured right now, uh, provinces are falling. We’re winning guys.”

**APPENDIX C – SUMMARY OF MISCHIEF-RELATED TESTIMONY**

<b>Honking<sup>239</sup></b>		
“I can recall hearing constant horns for the first week of the protest.”	Ayotte	September 20, page 24
“Well, once the trucks came in it was incessant honking. It was very difficult to concentrate. The type of work I do is very analytical, and so, as I say, it was very difficult to concentrate. I felt anxious in relation to trying to do my work.”	Gawman	October 12, page 4
“It was intolerable. A lot of the vehicles would park right on Slater so that would be facing one of my windows. So even with the window closed, it was, you know, non-stop honking.”	Gawman	October 12, page 4
“Blaring to me means loud. So, just the constant – I constantly heard the horns of trucks, more than one at a time. There was no respite from it, it was constant.”	Biro	October 13, page 15
“The number of times was so significant that I would describe the number of horns as “countless”, and especially, the affect of the horns was “constant”.	Li	October 16, page 4
“From my recollection, the horns were most commonly blared from the hours of seven a.m. to approximately 11 p.m., at night, though there were exceptions to this, as there were occasionally horns blared throughout both the night and day, not necessarily conforming to a specific time”	Li	October 16, pages 4-5
“In addition to a – what sounded like an air raid siren stationed directly across from my apartment in the parking lot.”	Li	October 16, page 5, line 23-25

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<sup>239</sup> In addition to the videos featuring honking, including: Exhibit #3 – OPS compilation video (00:00 to 01:37); Exhibit #13 (throughout); Exhibit #14 (00:26-00:37); Exhibit #15 (throughout); Exhibit #19 (00:17-00:46) (Note: “Good job”); Exhibit #20 (00:00-00:30) (Note: thumbs-up at 00:17); Exhibit #50 (00:00-02:45).



<b>Other Noises</b>		
Regarding frequency of fireworks: "I'm not sure, but I would say seven or eight days."	Bellfoy	October 13, page 2
"In addition to the honking, there was a variety of noises. As I mentioned, the – what I found reminiscent to be an air raid siren, there were fireworks, at times. There were – there were megaphones being shouted into, in addition to speakers blasting music, and also, as I mentioned before, the roving truck with the extremely loud horn."	Li	October 16, page 12
"There were multiple instances of fireworks. I recall fireworks going off the first weekend of the demonstration, perhaps, around the hours of 11 to one, 11 p.m. to one in the morning, over the weekend, in addition to additional displays of fireworks around the same evening time or on other dates."	Li	October 16, page 12
"And on the weekends, I believe that is when the fireworks most commonly occurred."	Li	October 16, page 24

<b>Interference with Sleep and Work and Mental health</b>		
“Well, it's accurate to me that I wasn't able to sleep, I wasn't able to sit in my front room, I wasn't able to close my bedroom door without hearing noise.”	Gawman	October 12, page 21
“I was trying to sleep. And sometimes that worked, and other times it didn't”	Bellfoy	October 13, page 2
“So, I think it was primarily difficult working from home, in the moment, due to the level of noise that was present most of the day, if not all of the work day, in addition to the effects of the noise that was going on outside, as a result of the occupation. It – it created an environment where, even from home, it was extremely difficult to focus, not just on work but, quite literally, anything. It was difficult to sort of live, I guess, as a human being, and in addition to the disruptions, as I was trying to work, I was also finding it difficult to work due to the lack of sleep that I had been experiencing, as a result of the noise, in addition to other effects of the occupation”	Li	October 16, page 2
“I would say that for the duration of the demonstration my work was disrupted. I attempted to work, but I was not as productive as I normally would be without the disruptions.”	Li	October 16, page 54
“Starting on the Friday afternoon, work became untenable. My work was severely disrupted.”	Jorgenson	October 16, page 77
“... the cacophonous noise. It was incessant. It was extremely loud. It's hard to convey, in words, how upsetting, how impossible it made basic life, basic higher level thought, the ability to conduct meetings. My job involves a lot of meetings. Those were untenable. It's hard to describe, you know, you hear people say, you know, “it's incessant”, I truly mean incessant. There was not a minute, in that first Friday, and weekend, and Monday, January 31st, where it stopped well into the evening past midnight, and it simply wasn't possible to carry on. <u>My mental health was significantly impacted. My partner's mental health was significantly impacted.</u> ”	Jorgenson,	October 16, page 77 [Emphasis added]
“... that was following a night of almost no sleep because the horns and the fumes kept us awake almost all night”	Jorgenson	October 17, page 28

<b>Interference with Services</b>		
“The choir did not come in to practice.” and “Our service numbers, people just did not attend the service.”	Leir	October 12, page 38
“So, during the time that the convoy was in place, it impacted our service. So, on those streets that I listed on Wellington, Queen, Bank, Kent, Bronson, Elgin, Rideau, Somerset, Sussex, a portion of King Edward and I'll also add Booth and Portage and Chaudière.”	Huneault	October 13, page 31
“So, the area between Bronson to the Canal and then Wellington to Gladstone. And then the area from Albert to Terrasses de la Chaudière. And then the area from Sussex to King Edward to Rideau”	Huneault	October 13, pages 33-34
“So, there 18, 19 routes. It varied depending on what was open. However, for the majority of the event, it was 18.”	Huneault	October 13, page 32
“About 150 stops were not in use” (Huneault, October 13, page 36, line 30) Because we weren't able to serve the roads that those stops were on.”	Huneault	October 13, page 37
“due to the supplementary traffic which was witnessed, we did encounter run time issues”	Huneault	October 13, page 38
Re taking public transit: “I don't believe I did, primarily, due to the fact that my area was inaccessible, from my understanding, and some stops had been relocated. There were detours.”	Li	October 16, page 23

<b>Interference with Meetings and Appointments</b>		
“I had a medical appointment I could not get to. I had to cancel it because I couldn't take a taxi.”	Gawman	October 12, page 6
“Over a period of three weeks, that probably four or five committee meetings were cancelled. And the other thing that people were cancelled, were rentals who have regular weekly meetings. Some of our rental. Or monthly meetings. And we had three or four of them just cancelled and were not....”	Leir	October 12, page 42

<b>Interference with Earnings and Sales</b>		
“We had suffered losses, financial losses at the church, and so I wanted to join in to the lawsuit”	Leir	October 12, page 55
“My in-store sale dropped dramatically”	Biro	October 13, page 16
“A lot fewer customers came in the store”	Biro	October 13, page 16
“The shipments that I was expecting were not able to get through to my shop.”	Biro	October 13, page 16
“Curriers [ <i>sic</i> ] could not get through.”	Biro	October 13, page 18
“So, I lost all of that selling time, was why it was important.”	Biro	October 13, page 24

<b>Interference from Fumes</b>		
Regarding vehicles on Metcalfe during the first week: “Some were idled, some were operating, some were honking their horns. It was an uncomfortable place in which to be.”	Arpin	September 21, page 63
Regarding lunch on Metcalfe during the first week: “was no longer possible because of the noise and the fumes coming from vehicles”	Arpin	September 21, page 68
Regarding vehicles on Metcalfe during the second week: “fumes spewing from the vehicles as they were being operated” and “strong smell and loud noise”	Arpin	September 21, page 66
Regarding February 11: “I noticed that several of the vehicles were running and, you know, there was an odor of diesel fuel in the air”	Ayotte	September 20, page 18
“And again, the noise, the diesel smell, because as each day went on, each day progressed, the diesel smell infiltrated the church. The noise infiltrated the church.”	Leir	October 12, pages 33-34
“The whole environment of the church was brutally altered by this noise, by the smell of the fumes coming into my office, so I had to breathe this each day.”	Leir	October 12, page 34

<p>“I could smell it pretty well from day one. It got worse, though. Never went away. I guess it was through the ventilation system.”</p>	<p>Leir</p>	<p>October 12, page 37</p>
<p>“it smelt [<i>sic</i>] of gas or diesel”</p>	<p>Bellfo</p>	<p>October 12, page 68</p>
<p>“And yeah, just gasoline and fumes and exhaust is what I would smell as soon as you stepped out the store”</p>	<p>Biro</p>	<p>October 13, page 13</p>
<p>“It smelt like the engine fumes, from what I assume to be diesel and gasoline from all of the idling vehicles in the area, the smell was significant in the downtown area, and almost inescapable, at times. It – for – for me, personally, the difference in air quality was evident.”</p>	<p>Li</p>	<p>October 16, pages 23-24</p>
<p>“Generally, just in the downtown vicinity it was – it wasn’t, like, clean air. Like, you could smell the diesel and the gasoline.”</p>	<p>Li</p>	<p>October 16, page 24</p>
<p>“So, I observed the plumes of black smoke in front of my building. I also smelt it. I have a short video on my cellphone of it happening. So, I recorded it, as well. It stank. It filled the air, and it was deeply unpleasant. It also burns the throat, when you are close to it. So, the second thing that I observed, especially, that first weekend, from the Friday to the Monday inclusive, was odours and smells that made sleeping untenable, in addition to the noise.”</p>	<p>Jorgenson</p>	<p>October 16, page 79</p>
<p>“The odours that remained that caused our throats to be coarse.”</p>	<p>Jorgenson</p>	<p>October 16, page 88</p>

<b>Interference with Commuting</b>		
“I was unable to take my car to work, which I normally do.”	Leir	October 12, page 33
“Our members could not get in”	Leir	October 12, page 36
“... I was unable to leave my home. They totally blocked the entrance and exit to my building with their vehicles. I tried unsuccessfully to leave in my vehicle, but because they were totally blocking the entrance, and were not permitting us to leave, I was unable to leave that first weekend, in my desperation to find some respite from the noise, and smell, and the other things.”	Jorgenson	October 16, page 79
“I tried to flee, on multiple occasions, in my vehicle, but was stopped by the vehicles that were completely blocking my ability to leave the building”	Jorgenson	October 16, page 82
“The trucks that were a part of the protest were parked immediately in front of the door that is the exit to the garage. There was no room to drive, and they were stopped. They – they didn’t move. It wasn’t like you could leave if you were patient, and just waited for the next cycle of lights. It was blocked. It was stopped.”	Jorgenson	October 16, page 91

<b>Heckling re: Masks</b>		
“Not in particular, although when I went on my walks I was wearing my masks so there were individuals that commented on it, that yelled at me to take off my mask. I did not respond though.”	Gawman	October 12, page 11
“People who were laughing at us because we wearing masks, so they were quite aggressive”	Bellfoy	October 12, pages 68-69
“Well, people [mocked, not “loved”] us because we were wearing masks.”	Bellfoy	October 13, page 1
“Because I didn't feel safe. I was getting comments, insults. I was wearing a mask, because we were supposed to be wearing a mask at the time. And because of that, that would attract attention, so I would just try to avoid any run-ins as much as possible”	Biro	October 13, page 12

“Yeah, some insults or some snickering. Some laughing because I was wearing a mask on my way from the garage to my store”	Biro	October 13, page 19
“We were surrounded by protesters, and threatened”	Jorgenson	October 16, page 79

<b>Other Interference</b>		
“And even worse, is I looked out my office, some of the members who were camped out in their truck, were urinating and defecating on church property, clearly in front of me.”	Leir	October 12, page 34
“They had put some of their items of clothing on our statue of Jesus. They commandeered our sign stand and put their signs on - our signage, on our property”	Leir	October 12, page 34
“It was shocking to me and it upset me. This is my place of work, a sanctuary, and they were fouling it and they were rude.”	Leir	October 12, page 35
“I believe there was an “F Trudeau” one on there, and there was a “Freedom” signs, and I think there were a couple of Freedom signs on there.”	Leir	October 12, page 45

## **APPENDIX D – VIDEOS FROM “FREEDOM CONVOY 2022” FACEBOOK PAGE**

### **Videos posted on “Freedom Convoy 2022” Facebook page featuring Ms Lich**

1. Exhibit #57 – posted on Facebook on Feb 3 (see Exhibit 37A at pages 118/212 and Exhibit #47 at page 31/37) (including “... you’re going to hear from Tamara Lich, who we all know is the spark that lit this fire and the leader of this organization”)
2. Exhibit #62 – posted on Facebook on Feb 6 (see Exhibit #39A at page 92/212 and Exhibit #47 at page 17/37) – one of three hosts of “second official press conference”
3. Exhibit #63 – posted on Facebook on February 9 (see Exhibit #39A at page 56/212 and Exhibit #47 at page 16/37)– one of three hosts of “third official press conference” (including clarification by Ben Dichter: “She is actually the president of the Freedom Convoy.”)
4. Exhibit #46 – posted on @bigred19755 and cross-posted on Facebook on Feb 11 (see Exhibit #47 at page 1/37)
5. Exhibit #51 – “Freedom Convoy Statement” posted on Facebook on Feb 14 (see Exhibit #47 at page 28/37)
6. Exhibit #56 – Press conference with Brian Peckford posted on Facebook on Feb 14 (see Exhibit #47 at page 32/37) (including “To, uh, kick things off, I’m gonna ask Tamara, who is of course, one of the great leaders of the, uh, truckers movement, to make a statement.”)
7. Exhibit #58 – Statement posted on Facebook on Feb 16 (see Exhibit #47 at page 37/37)
8. Exhibit #59 – Statement posted on Facebook on Feb 16 (see Exhibit #47 at page 36/37)
9. Exhibit #53 – Arrest posted on Facebook on Feb 17 (see Exhibit #47 at page 33/37)

### **Videos posted on “Freedom Convoy 2022” Facebook page featuring Mr Barber**

1. Exhibit #57 – posted on Facebook on Feb 3 (see Exhibit 37A at pages 118/212 and Exhibit #47 at page 31/37)
2. Exhibit #17 - @bigred19755 (cross-posted on Facebook: see Exhibit #47 at 29/37 and Exhibit #37A at 107/212) on Feb 4 - “... that’s exactly what we’re here for. We want no mandates.”
3. Exhibit #24 and #49 - @bigred19755 (and cross-posted on Facebook: see page 13/37 of Exhibit 47 and page 51/212 of Exhibit 37A) on Feb 9 - “Right now, there’s an order in place to keep the horns down, horns have to be quiet, okay? ... Grab that horn switch and don’t let go. ... Let that horn go. Don’t let it go.”
4. Exhibit #50 – Live (cross-posted to Facebook: see Exhibit #47 at 26/37) on Feb 12 – “Can I get a picture with you” (page 2) and “Oh my God... it’s such a pleasure to meet you, right” (page 3)
5. Exhibits #25 and #48 - @bigred19755 (and cross-posted to Facebook: see Exhibit 39A at page 51/212 and Exhibit #47 at page 12/37) on Feb 9 - “For every trucker that signs that to get out of custody, we will then replace that truck driver with three new truckers. ... Be strong, hold the line.”
6. Exhibit #58 – Statement posted on Facebook on Feb 16 (see Exhibit #47 at page 37/37)
7. Exhibit #55 – Arrest posted on Facebook on Feb 17 (see Exhibit #47 at page 35/37)



**APPENDIX E – CARTER TABLES FILED ON NOVEMBER 30, 2023**

1. **ANNEX A** – Statements by Christopher Barber (Admissible Against Tamara Lich)
2. **ANNEX B** – Statements by Tamara Lich (Admissible Against Christopher Barber)
3. *R. V. BARBER & LICH* – TEXT MESSAGES CAPTURED BY *CARTER*

**ANNEX A – Statements by Christopher Barber (Admissible Against Tamara Lich)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

	SOURCE	LOCATION	DETAILS	EXCERPT	“IN FURTHERANCE” OF WHICH “PURPOSES”
1.	Exhibits #22 and #22A (Line 16)	Tab 16	@bigred19755 Posted on Feb 2 (While outside Ottawa in a field)	(1) “So for all the truckers out there that are sitting, not having a direction to go around the city right now, I need you guys to go to the Facebook page, the Freedom Convoy 2022 page and get the link. I put a pin on that page. I will try and copy that. Go ... just ignore the messages there cuz if I muted them it seems like my volume goes wrong, so. Can everybody please organize? Like, there is ... the space that they have here is unbelievable. There’s probably, I don’t know, twenty or thirty trucks here. <u>We’re gonna try some, uh, slow rolls, and we’ll do that daily cuz we can’t fit everybody into the downtown core, so, ugh, this is what we gotta do. Anybody outside the city of Ottawa right now looking for direction, get to the Facebook page, find that link, get your trucks down here, get organized.</u> ” [Emphasis added]	1, 2, 5
2.	Exhibits #16 and #16A (Line 10)	Tab 10	@bigred19755 Posted on Feb 4 (While walking on Wellington)	(1) “So, they were predicting about 3 million people here on the weekend to celebrate this whole movement but because of maybe GoFundMe’s actions today, why don’t we try and make it 5 million people guys?”	1, 2, 3, 4, 5
3.	Exhibits #17 and #17A (Line 11)	Tab 11	@bigred19755 Posted on Feb 4 (While in boardroom)  (Duplicate of Exhibit #52 immediately below)	(1) “Everybody, head for Ottawa this weekend... We’re gonna have a little bit of a shin dig. and everybody’s gonna get along, and keep those hugs, and smiles, and that’s exactly what we’re here for. We want no mandates, and we want unity and so far, we’ve achieved the unity so much better, haven’t we?”	1, 2, 3, 4, 5

**ANNEX A – Statements by Christopher Barber (Admissible Against Tamara Lich)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

4.	Exhibits #52 And #52A (Line 118)	Tab 47	Cross-Posted on Facebook on Feb 4 (see Exhibit #39A at 107/212 and Exhibit #47 29/37)  (Duplicate of Exhibit #17 immediately above)	Duplicate of above	Duplicate of above
5.	Exhibits #64 (Line 26)	Barber’s Facebook	Page 6 – Feb 11, 12:17am	Remove from <i>Carter</i>	N/A
			Page 8 – Feb 9, 5:59pm	Remove from <i>Carter</i>	N/A
			Page 14 – Feb 6, 6:12pm	Remove from <i>Carter</i>	N/A
			Page 17 – Feb 4, 7:42pm and 7:38pm	“Etransfer is <a href="mailto:Tbofconvoy2022@protonmail.com">Tbofconvoy2022@protonmail.com</a> . Hit em’ hard people. We have them so scared right now.	1, 2, 3, 4, 5
			Page 18 – Feb 4, 6:55pm	Everyone that gave to the GoFundMe account for Freedom Convoy 2022. Demand your money back asap. We have set up a new donation site at GiveSendGo FREEDOM CONVOY 2022. I have never seen a country come together so fast around something. Look at how the liberal elite left reacts. Stand up people and fight. Share share share.	1, 2, 3, 4, 5
			Page 19 – Feb 2, 12:57pm and 11:30am	Remove from <i>Carter</i>	N/A
			Page 24 – Jan 29, 1:17am	Remove from <i>Carter</i>	N/A
		Page 32 – Jan 22, 11:47	Remove from <i>Carter</i>	N/A	

**ANNEX A – Statements by Christopher Barber (Admissible Against Tamara Lich)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

6.	Exhibits #12 and #12A (Line 6)	Tab 6	@bigred19755 Posted on Feb 6 (While walking in hallway)	(1) “We need an audience. So, citizens of Ottawa, put pressure on your, your government. Come on. We’re all here for a reason. We’re sorry it had to happen in your city, but this is where the politicians asked us to come or forced us to come, I should say for policies that we want changed. So, going forward, this can be over with a drop of a hat, a drop of a hat we will be gone.”	1, 2, 3, 4, 5
7.	Exhibits #7 and #7A (Line 1)	Tab 1	@bigred19755 Posted on Feb 7 (While walking around downtown)	(1) “That means you need to get to Ottawa. Whatever means you can, you come in peaceful protest. You peaceful, and you protest. You come here and you flood this city. I don’t give a shit if the entire country of Canada comes to fucking Ottawa.”	1, 2, 3, 4, 5
8.	Exhibits #8 and #8A (Line 2)	Tab 2	@bigred19755 Posted on Feb 7 (While sitting in room)	(1) “I don’t remember either, but anyway this is a trusted source. I will never ever, ever give a dime to “Go Fund Me” again. I don’t care what the cause, I will hand \$100.00 bills to whoever needs it rather than go through that joke of an organization.”	1, 2, 3, 4, 5
9.	Exhibits #9 and #9A (Line 3)	Tab 3	@bigred19755 Posted on Feb 7 (From car outside the National Gallery)	(1) “It looks a little lonely, doesn’t it? It doesn’t look like there’s anybody here. Do you think we can fix that?”	1, 2, 3, 4, 5
10.	Exhibits #10 and #10A (Line 4)	Tab 4	@bigred19755 Posted on Feb 7 (While sitting in Big Red on Wellington Street)	(1) “So, just know we’re representing so many Canadians. The ones that are here physically, the ones that can’t be here physically, and the ones that have passed on. <u>So, we have to win this, guys. There is no option for going home without answers.</u> That is my goal, personally. And I think that says a lot for the same for of Canadians, so. Be strong people, no matter what gets thrown at us.” [Emphasis added]	1, 2, 3, 4, 5

**ANNEX A – Statements by Christopher Barber (Admissible Against Tamara Lich)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

11.	Exhibits #38 and #38A (Line 87)	Tab 49	<del>Press conference on Feb 7 with Tom Marazzo and Brigitte Belton</del>	<p><del>(7) TM: “Um, well, we’re, we’re here. We’re, we’re, um, we’d love to have you. That’s probably the best thing. We’d love to have you.”</del>  <del>CB. “Yep.”</del></p> <p><del>(8) “I think we’re moving mountains here right now. When you look at the provincial mandates are being lifted all across the country. We’re seeing lots of changes come. Wait for more.”</del></p>	N/A
12.	Exhibits #11 and #11A (Line 5)	Tab 5	<del>@bigred19755 Posted on Feb 7 (While sitting in car on Bank Street)</del>	<p><del>(2) “There you have it, guys. You mess with truck drivers... we’ll find a way to mess you back. We’re holding the line my friend.”</del></p> <p><del>(2) “Appreciate your help, man. Appreciate it.”</del></p>	N/A
13.	Exhibits #24 and #24A (Line 18)	Tab 18	<p><del>@bigred19755 Posted on Feb 9 (While walking outside)</del></p> <p><del>(Duplicate of Exhibit #49 immediately below)</del></p>	<p>(1) “This word going out to everybody in the trucks around the city. Right now, there’s an order in place to keep the horns down, horns have to be quiet, okay? <u>If you see a large, vast majority of police coming towards your truck like they do ... like 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 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.</u> We want everybody to know when the time comes, and that is the best way to do it when it happens. <u>Do that guys, please, let that horn go. Don’t let it go.</u> When we see that mass force of police coming at you. Ok, guys? Be strong. We’ve got this. We’ve got some more announcements coming up. It’s gonna be pretty cool here. We’ll see if we can fire some shit up.” [Emphasis added]</p>	1, 2, 3, 4, 5

**ANNEX A – Statements by Christopher Barber (Admissible Against Tamara Lich)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

14.	Exhibits #49 And #49A (Line 49)	Tab 27	Cross-posted on Facebook on Feb 9 (see Exhibit #39A at 51/212 and Exhibit #47 at 13/37)  (Duplicate of Exhibit #24 immediately above)	Duplicate of above	Duplicate of above
15.	Exhibits #23 and #23A (Line 17)	Tab 17	@bigred19755 Posted on Feb 9 (While walking outside)	(1) “Hi provinces of Canada. A few of you have fallen already to the mandates. A few of you are holding on. <u>When we’re done in Ottawa here, we have the resources to come to you. Remember that, please. Quebec, you’re first ... Manitoba, you’ll be second. Just so you know, B.C.”</u>	N/A
16.	Exhibits #25 and #25A (Line 19)	Tab 19	@bigred19755 Posted on Feb 9 (While seated in car)  (Duplicate of Exhibit #48 immediately below)	(1) “We have instructed them for every Canadian truck driver that is protesting in downtown Ottawa that is arrested and has to sign ... the detainment form?  “Pretty much a piece of paper. If you sign it, you get to go free, but you’re not allowed to come back here, you’re not allowed to protest, you’re not allowed to do anything. <u>For every truck driver that signs that get out of custody, we will then replace that truck driver with three new truckers. When the call goes out, guys, everybody and their fuckin’ dog, get comin’ to Ottawa cuz 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 ... This aint no fuckin’ drill either ... be strong. Hold the line.</u> We have the liberal government fractured right now, uh, provinces are falling. We’re winning guys. We’re winning and they’re scared shitless. If they weren’t scared shitless, they wouldn’t be doing what they’re doing right now.” [Emphasis added]	1, 2, 3, 4, 5

**ANNEX A – Statements by Christopher Barber (Admissible Against Tamara Lich)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

17.	Exhibits #48 and #48A (Line 47)	Tab 26	Cross-posted on Facebook (see Exhibit #39A at 51/212 and Exhibit #47 at 12/37)  (Duplicate of Exhibit #25 immediately above)	Duplicate of above	Duplicate of above
18.	Exhibits #81 and #81A (Line 103)	Tab 17 of bound transcripts	@bigred19755 Posted on Feb 14  (Alongside EvaChipiuk)	(2) <del>“We’re moving trucks up onto Wellington, organizing them. Everything is perfect, so be patient. Hang tight.”</del>	N/A
19.	Exhibits #83 and #83A (Line 105)	Tab 19 of bound transcripts	@bigred19755 Posted on Feb 16  (Alongside Keith Wilson)	(3) KW: “So, if you come and stand with the protestors, it will make it harder for the police to act on what they’re being told to do and it’s really important that freedom-loving Canadians get to Ottawa as soon as possible to stand with the truckers and exercise their legal <i>Charter</i> rights of peaceful assembly.” CB: “We’ll be here, guys.”	1, 2, 3, 4, 5
20.	Exhibit 135 (Line 110)		Text messages from numerous dates	Various	Various
21.	Statements to PLT Cst Bach (No Line #)		Statements to PLT Cst Bach on various dates	1. Texts on various dates <sup>1</sup> 2. Jan 31 – “He informed me that they’re looking to do rolling convoys in – in and around the city.” <sup>2</sup> 3. Feb 8 – “He speaks to how they haven’t been heard and that there is only one solution, and that they would require	1, 2, 3, 4, 5

<sup>1</sup> Exhibit #127 at pages 6, 7, 19, 20, 20, 22, 29, 50, 58, 60, 68, 73 (in furtherance of 1, 2, 3, 4, 5).

<sup>2</sup> Oct 19, Cst Bach at p. 21, l. 30-32.

**ANNEX A – Statements by Christopher Barber (Admissible Against Tamara Lich)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

				<p>acknowledgement [and action] from the leadership; that includes the prime minister.”<sup>3</sup></p> <p>4. Feb 9 – “He reiterated that the only way the convoy would depart the city is if Justin Trudeau were to recognize that the convoy is here and to lift the mandates.”<sup>4</sup></p> <p>5. Feb 10 – “He said that they aren’t moving until things change.”<sup>5</sup></p>	
22.	Statements to PLT A/Sgt Blonde (No Line #)		Statements to PLT A/Sgt Blonde on various dates	<p>1. Feb 4 - End of the demonstration requires “acknowledgment from the federal government” (and specifically by the “Prime Minister”)<sup>6</sup></p> <p>2. Text on Feb 14 – “13 trucks are ready to move” and “I haven't made it down there. We are trying to move block by block”<sup>7</sup></p>	1, 2, 3, 4, 5
23.	Exhibits #28 and #28A (Line 23)	Tab 22	@bigred19755 Posted on unknown date	(1) “GoFundMe is actually starting to work with us now ... GoFundMe is uh, working with us now finally. Thanks for the pressure, guys! We can ... uh, we can lay off this now. We can stop. I need this video shared, cuz we’ve had a lot of trouble here because of this, so, we’re trying to work with everybody, but we’re in a delicate situation, so, please, share this. <u>Get the word out. Um, GoFundMe is working with us now, so you can quit requesting your money back. We are now ok.</u>	1, 2, 3, 4, 5

<sup>3</sup> Oct 19, Cst Bach at p. 51, l. 8-11 and 26.

<sup>4</sup> Oct 19, Bach at p. 65, l. 28-30.

<sup>5</sup> Oct 19, Bach at p. 67, l. 19-20.

<sup>6</sup> Oct 27, Blonde at p. 20, l. 5 and 20 (see also lines 5-7: “Which was an answer that was provided by a great many number of people that I spoke with during my time downtown”).

<sup>7</sup> Exhibit #129 at page 3.



**ANNEX A – Statements by Christopher Barber (Admissible Against Tamara Lich)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

24.	Exhibits #13 and #13A (Line 7)	Tab 7	@bigred19755 Posted on Feb 5 (While walking on Wellington Street)	Remove from <i>Carter</i>	N/A
25.	Exhibits #14 and #14A (Line 8)	Tab 8	@bigred19755 Posted on Feb 5 (While walking on Wellington Street)	Remove from <i>Carter</i>	N/A
26.	Exhibits #15 and #15A (Line 9)	Tab 9	@bigred19755 Posted on Feb 5 (While walking outside)	Remove from <i>Carter</i>	N/A
27.	Exhibits #18 and #18A (Line 12)	Tab 12	@bigred19755 Posted on Feb 4 (In room)	Remove from <i>Carter</i>	N/A
28.	Exhibits #19 and #19A (Line 13)	Tab 13	@bigred19755 Posted on Feb 3 (While walking outside)	Remove from <i>Carter</i>	N/A
29.	Exhibits #20 and #20A (Line 14)	Tab 14	@bigred19755 Posted on Feb 3 (While walking outside)	Remove from <i>Carter</i>	N/A
30.	Exhibits #21 and #21A (Line 15)	Tab 15	@bigred19755 Posted on Feb 2 (While together in room with Lich)	Remove from <i>Carter</i>	N/A

**ANNEX A – Statements by Christopher Barber (Admissible Against Tamara Lich)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

31.	Exhibits #26 and #26A (Line 20)	Tab 20	Feb 10 Tik Tok video	Remove from <i>Carter</i>	N/A
32.	Exhibits #27 and #27A (Line 21)	Tab 21	Feb 8 Tik Tok video	Remove from <i>Carter</i>	N/A
33.	Exhibits #29 and #29A (Line 27)	Tab 24	Feb 12 Tik Tok video	Remove from <i>Carter</i>	N/A
34.	Exhibits #55 and #55A (Line 74)	Tab 34	Feb 17 Video (Arrest)  Posted on Facebook on (See Exhibit #47 at 35/37)	Remove from <i>Carter</i>	N/A
35.	Exhibits #58 and #58A (Line 79)	Tab 36	Feb 17 Press conference with road captains (including Barber)	Remove from <i>Carter</i>	N/A
36.	Exhibits #50 And #50A (Line 80)	Tab 37	Feb 12 Facebook Live (Cross-posted to 26/37 and 8/212)	Remove from <i>Carter</i>	N/A
37.	Exhibits #30 and #30A (Line 86)	Tab 48	Feb 7 Press conference with large group (including Lich)	Remove from <i>Carter</i>	N/A

**ANNEX A – Statements by Christopher Barber (Admissible Against Tamara Lich)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

38.	Exhibits #37 and #37A (Line 108)	Tab 46	Feb 10 @papawolf65	Remove from <i>Carter</i>	N/A
39.	Did not lead (Line 101)		Tik Tok video	Remove from <i>Carter</i>	N/A
40.	Did not lead (Line 102)		Tik Tok video	Remove from <i>Carter</i>	N/A
41.	Did not lead (Line 104)		Tik Tok video	Remove from <i>Carter</i>	N/A
42.	Did not lead (Line 106)		Facebook video	Remove from <i>Carter</i>	N/A
43.	Did not lead (Line 119)		Press conference	Remove from <i>Carter</i>	N/A

**ANNEX B – Statements by Tamara Lich (Admissible Against Christopher Barber)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

	SOURCE	LOCATION	DETAILS	EXCERPT	“IN FURTHERANCE” OF WHICH “PURPOSES”
1.	Exhibits #57 and #57A (Line 66)	Tab 30	Bilingual press conference (including Barber)  Cross-posted on Facebook from YouTube on Feb 3 (see Exhibit #39A at 118/212 and Exhibit #47 at 31/37)	(2) “We are therefore calling on all levels of government in Canada to end all COVID mandates and restrictions. We will continue our protest until we see a clear plan for their elimination.”  (3) “Let me assure the people of Ottawa that we have no intent to stay one day longer than necessary. Our departure will be based on the prime minister doing what is right, ending all mandates and restrictions on our freedoms.”	1, 2, 3, 4, 5
2.	Exhibits #31-36 (Line 107)	Tab 44	Tik Tok videos posted on Feb 4 (and 5, 10)	Exhibit 31 (Feb 10) – Remove from <i>Carter</i>	N/A
				Exhibit 32 (Feb 5) – Remove from <i>Carter</i>	N/A
				Exhibit 33 (Feb 4) – Remove from <i>Carter</i>	N/A
				Exhibit 34 (Feb 4) – Remove from <i>Carter</i>	N/A
				Exhibit 35 (Feb 4) – “We have switched over to a new platform called GiveSendGo. Uh, you should be able to find it under Freedom Convoy 2022. That money is readily accessible. They’re not going to keep it because they don’t like who we are. Um, they’re not going to judge us. They’re going to make sure that we get that money to the truckers that are here on the ground that need it the most.”	1, 2, 3, 4, 5
				Exhibit 36 (Feb 4) – Remove from <i>Carter</i>	N/A

**ANNEX B – Statements by Tamara Lich (Admissible Against Christopher Barber)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

3.	Exhibits #60 and #60A (Line 97)	Tab 39	Statement  Cross-posted on Facebook on Feb 4 (see Exhibit 39A at 106/212)	(1) “We’ve decided to team up with an organization called GiveSendGo, and which is going to enable us to get donations into the hands of the truckers much, much, quicker while everybody gets the rest of the stuff sorted out. So, it’s going to be GiveSendGo. It is Freedom Convoy 2022, uh, that you check out their site. There’ll be links posted there shortly once we have all this information up, or and, uh, yea. So, please, if you can donate, uh, 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 that your rights and freedoms are restored.”	1, 2, 3, 4, 5
4.	Exhibits #62 and #62A (Line 55)	Tab 29	“Second official press conference”  Cross-posted on Facebook on Feb 6 (see Exhibit #39A at 92/212 and Exhibit #47 at 17/37)	(33) Reporter: “If you do get what you want, and the mandates are dropped and you leave, and the government find, uh, decides to reimpose these mandates because of a new variant, variant, would you be willing to come back to Ottawa to pressure them again?”  Lich: “I think you would see that happening... ..in short order.”	1, 2, 3, 4, 5
5.	Exhibits #30 and #30A (Line 86)	Tab 48	Press conference with large group (including Barber)  Cross-posted on Facebook on Feb 7 (see Exhibit #39A at 70/212)	(15) “Um, for the truckers? Yea. We have an Adopt-a-Trucker program. Uh, that’s adoptatrucker.ca. We’ve set up a GiveSendGo. That one is an alternative, uh, Christian-based platform as opposed to GoFundMe. Uh, we still have the e-transfer, um, email set up. So, also, I know up at Parliament, I was up there today. There’s a great big jug that you can donate cash to ... right by the stage if you want. And that money can get to them right away. So.”	1, 2, 3, 4, 5

**ANNEX B – Statements by Tamara Lich (Admissible Against Christopher Barber)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

6.	Exhibits #37 and #37A (Line 108)	Tab 46	Video  Posted on @papawolf65 on Feb 10 (including Barber standing nearby)	(6) “Keep getting the word out”	1, 2, 3, 4, 5
7.	Exhibits #46 and #46A (Line 35)	Tab 25	Statement  Cross-posted on Facebook from @bigred19755 on Feb 11 (see Exhibit #47 at 1/37)	(2) “We gotta, we have to stick together and, and continue to remain unified.”  (2) “I know there’s a lot of negativity and outside forces that are trying to come in, which happens when you, when you, uh, are in something that has grown into what, what this has grown into, but it’s really important that we stay unified.”	1, 2, 3, 4, 5
8.	Exhibits #100 and #101 (Line 113)		Letter to Mayor Watson dated Feb 12	“The Freedom Convoy Board 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 buy in from the truckers. We hope to start repositioning our trucks on Monday.”	1, 2, 3, 4, 5
9.	Exhibits #56 and #56A (Line 69)	Tab 31	Press conference with Brian Peckford  Posted live on Facebook on Feb 14 (see Exhibit #47 at 32/37)	(1-2) “First of all, we are not afraid. In fact, every time the government decides to further suspend our civil liberties, our resolve strengthens and the importance of our mission becomes clearer. We will remain peaceful but planted on Parliament Hill until the mandates are decisively ended.”  (2) “Now, I want to address the prime minister. No matter what you do, we will hold the line.”	1, 2, 3, 4, 5

**ANNEX B – Statements by Tamara Lich (Admissible Against Christopher Barber)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

10.	Exhibits #59 and #59A (Line 77)	Tab 35	Statement  Posted live on Facebook on Feb 16 (see Exhibit #47 at 36/37)	(1) “You guys, I just want you to stay strong. And I want you to continue to be unified.”  (2-3) “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 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 gonna stay and they’re gonna fight for your freedom as long as they possibly can.”  (3) “I want you to keep fighting the good fight. And I want you to look out for each other. And I want you to have each other’s backs.”  (3) “And we’re gonna hold the line.”	1, 2, 3, 4, 5
11.	Exhibits #58 and #58A (Line 79)	Tab 36	Press conference with road captains (including Barber)  Posted live on Facebook on Feb 17 (see Exhibit #47 at 37/37)	(1) “Tonight, we have sent our roadmap to freedom to all federal and provincial leaders. I will read that to you now.”  (2) “We are calling on all governments in Canada to restore the rights and freedoms of Canadians and set concrete limits so governments can’t easily abuse our rights and limit our freedoms again. It is now time for serious and immediate action by our governments. We call upon our governments to restore the rights and freedoms to all Canadians. How?”	1, 2, 3, 4, 5
12.	Exhibits #54 and #54A (Line 72)	Tab 33	Interview (Pre-arrest)  Cross-posted on Facebook from Twitter on Feb 17 (see Exhibit #47 at 34/37)	(1) “She wants to know what my response would be if I get arrested? Hold the line.”	1, 2, 3, 4, 5

**ANNEX B – Statements by Tamara Lich (Admissible Against Christopher Barber)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

13.	Exhibits #53 and #53A (Line 70)	Tab 32	Feb 17 Video (Arrest)  Posted on Facebook (see Exhibit #47 at 33/37)	(3) “Hold the line	1, 2, 3, 4, 5
14.	Exhibit #63 and #63A (Line 53)	Tab 28	“Third official press conference” posted on Facebook on Feb 9 (see Exhibit #39A at 56/212 and Exhibit 47 at 16/37)	Remove from <i>Carter</i>	N/A
15.	Exhibit #65 (Line 65)		Feb 12 @ 5:27pm Posted on Facebook (See Exhibit #39A at 10/212)	Remove from <i>Carter</i>	N/A
16.	Exhibits #51 and #51A (Line 83)	Tab 38	Bilingual press conference on Feb 14 Tamara Lich and Joanie Pelchat	Remove from <i>Carter</i>	N/A
17.	Exhibits #39A and #39A (Line 85)		Facebook Posts (signed-off as “Tamara”) on the following pages: 10, 179, 186, 186-187, 188, 189, 190, 196, 202, 204, 206	Remove from <i>Carter</i>	N/A
18.	Exhibits #61 (Line 98)		Twitter posts	Remove from <i>Carter</i>	N/A



**ANNEX B – Statements by Tamara Lich (Admissible Against Christopher Barber)**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

19.	Exhibit #135 (Line 110)		Text messages with Chris Barber	Remove from <i>Carter</i>	N/A
20.	Did not lead (Line 119)		Press conference	Remove from <i>Carter</i>	N/A

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

TAB	CHAT	PAGE	DATE / TIME	TEXT	
<b>BINDER 1 (FORMERLY LETTERED EXHIBIT BINDER)</b>					
1.	33	2	Feb 17 @ 12:40	<ul style="list-style-type: none"> <li>Ya we have the right to peaceful assembly</li> </ul>	1, 2, 3, 4, 5
2.	252	2	Feb 15 @ 7:16	<ul style="list-style-type: none"> <li>We are doing what we can. Hold that line</li> </ul>	1, 2, 3, 4, 5
3.	368	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
4.	584	2 3 9 9 10	Feb 11 @ 6:52 Feb 11 @ 6:58 Feb 16 @ 1:23 Feb 16 @ 1:23 Feb 16 @ 1:26	<ul style="list-style-type: none"> <li>Shoot. We could always use more trucks for convoys here. Totally up to you</li> <li>I bet. Government better start dealing with the issue</li> <li>Hold that line</li> <li>How bout we all get arrested</li> <li>We are headed out soon to talk to everyone</li> </ul>	1, 2, 3, 4, 5
5.	646	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
6.	649	2	Feb 10 @ 2:40	<ul style="list-style-type: none"> <li>Ok we are getting ready to roll</li> </ul>	1, 2, 5
7.	696	3 4	Feb 9 @ 1:27 Feb 9 @ 1:34	<ul style="list-style-type: none"> <li>It was a tiktok joke to mess cops up</li> <li>Omg that's awesome</li> </ul>	1, 2, 3, 4, 5
8.	701	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
9.	703	2 8 10 11 13 23 23	Feb 9 @ 10:07 Feb 9 @ 11:29 Feb 9 @ 12:08 Feb 9 @ 12:15 Feb 10 @ 3:23 Feb 13 @ 9:15 Feb 13 @ 9:16	<ul style="list-style-type: none"> <li>Absolutely</li> <li>Everyone needs to calm the hell down over this tiktok. Bunch of drama in the drivers. No one is leaving.</li> <li>I blew a kiss at the end of the video. This is our tactic. Calm the fuck down everyone. It hit its mark with police.</li> <li>Spread it</li> <li>Ok we are planning on slow rolling</li> <li>Can we not use the funds to buy more</li> <li>There is cash somewhere</li> </ul>	1, 2, 3, 4, 5

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

		33	Feb 15 @ 6:32	<ul style="list-style-type: none"> <li>• Just git back from scoping truck spots</li> </ul>	
10.	713	1 2 3 5	Feb 9 @ 7:56 Feb 9 @ 8:04 Feb 9 @ 10:00 Feb 11 @ 10:27	<ul style="list-style-type: none"> <li>• No. It's all a big game with law enforcement</li> <li>• No just leave it for now. It's got police fucked right up. Hit it's mark lol</li> <li>• We are good. Need bodies if they start arresting</li> <li>• @sasktel.net</li> </ul>	1, 2, 3, 4, 5
11.	749	2 3	Feb 8 @ 2:14 Feb 9 @ 10:11	<ul style="list-style-type: none"> <li>• Nice. We are moving few trucks out today to do slow rolls</li> <li>• No. Ottawa. We are playing cat and mouse with police</li> </ul>	1, 2, 3, 4, 5
12.	802	3 4 4 6	Feb 9 @ 10:09 Feb 9 @ 10:21 Feb 9 @ 10:21 Feb 9 @ 6:28	<ul style="list-style-type: none"> <li>• No. It's a game</li> <li>• Yes</li> <li>• Cops messed with us. We just playing back</li> <li>• We replace every driver arrested with 3 new drivers. Call just went out</li> </ul>	1, 2, 3, 4, 5
13.	831	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
14.	851	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
15.	855	15	Feb 17 @ 7:12	<ul style="list-style-type: none"> <li>• I won't. Things are heating up and coming to a boil. Weekend means lots of people. Need to keep the wheels on the bus</li> </ul>	1, 2, 3, 4, 5
16.	897	5 5 9 9 10 11	Feb 5 @ 7:24 Feb 5 @ 7:24 Feb 9 @ 10:11 Feb 9 @ 10:11 Feb 9 @ 10:11 Feb 10 @ 7:03	<ul style="list-style-type: none"> <li>• <a href="mailto:Tbofconvoy2022@protonmail.com">Tbofconvoy2022@protonmail.com</a></li> <li>• <a href="https://givesendgo.com/FreedomConvoy2022?utm_source=facebook">https://givesendgo.com/FreedomConvoy2022?utm_source=facebook</a></li> <li>• Not it's a game</li> <li>• I'm fucking with law enforcement</li> <li>• Get that word out</li> <li>• Yup fuck em</li> </ul>	1, 2, 3, 4, 5
17.	950	11 22	Feb 11 @ 6:42 Feb 16 @ 10:55	<ul style="list-style-type: none"> <li>• I've got some cash for guys</li> <li>• Wtf we where talking about surrender but we all said no</li> </ul>	1, 2, 3, 4, 5

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

18.	954	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
19.	997	4	Feb 9 @ 12:53	<ul style="list-style-type: none"> <li>• Haha cops been fucking with us. Why not fuck back</li> </ul>	1, 2, 3, 4, 5
20.	1022	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
21.	1037	2 10	Feb 1 @ 9:26 Feb 9 @ 10:17	<ul style="list-style-type: none"> <li>• Yip we arnt leaving</li> <li>• Awesome. We are waiting for police take the move</li> </ul>	1, 2, 3, 4, 5
22.	1038	7 11	Feb 9 @ 7:52 Feb 9 @ 2:01	<ul style="list-style-type: none"> <li>• Haha no I'm being a shit disturber on tiktok. Cops have fucked us around. I'm just playing games back.</li> <li>• 500 bucks</li> </ul>	1, 2, 3, 4, 5
23.	1052	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
24.	1053	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
25.	1063	1	Jan 31 @ 3:16	<ul style="list-style-type: none"> <li>• I'm so flat out I can't get outa meetings. One after after another. Keep those drivers united and patent.</li> </ul>	1, 2, 3, 4, 5
26.	1118	21	Feb 16 @ 1:47	<ul style="list-style-type: none"> <li>• Hold the line</li> </ul>	1, 2, 3, 4, 5
27.	1154	9 10	Feb 6 @ 12:25 Feb 5 @ 12:29	<ul style="list-style-type: none"> <li>• Nope we stay and finish this bud. Canadians want us here.</li> <li>• Haha I'm good at thos shit stir. Keep all those troops calm and peaceful</li> </ul>	1, 2, 3, 4, 5
28.	1196	3 4 7	Feb 2 @ 12:44 Feb 2 @ 1:01 Feb 3 @ 1:51	<ul style="list-style-type: none"> <li>• We are trying to work with city and silence the horns. Trudeau has no interest in hearing us so we can't just leave.</li> <li>• We would love to open a lane but it hasn't happened yet</li> </ul>	1, 2, 3, 4, 5
29.	1200	10 33	Jan 29 @ 8:15 Feb 10 @ 8:31	<ul style="list-style-type: none"> <li>• Yes but we flooded that. We are completely messing the city up.</li> </ul>	1, 2, 3, 4, 5

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

		50	Feb 16 @ 7:35	<ul style="list-style-type: none"> <li>• Really good. Train wrecked traffic</li> <li>• Bring it</li> </ul>	
30.	1221	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
31.	1253	3 3 5	Feb 3 @ 7:19 Feb 3 @ 7:22 Feb 16 @ 7:50	<ul style="list-style-type: none"> <li>• Thanks Don. We are on it. Ain't stopping</li> <li>• We ain't stopping</li> <li>• Head for Ottawa lol we need bodies</li> </ul>	1, 2, 3, 4, 5
32.	1284	30 65	Jan 31 @ 6:28 Feb 10 @ 7:02	<ul style="list-style-type: none"> <li>• 140 Slater Street</li> <li>• I have the address of where they are firing up tow trucks right now for the city! Can you get as many trucks over there as possible. 2799 Swansea big city garage.</li> </ul>	1, 2, 3, 4, 5
33.	1363	23  26 34	Feb 7 @ 9:05  Feb 8 @ 5:32 Feb 10 @ 12:44	<ul style="list-style-type: none"> <li>• If we go quiet on social media. Send as many people as you can to Ottawa. This is full government overreact.</li> <li>• Oh my. We have vhf radios. We are safe now. We are playing games with law.</li> <li>• End the mandates</li> </ul>	1, 2, 3, 4, 5
34.	1392	19 21	Feb 14 @ 7:46 Feb 14 @ 8:56	<ul style="list-style-type: none"> <li>• We are all in same boat. We have to take a stand or it will be all gone</li> <li>• Yup shut this country down. Fuck Trudeau</li> </ul>	1, 2, 3, 4, 5
35.	1405	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
36.	1434	14 16	Feb 6 @ 5:42 Feb 7 @ 7:37	<ul style="list-style-type: none"> <li>• <a href="https://givesendgo.com/FreedomConvoy2022?utm_source=facebook">https://givesendgo.com/FreedomConvoy2022?utm_source=facebook</a></li> <li>• We are already mobile. Today we roll to cause grief</li> </ul>	1, 2, 3, 4, 5
37.	1464	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
38.	1472	5 13  34	Jan 29 @ 8:18 Feb 5 @ 11:10  Feb 11 @ 7:46	<ul style="list-style-type: none"> <li>• Fuck this ain't done till mandates are lifted</li> <li>• Ok get names next time. We need to keep these slow rolls going. Monday we'll be moving more guys out</li> <li>• I've got cash if you need</li> </ul>	1, 2, 3, 4, 5

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

39.	1542	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
40.	1616	8	Feb 14 @ 11:48	<ul style="list-style-type: none"> <li>Hwy Greg. Oh lots of games. Streets are blocked. Food and stores are closed trying to push us out. It's a big game of cat and mouse.</li> </ul>	1, 2, 3, 4, 5
41.	1708	13	Feb 9 @ 12:36	<ul style="list-style-type: none"> <li>No lol police are being dicks. Time to play back.</li> </ul>	1, 2, 3, 4, 5
42.	1727	42	Jan 31 @ 8:38	<ul style="list-style-type: none"> <li>Ottawa city police wanted us all gone by 8am. I just told them we need the mandates removed and we will happily leave.</li> </ul>	1, 2, 3, 4, 5
43.	1762	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
44.	1764	12 14 15	Feb 5 @ 9:32 Feb 11 @ 7:26 Feb 11 @ 8:26	<ul style="list-style-type: none"> <li>Yes police are on our sides but now they are being told to be aggressive. Monday will be the day we hold wellington but pull out of downtown.</li> <li>We have medical doctors meeting today. We have fractured the liberal party. There was a leaders meeting last night. Just a bit longer.</li> <li>I'm not in contact. Different groups. This is all on the back of Trudeau. He has all the power to end this. We have come this far. We can not show weakness now.</li> </ul>	1, 2, 3, 4, 5
45.	1817	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
46.	2195	3	Feb 7 @ 4:06	<ul style="list-style-type: none"> <li>Yes</li> </ul>	2, 5
47.	2198	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
48.	2253	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
49.	2260	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
50.	2284	39	Feb 8 @ 11:31	<ul style="list-style-type: none"> <li>Yes we have more coming. If we keep out presence on wellington but move out and regroup into slow roll.</li> </ul>	1, 2, 3, 4, 5

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

51.	2287	45 58 70 80	Jan 31 @ 5:40 Feb 4 @ 9:44 Feb 10 @ 6:17 Feb 16 @ 1:50	<ul style="list-style-type: none"> <li>• Please fan this out. It's a hotline set up for trucks needs and is ready to go</li> <li>• <a href="mailto:Tbofconvoy2022@protonmail.com">Tbofconvoy2022@protonmail.com</a></li> <li>• Out fucking up traffic</li> <li>• Hold the line. We are in a peaceful protest.</li> </ul>	1, 2, 3, 4, 5
52.	2336	31	Feb 9 @ 12:32	<ul style="list-style-type: none"> <li>• No lol just messing with police</li> </ul>	1, 2, 3, 4, 5
53.	2370	35 44	Feb 10 @ 11:23 Feb 16 @ 10:17	<ul style="list-style-type: none"> <li>• Yup lol we fucked the 417 up tonight. 8 km long 3 lanes wide. 5 km per hour</li> <li>• I heard. We need help.</li> </ul>	1, 2, 3, 4, 5
54.	2438	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
55.	2461	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
56.	2464	46 55 56 63	Feb 7 @ 8:24 Feb 12 @ 3:37 Feb 12 @ 4:07 Feb 14 @ 6:27	<ul style="list-style-type: none"> <li>• <a href="https://givesendgo.com/freedomConvoy2022?utm_source=facebook">https://givesendgo.com/freedomConvoy2022?utm_source=facebook</a></li> <li>• Give send go is still up I think. I'm handing out cash daily</li> <li>• Yup I'm getting cash donations all day. I just hand it off to guys that need it</li> <li>• Hes a tyrant. He stomps his feet and we all run home.? No we stand and fight.</li> </ul>	1, 2, 3, 4, 5

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

<b>BINDER 2 (FORMERLY NUMBERED EXHIBIT BINDER)</b>					
1.	118	N/A	N/A	• Not relied upon for <i>Carter</i>	N/A
2.	123	N/A	N/A	• Not relied upon for <i>Carter</i>	N/A
3.	127	1	Feb 16 @ 7:03	• We will	1, 2, 3, 4, 5
4.	160	N/A	N/A	• Not relied upon for <i>Carter</i>	N/A
5.	261	N/A	N/A	• Not relied upon for <i>Carter</i>	N/A
6.	270	N/A	N/A	• Not relied upon for <i>Carter</i>	N/A
7.	288	N/A	N/A	• Not relied upon for <i>Carter</i>	N/A
8.	314	N/A	N/A	• Not relied upon for <i>Carter</i>	N/A
9.	338	N/A	N/A	• Not relied upon for <i>Carter</i>	N/A
10.	382	N/A	N/A	• Not relied upon for <i>Carter</i>	N/A
11.	441	1	Feb 12 @ 7:27	• Hey Bill. Thanks so much. Government has accounts frozen but if you wish I can take cash out and get money to the drivers through etransfer to cell.	1, 2, 3, 4, 5
12.	448	1	Feb 12 @ 7:23	• Hi Greg. Government has funds froze but if you send to this number I can get cash to drivers. Seems to be best.	1, 2, 3, 4, 5
13.	459	1	Feb 12 @ 4:08	• Hi there. Yes the account is <a href="mailto:tbofconvoy2022@protonmail.com">tbofconvoy2022@protonmail.com</a>	1, 2, 3, 4, 5
14.	670	N/A	N/A	• Not relied upon for <i>Carter</i>	N/A
15.	686	3	Feb 16 @ 4:23	• We are wanting bodies fast	1, 2, 3, 4, 5



**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

16.	687	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
17.	697	2	Feb 9 @ 12:41	<ul style="list-style-type: none"> <li>Have money for you to give out</li> </ul>	1, 2, 3, 4, 5
18.	727	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
19.	744	11 12	Feb 13 @ 11:35 Feb 13 @ 11:53	<ul style="list-style-type: none"> <li>Things are great. Holding the line. Not giving up.</li> <li>First meeting with city was today. Negotiations begin lol ots a huge cat and mouse game</li> </ul>	1, 2, 3, 4, 5
20.	778	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
21.	790	3	Feb 7 @ 1:34	<ul style="list-style-type: none"> <li>You can do etransfer to this cell phone. <a href="https://givesendgo.com/FreedomConvoy2022?utm_source=facebook">https://givesendgo.com/FreedomConvoy2022?utm_source=facebook</a>. <a href="mailto:Tbofconvoy2022@protonmail.com">Tbofconvoy2022@protonmail.com</a> is etransfer.</li> </ul>	1, 2, 3, 4, 5
22.	853	2 3	Feb 6 @ 11:34 Feb 13 @ 4:33	<ul style="list-style-type: none"> <li><a href="mailto:Tbofconvoy2022@protonmail.com">Tbofconvoy2022@protonmail.com</a></li> <li>Etransfer to this number</li> </ul>	1, 2, 3, 4, 5
23.	893	1 1 2	Feb 5 @ 2:09 Feb 5 @ 2:09 Feb 5 @ 2:09	<ul style="list-style-type: none"> <li>Hey Calvin. Give send go is now up or email transfer</li> <li><a href="https://givesendgo.com/FreedomConvoy2022?utm_source=facebook">https://givesendgo.com/FreedomConvoy2022?utm_source=facebook</a></li> <li><a href="mailto:Tbofconvoy2022@protonmail.com">Tbofconvoy2022@protonmail.com</a></li> </ul>	1, 2, 3, 4, 5
24.	898	4	Feb 6 @ 5:46	<ul style="list-style-type: none"> <li>I'm going to organize guys out Tomorrow and we'll set up slow rolls all over the city</li> </ul>	1, 2, 5
25.	953	1 1	Feb 3 @ 5:11 Feb 3 @ 5:11	<ul style="list-style-type: none"> <li>[redacted contact information]</li> <li>This is our fuel guy</li> </ul>	1, 2, 3, 4, 5
26.	965	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
27.	966	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

28.	980	3 4 5	Feb 3 @ 12:02 Feb 7 @ 7:45 Feb 7 @ 8:12	<ul style="list-style-type: none"> <li>• Ok perfect. Do a slow roll anywhere you like</li> <li>• Yup they drew the line. We counter today</li> <li>• Thanks buddy. I'll fire red up and move to 88. We will then start a campaign of convoy slow rolls. Get ready my friend.</li> </ul>	1, 2, 3, 4, 5
29.	984	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
30.	1064	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
31.	1086	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
32.	1088	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
33.	1104	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
34.	1129	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
35.	1133	1	Jan 29 @ 9:48	<ul style="list-style-type: none"> <li>• Hey bud. Need traffic to part so we can get back to the hotel lol wow we are messing tgis town up</li> </ul>	1, 2, 3, 4, 5
36.	1144	10	Feb 14 @ 6:19	<ul style="list-style-type: none"> <li>• After supper. Been such a busy day moving trucks</li> </ul>	1, 2, 3, 4, 5
37.	1202	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
38.	1208	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
39.	1229	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
40.	1263	6 7	Jan 30 @ 11:17 Feb 2 @ 5:42	<ul style="list-style-type: none"> <li>• Awesome thank you. We have quite the situation going on with trucks flooding the city. I hope things stay peaceful.</li> <li>• Not quite yet. We are working with city police to strengthen our spots. Move to get out of residential.</li> </ul>	1, 2, 3, 4, 5

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

41.	1265	16	Feb 5 @ 12:23	<ul style="list-style-type: none"> <li>• <a href="mailto:Tbofconvoy2022@protonmail.com">Tbofconvoy2022@protonmail.com</a></li> </ul>	1, 2, 3, 4, 5
42.	1352	6	Feb 14 @ 8:53	<ul style="list-style-type: none"> <li>• We have this Tim. Hold the line</li> </ul>	1, 2, 3, 4, 5
43.	1393	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
44.	1416	4 5	Jan 29 @ 9:16 Jan 29 @ 9:47	<ul style="list-style-type: none"> <li>• Meeting with ems and then Ottawa police. Trying to get the truckstop to open there pumps up</li> <li>• We have cash to top guys off. Fuck I. Stuck downtown in a basement war room. Holy this is huge.</li> </ul>	1, 2, 3, 4, 5
45.	1420	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
46.	1498	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
47.	1507	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
48.	1555	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
49.	1579	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
50.	1628	4 4	Feb 5 @ 11:07 Feb 5 @ 11:07	<ul style="list-style-type: none"> <li>• <a href="https://givesendgo.com/FreedomConvoy2022?utm_source=facebook">https://givesendgo.com/FreedomConvoy2022?utm_source=facebook</a></li> <li>• <a href="mailto:Tbofconvoy2022@protonmail.com">Tbofconvoy2022@protonmail.com</a></li> </ul>	1, 2, 3, 4, 5
51.	1630	3 5	Jan 30 @ 8:05 Jan 30 @ 10:13	<ul style="list-style-type: none"> <li>• It's already locked. We train wrecked it</li> <li>• Ok work with law enforcement. If you can go to adopt a trucker.ca and get info on rides and food</li> </ul>	1, 2, 3, 4, 5
52.	1688	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
53.	1711	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

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54.	1715	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
55.	1716	8 10	Feb 4 @ 9:33 Feb 7 @ 9:35	<ul style="list-style-type: none"> <li>• Ok I'm got fuel if you need it</li> <li>• Ok today we received organize. Slow roll time again.</li> </ul>	1, 2, 3, 4, 5
56.	1724	5 8 8	Jan 29 @ 8:16 Jan 29 @ 9:51 Jan 29 @ 9:51	<ul style="list-style-type: none"> <li>• Fuck it's not finished until we get everyone in</li> <li>• No fuck no. We go home when they lift mandates.</li> <li>• Find another way in</li> </ul>	1, 2, 3, 4, 5
57.	1805	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
58.	1808	9	Jan 31 @ 9:49	<ul style="list-style-type: none"> <li>• We won't leave till mandates are lifted</li> </ul>	1, 2, 3, 4, 5
59.	2172	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
60.	2259	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A
61.	2300	27 31	Feb 10 @ 8:56 Feb 10 @ 6:03	<ul style="list-style-type: none"> <li>• Hey pull ¾ trucks outta airport. It's too clogged. We want presence but not shut down</li> <li>• We need more trucks to block them in?</li> </ul>	1, 2, 3, 4, 5
62.	2319	15	Feb 14 @ 8:57	<ul style="list-style-type: none"> <li>• Yup holding the line</li> </ul>	1, 2, 3, 4, 5
63.	2320	59 62  62 73 74 79 83	Jan 31 @ 3:15 Feb 1 @ 10:34  Feb 1 @ 10:58 Feb 7 @ 7:55 Feb 7 @ 8:11 Feb 10 @ 8:14 Feb 12 @ 10:27	<ul style="list-style-type: none"> <li>• Holy cow you need to fly out and take part</li> <li>• We are good but the city is cutting our fuel off. Food and hotels are getting pressure. If they want more truck coming we can get them coming</li> <li>• Yup we can have way more people coming if they wish</li> <li>• It's us against the establishment. Time we show them who we really are</li> <li>• Yup and its our last stand</li> <li>• Yup and we aint leaving</li> <li>• Oh we are going to mess with this government</li> </ul>	1, 2, 3, 4, 5
64.	2331	N/A	N/A	<ul style="list-style-type: none"> <li>• Not relied upon for <i>Carter</i></li> </ul>	N/A

**R. V. BARBER & LICH – TEXT MESSAGES CAPTURED BY CARTER**

**Note:** Statements below are taken in isolation of their context. When reviewing, please refer to the surrounding texts in the chats.

65.	2337	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
66.	2340	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
67.	2384	16 29	Jan 27 @ 4:20 Feb 16 @ 5:04	<ul style="list-style-type: none"> <li><a href="mailto:Tbofconvoy2022@protonmail.com">Tbofconvoy2022@protonmail.com</a></li> <li>Cash. Everything is held up</li> </ul>	1, 2, 3, 4, 5
68.	2387	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
69.	2393	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
70.	2432	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
71.	2442	16 16 20	Feb 5 @ 8:41 Feb 17 @ 9:31 Feb 17 @ 12:27	<ul style="list-style-type: none"> <li>It is [redacted] but I posted the new givesendgo account this morning. Almost 700k overnight</li> <li>Oh sweet. Need bodies. Things are heating up with police today</li> <li>Yup well keep on pushing. We are definitely winning</li> </ul>	1, 2, 3, 4, 5
72.	2448	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
73.	2466	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A
74.	N/A	N/A	N/A	<ul style="list-style-type: none"> <li>Not relied upon for <i>Carter</i></li> </ul>	N/A

Information No. 23-11401103

**ONTARIO COURT OF JUSTICE**  
(East Region)

**HIS MAJESTY THE KING**

- AND -

**CHRISTOPHER BARBER &  
TAMARA LICH**

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**CROWN'S CLOSING SUBMISSIONS**

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Siobhain Wetscher & Tim Radcliffe  
Assistant Crown Attorneys

[REDACTED]