

Court File No. CV-22-00088514-00CP
CITATION: Li v. Barber et al. 2022, ONSC 1037

SUPERIOR COURT OF JUSTICE

B E T W E E N:

ZEXI LI

Plaintiff

-and-

CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4,
JOHN DOE 5, JOHN DOE 6, JOHN DOE 7, JOHN DOE 8,
JOHN DOE 9, JOHN DOE 10, JOHN DOE 11, JOHN DOE 12,
JOHN DOE 13, JOHN DOE 14, JOHN DOE 15, JOHN DOE 16,
JOHN DOE 17, JOHN DOE 18, JOHN DOE 19, JOHN DOE 20,
JOHN DOE 21, JOHN DOE 22, JOHN DOE 23, JOHN DOE 24,
JOHN DOE 25, JOHN DOE 26, JOHN DOE 27, JOHN DOE 28,
JOHN DOE 29, JOHN DOE 30, JOHN DOE 31, JOHN DOE 32,
JOHN DOE 33, JOHN DOE 34, JOHN DOE 35, JOHN DOE 36,
JOHN DOE 37, JOHN DOE 38, JOHN DOE 39, JOHN DOE 40,
JOHN DOE 41, JOHN DOE 42, JOHN DOE 43, JOHN DOE 44,
JOHN DOE 45, JOHN DOE 46, JOHN DOE 47, JOHN DOE 48,
JOHN DOE 49, JOHN DOE 50, JOHN DOE 51, JOHN DOE 52,
JOHN DOE 53, JOHN DOE 54, JOHN DOE 55, JOHN DOE 56,
JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60

Defendants

P R O C E E D I N G S

REMOTELY BEFORE THE HONOURABLE JUSTICE H. MCLEAN
on February 7, 2022, for an OTTAWA proceeding

APPEARANCES:

IDENTIFIED AS ANNOTATED - PARTICIPATED VIA REMOTELY FROM UNKNOWN LOCATIONS

P. Champ, C. Johnson

Counsel for Zexi Li

K. Wilson

Counsel for Chris Barber

K. Wilson

Counsel for Benjamin Dichter

K. Wilson

Counsel for Tamara Lich

(i)
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Legend
<i>[sic]</i> - Indicates preceding word has been reproduced verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled Phonetically.

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Transcript Ordered:	February 16, 2022
Transcript Completed:	February 23, 2022
Approved by MCLEAN, J.:	February 14, 2022
Ordering Party Notified:	February 23, 2022

60.
Reasons for Decision
McLean, J.

5 THE COURT: Thank you. Anything further, Mr. Wilson, on behalf of that?

MR. WILSON: No. Of course, I - I - I would like to speak to costs at the appropriate time, but I think....

THE COURT: Well, we're not - we're not - we haven't got to that stage.

10 MR. WILSON: I know. I just wanted to be clear, I didn't want to [*Indiscernible...multiple speakers at the same time, unable to decipher words spoken*].

THE COURT: No, no, that's fine. That's fine.

R E A S O N S F O R D E C I S I O N

15 Transcribed *verbatim* as spoken on the record for purposes of judicial review and can be checked for accuracy by listening to the Liberty DCR audio recording
0411_CR34_20220207_093144__10_MCLEANH.dcr

20 MCLEAN, J. (Orally):

25 Well, obviously, this is a matter that has to be dealt with. It was put over from Saturday to ensure that there was a full and fair record before the court, which is necessary for an adjudication. I know that there's - because of the notoriety of this whole thing, that everybody is of an opinion, I think, out there, that this - the court does things by plebiscite. It certainly doesn't. I have an oath to follow. I have to look at the facts that are brought before the court. And whatever people think out there, that is not of great relevance to what I have to

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decide.

5 The only issue before the court is whether an
injunction should be granted in some terms with
respect to the use of vehicle horns as described
in the *Highway Traffic Act* for the Province of
Ontario. That is how the motion is set forward.
And whether, on that basis, I should grant an
interim injunction.

10 With respect to the injunction, it is this Court's
view that the injunction, if it's granted, will
only be for 10 days. It is - because there are
certainly a plethora of people that have not been
15 served, or have not attorned (ph) to the
jurisdiction of the court.

20 Now we deal with the factual basis for which the
application is made. The factual basis is one
particular individual, in Ottawa, has brought
evidence of the effect that the constant use of
air horns, or truck horns, or whatever, has upon
her with that.

25 There is another individual who got an app for
their cell phone and went around the centre part
of Ottawa, where this protest is alive, and
measured decibel levels, which is found in the
affidavit. I will not go back - rehearse that
30 because it's clear in the affidavit record, that I
do not need to.

5 The third affidavit is one from a doctor who is an
otolaryngologist at the University of Ottawa and
has a practice. The main part of her evidence,
aside from opinion of potential loss - or
continuing loss (ph), was the effect that the
noise of such horns would have upon various
individuals and how it could - there would be
effects that may be of a permanent nature. And I
say maybe because it has not been tried, and of
10 course, that's the level of the evidence before
us.

15 In reply, we have evidence from - there - the
named individuals that Mr. Wilson has represented,
quite eloquently, about how in reality one has no
truck here, one never did have a truck here, and
the third one had a truck but didn't use the air
horn. That's their nature.

20 There are other affidavits of other people who
have been around the area and - and really, the
import of the affidavits are that people were
having a good time. There are some affidavits
saying that they could, even with the air horns,
25 they could hear a conversation. The issue on that
factual basis then leads us to a consideration of
where - whether an interlocutory injunction should
be given.

30 The test, of course, for obtaining an
interlocutory injunction is articulated in the
Supreme Court of Canada in *RJR-MacDonald Inc. v.*

Attorney General.

The moving party [must be satisfied] must demonstrate [that] a serious question [is - is] to be tried. [As Read]

Clearly, on these merits, the court has not much difficulty in finding that the test has been met. This is a serious issue that has to be - that should be tried on the effect of the air horns on particular people, who is responsible for that, et cetera.

The third - or the second part of the test is whether

[The moving par -] The moving party must convince the court that it will suffer irreparable harm if relief is not granted. 'Irreparable' refers to the nature of the harm rather than the magnitude [of it]. [As Read]

Here, on the basis of the evidence of the plaintiff, of the person who has measured it, and of the doctor. Now, objection was taken to the doctor that he perform as an expert witness's report was not filed. However, given the importance of this issue and the need for a determination on this most preliminary matter, the court accepts the evidence of the doctor. And therefore, it is the Court's view that irreparable - the irreparable nature of the harm has been made out.

That leaves us the third branch, which requires an assessment of the balance of inconvenience.

5 Clearly, what we are dealing with here is, we are dealing with the right for security of person vis-à-vis the right of expression and protest. Both these rights exist. There is no debate on that. People have a right to protest various things in various ways. That is enshrined at common law for many eons, and also in the *Charter*.

10 However, in the Court's view, there's really no difference between the rights given by the *Charter* and the rights that already existed in common law. Certainly, people have a right to protest things, particularly governmental things, that they don't like. And the nature of that protest is really not something that can be accurately assessed because it, in large degree, is a subjective matter within the sole interest of those people demonstrating.

15 However, in these particular circumstances, we have the issue of the fact of the manner of self-expression, that is the continual honking of - or using horns on vehicles, trucks in particular, which are having an effect on the people in the particular area of this protest. That is clear from the evidence of the plaintiff, it is clear from the other evidence, and it is also clear from 20 the evidence put forward in the affidavit of Mr. Bufford (ph), who apparently is a volunteer

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Reasons for Decision

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5 security official with the group, wherein he suggests that the honking of the air horns would be restricted from 8:00 p.m. to 8:00 in the morning. Clearly, the inference that the Court draws from that is, quite frankly, that the defendants, or at least the evidence on behalf of the potential defendants, comprehends the fact that there is a deleterious nature to the use of these horns. When we consider this as a whole, we are of the opinion that the balance of - balance of inconvenience has been made out, in that the rights of the citizens for quiet, if we can use that term, and I know it's not a legal one, but a right to quiet, has been made out as the 10 overcoming or being the overriding right here. And for those reasons, an interim injunction will be granted. All right.

15 Then we get to the terms of the order. And I can tell you right now that the order will only be for 20 10 days because clearly the fact is that there are a myriad of people that have not been served with this, and they may have their own interests that they wish to bring to the court on the basis of the injunction being made of a permanent nature. All right.

30 So, what do you want to do then about the order?
MR. CHAMP: Well, I would submit, Your Honour, that we should give an opportunity for legal