

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)
Table of Contents

SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

5		<u>ENTERED ON PAGE</u>
	SUBMISSIONS BY MR. CHAMP	11
	SUBMISSIONS BY MR. WILSON	34
	REPLY SUBMISSIONS BY MR. CHAMP	52
	REASONS FOR DECISION	60

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Legend	
15	<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
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MONDAY, FEBRUARY 7, 2022

CITATION: Li v. Barber et al. 2022, ONSC 1037

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10
PLEASE NOTE: PROCEEDINGS WERE RECORDED REMOTELY. PORTIONS OF THIS TRANSCRIPT CONTAIN A HIGHER THAN USUAL NUMBER OF [INDISCERNIBLE] NOTATIONS DUE TO TECHNICAL FAILURE AND POOR QUALITY OF THE AUDIO, AND SOME WORDS MAY NOT HAVE BEEN CAPTURED ON AUDIO DUE TO INTERMITTENT FADING AND/OR MUFFLING OF MICROPHONE.

15
SOME PARTIES ARE PRESENT IN COURT WHILE OTHERS ARE PARTICIPATING IN THIS HEARING REMOTELY FROM DIFFERENT LOCATIONS. AT TIMES AUDIO RECORDING DOES NOT MEET REQUIRED STANDARD AS DULY NOTED HEREIN.

20
... WHEREUPON MATTER COMMENCES (1:08 p.m.)

25
CLERK REGISTRAR: Oye, oye, oye, anyone having business before the Queen's justice Superior Court of Justice attend now and you shall be heard. Long live the Queen.

30
THE COURT: Thank you. Before we can commence, I'd just like to say a few things first, which really doesn't have much of a bearing on this. I'd like to thank the staff that were here with me on Saturday. Of course, it's always a nice thing when you get called into work when you don't expect to, and we really appreciate your help because you were really helpful.

5 I'd also like the - thank counsel in the criminal matter that I'm engaged in, Ms. Tansey for the Crown, Mr. Lewandowski and Mr. Krongold, for arranging it so I could continue to hear this matter. They're very - they've been very helpful in that regard.

10 The other matter I'd like to address is, as I guess you're aware better than I am, because I really - I only heard about it - really heard about it after the - the hearing on Saturday at close, that a racial slur was put in the chat line.

15 Now, obviously, is that were done in open court I would either have the participant who did that removed, or arrested, or both, depending on what the nature of it is. With regard to this particular matter, I - and then I would deal with the individual matter in contempt or otherwise after the hearing had been completed because obviously, those kinds of outbursts are generally designed to prevent the court from adjudicating on 20 certain matters that are before it, or at least slowing down that adjudication.

25 So, what I'm suggesting at this point is, because counsel have read the epithet that was in the ZOOM, I would ask that both counsel communicate that to the Crown Attorney's office so that perhaps criminal proceedings or contempt 30

5
proceedings can be brought if that individual can
be identified. Please do that. That's - as I
say, I can't deal with it personally because it's
not a situation where I can deal with it. But I
have to deal with it because that's what is
necessary to make sure the procee - the
proceedings of the court are not interfered with.
All right. Thank you.

10
MR. WILSON: Your Honour, I - I need to clarify.
I have not seen it.

THE COURT: Well, you can - okay, sorry. I didn't
want to interrupt.

15
MR. WILSON: If I might, sir. And I've confirmed
all of this in writing with my friend. That, I
was instructed by my clients for Saturday to share
the link only with my legal term and that's what
occurred.

20
THE COURT: I'm not - I'm not - what I'm - I'm not
trying to put counsel in any difficulty. I'm
simply put - and the - the limit of my request is
simply to inform the Crown Attorney's office as to
what you're aware of, and then they can take over
from there. I'm not asking you to be a witness to
it or anything else. It's just, I don't know how
25
to deal with this because we're not in open court.
And as I said before, if it were in open court, I
would deal with it personally without any
problems, but I can't do that because just - and I
have no ability to investigate it myself. And so,
30
therefore, what I'm simply asking - you can talk
to your friend, Mr. Wilson, and - to Mr. Champ,
you can talk together how you handle this. I just

5
10
want - it should be reported to the Crown
Attorney's office so they can take appropriate
measures that they deem. Whether by means of a
contempt application or by means of a criminal
proceeding. The difficulty is, of course, whether
the person can be identified, and I have no way of
knowing that, perhaps neither do you. So, that's
why my suggestion is that we allow them to do
their investigation if they deem that appropriate.

We'll proceed on with this.

MR. WILSON: Thank you.

THE COURT: All right. Thank you.

MR. CHAMP: Thank you very much, Your Honour.

15
THE COURT: All right. So....

CLERK REGISTRAR: *[Indiscernible...speaker away
from microphone]* the chat ability has been
disabled.

THE COURT: Yes, I understand that.

20
CLERK REGISTRAR: Okay.

THE COURT: And I'm very pleased with that too.

25
30
Anyway, let's go on now. I don't know - I've got
a great deal of materials. I guess the - I now
have a factum from you both - or facta from you
both. I have motion records from you both and the
various affidavits that are appended there to, or
part of it. I don't know if we have to go into
any other detail with respect to what the record
is that I'm - have to deal with.

MR. CHAMP: If I may, Your Honour, I - and I
appreciate the Court and the court registry

working so hard on this matter over the last few days, and materials coming in at all times. Very - very appreciate and - of the court's efforts on that.

5

I thought, if I may, I could just sort of summarize what I understand the record to be before, given the various....

10

THE COURT: Well, you can both do that. You could both do that and highlight it. And then I'll - if I'm having a problem recognizing it, I'll go and look for it, I guess. Or you can help me with it. All right.

15

MR. CHAMP: Well, may - maybe I'll summarize to - it to you, Your Honour, at least my understanding and my friend then can advise if - if he has the same understanding.

20

From the moving party's perspective, the plaintiff, there's a moving party's motion record that was filed on Friday evening.

THE COURT: Yes.

25

MR. CHAMP: And then there's a supplementary motion record, which we filed last night.

We've asked the....

THE COURT: That's right. I have that too.

30

MR. CHAMP: Yeah, yeah. There was a supplementary book of authorities that we filed on Saturday, but you no longer need to use that. We've incorporated all of those authorities into the supplementary motion record.

THE COURT: That's fine. Thank you.

MR. CHAMP: And just to confirm with the Court, and that supplementary motion record, it's predominantly just authorities. We added some authorities to address some of the questions that the Court had on - on...

THE COURT: Right.

MR. CHAMP: ...Saturday, Your Honour. And beyond that, we just - we have a version of a draft order, which we had gotten input from - from the Ottawa Police. And then, we also just put in, as I believe the Court may be aware, but just to confirm, that the City of Ottawa major declared a state of emergency under the - under the *Emergencies Management And Civil Protections Act* yesterday. So, just thought the court...

THE COURT: Yeah.

MR. CHAMP: ...should be aware of that. But aside from that, our evidence is what we had filed on Friday evening.

THE COURT: Okay, that's fine.

MR. CHAMP: Our motion - and our factum is included in - in Volume 1.

THE COURT: That's right. No, I've - I've - I've separate that out and I - I appreciate how hard the administrative staff have been working because I've had to do some of it myself. So, I - I'm grateful for what they've done.

MR. CHAMP: Yeah.

THE COURT: Mr. Wilson....

MR. CHAMP: For sure.

THE COURT: Yes.

5 MR. CHAMP: And from Mr. Wilson's side, I understand that the - the record is, they've filed a motion record last night, which included five affidavits. And they've filed now a supplementary motion record about an hour and a half ago with eight affidavits. And then they've filed a factum, the latest version of - they filed a few, but I think the latest version was at 11:50 a.m.

10 So, that's - today. So, that's - that's my understanding of their record. Two motion records for each party, plus they have a separate factum. We have our factum incorporated in our first volume.

15 THE COURT: All right. Mr. Wilson?

MR. WILSON: I thank my friend for that summary. I can advise the court and my friend, if they haven't received it already, we do have one further affidavit that's on its way, or already into the court, and it's from Thomas Merezano (ph).

20 THE COURT: I don't know that I - is it a stand-alone affidavit?

MR. WILSON: That's correct, sir.

25 THE COURT: Well, all right. Well let me look and see.

30 MR. CHAMP: Well, Your Honour, I haven't had a chance - and I'll just say at this stage, this hearing has - has commenced and I would oppose the introduction of that affidavit.

All of the moving party's evidence was served on

the respondents on Friday. We're now....

5 THE COURT: Well, let's - let's - let's go ahead with it and then we'll see where we go because I don't have it, as - as I understand it. All right. So, let's proceed and we can deal with that....

MR. WILSON: One other - one other - sorry, sir, I'm not meaning to talk over.

THE COURT: Okay. No, no, no. You go ahead.

10 MR. WILSON: There is - there was an e-mail that I received, a few minutes before the hearing started, from counsel for the Ottawa Police. I haven't had a chance to review it or read it, obviously. So, I'm not sure if that's part of the record or what the role of the Ottawa Police are in this private litigation matter. But I - I just want....

15 THE COURT: Well, do you want - do you want a few minutes to read it? I don't know - you know, I'm....

MR. WILSON: Yes, please.

20 THE COURT: All right. We'll give you a few minutes. We'll just wait. We'll give you five minutes and then. Mr. Champ?

25 MR. CHAMP: Yeah, before he goes, if I may, Your Honour, thank you. I would just address the - the issues is that the - the Ottawa Police Service legal counsel has asked for standing simply to speak to the issues of any terms of the order that would apply to the Ottawa Police Service.

30 When we were preparing the draft order for Your

Honour early on Saturday morning, the Ottawa Police Service had reached out and had some input in what they thought would be helpful...

THE COURT: So....

MR. CHAMP: ...for them to enforce. We added that language. And they've now indicated they would like standing simply to speak to that language...

THE COURT: Well....

MR. CHAMP: ...as it applies to the Ottawa Police.

THE COURT: All right.

MR. CHAMP: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

THE COURT: We'll - we'll hear from you, Mr. Wilson, on that. But I - I would think if they want standing for that limited portion of the debate, then why don't we wait until we see if we get to that portion of the debate.

In other words, if there is an order to be given then we can talk about getting the police in, but I don't think - if they're not gonna talk about the substantive - substantive nature of the order, I don't know that they need standing. Is that your position, Mr. Champ?

MR. CHAMP: I guess it's just at whatever stage you make that determination, Your Honour. But that's - that's fine....

THE COURT: No, no, no, but....

MR. CHAMP: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

THE COURT: Yeah, well, I'm just saying, if for example, I don't make an order, then I don't know

5 that the Ottawa Police are of any moment. If I do
make an order then if they want to discuss
whatever, then we could consider the matter of
standing. I think that's - because other - you
know, it's a two stage process. The first process
is whether I issue injunctive relief, and then -
and then if we get there, and - and true enough,
you know, true enough, the nature of the
injunctive relief will govern the order. But if
10 it's just the technicalities of enforcing the
order and the terms of the order that the police
wish to speak about, then they would have - I
think would have a - be on firming ground to be
given that opportunity.

15 I don't know what your position is, Mr. Wilson, on
that?

MR. WILSON: I think that's a very efficient use
of everyone's time, sir, and I think that's fair
and reasonable. Thank you.
20

THE COURT: All right. All right, we'll give you
five minutes, Mr. Wilson, to read their -
their....

MR. WILSON: Perhaps, sir, would it make sense to
proceed with the first part of the hearing and
then....
25

THE COURT: Okay. All right.

MR. WILSON: *[Indiscernible...multiple speakers at
the same time, unable to decipher words spoken].*

MR. CHAMP: *[Indiscernible...multiple speakers at
the same time, unable to decipher words spoken].*
30

THE COURT: No, I'm - I - I - I have no - you

Submissions by Mr. Champ

5 know, I just want to be fair to everybody and I -
you know, I - it's very hard for me to tell you
what to do with documents I haven't seen. So, you
- yes, we'll go ahead with the hearing, then we'll
get - you'll get your - depending on how we deal
with the first part of the hearing, then we will -
you'll have your time to read the police thing and
we'll go on from there. If that's - if we do
that. All right.

10 Mr. Champ?

MR. CHAMP: Thank you, Your Honour.

SUBMISSIONS BY MR. CHAMP:

15 So, our submissions today, Your Honour, is with
respect to a motion for an injunction pursuant to
Section 101 of the *Court's of Justice Act*, and
Rule 39.01(4) of the rules of civil - pardon me,
40.01(4) of the *Rules of Civil Procedure*.

20 The nature of the order sought, Your Honour, is an
injunction enjoining not only the defendants, but
any unnamed person who has notice of the order,
from blasting air horns or rail horns in the
community of Ottawa for 60 days, unless it is for
legitimate emergency purpose.

25 THE COURT: Right, but - okay, that - the point
is, we've got a whole plethora of people who
aren't served, right?

30 MR. CHAMP: Yes, Your Honour, but if I may....

THE COURT: So....

MR. CHAMP: If - I - I'll address those issues in

Submissions by Mr. Champ

my - in my submissions, if - if I may.

THE COURT: Right, but I'm - I'm just saying that, on that, and this is what I want some clarity, doesn't it have to come back to it in 10 days?

MR. CHAMP: It's within 10 days under sub - sorry, under - sorry under submission - 40.02(1), if it's *ex parte*, but Mr. Wilson is now participating....

THE COURT: Well, yes, but it's *ex parte* - it's sort of *ex parte*, isn't it? Yeah, it's sort of *ex parte*...

MR. CHAMP: I guess....

THE COURT: ...so, I don't see how I can give you your 60 days because a lot of these people aren't served. I have - and you want - you know, and let's be blunt about it. You want a globular injunction that enjoins everybody in a particular area from doing certain things, right?

MR. CHAMP: This is so.

THE COURT: Yeah. Well, I can't - I don't think I can give it to you for 60 days when they have no notice of it, et cetera, et cetera, et cetera. So, it's an *ex parte* injunction for the main part, right?

MR. CHAMP: Well, I - I'm not sure if I'd agreed with that position, Your Honour. If I may, I'd proceed with my arguments and I could address that point to you in fulsome.

THE COURT: You go ahead. Okay. Go ahead.

MR. CHAMP: Thank you very much, Your Honour.

THE COURT: I'm not trying to - I'm just trying to - I'm trying to see where we're at, that's all. Okay. Go ahead.

Submissions by Mr. Champ

MR. CHAMP: I appreciate it. I appreciate it very much, Your Honour. I appreciate hearing the Court's concerns. That assists me in....

THE COURT: Yeah, well you go ahead. Go ahead.

MR. CHAMP: It assists me in sort of shaping our arguments and points.

THE COURT: Go ahead.

MR. CHAMP: So, Your Honour, we have this motion before you for an injunction, we'll leave it at that, prohibiting the air horns and rail horns around Ottawa, applying to some people for some time. And we'll - we'll talk about those issues later in the motion.

I'll proceed by reviewing the evidence of the parties that you have before you and then I'll turn to the law, the test, the well-known test of an injunction, *RJR MacDonald*, and I'll go through the three branches of that test:...

THE COURT: All right.

MR. CHAMP: ...serious issue to be tried, irreparable harm, and balance of convenience...

THE COURT: Right.

MR. CHAMP: ...and then make a request of the nature and order that should issue.

THE COURT: All right.

MR. CHAMP: On the basis of the evidence, Your Honour, the evidence you have from the moving party is three affidavits: from the plaintiff, Ms. Li, from a member - another resident of Ottawa, Mr. Barr (ph), and from a doctor, Dr. Scherer an otolaryngologist or ENT specialist, who's a

specialist in hearing damage.

5 The affidavit of Ms. Li sets out that - in
paragraph 5 of her affidavit, which is - you'll
find that material at Tab 3 of our motion record:
loud horns on trucks being deafening in her
neighbourhood. At paragraph 6, she sets out how
frequent it is, which is basically all day and all
10 night, including the latest that she can recall,
1:30 a.m. At paragraph 7, Your Honour....

THE COURT: Go ahead.

15 MR. CHAMP: That's fine. Paragraph 7 of her
affidavit, Your Honour, sets out that she has
measured the level of sound in her apartment. So,
this isn't on the street, this is in her apartment
with the windows closed, at 84 decibels.

20 She talks at paragraph 8 about how this has been
impacting her. The 84 decibels almost non-stop,
at that point, for over a week, her nerves are
frayed, she can't sleep, she's suffering anxiety,
and even when the sound stops she's seized with
anxiety because she's unsure of when it will start
again.

25 At paragraphs 10 and 11 of her affidavit, she
talks about what it's like when she goes outside,
right outside her door, that the sound is so loud,
even when she wears sound cancelling earphones,
30 it's physically vibrating in her head.

At paragraph 12, she speaks to how she's made

Submissions by Mr. Champ

complaints to the Ottawa Police Service 14 times and they've indicated they can't assist her.

5 The next affidavit, at Tab 4 of our materials, is the Barr (ph) affidavit. This is an individual citizen from Ottawa who walked around using an app on his phone from the CDC for Occupational Health and Safety, to measure the decibel levels.

10 At paragraph 5, and 6, and 8, of his affidavit, he indicates that he has measured and has recordings of those measures of sound levels, constant sound levels, of 100 decibels at the corners of Laurier and Kent, 105 decibels at Parliament Hill and at Bank and Slater. And he testifies in those aff -
15 in those paragraphs, Your Honour, that he could only tolerate that sound, that level of sound, for a few minutes.

20 At paragraph 7, he speaks to at one point going by a truck, which then uses the rail horn - or pardon me, the train horn. The sound level spiked, which he measured at over 121 decibels. He described the sound as very painful.

25 Paragraph 9, he indicates that he can hear the blaring of those horns even when he was several blocks away.

30 The third affidavit, from the moving party, is from Dr. Scherer, as I'd indicated, an ENT, ears - ear, nose and throat specialist and

otolaryngologist, who treats patients for hearing loss and hearing damage.

5 At paragraph 2, she points out that she's a doctor at the Ottawa Hospital, the Montfort Hospital, and CHEO, and she's an assistant professor with the Facility of Medicine at the University of Ottawa.

10 Paragraph 4, she advises that the sound of a lawnmower is between 88 to 94 decibels. And if I could, Your Honour, I'd just indicate that that's very close to decibel level that Ms. Li indicates is in her apartment with the windows closed. So, essentially, Ms. Li has a lawnmower running in her living room none stop, all day and all night.

15 Paragraph 7 and 8, the doctor sets out that prolonged exposure can cause permanent damage to the ear and can cause psychological distress.

20 At paragraph 10, she indicates that residents living in downtown Ottawa, exposed to this level of noise, may face hearing loss and tinnitus.

25 And at paragraph 12, Your Honour, which is particularly important for the irreparable harm test, she says that tinnitus can be permanent for downtown residents due to exposure of these sound levels over several days.

30 Indeed, Your Honour, when we get to trial in this matter, it may be that some of these individuals

in downtown Ottawa have already suffered serious, permanent harm.

5 The only other evidence, if I can call it that, we just - in our record that we put in yesterday, is just confirming that the mayor of Ottawa has declared a state of emergency.

10 With respect to the responding party's affidavits, there's 13 affidavits, Your Honour. I'll just have a couple of comments on them. Largely because, Your Honour, I believe, almost the entirety of the evidence is irrelevant. It's speaking to that their having a good time and that 15 the truckers are friendly and nice, and joyful and jubilant, and so on and so forth. But in terms of the evidence that speaks to the honking, the horns, which is the subject of this litigation and this motion, what we hear is in the Bullford (ph) affidavit, or Bufford (ph) affidavit, pardon me, 20 at Tab 3 of the respondent's motion record. At paragraph 7, he speaks of the freedom convoy leadership, in his words, agreeing on a schedule of the honking between 8:00 a.m. to 8:00 p.m. And that in his - it's his understanding that they're 25 respecting those parameters.

30 Now, that evidence, Your Honour, is important because it indicates that, as part of the claim, we're pleading, or alleging, that the leaders of this freedom convoy protest are directing and encouraging, and controlling to some extent, the

Submissions by Mr. Champ

5 truckers who are using this horn tactic. There's
some other evidence that is contradictory to that,
so I'm unsure how my friend will address that in
his arguments. I'm looking forward to hearing
that. But that, Your Honour, I would suggest,
meets the serious - met - fills - fits the serious
issue to be tried test. That that would be
relevant to the tort of nuisance and individuals
working collective - collectively for a common
10 design or purpose.

15 Now, beyond that, Your Honour, we have, you know,
Ms. Lich, and Mr. Dichter, and Mr. Barber, all
saying they don't have trucks here and they're not
honking horns. You know, to that extent then,
Your Honour, I - I question why they're here
opposing this motion. If they're not honking
horns, why are they here opposing? And I would
suggest, Your Honour, that's a relevant question
or issue for costs.
20

25 And the other affidavit, Your Honour, that I'd
like to speak to is the Jean Dragne (ph)
affidavit. It's in the respondent's supplementary
motion record at Tab 2. It's the only one that
speaks to the horns. All the other ones are just,
"It's a nice place and there's lots of really
great people in this protest", which is fine,
people can have those opinions. But at paragraph
30 5 of the Jean Dragne (ph) affidavit, this affiant
says that "the honking was loud and fairly
consistent". So, he confirms that it's an ongoing

Submissions by Mr. Champ

5 blaring horn, but he suggested he could still hear
conversations with people and hear speakers on
stage. Well, Your Honour, in terms of the
evidence from the respondent about the level of
sound, there's no one that has provided evidence
about the decibel levels. We've provided evidence
with them on Friday, if they wanted to put in
evidence about, no, we're measuring the decibels
10 this or that, they could have put it in but they
didn't. I wonder why, Your Honour. We'll I would
suggest, an inference can be drawn is 'cause they
did check it out and they found that our readings
are accurate.

15 That goes to the fact that - and if they do have
that evidence, I hope they hold onto it for when
this trial of action is heard showing that they're
aware of the harm that they're causing and
inflicting on the people of Ottawa.

20 With respect to the rest of the aff - the
evidence, I've already indicated much of it is
irrelevant, but there's one point I would like to
highlight, Your Honour. There are many references
25 in my friend's affidavits to what people told
them. So, hearsay evidence. Now, we do know
under the *Rules of Civil Procedure*, Rule 39.01(4),
that hearsay evidence is admissible on motions but
the affiant must state the information and belief
30 of that source. In other words, they have to
state who they are hearing that information from,
at a bare minimum.

Submissions by Mr. Champ

THE COURT: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken].*

MR. CHAMP: So, when you're reviewing those affidavits in detail, Your Honour, I would submit, you'll - you'll agree with me that much of that evidence is inadmissible. We have phrases like this, "Very reliable sources tell me", "The caller told me", "Two separate truck drivers told me", "Drivers confirmed to me", "I've spoken with many truck drivers". Your Honour, that kind of evidence is not only hearsay, but it's hearsay that does not meet the exception in Rule 39.01(4), and is inadmissible.

I appreciate that my friend is Alberta counsel. He does have rights to participate and appear here, and maybe it's not as - maybe the rules of civil procedure in Alberta are different. I'm not familiar with them myself. But if he's appearing in Ontario court, I'd suggest he should be aware of them.

So, that's the evidence you have before you, Your Honour. Direct evidence. Three affidavits from the plaintiff, all directly relevant, all direct evidence. Un - unchallenged.

Turning to the law, Your Honour, the test for an injunction is whether there is a serious issue to be tried in the underlying action, whether irreparable harm be caused to the moving party if an injunction is not issued, and the balance of

convenience as between the parties.

5 On the serious issue to be tried test, we've provided you with a full statement of claim that has been issued as a class action, under the *Class Proceedings Act* of Ontario. The claim is in the nature of private nuisance. We've provided you with a couple of cases on private nuisance. We've provided you with the - the *Berdah v. Quebec* case at Tab 8 of our supplementary motion record, but is all - it's referenced in our factum, which we served on Friday night. That was a class action by residents of Montreal based on excessive sound that they were all experiencing.

15 And I also submitted the Moto Park case in our materials, which is - I apologize, I'm just gonna give you the tab for that. I can't remember it off the top of my head right now - Tab 7 of our supplementary motion record. It's a - it's a numbered company that starts it, but it's - I call it the Motoplex Speedway case. That had to do with residents of a community called Lawrence Heights and the property owner beside them turned his large farm into a racetrack where they were holding races every weekend. And the sound levels would reach between 80 and 90 decibels at the homes of those plaintiffs. And they brought an action for nuisance against the moto - the Motoplex Raceway track, which was successful and they all received damages for that harm.

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Submissions by Mr. Champ

5 We would submit, Your Honour, based on the evidence that you've seen from Ms. Li, Mr. Barr (ph), and Dr. Scherer, clearly, a serious issue to be tried has been made out. On a strong *prima facie* case or whatever standard one wants to apply.

10 With respect to irreparable harm, Your Honour, irreparable harm is ongoing. Every hour more is inflicting pain and suffering on the people of Ottawa. And according to the evidence of Dr. Scherer, many of these Ottawa residents may be suffering, or may suffer permanent hearing damage.

15 Now, Your Honour, we haven't lead any evidence from a psychiatrist or a psychologist yet, on the psychological impacts on that - of - on the residents, but you do have the evidence of Ms. Li, of the torment, and the sleeplessness, her frayed nerves, the anxiety that she's experiencing from these ongoing horns.

25 Then we get to the balance of convenience, Your Honour, and I would suggest, as with many cases, motions for an injunction, this is where it turns. What is the balance of convenience between the parties? Now, I know my friend - opposing counsel - opposing counsel for the respondents is going to say, "Look, there's - there's fundamental freedoms at issue here, Your Honour. *Charter Rights and Freedoms*. The right to protest, and assemble, and express opinions on political views."

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Submissions by Mr. Champ

THE COURT: Well, does the *Charter* apply to this?

MR. CHAMP: Actually, Your Honour, I would submit it does. My friend is correct. It does.

THE COURT: It involves - it involves two people. It does not involve the government.

MR. CHAMP: When you issue a court order, if you issue a court order, Your Honour, then the *Charter* does apply. So, you do have to consider *Charter* values and the *Charter* if you do issue a court order. That's - that's pretty - it's - it - that's fairly well settled law.

We've - we've provided you with some more authorities, Your Honour.

THE COURT: No, that's fine.

MR. CHAMP: Yeah, we've provided you with some more authorities to assist you a bit on this issue, Your Honour. At Tab 16 of the supplementary motion record that we provided you yesterday, that's *MacMillan Bloedel Ltd v. Simpson*....

THE COURT: No, no, I'm aware of that.

MR. CHAMP: Yeah.

THE COURT: It's just generally, in a litigation between parties it doesn't apply.

MR. CHAMP: Well, Your Honour, as the Supreme Court of Canada says in *MacMillan Bloedel* at paragraph 13, that, you know, when you've got a - a conflict between the right to express public dissent on the one hand and the exercise of property rights on the other, one has....

THE COURT: Well, the property - property rights

aren't in the *Charter*.

MR. CHAMP: That's - that's very true, Your Honour. But the court says - the Supreme Court of Canada says that the right to express opinions is relevant when we're talking about the expression of opinions.

THE COURT: Oh, no, no. I'm not - that's not my point. That - the - the right to express opinions exists outside the *Charter* too. You know, it's not - it's not just the *Charter*. Freedom of speech existed before the *Charter* and existed in common law.

MR. CHAMP: Absolutely.

THE COURT: You know, so, you know, it's - we're going the same way, but I don't know whether - anyway....

MR. CHAMP: I - I - it's of no moment to me. I'm not trying to make my friend's arguments, Your Honour....

THE COURT: No, no, I'm not making - I'm just asking you a particular point because...

MR. CHAMP: Yeah.

THE COURT: ...generally speaking, that - you know, in some of the litigation I've been involved, it's been argued it didn't apply. But anyway, there is -...

MR. CHAMP: Well, I'll be....

THE COURT: ...whether it applies or not, okay, whether it applies or not, and whether we sense it as a *Charter* issue or a common law issue, there's still a right to free speech.

MR. CHAMP: Absolutely, without question.

Submissions by Mr. Champ

THE COURT: Okay. So - so...

MR. CHAMP: Without question.

THE COURT: ...and they overlap. So, it...

MR. CHAMP: Without question.

5 THE COURT: ...you know....So, it's - it's not something I can say, "Well, there's no free speech because there's no *Charter*." That's not the case. It never was the case and it won't - it isn't now because the *Charter* does not - as I understand it, and maybe there's more - there's law that I've missed - the *Charter* does not foreclose common law right between parties.

15 You know, in other words, if you're arrested in Canadian Tire, you still have rights against false arrest, whether the *Charter* applies or not. You just can't do certain things. That's - that's what I'm saying. What I - what I'm saying is, yes, I have to consider it, but I have to consider it whether the *Charter* applies or not. That's - that was the only point of our - my interjection.

20 MR. CHAMP: And I - we - we're completely on the same - on the same wavelength on that, Your Honour.

25 THE COURT: You know, because you see, if the court order is issued, then there's court - *Charter Rights* involved, yes, I know that, but before I get that - get to that, I have to consider them. That's all. That was the only - and how I get - how I do that is, I don't think of any great moment what label I put on it.

30 MR. CHAMP: I - I - I agree with you on that, Your

Submissions by Mr. Champ

Honour.

THE COURT: All right.

MR. CHAMP: And - and....

THE COURT: Sorry - sorry - I just - just was curious, that's all. All right.

MR. CHAMP: Well, I mean, my friend will point you to whatever paragraphs of the - the decisions that he feels is relevant on that.

THE COURT: Oh, no, no, no, I know that. I'm just trying to focus what I'm supposed to do...

MR. CHAMP: Indeed.

THE COURT: ...because - because, as - as my view is, that no matter what - which way we go at this, whether it's common law rights or *Charter Rights*, or something like that, we end up at the same spot.

MR. CHAMP: Absolutely.

THE COURT: Okay.

MR. CHAMP: Agreed. Agreed.

THE COURT: Thank you.

MR. CHAMP: But at - but the point is, through, Your Honour, ultimately, is, the plaintiff fully recognizes that - that it is an important issue. Expressive rights...

THE COURT: Oh, it's a - it's a....

MR. CHAMP: ...and free expression, and free speech. And we recognize this is absolutely a big part of this case.

THE COURT: It's a balancing of the right to expression vis-à-vis the right to - quiet enjoyment is not the right word because quiet enjoyment has a special - has a special meaning

Submissions by Mr. Champ

that really doesn't comprehend this. It's a right to, I guess, peaceable co-existence, or - or....

MR. CHAMP: I'll take to some language for some of the cases that may assist you in - in draft....

THE COURT: Oh, no, no. I - well

[Indiscernible...multiple speakers at the same time, unable to decipher words spoken].

MR. CHAMP: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken].*

THE COURT: Yeah, but let's get to the - we'll get to that. Once we get there - I know you want to say, "Well, let's just draft it now", but I don't think we can.

MR. CHAMP: No, no, I'm talking about the cases. I'm talking about whatever ruling that you issue, Your Honour.

THE COURT: No, no. I know that. I'm just saying....

MR. CHAMP: Whichever way. Whichever way it goes.

THE COURT: yeah, I know. Okay.

MR. CHAMP: Whichever way it goes.

THE COURT: Thank you.

MR. CHAMP: So, on - you know, and on that point we're just debating, Your Honour - or not debating - I'd say discussing, again, the Supreme Court of Canada says in *MacMillan Bloedel* at paragraph 13, that,

In a society that prizes both the right to express dissent and the maintenance of private rights, a way to reconcile both interests must be found. One of the ways this can be done is through court orders like

the one at issue in this case. [As Read]

THE COURT: Oh, no. I know that. Yeah.

MR. CHAMP: The other case we have is the *CNR v. Chief Plain*, on that point, on Tab 14, at paragraph 19 of that case.

At paragraph 19, the court says that,

The protestors...are exercising...Charter Rights...but...expressive rights are not absolute and are subject to reasonable limits. [As read]

So, Your Honour, what we're trying to say is, you know, the plaintiff, and actually, I think all downtown Ottawa residents understand the right to protest. They experience it all the time. Ottawa, you know, as the national capital, experiences mass demonstrations, small demonstrations, loud protests, quiet protests, small numbers, big numbers, sometimes occupying streets and street corners, and parks, and the Ottawa residents respect that. They understand the freedom of assembly, the freedom of association, and the freedom of expression. But the democratic rights of individuals to engage in those activities end when they unreasonably interfere with the rights of others, including causing harm. And that's what we're talking about here.

I'll just review some of the rest of this

5 jurisprudence by going further on those arguments first, Your Honour, but I wanted to address the point or concern that you had the other day, Your Honour, if I understood it properly, is, could you issue an arder - an order to people who aren't participating and how do you name them. And *MacMillan Bloedel* discusses that at paragraphs 26 to 31 of the judgment. So, you can - can review that...

10 THE COURT: Okay.

15 MR. CHAMP: ...Your Honour. And the court there - Supreme Court confirms that your court order can be effective even to people who are non-parties to this action. So, we've named 60 John Does, but let's say tomorrow the - the - the convoy leadership, as Mr. Bufford (ph) describes them, freedom convoy leadership, has all these truckers leave tomorrow and a whole new group of truckers come in and then they start blaring on their horns saying, "We're not covered by this injunction." Well, I mean, those kinds of facts are not unknown to the courts. And so, how the court deals with that, as the Supreme Court of Canada reviews, is they issue an order to the public at large that was binding on individuals who are even known parties. And it's binding on individuals who have notice of the order. So, that's the key. And we have - so, that's the key. Is that individuals who have notice of the order, even if they're non-parties, even if they're unnamed, persons known or 20 25 30 unknown, if there's a court injunction issued to not blast air horns and rail horns in Ottawa

unless you're an emergency vehicle, they're in contempt, and they're contemnors, if they're aware of the court order.

5 The court summarizes at paragraph 32, the Supreme Court in *MacMillan Bloedel*,

Canadian courts have for decades followed the practice of issuing orders directed at prohibiting interference with private property rights, which orders affect not only the named parties but also the general public. [As read]

15 A couple other interesting cases we have before Your Honour, the *Hotel Georgia* case and the *Ottawa MacDonald Cartier Airport* cases, at Tabs 15 and 18, those case [sic] both involves injunctions against air horns. Air horns being used by protestors and strikers. The *Hotel Georgia* case - incidentally, Your Honour, *Hotel Georgia* case at 20 paragraph 5, is a 2019 judgment from the B.C. Supreme Court and - and Tab 15 of our materials. Paragraph 5, talks about the *Charter Right* of free expression and cites some of the Supreme Court of 25 Canada cases on that. Not that - again, I - I - I'm - I'm completely aligned with your view, Your Honour. I don't think it makes a difference whether we're talking about the common law right of free speech. As the Supreme Court of Canada, you know, confirmed in *Switzman v. Elbing* and 30 others, and from precedence in the '50s, or - or it's the *Charter*. It's - it's the same. But the

Submissions by Mr. Champ

court does have to recognize that balance. That's the issue in the balance of convenience.

THE COURT: Oh, of course it is.

MR. CHAMP: Right.

THE COURT: That's the...

MR. CHAMP: Yeah.

THE COURT: ...the - the issue is where one right stops and another right begins.

MR. CHAMP: Yeah.

THE COURT: And when there's an overlap, where the lines is drawn. That's really what we're talking about.

MR. CHAMP: That's right.

THE COURT: And that existed at common law before we even got the *Charter*.

MR. CHAMP: Indeed. Indeed, Your Honour. Fully agreed.

THE COURT: Okay.

MR. CHAMP: So, the interesting thing in *Hotel Georgia*, Your Honour, is that it's also based on the tort of nuisance because of the excessive sounds and air horns, and megaphones. That's at paragraph 6 and 7 of that judgment. The interesting there - on the evidence of that case, Your Honour, at paragraphs 9 and 10, the moving parties used phone apps to measure the decibel sound levels and that was admissible, and the court relied on that. And in paragraph 10, the sound levels were 85 decibels for much of the day. And that, the court found, was unreasonable and should be enjoined. Here, the sounds levels are much higher. Much, much higher.

5 Paragraph 13, the court, again, in *Hotel Georgia*, then issues an injunction against any person with notice and enjoins them from using air horns, sirens, blow horns, and whistles.

10 The other authority on using car - air horns, Your Honour, *Ottawa MacDonald Cartier International Airport*, 2015 judgment of the Ontario Superior Court, it's at Tab 18 of our materials, that had to do with striking taxi drivers. You'll see at paragraph 2, the moving party was looking to enjoin the use of car horns, air horns, megaphones, sirens, or other devices of a similar nature. The court there, at paragraph 8, 15 recognizes that the - the individuals who were using those things have the right to express their opinions and in fact, are using those loud device noises to attract attention. So, it's a form of expression. We don't take issue with that. But 20 there are other ways to express opinions and draw attention to your views without causing harm on others.

25 The - I don't I - yeah, I don't think I need to go beyond, Your Honour, in terms of the law. The balance of convenience, I think, is - is quite stark and clear. It's the rights of Ms. Li and the other putative class members to not be exposed to permanent harm and to the - and to private use 30 - pardon me, the - the - the quiet enjoyment of their own homes; the sanctity of their own homes.

Submissions by Mr. Champ

They're being interfered with these protestors.

5 And in terms of the balance of convenience for the other side, Your Honour, this injunction isn't moving to say these trucks must move, that they must unsnarl traffic, they should get out of parks, et cetera. They can still keep expressing their opinions. This - this injunction will not prohibit them from continuing to express their opinions.

10 If there's other issues that the - you know, the - the local authorities want to take issue with the protestors, that's their - that's their issue.

15 This injunction is aimed at the horns. And in that sense, Your Honour, I would submit that it is carefully crafted, a narrow type of remedy....

THE COURT: All right, that's fine. No, no, I understand that.

20 MR. CHAMP: And so, beyond that, Your Honour, I - again, I could get into the terms of the order, but it sounds like you want to sort of defer that issue and....

25 THE COURT: Well, let's - let's - yeah, let's deal with the - let's deal with the substantive issues and then we'll deal with the adjectival ones after, is the - if I do something, how do I do it?

MR. CHAMP: Yeah.

THE COURT: All right.

30 MR. CHAMP: Thank you. So, unless there's any further questions of the Court...

THE COURT: No, that's fine.

Submissions by Mr. Wilson

MR. CHAMP: ...those are - that's all I have.

Thank you.

THE COURT: Mr. Wilson?

MR. WILSON: Thank you, Your Honour. Thank you, Your Honour. It looked like I froze there for a minute, sir.

THE COURT: Okay.

SUBMISSIONS BY MR. WILSON:

I - I would say this as I begin, and sort of to cut to the chase, but I will go through the tripartite test, but I - I do want to emphasize one thing, if I could.

THE COURT: All right.

MR. WILSON: I think when we look at this - this action and this motion, I feel as though we're trying to fit a round peg in a square hole in that we're trying to use - the effort before the court is to use a private civil remedy, including a class action, as a means of effectively achieving municipal noise by-law and police compliance. And I think....

THE COURT: Just on that point, but can't they do that?

MR. WILSON: Well, I'm not sure that - well, perhaps they can, but....

THE COURT: Because I'm remembering an old case, and I can't even remember what it was called, but it - basically it was, I think from the English Court of Appeal, and it said that nobody's above the law, and that - I think what it had to do with is - is the issue where you had to have the - I

Submissions by Mr. Wilson

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guess it was a private prosecution. You had to have the Attorney General's consent to bring the prosecution in that level. I don't know whether it's an indictable offence over - it wouldn't be - it would be a felony over there. And the Attorney General refused to grant his consent. And I think it was the English Court of Appeal or the House of Lords said that's - that doesn't make any different". You can't withhold your consent arbitrarily. You can bring this matter to - for an enforcement because you have that right and the executive branch cannot overwhelm that right.

So, I - you know, I don't know how far that argument takes us, because, as I said, the basic - I think the - why I remember it was that it had in it something about no person, or no thing is above the law. So, there you go. You know, I - whether - to get that argument off the ground, don't you have to do - don't you have to tell me or show me that the plaintiffs in this case are acting improperly?

MR. WILSON: Well, not with respect to their right to sue and - and exercise their right for damages and nuisance...

THE COURT: Right.

MR. WILSON: ...but - but

[Indiscernible...multiple speakers at the same time, unable to decipher words spoken], sir, I - I understand....

THE COURT: Oh, you go ahead. You go ahead.

MR. WILSON: Yeah, thank you.

Submissions by Mr. Wilson

5 So, what - what I want to say is this, that where we start to get into the quicksand here is - and the comparison you've used with respect to private prosecutions is a good one - is when you get into the issue of - of - of enforcement and the whole problem of in persona vs in ram.

THE COURT: Right.

10 MR. WILSON: And what's unique - you know, so, the order - and I'll look at the - what the police - the - the Ottawa Police counsel has to say in her materials if we need to, but what we've seen consistently is, the idea here is not that a trucker who's blowing his horn, if this order were granted, would be found in contempt, which is normal. You know, information would come before you or one of your colleagues....

15 THE COURT: Would have to - would have to.

20 MR. WILSON: Well, but they're going way past that. That's my point. They're saying, as soon as you have notice, any police officer can search your vehicle or arrest you....

THE COURT: Okay. But I don't - I - with - with respect, I don't want to get into that. We can...

25 MR. WILSON: Okay.

THE COURT: ...debate that later...

MR. WILSON: Right.

30 THE COURT: ...but you see, right now, I have to look at *R.J. Reynolds* and say, okay, should I even give the order?

MR. WILSON: Right.

THE COURT: And then we can get into, if I - if I

Submissions by Mr. Wilson

say that *R.J. Reynolds* has been met and I give the order, then we can get into the debate about how the order should be fenced.

MR. WILSON: Fair enough....

THE COURT: You know, because that's just...

MR. WILSON: [*Indiscernible...multiple speakers at the same time, unable to decipher words spoken*].

THE COURT: ...you know, I don't think your friend is suggesting - and I - I - as I said, I - I'm trying to do this in little bites so that my mind can wrap itself around it. And that is, okay, should I give this order? Because that's the first thing. The first thing is whether I should give play to the protection of a public person's right, or should I say, well, here, in these circumstances, that's absumed (ph) by the right for freedom of expression. Right? That's what it's really about.

Because we can get into - as your friend has justly put it, the real issue here is not the - the first two prongs of the *R.J. Reynolds* test. The - the real issue here is the third one. You know, because we can debate it, he's got - he says there's a nuisance, you know, escaping noise is a nuisance; I don't think there's much debate there. It's not a frivolous thing because they've got some evidence that this person could be hurt by it. Irreparable harm. There's some evidence that it may be. There's some evidence that it may be, like, there's prima facie that noise of this nature can damage you. So, you got the three

things - the two things there.

5 The other issue though is, does her right overcome your client's right to protest, or freedom of expression, or however we want to call that - you know, that particular right.

10 But I - I don't know. I don't want to - please forgive me. I do not want to say, okay, I've dealt with these two things, let's go onto the third. I want to hear your argument. That's - that's my point. But I'm just trying to get, shall we say, a skeleton so I can hang all these things on it.

15 MR. WILSON: Okay. Thank you, sir. And - and also, with respect to - and I'm not going into the order, but I'm going into the issue of whether or not this is interim interlocutory injunction or a - a - just an interlocutory - it's our view that - that Rule 40 does apply and that this is an interim order because the ex parte nature of it.

20 THE COURT: That's right.

25 MR. WILSON: Now, our three clients, Ms. Lich - Ms. Lich does not own a truck. She doesn't have a truck in - a semi-truck in - in - in Ottawa now. She doesn't - she's never owned a semi-truck. The other individual that my - my friend has identified and named is - is Mr. Dichter. He does have a truck, but he's never had his semi-truck here. It's currently in Mississauga and he's never had it in Ottawa. So, he's - they're both incapable of honking horns. And Mr. Barber does

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Submissions by Mr. Wilson

have a semi-truck here, but has provided an affidavit that he's never sounded his horn.

5 So, we're not - my friend is not here on behalf of all the - he can't reasonably be here on behalf of all the citizens or - or grouping of citizens other than that who he claims to represent, which is one individual.

10 So, we just don't have evidence before the court that the named parties, at least those that I represent, are even engaging in a nuisance in the first instance. And - and I think that's relevant. And I think it's relevant to the fact that there are other ways for the goals of Mr. 15 Champ and his client to be achieved outside of this particular approach, and as I will explain, I think it's fraught with danger.

20 The - the protests that have been occurring have - have been peaceful; that's the affidavit evidence before you. The - the - the residents haven't been impeded in their ability to move freely and there - the issue, we acknowledge, is really the 25 noise from - from the honking.

THE COURT: That's the only issue. That's - that's the only issue before me. That's - you know, we can - 'cause there's no - there's nothing here in any of the materials that say that there's - the right of movement has been infringed, that's - it's just the noise, that's it.

30 MR. WILSON: Yeah.

Submissions by Mr. Wilson

THE COURT: And I'm not gonna get into anything else because that's - I'm not asked to.

MR. WILSON: Fair enough, sir. Thank you.

5 Now, with respect to what's happening, the evidence before you as well, and I think Mr. Champ also made some reference to that, is that this is a large group of people who've come in from different parts of the country. Sometimes they
10 come and go. This is not one cohesive unified group. But there also is affidavit evidence before you, and former police officer Danny Bullford (ph), has sworn an - an affidavit about the efforts that some of the volunteers have made
15 to create cohesion and to - to - to work together and try to get the truckers to behave in a similar manner. You heard about how they previously had in place a - a rule or an - an informal accord amongst themselves not to sound their horns
20 between 8:00 a.m. and 8:00 p.m.

The last affidavit I filed with the court, confirms that as of this morning, that same informal group has announced, further to what they
25 heard you say on Saturday, sir, that they are immediately implementning, and requesting all the truckers not sound their horns but for at one time in the day. And rather than noon, they're - they've - they've said 5:00 p.m. for five minutes.
30 So, rather than having the horn sound throughout the day, they announced that, in conjunction with a formal request to meet with the City officials

Submissions by Mr. Wilson

5 because there's been no dialogue, as their affidavits confirms, to open up the lines of communication and try and address some of the issues, and deescalate the tensions and situation.

So, we have this request for an injunction [*indiscernible...ZOOM interference on channel, audio is distorted*] occurring in the face of that evidence.

10 THE COURT: Well, okay. Isn't there some evidence that your clients are - I don't want to use the word controlling, but they have some interests, or they have some function in the organization of the group. Or whatever.

15 MR. WILSON: Right.

THE COURT: There's some evidence of that.

20 MR. WILSON: I think - I think that's fair. But - but it's - it's - it's a - it's in a sense that - Tamara Lich in particular, I think because she started the Go Fund me page.

THE COURT: Right. Right.

MR. WILSON: Yeah, and so she sort of gets naturally - and she's been interviewed by a lot of news people.

25 THE COURT: But - I - okay. But....

MR. WILSON: So, she has moral suasion.

THE COURT: She has moral suasion and so therefore, wouldn't that be a reason that she be enjoined? Because if she is enjoined...

30 MR. WILSON: Well....

THE COURT: ...then - if she is enjoined then that might put moral suasion on, if I were to give an

Submissions by Mr. Wilson

order - if I were to give an order, on making sure that other per - people were aware of the order and that it would be fulfilled.

MR. WILSON: But she has no control - you know, off....

THE COURT: I - I didn't say she had.

MR. WILSON: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

THE COURT: I - I've never said that - I - I didn't say that. I said she has some function in it, let's say. Which I don't think can be denied.

MR. WILSON: Yeah, fair. Fair, sir. I think - but she has the function no greater than to the extent to which that same loose organic grouping in independent truckers has announced this morning that they are doing exactly what you had suggested might be a compromise.

THE COURT: That's - well, that's fine. That - that's fine. But what I'm simply saying is, if - if - if the *R.J. Reynolds* dictates are made out, okay, then I have to give an order of some kind. And since they have some function in it, of course, they would be named in that order, and I don't think there's anything - if they're not doing anything then, you know, so be it.

MR. WILSON: Fair enough.

THE COURT: Yeah.

MR. WILSON: And I just - I guess what I'm saying....

THE COURT: You know, I'm not - I'm not - you know, if I do give an order, I'm not - there are no sanctions against your clients per se, because

Submissions by Mr. Wilson

5 there's - there's no reason to. I have no evidence that they are in fact breaching anything. You know, whether it's the *Highway Traffic Act* or anything, that's up to the police, I can't deal with that.

MR. WILSON: Right. And I know - I'm not going to get into the terms of the order, but if you find they're made out then we will, and then we're into the enforceability, the in ram....

10 THE COURT: Oh, I know.

MR. WILSON: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

MR. WILSON: All of those
15 *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

THE COURT: But let's - let's just deal with...

MR. WILSON: Yeah.

THE COURT: ...this right now.

MR. WILSON: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

20 THE COURT: That's - then we can deal with it if we need to.

MR. WILSON: Thank you.

25 It's - it's our submission that based on the evidence that you have before you, sir, that there is no evidence as made out as between our clients that they're engaging in a nuisance because they don't have horns and the only - the only evidence before you is that the one person who does, hasn't
30 sounded it.

In addition, there's no evidence before you that my clients - is even - are the source of - of the horns.

5 With respect to the - the - with respect to irreparable harm, you know, irreparable harm, the applicant must, you know - there must be detailed, concrete, real, definite, unavoidable. Vague assumptions and bald assertions are - are not
10 sufficient. The purported expert report or affidavit from the purported expert doesn't even attach a CV, does not comply with the requirements of the rules with respect to the *Court of Justice Act* for - for form 53. And - and I just don't
15 know that it's proper, sir, for you to rely on that opinion evidence given those glaring defects, and our inability, just due to the compressed timelines, to cross-examine on that, for the court to rely on that to support a conclusion of - of
20 irreparable harm.

25 Interestingly, Ms. Li alleges that she's had difficulty sleeping, but then testifies that she can fall asleep with earplugs. I note that my friend had indicated that - that it is not uncommon in the City of Ottawa, he's represented to you, sir, for there to be protests and for them to be loud and prolonged. That that is sort of a flavour and the complexion of the neighbourhood.
30 And when you're - when you're engaged in a nuisance assessment you look at the - the context in which the nuisance is occurring. A loud noise

in a - in a - in a quiet place is different than a loud noise in a busy place.

5 With respect to the balance of convenience, this is where the *Charter* starts to come in, and as you know, the balancing of rights with respect to free speech. And the - this is not some spontaneous protest in response to a government announcement of today. This is a spontan - this is a
10 spontaneous grassroots phenomenon that started in Canada, is now spreading around the world, in response to what we all have had to endure for over the last two years. And I think - and it's an effort to end that - that - that harm and that
15 hardship. And I think that needs to - it's important to contextualize what - why it is that people came here. That they're - they are seeking to lift themselves and their families from what they believe are hardships that are affecting them
20 and their families, and their communities, and their economies, with respect to the COVID restrictions and the vaccine mandate.

25 So, I - I do believe that's relevant for the balancing and the measuring of balance of convenience.

30 THE COURT: But on the other hand, if we're doing that balancing, how do I balance the fact that we have evidence here that there is harm being inflicted on another portion of society? Like how do I balance that? 'Cause I have - I have some evidence here of that.

Submissions by Mr. Wilson

MR. WILSON: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken].*

I think we have more evidence that it's not. And I mean that seriously, sir. We've got extensive affidavits from Ottawa residents. I - I - you know, as counsel, we don't tell our colleagues how to....

THE COURT: No, no, I know that.

MR. WILSON: I - I don't know why we're faced with one applicant - or - or - you know - here - why didn't we - we have more, just a sampling.

But in any event, there is - the ev - there - there is more evidence before you that - that downtown Ottawa residents don't feel they're being harmed and that this is part of the democratic process. And that's the evidence before you. And to the extent that there's some substantive allegations of harm, it's based on - on - on - on a purported expert that hasn't even been presented in a way that meets the most basic of requirements to offer such kind of opinion evidence. The case is just lacking, in all due respect...

THE COURT: All right.

MR. WILSON: ...to my friend.

THE COURT: Okay.

MR. WILSON: So - so, those - those are our submissions that - that this is a major city, at the centre - it's a capital city. People have come from across the country on their own initiative, and they're very - they're seeking to free themselves from - from harm....

5 THE COURT: Oh, no, they're - they - there's no
debate. And your friend hasn't said anything
about that. That - there's no debate that they
have - they have legitimate concerns. Like, they
- that's never been part of the argument, as I
understand it. That's - he's never even said
that. What he's simply saying is, the way it's
being carried out is creating harm to his clients.
And you have- and I have some evidence of that.
10 And therefore, their protest should be restricted
from create - continuing with that harm. That's
it. That's all he's saying. He's not - you know,
they can do other things besides use their horns.
And that's - that's - that's basically where the
15 case lies, is it not?

MR. WILSON: Yes [*Indiscernible...multiple
speakers at the same time, unable to decipher
words spoken*].

20 THE COURT: Because he's not
*[Indiscernible...multiple speakers at the same
time, unable to decipher words spoken]* he's not
saying get rid of the trucks. He's not saying,
you know, you can't be on Wellington Street. It's
- there's none of that. That's for somebody else
25 to do.

30 He's just saying that if there's an - if I give -
I enjoin them from using the horns then - you
know, because I - you know, generally what, as he
said, and you can help me with this point, he said
the use of horns is to bring attention to the
protest, right? That's the only reason. Because

Submissions by Mr. Wilson

5 it's not an expression, like, honking a horn is not an expression of any great thought, that I'm aware of. Perhaps *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

MR. WILSON: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]* and having been down there, I've been astounded at the dance beats that some of the trucks *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

10 THE COURT: Oh, no, oh, no. Well, it could be an art *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

15 MR. WILSON: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

THE COURT: There could be art. There could be artist merit to it, but we're not debating that.

20 What I'm simply saying is, on the fact that bringing attention to the protest, I don't think the horns give or take away from that. There is all kinds of attention for this protest. And he's not trying to stop that. That's not what he's
25 trying to do. He's trying to stop only one part of it.

30 But I think anybody turns - you know, and I'm not taking judicial notice of this, but I don't think you're gonna deny it, anybody who turns on the news knows about this protest, and it's children, or brothers and sisters, that are protests,

Submissions by Mr. Wilson

5 everybody knows that. So, I don't think the horn
- the - the - what you're friend is saying is that
the only peop - the only thing that the horns are
doing at the moment to increase their visibility
is to bother the people in the core of Ottawa.

MR. WILSON: The tripartite test in the Supreme
Court of Canada decision, and thank you for your
comments, My Lord, and your questions...

THE COURT: Okay.

10 MR. WILSON: ...and your - your probing, 'cause I
know why you do it and it's - it's the beauty of
our - our rule of law process to explore and
probe. But the *RJR* test - and I know you don't
want to get into the order, I'm not gonna get it,
15 but it doesn't exist....

THE COURT: You're [*Indiscernible...multiple
speakers at the same time, unable to decipher
words spoken*]....

MR. WILSON: It doesn't exist

20 [*Indiscernible...multiple speakers at the same
time, unable to decipher words spoken*].

THE COURT: You two are bound and determined to
[*Indiscernible...multiple speakers at the same
time, unable to decipher words spoken*] complicate
25 my thought process.

MR. WILSON: Well, no, I - I

[*Indiscernible...multiple speakers at the same
time, unable to decipher words spoken*].

30 THE COURT: I think the two of you would like to -
I know what you're - I - I - I'm being - I - I'm
being perhaps more coy than I should be. But I'm
just saying, no, I know what you're saying...

Submissions by Mr. Wilson

MR. WILSON: Yeah.

THE COURT: ...I know what you - you know.

MR. WILSON: So, you can't - what I'm trying to say is that you can't - one cannot examine the tripartite test in the absence of the fact that you only use it where it will - either it will or it won't result in an order, an injunction that enjoins the issue.

THE COURT: That's right. Oh, I know.

MR. WILSON: And - and - and so, it's not examined in the absence of that. And so, we do have competing rights. But - and we have - and - and so, the rights of Mr. Champs clients are being weighed against my clients' *Charter Rights* and their common law rights of freedom of expression, their *Charter Rights* of peaceful assembly. And I just - I believe that that really mitigates and weighs in favour of - of finding that the balance of convenience test isn't met, and in part, because it's weighing the balance of convenience in the context of an order that will enjoin. And for all the reasons we've already struggled with at different points, both Saturday and today, it just gets really messy and ineffective.

[phone ringing in background] - I apologize, Your Honour. We're in a hotel room. I have no idea who is phoning.

THE COURT: Don't worry about it. I'm surprised mine hasn't rung. So, just....

MR. WILSON: Okay.

THE COURT: I understand - I understand the

Submissions by Mr. Wilson

exigencies of doing things by ZOOM.

MR. WILSON: Thank you. So - so, those are my submissions, sir...

THE COURT: All right.

MR. WILSON: ...with respect to - with respect to the application and the test, sir.

THE COURT: All right. Thank you. All right.

MR. CHAMP: Would you like a break, Your Honour, before I....

THE COURT: I don't know whether I want a - I'm trying to think of what I'm gonna do. Okay. It's - like, it would be lovely to have three weeks where I could write something, but that's not the way this thing works, and I know that. I've been doing this long enough that I know that.

So, with respect to the - excuse me.

MR. CHAMP: Your Honour, will I - will I have a right of reply? If I could, I've got....

THE COURT: Oh, yeah. Go ahead. Please, go ahead.

MR. CHAMP: Sure.

REPLY SUBMISSIONS BY MR. CHAMP:

Just a few point. My friend - I think Your Honour fully understood the issue when my - my - opposing counsel was saying that - you know, the police - this is a policing issue, and I think Your Honour was very much on point, but I can give you a reference that confirms that your - your opinion is correct. *MacMillan Bloedel* at paragraph 17 and 18, the Supreme Court of Canada confirms that even

Reply Submissions by Mr. Champ

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if it's a - because the - the respondents there we're arguing that same issue that Mr. Wilson is advancing. The Supreme Court had no - no difficulty dealing with it, saying, yeah, it may be a policing issue and a criminal issue, but private citizens have the right to assert their private rights to obtain an injunction. But anyways, that's an authority to support the - what you were expressing there, Your Honour.

15

A few other points my friend made - he said that the - his clients aren't using horns. And I guess I would just reiterate, why are they opposing this motion? I just - I - I don't understand that.

20

My friend then makes the suggestion, I don't know if it was a serious suggestion, that - that my client could wear earplugs. I'm not sure if that was serious or *[indiscernible...ZOOM interference on channel, audio is distorted]* but I find it offensive.

25

30

THE COURT: Well, no, just on that prior point about your friend and why they're doing it. The difficulty with that proposal is as follows: I have no idea, nor can I know, what instructions is passed between his clients and himself. I don't know. And - and you know, I can do - which is not helpful, I can do constructs in my head or thought - thought problems where it might, but that's not the point. The point is, your friend is here in good faith saying he's defending his clients and be that as it may.

Reply Submissions by Mr. Champ

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You know, the - there's an issue between what counsel do, there's an issue as to what evidence is called. And on the - what evidence is called, I can - if no evidence is called, I can draw certain inferences. But I don't think I can draw inference from what counsel say or don't say because that's entirely in their purview and their rights. And be that as it may. Okay.

MR. CHAMP: On my friend's argument about the evidence of Dr. Scherer saying that this is inadmissible opinion evidence because there wasn't a Form 53 filed. Our submission is the court could overlook that technical defect given the exigency of the situation. But in any event, if the court was of the view that, you know, they should be accepting opinion evidence without the two sentence, sort of, certificate, Form 53, if you look at her affidavit, much of it is actually fact evidence as opposed to opinion evidence. At the end, I believe it's in paragraph - I might be wrong, but I believe it's 13 and 14, she gets into her opinion that - pardon me, 10 to 12.

Paragraphs 10 to 12 of her affidavit, she - she expresses an opinion that the residents of Ottawa may be suffering permanent hearing damage based on that.

If absolutely necessary, Your Honour could not rely on that evidence. But her early evidence about loud sounds and decibel levels, and about the - the risks that they pose, that's fact

Reply Submissions by Mr. Champ

evidence from a doctor in these circumstances.
And you also, obviously, fully have the evidence
of Mr. Barr (ph) and Ms. Li about the sound
levels, which are extreme.

5 THE COURT: Okay.

MR. CHAMP: The other point my friend - he started
talking about the content of the expression. I -
again, I think Your Honour was on that - the
content of the expression is not relevant here.
10 You know, there's - you know, these individuals,
if they want to protest and express their opinions
that's - that's perfectly fine. I don't think the
content of expression would ever really be
relevant in an analysis like this. I'm - you
15 know, maybe perhaps, if it was the most extreme
kinds of expression like hate speech or white
supremacy, or so forth, that might be relevant,
but that's....

THE COURT: That's before - it's before me.

MR. CHAMP: That's before you. Exactly. That's
20 what I'm saying. So...

THE COURT: Yeah.

MR. CHAMP: ...it's - I don't - I don't think my
friend's arguments really have any relevance right
25 here.

And then the final argument I would like to
address of my friend, is why the applicant. Why
only one applicant? We've already put in
30 authorities, Your Honour, that propose class
actions can be used for a - an injunction. But I
will say this, Your Honour, my client is

Reply Submissions by Mr. Champ

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incredibly brave. I can advise you of this, Your Honour, and this may well be subject of a subsequent motion here in the next day or two, I've already advised my friend of this, but he - he didn't deem it appropriate on his side to even respond. My - my client has been subject to threats...

THE COURT: Okay, well....

10
MR. CHAMP: ...and vile abuse online. Her phone number has been put online, Your Honour, and people are calling her.

15
Now, I - I - my friend might say, well that's not evidence, well, Your Honour, I'm just putting the Court on notice because this is relevant to this court. If there is a litigant who is receiving threats because they are participating in a court proceeding, that is inherently a matter of contempt. And I think it is appropriate on my part, as an officer of the court, to inform the court of that. And I would add, Your Honour, if I may....

20
MR. WILSON: Your Honour, this is completely improper....

25
MR. CHAMP: I - I would add, Your Honour, if I may. *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*. Sir, keep interrupting, you can speak during your time, Mr. Wilson.

30
THE COURT: Just - just - just speak to me. Just speak to me.

MR. WILSON: Your Honour, this is completely...

Reply Submissions by Mr. Champ

MR. CHAMP: Your Honour - sir, sir...

MR. WILSON: ...inappropriate.

MR. CHAMP: ...Mr. - Your Honour, I'm speaking....

MR. WILSON: [*Indiscernible...multiple speakers at the same time, unable to decipher words spoken*].

THE COURT: Okay, well....

MR. WILSON: [*Indiscernible...multiple speakers at the same time, unable to decipher words spoken*].

MR. CHAMP: I request that the court - I, please, request the court to direct Mr. Wilson to wait until I'm done.

THE COURT: Well, he's got an objection - he's got an objection.

MR. CHAMP: Okay. He hasn't even heard what I have to say.

THE COURT: Well....

MR. WILSON: [*Indiscernible...multiple speakers at the same time, unable to decipher words spoken*].

MR. CHAMP: I'm not finished my....

MR. WILSON: I have an objection based on what you've said.

THE COURT: Okay. Go ahead, Mr. Wilson.

MR. WILSON: There - there's no evidence before the court of this. It's highly inflammatory. I've received personal threats. So, I just think this is improper and it's tainting this hearing. We've - we've...

THE COURT: Well, I'm not gonna - I'm not gonna....

MR. WILSON: ...never [*Indiscernible...multiple speakers at the same time, unable to decipher words spoken*] evidence before the court.

Reply Submissions by Mr. Champ

5 THE COURT: It's not - there's no evidence before me. Okay. There's - there's no evidence. And you know, Mr. Champ, yes, I can hear what you're saying and it may be relevant for another proceeding.

10 As far as the issue of one client bringing this motion, a person can bring an action for a private nuisance and ask for an injunction. That's fine. That was the point of the discussion I had, I think, on Saturday, saying isn't it enough if one person comes forward and says - says that they have a problem with the nuisance. Isn't that the case?

15 MR. CHAMP: Yes, Your Honour. The only - the only difference then, Your Honour, is if it was a private nuisance on her own, I don't know if my friend would take this, then she would have to disclose her address about where specifically she's experiencing the nuisance rather than on a classified basis. And I can presume...

20 THE COURT: No, no, I'm not - I'm not....

MR. CHAMP: ...we would then - she would then be in danger, Your Honour...

25 THE COURT: I'm not....

MR. CHAMP: ...that's the nature of what's going on right now.

30 THE COURT: No, no. A private nuisance, if a person has brought it before the court, right, whether there is a class action or not, because the class action has not been certified, we're at very early stage, I can act on that one person's

Reply Submissions by Mr. Champ

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plea to grant it, without getting any further on the basis of the fact that she has brought a potential class action. There's enough evidence. There - in the pleadings, there's enough that - notwithstanding it's a class action, that she may have been suffering from a nuisance, and let's leave it at that, shall we.

10
You under - you see where I'm going with it.

MR. CHAMP: I do, Your Honour.

THE COURT: Or my thoughts anyway.

MR. CHAMP: I do, Your Honour.

THE COURT: All right.

15
Because you get in - I don't want to get into it. This is a private nuisance. It is not a public nuisance, it's not a nuisance under the *Criminal Code*. It's not that kind of thing. That's not been alleged. And I'm not gonna get into that because there's a whole issue in law about public and private nuisances and their nature, and who can bring the proceedings and all this kind of thing. This is a private nuisance, one person, true enough, on behalf of a class, but one person has brought the application. There you go.

25
MR. CHAMP: Thank you, Your Honour. Thank you, Your Honour.

30
So, just then to conclude, Your Honour, two points. Just one, just reiterating costs. We would ask for costs in the substantial indemnity basis given again, that the respondents, on the

Reply Submissions by Mr. Champ

one hand they say, we don't - we're not even honking horns yet they're vigorously opposing....

THE COURT: Well, let's go - let's find out....

MR. CHAMP: If you grant it.

THE COURT: Yes.

MR. CHAMP: Then Your Honour, I would just ask, in terms of speed. In terms of speed....

THE COURT: Well....

MR. CHAMP: If I may, Your Honour. If I may, my - my friend has submitted an affidavit that he's described to you, this - the one that is submitted after the hearing commenced from a Mr. Morazo (ph) saying that there's been an agreement to - they've stopped the honking and they're only going to do it once a day at 5:00 p.m. We're - we're about - we're about to - we're gonna submit an affidavit in about five minutes from our client that there....

THE COURT: Well, we're not gonna....

MR. CHAMP: Rail horns....

THE COURT: We're not having anymore affidavits. I'm gonna rule on this on the record I have. And I have not heard that five o'clock affidavit and I'm not gonna refer to it.

MR. CHAMP: All right, Your Honour, that's - those are all my submissions other than to say, this is a serious issue. Every hour that goes by, there's harm. Every hour that goes by at this stage, there is harm to the people of Centretown...

THE COURT: All right.

MR. CHAMP: ...and those are our submissions. Thank you.

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

30

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.

Reasons for Decision

McLean, J.

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 10 many eons, and also in the *Charter*.

15 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 20 matter within the sole interest of those people demonstrating.

25 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 30 the evidence put forward in the affidavit of Mr. Bufford (ph), who apparently is a volunteer

Reasons for Decision

McLean, J.

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

counsel for the Ottawa Police Service, who is monitoring this hearing and has been watching it, to participate and - and have some say.

5 The way we've crafted the order, it has some language about the Ottawa Police, that's - that's what the Ottawa Police had requested. And so, they - they would like an opportunity to address that, so....

10 THE COURT: Well, first of all, should we take some time for Mr. Wilson to read the letter and perhaps talk to the Ottawa Police? I don't know.

MR. CHAMP: Sure. Sure.

THE COURT: I'm in your hands.

15 MR. CHAMP: I'm - I'm fine with that. Yeah. We could probably arrange a three-way call between us or something like that.

20 THE COURT: Well that's why - why don't you do that because I don't - Mr. Wilson doesn't know, I don't think, what they're demanding.

25 And of course, the other thing, this is a civil contempt matter. So, what happens is, if somebody is found in contempt, they have to be brought before this court. And so, it's gotta be crafted in that way. It's not just as simple of arresting people. That's not what happens. The only purpose of arrest is to bring it before a judge of this court, because as I say, it's civil contempt if it's a global order. All right.

30

I'll give you 10 minutes and you - you know, you

can let me know and see what you can do. All right. Thank you.

We'll stand down for 10 minutes - or 15 minutes, I guess.

MR. WILSON: Mr. Champ, can you - can you phone number and please, don't broadcast it, because there's, I believe 800 people....

THE COURT: Yeah, I'll - we - I will absent myself and the court can put you in a breakout room where nobody else is privy to it.

MR. CHAMP: I guess the only question then, Your Honour, would be, how we get the Ottawa Police counsel. I - the court has her information. They might be able to send her a panellist invite so she can join with us.

THE COURT: Yeah, well you can - okay. What I'll do is, I'll get the registrar to put you in a breakout room. You can set up how you want to deal with the Ottawa Police...

MR. CHAMP: Yeah.

THE COURT: ...counsel, et cetera, et cetera. And that will be private so you will not be subject to me or anybody else. All right?

MR. CHAMP: Okay. I'd ask the court - oh, sorry, I apologize.

THE COURT: No, no, no, no, you go ahead. I'm just simply - I can - I - I'll just stop my....

MR. CHAMP: No, I can manage that. I was just gonna request, for putting in another room, I'd just ask my co-counsel, Christine Johnson, to join me.

THE COURT: Okay. Well, you - you can deal with that. I'll just absent myself. You can go - you can go wherever you want.

MR. WILSON: Thank you, sir.

CLERK REGISTRAR: Mr. Champ.

MR. CHAMP: Yes.

CLERK REGISTRAR: Is it Champ or Champ?

MR. CHAMP: Yes.

CLERK REGISTRAR: If you know the e-mail....

R E C E S S (2:36 p.m.)

U P O N R E S U M I N G (3:22 p.m.)

MR. CHAMP: Your Honour, I apologize, I believe Mr. Wilson is just gonna be sent - we've sent a draft version of the order that the Ottawa Police Service and the plaintiff has agreed to. Mr. Wilson has some comments on it. I think the - I think the plan is he's going to send us a version, and the Court a version with track changes. And I apologize, we had a variety of technical difficulties all the way around on just about every technological level between all three of us, but we've been working as hard as we can to assist the Court.

MS. STEWART: And Your Honour, it is Vanessa Stewart for the Ottawa Police Service. I just wanted to clarify, the Ottawa Police Service is consenting. There are terms with respect to police enforcement, and that is what I'm speaking to here today, the enforcement clause. And we are

consenting to the enforcement clause as outlined in the draft order submitted by Mr. Champ to the Court.

5 THE COURT: I think I'm getting Mr. Champ's order. I'll just see if I can print it so I've got something.

... PAUSE

10 Well, I have yours and just - Mr. Champ, just before we go on to - I think it has to come back to a fixed date.

MR. CHAMP: Yeah, I - I agree with you, Your Honour. That's fine.

15 THE COURT: So, it'll have to come back to the court.

MR. CHAMP: On the 17th?

20 THE COURT: I - I presume - well, there's a whole issue about that, which I don't particularly want to get into, as to whether the order self-destructs on the 17th. So, we'd better come back on the 16th.

MR. CHAMP: Okay, thank you.

25 THE COURT: And at ten o'clock in the morning. And I presume it comes back before me.

All right. Now, I just wonder if I've got your comments, Mr. Wilson. Let's see.

30 MR. WILSON: It was - Mr. Champ, did you receive that e-mail that I sent to - that we were all using? The distribution list?

MR. CHAMP: Yes, I have it, Mr. Wilson. I have

your comments. So, you want - as I understand your comments there, Mr. Wilson, you want it to take affect tomorrow at noon, is that right?

MR. WILSON: Yeah, I'll wait until perhaps....

MR. CHAMP: So, one - one more night of partying, that's the - that's the view - the position of the respondents?

MR. WILSON: I want to make sure that His Honour has the benefit of - of having the track changes version to make this - his decision making efficient.

THE COURT: Okay, just - I'll just see what I've got. I'm getting as many e-mails as - I guess Mr. Champ is the winner, are you?

... PAUSE

I'm getting so many copies of the order, I don't know.

MR. CHAMP: I know. I - yeah.

CLERK REGISTRAR: The last one with Mr. Wilson's changes came in at 3:26, Your Honour, from Ms. McKinley (ph), and it's addressed to *[indiscernible...ZOOM interference on channel, audio is distorted]*.

MR. CHAMP: I apologize, Your Honour, we're doing our best to work under short timelines.

THE COURT: No, no, I - I know. I'm not - well, Mr. - are - is your order - just so I've got the - is your order simply that I issue the order for the interlocutory injunction that takes place at 12 on - on - that's the one you're....

MR. CHAMP: Yeah, that's his - that's his, Your Honour. You got it. They want it to start at noon tomorrow.

5 THE COURT: Okay, well, I'll print it. And just give me a second, and so, I'll have the two of them.

MR. CHAMP: I think I understand the differences that they want.

10 ... PAUSE

CLERK REGISTRAR: And Mr. Champ, just so you know, I don't see Ms. Johnson anywhere to let her in.

15 MR. CHAMP: Oh, okay. I'll - I'll text her. Thank you, Sir.

... PAUSE

20 MR. CHAMP: Your Honour, I think I understand the changes my friend is seeking now. I could probably summarize them for you, or he might - maybe - perhaps you want Mr. Wilson to address the - the different language that he wishes.

25 THE COURT: All right. Well, perhaps Mr. Wilson can speak for himself.

30 MR. WILSON: The first concern, sir, that we're seeking to address is adding language to allow word to get out and people to know. We don't want to, obviously, have a situation where people don't know the law and then be told they're in breach of the law. So, we're proposing that the order would become effective tomorrow at noon.

And then I can move to the next change, if you'd like, unless you have - want to stop here.

5 THE COURT: Well, obviously, if they don't have notice, they're not in contempt.

MR. WILSON: Okay.

10 THE COURT: So, it's - the onus is on Mr. Champ to make sure they have notice, or the police, before they can enforce it. 'Cause the - so that, you know, the starting date, I don't think - the main issue is, first of all, and you can both help me with that point is, how do we get notice to them?

MR. CHAMP: Well - I'm sorry. I'm sorry, Your Honour.

15 THE COURT: Okay, well, you know - help me with that point. Because there's no application for substituted service, right? So, I have to do something. I have to use my discretion as to giving them notice because of course, contempt is a very, very serious matter. And it's not a - I suppose contempt is really, and you can both help me with it, that - it's as serious as any indictable offence because the penalty is in the court's discretion.

25 MR. CHAMP: Yes.

30 THE COURT: You know, and so, that's - that's my concern. Is, we've got to make sure, whatever we do, that notice is given and *[indiscernible...ZOOM interference on channel, audio is distorted]* at this time, no matter, I - I think the date, Mr. Wilson, with respect, it may be fictitious because I don't think that's gonna help anybody. Because

first of all....

MR. WILSON: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

5 THE COURT: First of all, we have to do is, how are we gonna get the word out there? Is it gonna be in the press? Is it gonna be on, you know, social media? What do you - you know, I....

10 MR. CHAMP: What we've proposed, Your Honour, is a few - a few ways. One is we've requested that the named respondents who are parties here, Ms. Lich, and Ms. *[sic]* Dichter, and Mr. Barber, that they communicate the order out through their social media and e-mail channels to those persons who they know...

15 THE COURT: Well....

MR. CHAMP: ...who have been associated with the protest or are currently associated with the protest.

20 Then we also have a provision that - we had proposed that notice of this order may be given by posting copies of this order in or around downtown Ottawa. By reading the order to any person, including but not limited to reading the order over an amplification system, and/or by publishing this order online, including on social media accounts associated with the defendants.

25 THE COURT: Yeah, but you see, the - the - the concern I have with that is, the - I can see the other parts of it, but getting them to the - the defendants to publish it presumes they have more of a connection with the thing than maybe has been

30

proved. And then you get into this other business of, if somebody says they didn't - they should have got it through them, are they in contempt?

5 MR. CHAMP: I wouldn't - I wouldn't say so, Your Honour. I mean, if we find out somewhere later down the road through discovery...

THE COURT: No, no, I....

10 MR. CHAMP: ...otherwise that Mr. Barber and Ms. Lich did have a big e-mail list of people and they didn't communicate the order, well, make no mistake, we will look for some kind of....

THE COURT: Well, I think what we would simply do is, that - it'd be suggested to those persons that they communicate.

15 MR. CHAMP: Your Honour, I - I would - with - with great respect, I would forcibly request that this court direct and order these respondents. They showed today. They said, "We don't honk", but they showed up today to defend it. And we also have evidence before the court from Mr. Bufford (ph) that there is a convoy leadership team. And I do not think it's unreasonable just - and how difficult is it for these individuals just to send out....

25 THE COURT: Well, okay. We'll do that.

30 MR. CHAMP: ...the order to those individuals to whom they know - they're communicating to them somehow. The scene (ph) - convoy leadership team is communicating to them somehow, and Mr. Bufford (ph) isn't a party to this, so you can't make an order to him - for notice.

THE COURT: No, no. I can't do that.

5 MR. CHAMP: But you can't for him. But for Ms. Dichter [sic] and Mr. Barber, and Ms. Lich, they are parties. And I do not think it's a - it's unreasonable to ask them to - to publish that order through their social media channel.

THE COURT: Okay. Well - well, they can publish it through their social media channels. That's fine. That's neutral. But I just want to make sure that that is - see the problem....

10 MR. CHAMP: And then....

THE COURT: The problem you've got is this, what's their social media channel? I don't have an idea. Okay. So....

15 MR. CHAMP: Your - Your Honour, with all due respect to my friend, if you look at how he's crafted this, he's looking for every way to create means for people to, you know, come up with plausible arguments to evade the order that they can't [indiscernible...ZOOM interference on channel, audio is distorted]. He's insisting that we have a process server go around to every individual truck. I mean, I won't even get into the safety issues of that, but in any event, I don't think it's unreasonable, with all due respect, to ask that they send it out through 20 their social media channels, whatever - however, they may - however they maybe described.

25
30 Social media channels is fine. If they say - how about this, we could say, any social media channels that permit the user to send out images. Like Mr. Barber, I know, for example, has a

5 twitter account. It's called "Honk" something or other, so I guess he understands honking and - and that. And so, if Mr. Barber's got a social - social - any social media account where he can puvblish a document. I don't think that's too unreasonable, Your Honour.

THE COURT: All right. Well, that's - that's *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

10 MR. WILSON: My Lord?

THE COURT: Yes?

MR. WILSON: My co-counsel has just brought to my attention that, in fact, the tech companies have been blocking some of my client's social media and taking their Facebooks down and so on. So, this is a - this is murky water, sir.

15 THE COURT: Well, what - how we can deal with that is any social media that is effective for them. If it's blocked, they can't do. It's as simple as that.

MR. WILSON: Maybe it would cause the tech companies to put their social media back active again.

20 THE COURT: I'm not making that order. I can't. They're not a party to this.

MR. WILSON: Nor am I asking, sir.

25 THE COURT: No, no, I know you're not. Anyway. Okay. So, that's that part of it.

30 What about....

MR. CHAMP: And Your Honour, I - I apologize, Your Honour. Just on the other bit about just making

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it general, those - that's the terms in those
other draft orders that we provided to you that
are - not - not draft orders, orders that were
issued by the court, at Tabs 19 and 20 of our
supplementary motion record. That - that's how
the - the notice provisions were handled. These
are common notice provisions, Your Honour.

10
If you look at some of the other jurispru - the -
the case law that we put to you, some of them have
the terms of the order at the end, in terms of
notice, and it's similar. And then we've given
you two orders that other courts have issued. So,
in terms of - like just making them - I apologize,
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I'm just gonna go back to the language that we
used here. We drew it precisely from those court
orders saying....

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MR. WILSON: Your Honour [*Indiscernible...multiple
speakers at the same time, unable to decipher
words spoken*].

25
MR. CHAMP: ...notice of this order may be given
by: posting copies of this order in or around -
and then it's - we say downtown Ottawa, but in the
other case it was a location - by reading the
order to any person, including but not limited to
reading the order over an amplification system
and/or by publishing this order online, including
on social media - well, the social media accounts
is one that we - we added, but everything else up
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to that is - is language that we've drawn from
other court orders issued by courts.

MR. WILSON: Your Honour, I can assist. My

clients, I believe, are reasonable people and if they can assist the court in

[Indiscernible...multiple speakers at the same time, unable to decipher words spoken].

5 THE COURT: That's fine. That's fine.

MR. WILSON: ...word out, we don't have a problem. As long as there's not an adverse consequence if they get blocked.

10 THE COURT: Well, there won't be. There won't be. Well, if - if they're blocked, they can't. It's a...

MR. WILSON: Yeah, I just want to
[Indiscernible...multiple speakers at the same time, unable to decipher words spoken].

15 THE COURT: ...new thing that's intervened.

MR. WILSON: Yeah, they'd use reasonable efforts, sir.

20 THE COURT: All right. So, okay. That's that part of it.

MR. WILSON: The earlier paragraph, sir, is about the geographic area. I'm just trying to make this precise as possible given - because of the seriousness of this. And - and it being an injunction against - almost in the form of in ram, that the greater precision that can be brought, means greater certainty and equity.

25 THE COURT: Well, what's - what's your view on that *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken].*

30 MR. WILSON: The track changes - we've - in the track changes document, we're saying instead of all of Ottawa we're saying in the geographic area

5 described - and this is in the document I've provided. I realize you may not have it in front of you. In the geographic area described as east of Bronson Ave, north of Gloucester Street, west of Queen Elizabeth Drive, and south of TransCanada Trail. And then we have the duration.

THE COURT: What about that, Mr. Champ?

10 MR. CHAMP: The - the difficulty with that, Your Honour, is that these trucks have been in different parts of Ottawa. Some have been out at Coventry Road and so forth. And I'll add this, Your Honour, the way we framed that is, we drew the language from Section 74 of the *Highway Traffic Act*. That's - it's - it's - it's
15 practically the same as the language of the *Highway Traffic Act*. So, it's *prima facie* an offence under the *Highway Traffic Act* to be using an air horn unreasonably...

THE COURT: Oh, I know that.

20 MR. CHAMP: or unnecessarily. And then there's the exception, obviously, for....

THE COURT: Yeah, but you, I think, in some of your documents, and maybe I've forgotten, you ask for an area to be enjoined.

25 MR. CHAMP: This - in our original draft...

THE COURT: And so, that will be....

MR. CHAMP: ...in our notice of motion.

THE COURT: And that'll be the area of the injunction. Okay.

30 MR. CHAMP: So, the language that Mr. Wilson has put forward?

THE COURT: Well, no, I don't know. I can't - I -

like....

MR. CHAMP: So, I'll agree with the - the language Mr. Wilson has.... The only - Your Honour, this a little bit like - so, he - we're abandoning the people of Byward Market, we're abandoning the people of Lowertown...

THE COURT: No, well, I don't....

THE COURT: ...abandoning the people of Sandy Hill.

THE COURT: No, I don't know...

MR. CHAMP: Abandoning the people near Coventry and - and the Jet Form Ball Park.

THE COURT: ...what you.... Mr. Champ, you, in your original document, had a boundary, right, whatever that was. And I can't recall because my mind doesn't....the area of the injunction will be whatever you ask for in your originating document, okay.

MR. CHAMP: I'll have to take a look what we said in our notice of motion. Your Honour, I - Your Honour, I'll be back - with - with the greatest of respect, Your Honour, if these trucks move onto Queen Elizabeth Driveway and start blowing their horns there, if they move into Lowertown and Byward Market, we will be back before you...

THE COURT: That's fine. That's fine.

MR. CHAMP: ...within a day.

THE COURT: That's fine. But I'm saying....

MR. CHAMP: Well, not fine for those residents. With the greatest of respect, Your Honour.

THE COURT: I'm not....

MR. CHAMP: Not fine for those residents.

5 THE COURT: I am not saying that. I am saying, you requested a particular geographic area and that is going to be the area of the injunction, okay. It's what you asked for and that's what you'll get.

But the City of Ottawa is basically, unenforceable.

10 MR. CHAMP: It is - it's not. With great respect, Your Honour, it's not unenforceable.

THE COURT: Well, I [*Indiscernible...multiple speakers at the same time, unable to decipher words spoken*].

15 MR. CHAMP: The geographic boundaries of the Municipality of Ottawa are well known.

20 THE COURT: Well, that's fine. I have decided it will be whatever you asked for in your originating notice of motion, and that's [*indiscernible...ZOOM interference on channel, audio is distorted*] to the rest of it. Okay.

Let's go on to something else.

25 MR. WILSON: My Lord, what we've proposed is that, given that we're talking about civil contempt here, in paragraph 4, we've proposed that it say that the court orders that the applicant shall be permitted to bring an application for contempt of court against any person with notice, who is alleged to have violated the terms, as opposed to automatically jumping to the idea of a person being arrested. Again, this is a civil
30 enforcement - this is - this is a private remedy.

5 It's unique. There's - doesn't have the same due diligence and fair process procedures that - that we have in our criminal courts, as we all know, and that's what we've proposed, sir, and - and the wording is in our revision.

THE COURT: Mr. Champ?

10 MR. CHAMP: Yes, Your Honour. The - it's not only that section, but all - basically, Mr. Wilson wishes to remove all of the language referring to the Ottawa Police and any enforcement by the police. These kinds of provisions are in other civil contempt orders. The Ottawa Police has indicated that they have other orders similar to this, and that's - it's easier for them to
15 enforce. Because it is always open to a peace officer to enforce an order of the court, at any time, whether it says it expressly or otherwise, but the Ottawa Police have requested these specific terms because it makes them easier to -
20 to manage for themselves.

25 So, it doesn't matter whether we have language in there or not saying that a peace officer can enforce, because the Ottawa Police can enforce it. And my friend then adds language, "It'll be enforced by way of an application for contempt". Well, again, you don't need that language. I can enforce a contempt motion, you know, as of right. So, we're just ask - I'll maybe defer to Ms.
30 Stewart, but this is the request of the Ottawa Police because again, they would have the right - an obligation, I would submit, to enforce any

order of the court and they've requested these terms to make it easier for them to do so. Thank you.

5 MR. WILSON: Your Honour, if I might. My friend seems to be treating this as though he's asking you to draft the terms of a contempt order, and that's our difficulty. Is that, as we all know, 10 contempt is a very orderly process when someone is believed to, or alleged to have engaged in it, for the serious reasons that Your Honour's already identified. And we're not here to - we don't have someone in contempt. We're - we're creating a process so that the order will be consequential, and meaningful, and clear, but if someone breaches 15 it, there'll be a process where they could be found in contempt. But we're not drafting, with all due respect, at least that's my understanding, the contempt order right now.

20 THE COURT: Ms. Stewart, have you anything to say on this?

MS. STEWART: Thank you, Your Honour. I am of the position that the Ottawa Police and a police officer can enforce an order of the court.

25 What we are requesting here, in the language that has been proceeded, has been provided on consent by the moving party and the Ottawa Police Service, is really, you know, if the Ottawa Police is called upon to enforce the injunction, we are 30 providing what the Police Service believes is the most appropriate language for that purpose, as opposed to exercising the polices' discretion to

enforce a court order as a matter of course.

5 And so, ultimately, if Your Honour does consider to include this wording within the order, I would respectfully ask that the language provided to the court be the wording that is used.

10 THE COURT: Well, first of all, I don't think, in 5, I don't think (c) is appropriate because I'm not issuing any search warrants. It says, "To search any place, seize any item, where the police have reasonable probable grounds to believe" - well, this is open and we don't need that.

15 ... PAUSE

20 MS. STEWART: Your Honour, if I may just address that specific clause, 5(c). It would be in order to seize any item, for example, an air horn, that could be used to contravene the order of the court. I - just to....

THE COURT: Well, I know that. But I don't think we can - I'm not going to give that kind of order.

MS. STEWART: Thank you.

25 MR. WILSON: Just to confirm, My Lord, we're talking about factory-installed equipment. I don't....

30 THE COURT: No, no, I'm not - we're not getting there. The issue is whether using it. Okay. You can have it. There's nothing to prevent you from having it. You just can't use it. Because then it gets into a whole more - whole larger issue, and that is the requirement under the *Highway*

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Traffic Act to have them. And it the - and you know, and there - you get into the issue of liability exactly. If they move their vehicle for some reason, and they're enjoined from using it, and some child runs in front of the road - in front of them, they have to use it. There's no question about that.

MR. WILSON: In fact, sir, if it was removed, they wouldn't be able to move.

10
THE COURT: Well, that's what I mean. Like, it'd be - you know, we - I - it would cause a whole problem. And that's - the - the issue, as I said before, it's not the thing, it's the person. You know, it's not the thing, it's the person. So, I can't - I don't agree with (c).

15
I'm trying not to mess this thing up. 'Cause I've got a real - release the person. Okay, the issue becomes how - so, what? They're gonna give them a promise to appear to a date to be fixed by the court? Is that, I guess, what that means in 6(d)? 'Cause they can't fix the date of the hearing.

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MR. CHAMP: I'll - I'll defer to Ms. Stewart on that.

25
MS. STEWART: It indicates, "Require that a person appear before this court at such as may be directed by this court on date to be fixed by this court". As I understand it, we already have a next date anticipated.

30
THE COURT: No. No, no, no, no.

MS. STEWART: No? Okay.

THE COURT: You don't have it for that.

MS. STEWART: Okay.

THE COURT: No, this is totally different. This is just the rehearing of the injunction, whether it should be made to be [in quotes] "a permanent interim injunction", if there is such a term.

What happens is, the court has to set a date for a hearing of it. It's not - the police can't do that because the contempt is a - as I said before, the contempt is an issue for the court and the court solely. So, I fixed a date, or - no, not me, but anybody - you see, this is - that part of it has got to go to the court as a whole because a person who is arrested under this has to be brought immediately before a judge of this court to set a date because otherwise you get into a whole kinds of habeas corpus business. It's not....

MR. WILSON: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

THE COURT: Yes, go ahead.

MR. WILSON: My concern is that - and I think you're very alive to it, but just to illuminate it further, and - and assert it from our position, is that, this isn't the criminal process, and this isn't, you know - this is a civil process...

THE COURT: That's right.

MR. WILSON: ...that's being proposed.

THE COURT: That's right.

MR. WILSON: This is a civil process. Civil *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*. It's not

a criminal manner.

5 THE COURT: No, no, no, I know that. It's not -
there's no - there's no issue about that. But
what I'm saying is, the modality of getting a date
from this court is not sort of, well, you pick a
date and say, well, you get to go before the judge
and that. That doesn't work that way. You - you
- what you have to do is, you have to - I don't
10 know how you would do it because it's - it's - we
have a different - you know, you're - you're not -
as I say, next - the 16th is not gonna be a day
where I hear contempt motions or contempt
proceedings. That's not it. They're gonna be
separate from that all together.

15 MS. STEWART: No. And - and I wasn't suggesting
that that would be a date where, you know, if
police exercise their discretion, and if they
arrest someone who is breaching a - and if someone
does breach the court order that they would come
20 back on that date to - for the court to hear a
contempt motion, but I - I think it's to just
attend and present themselves in front of the
court.

25 THE COURT: Yeah, but you see, we don't have fixed
dates. We just...

MS. STEWART: *[Indiscernible...multiple speakers
at the same time, unable to decipher words
spoken]*. Sorry.

30 THE COURT: You see, generally speaking, the way
it works is, civil contempt - and you know, you
both - the other lawyers will, I think, agree with
me, is a function of a judge alone. It - it

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doesn't have to do with - you know, generally speaking, the criminal process, you get a date from the Provincial Court, et cetera, et cetera, and you show up there to set - and they sit regular dates. Because it's a function of the Superior Court, we don't do it that way. Whether we should is another issue, but it's not for today to discuss. You have to bring the person before the court for the court to fix the date.

MS. STEWART: Okay.

THE COURT: And then you have to do it, but that - this is where I'm getting a little concerned about this because, you know, what do you do? You arrest somebody, you say, well, you know, we're gonna take you to the court, you find out there's no judge available.

MS. STEWART: Right. So, the perspective of the police is that the police were bring the - any arrested protestor before the court, after the arrest, and the court would then speak to the protestor and set the date for the civil contempt proceeding. And at that point in the, you know, usual course, an individual is released unless they, you know - they don't agree on the spot to stop prohibited activity.

THE COURT: Well, it's not quite simple as that.

MR. WILSON: It's not at all.

THE COURT: You know, it doesn't work that way.

MR. CHAMP: Your Honour, if I could just jump in....

THE COURT: Yeah, go ahead.

MR. CHAMP: *[Indiscernible...multiple speakers at*

the same time, unable to decipher words spoken].

THE COURT: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken].*

5 MR. CHAMP: I'm fine with that - I'm fine with that provision being removed. I don't think it's - I mean, the police can do what they wish, as - in terms of how they enforce. I don't think they need specific language directing. And I agree - I - I - I actually tend to agree with you. I think having an order in there about the time is - is probably not - not the way to do it. It's not quite the same as a criminal offence in that sense.

10 THE COURT: Well, how do you suggest we get around that then, having suggested that?

15 MR. CHAMP: Well....

THE COURT: Because you see, the - you see, I don't want to get into a situation where we're - we're into a situation whereby the police have the power to simply arrest somebody, because that's not the - the sole reason that would occur is - is because that - they have to bring them before this court.

20 MR. CHAMP: Yeah, Your Honour, I would submit that it simply - for - so, we're talking about Section 6 here, it could - all of those provisions could be removed except for the (a), and the (a) could just be brought in saying,

25
30 This court orders that any peace officer or any member of the police, who arrests or - and arrests or removes any person pursuant to this order shall have authorization to

release that person from arrest upon that person agreeing in writing to obey this order. [As Read]

5 I think - I think that would achieve really, what we're trying to get at. I'm not sure if the rest of the language is necessary, but I'll defer...

THE COURT: Mr. Wilson?

MR. CHAMP: ...I'll defer.

10 THE COURT: That's fair.

MR. WILSON: Which section were you looking at?

THE COURT: It's 6. The - 6 is excised except for (a).

15 Court orders that any peace officer who arrests or - arrests or arrests and removes any person pursuant to this order shall be authorized to release the person from arrest upon that person agreeing to - in writing, to obey this order. [As Read]

20 Period. That's the end of it.

MR. WILSON: I'm fine with that, sir.

THE COURT: All right. So, that's how 6 will be worded.

25 MR. CHAMP: The next one's about third parties, when requested by the police - Mr. - counsel for the responding parties is opposed to that one. We - we don't have a big concern one way or the other. We'll just defer...

30 THE COURT: No, that will....

MR. CHAMP: ...we defer to the Ottawa Police.

THE COURT: That will come out.

MR. CHAMP: Okay.

THE COURT: Of course, 8 stays in. That's fine.

MR. CHAMP: And then....

THE COURT: Notice....

5 MR. CHAMP: So, the last bit I guess, we're just
down to how we get it out. We're saying, "notice
of this order" - well, there's two last things.
Notice of this order may be given by - and we're
10 suggesting posting copies of this order in or
around, including by, et cetera. So, that's -
that's how we're suggesting.

And then, the last issue is about whether they can
15 still blast their horns for five minutes. I - I
think that would be a problematic one.

THE COURT: Well, the other.

MR. WILSON: Sir, if I [*Indiscernible...multiple
speakers at the same time, unable to decipher
words spoken*].

20 THE COURT: Okay. Just with regard to the notice.
Let's do this once - you know, so we can - you can
have a joint order - or an order
*[Indiscernible...multiple speakers at the same
time, unable to decipher words spoken]* form for me
25 to sign.

The - I think should be added to that that a copy
- true copy of the order be granted to all - to be
30 given to all news media in the Ottawa area and
request that they publish it.

MR. CHAMP: I'm fine with that, Your Honour. Who
should be responsible for that?

THE COURT: You. You are.

MR. CHAMP: Yeah, that's fine. I'm just confirming. Yeah.

THE COURT: No, no, I'm just telling you. You are. It's your order.

Ten is fine.

Eleven: costs. The costs will be in the cause. I'm not ordering costs at this point. Okay.

MR. CHAMP: As I understand it, I think they agreed to costs.

MR. WILSON: No, that's not true. No. I reserved *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]*.

THE COURT: Well, costs - costs are going to be in the cause. And the problem I've got is, you know, enforcing them. And I'm not getting into there. We could do that later. Okay.

MR. CHAMP: But Your Honour, it was just about the cost to the three parties who - I haven't actually made submission on costs 'cause you asked us to wait, but they - the - the three responding parties chose to respond to this - they didn't have to - even though they don't honk.

And I'd also note, Your Honour, you can take a look at those affidavits. You've already indicated that, you know, much of them have information or evidence that's - that's irrelevant. We had to work very hard to sort of, like, respond to all...

THE COURT: Well, that's fine.

MR. CHAMP: ...these issues by Mr. Wilson. So, I
- I think it is appropriate, in this particular
instance. I think normally, you know, I agree
cost. But in this particular instance, I think
costs are appropriate. Perhaps on partial
indemnity and we can try to agree and if we don't
agree, we come back to the court.

THE COURT: No, costs will be in the cause. Thank
you.

And the matter will be adjourned to the 16th of
February, next, at ten in the morning.

MR. CHAMP: Your Honour, I'm just confirming,
we're not allowing them to blow their horns for
five minutes a day, are we?

THE COURT: No.

MR. CHAMP: No. That's what I thought. Thank
you.

THE COURT: Okay.

MR. CHAMP: Thanks very much, Your Honour.

THE COURT: Is there any other part of the other -
and the order will be effected [*sic*] immediately -
effective immediately. Because there is a - a
provision in it that nothing will happen unless
the people have notice of it. So, that's the -
the enforcing authority has to be aware of that.
Okay.

MR. CHAMP: Thank you, Your Honour.

MR. WILSON: Your Honour, I just - I know you've
just been clear, but you've been clear without the
benefit of me commenting and

[Indiscernible...multiple speakers at the same time, unable to decipher words spoken].

THE COURT: Okay, that's fine. I'm sorry. All right. Sorry.

MR. WILSON: You know, we're trying to balance rights and we're all struggling with that to try and get the balance right. And you're - you - you are in the envied position of the - the great decider, and respect that.

THE COURT: Don't say that that is an envied position.

MR. WILSON: I understand, sir.

THE COURT: That is an assumption without basis. Anyway, go ahead.

MR. WILSON: That - that - you know, we're - rather than just flipping this to one party or the other, we're suggesting that the compromise, and sort of the balancing the right could be achieved if there was a specific time window, once a day. And what we had proposed was - was 5:00 p.m.

because that's a high traffic time

[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]....

THE COURT: Well, that's - that's - that's - yeah, I appreciate that. But as I said when I gave you reasons earlier, the only purpose for this is to bring attention to the protest. And as I said earlier, in my view, from the material that have been filed, there is no need for that anymore. There is - the public has full comprehension of what's going on downtown Ottawa.

So, it will be effective immediately and there will be no provision for any time where honking can continue. All right?

MR. WILSON: Thank you, sir.

THE COURT: Thank you.

MR. CHAMP: And Your Honour, I apologize. Just one last thing. On media, is it okay if I specify which media to you right now? 'Cause I'm just - 'cause it's kind of generalized right now.

THE COURT: Okay.

MR. CHAMP: *[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]* media.

I'm gonna suggest like local media in the Ottawa area. So, CBC, CTV, Ottawa Citizen, Ottawa Sun, and Global news. I can't...

THE COURT: And....

MR. CHAMP: ...think of any - if you have any other suggestions, I'm happy to add them.

THE COURT: Oh, I'm just wondering if there's a way to put it in the French media.

MR. CHAMP: Yeah, that's a good idea. Yeah. So, Radio - Radio Canada.

THE COURT: Yes.

MR. CHAMP: And beyond that, I'm just - I'm not familiar with the other French media outlets in Ottawa.

THE COURT: Oh, I don't know, but it should be. Like, it's - it's a situation where everybody - every way possible, should be used to do it.

MR. CHAMP: How about every daily newspaper in the

Ottawa area?

THE COURT: Yeah, that's fine.

MR. CHAMP: That would cover the....

THE COURT: That's fine. I think. Mr. Wilson,
that's agreeable?

MR. WILSON: *[Indiscernible...multiple speakers at
the same time, unable to decipher words spoken].*

Sir, what I hear you saying is, use reasonable
efforts.

THE COURT: Yeah, use reasonable efforts. But I'm
just saying, it - it should be both in the media
that's in the French language as well as the - and
I - now, don't look at me to translate it into an
order that's even partially bilingual. So. But
anyway.

MR. CHAMP: *[Indiscernible...ZOOM interference on
channel, audio is distorted].*

THE COURT: Any - no, I'm sorry. Ms. Stewart, do
you have any comments on this? I should have
asked earlier.

MS. STEWART: Thank you. Thank you, Your Honour.
Not with respect to anything - and I - and I think
I had already spoken to this, but, you know, from
the Ottawa Police Services' position, we would
have expected that the arrested individuals go
before the Superior Court of the Province. And
unless the order allowed the arrestees to be
released upon a civil promise appear at a date set
by your court registry, which the police would
call ahead to get a date.

So, I just wanted to put that on the record. I

know Your Honour has made your decision.

[Indiscernible...multiple speakers at the same time, unable to decipher words spoken]....

5 THE COURT: Well, no, it's - it's - you see, the point of the whole thing is, they're going to - what they will have to do - and you know, the lawyers can deal with this. What they'll have to do is, if they don't sign an undertaking to comply with the order then you're gonna have to get them to the Superior Court and do that. You know. That's - that's - that's the way - contempt is not a - shall we say, a delicate instrument. You know. And so, you'll have to get them to the Superior Court. And I'm sure you can talk to the local registry and figure that out if - if it happens. But, you know, I don't know what else to say.

10
15
20 Because I can't - contempt is a matter that depends a) on the individual, depends on what the harms done, depends on all kinds of things. And so - but it's up to the judge to - you see, I don't think I'm - I'm treading on any ground. If the person says, "Okay, I'm sorry. I will obey the order. Here's my undertaking to do it", then I don't think there's any reason to bring that person before the court because the issue is whether the order's complied with. And you get into all kinds of business about notice and that kind of stuff too.

25
30 Because clearly, if the person has no notice,

5 there's no contempt. There can't be. But you know, if they agree to comply with it, then that's fine. Otherwise, I think, you know, you're gonna have to get it before the court. But you can talk to these lawyers and they can tell you about that. You know.

Okay. Is there anything else we need to discuss?

10 MR. CHAMP: I don't think so, Your Honour. The only thing would be is, once we - I think I've made notes of all the changes you've recommend - that you've....

15 THE COURT: Well, I'll - I will - I am not going any place. So, I'll just mute myself and turn my - and so, if there's any problems, then you can come back to me.

20 If not, then simply give the registrar a copy of the order agreed to, and content the form and I'll sign it. Okay?

MR. CHAMP: Thank you very much, Your Honour.

THE COURT: And the other thing - the other thing is, put "Mr." in front of Justice too.

25 MR. CHAMP: That's fine, Your Honour. And if it's okay, if we can not go through the normal of *[indiscernible...ZOOM interference on channel, audio is distorted]* content, just if I - if I e-mail the registrar with an order and copy Mr. Wilson, is that sufficient?

30 THE COURT: Well, whatever you - however you want to do...

MR. CHAMP: Okay, thank you.

THE COURT: ...just to make sure that both of you are agreed to the form of the order - ...

MR. CHAMP: One hundred percent. Yeah.

THE COURT: ...well, I guess the three of you.

MR. CHAMP: Yeah.

THE COURT: I don't know whether....

MR. CHAMP: That's fine.

THE COURT: You know. And however you want to do it, as long as it's done that way, I'm not concerned about it. But I'll be on - around line...

MR. CHAMP: Okay.

THE COURT: ...as they say. All right?

MR. CHAMP: Thank you very much, Your Honour.

THE COURT: Thank you. Take care.

MR. WILSON: Thank you, sir. Thank you, counsel.

R E C E S S (4:03 p.m.)

U P O N R E S U M I N G (5:06 p.m.)

THE COURT: All right. So, how are we?

MR. CHAMP: Your Honour, I believe we have an agreement. Or, not I believe, we have an agreement and we're - we've sent the version to the court: to the registry and to Ms. McKinley (ph). And I think that's it.

It would just be, we'd ask, when you do get it, Your Honour, if you could sign and return to us.

THE COURT: Well, I'll return it to the registrar.

MR. CHAMP: I'd ask the registrar to send a PDF or scan it to the parties at their earliest - or as

soon as they can.

THE COURT: All right. Well, if you just wait, I'll see when I get it...

MR. CHAMP: Yeah.

THE COURT: .if I can sign it right away.

MR. CHAMP: Thank you, Your Honour.

... PAUSE

THE COURT: Haven't got it yet. We'll see. 'Cause I can sign it, I think, quickly. If I know....

... PHONE RINGING IN BACKGROUND

MR. WILSON: *[Indiscernible...ZOOM interference on channel, audio is distorted]* don't want to do that, what trick we just discovered of sending it a second time.

MR. CHAMP: Oh, my gosh. Okay.

MR. WILSON: I'm forwarding from your sent folder 'cause that seemed to speed it up for me, sir.

THE COURT: Okay.

MR. CHAMP: SJ courts - Eva (ph) - Vanessa Stewart - okay. On it's way again.

... PAUSE

THE COURT: *[Indiscernible...ZOOM interference on channel, audio is distorted]* Mr. Registrar, I just don't know whether it went to Ms. McKinley. And I don't know whether she's around. That's the....

MR. CHAMP: I sent it to - yeah, I can send it to the registrar as well. I used the - hold on. Mr. - Mr. Carter. No. Hold on.

THE COURT: Carlson.

MR. CHAMP: Got it.

THE COURT: I think it may have gone to Ms. McKinley, and that....

MR. CHAMP: It went to McKinley and also the registrar. But I'll get....

THE COURT: Yeah, sent it to the registrar just straight. And then....

MR. CHAMP: Yes. Sorry, Mr. Carlson.

THE COURT: It's all right.

CLERK REGISTRAR: For some reason though, it - when we're in the courtrooms it takes longer.

THE COURT: Oh, okay.

... PAUSE

THE COURT: The marvel's of modern technology.

MR. CHAMP: I'm so sleep deprived right now.

THE COURT: I can under - I think - I can understand that.

CLERK REGISTRAR: Okay. I now have it.

THE COURT: Okay. You send it to me. I'll PDF it and sign it.

MR. WILSON: And just so you're clear, sir, I have - I have reviewed it and I've worked with my friends to resolve any differences

[Indiscernible...multiple speakers at the same time, unable to decipher words spoken].

THE COURT: *[Indiscernible...multiple speakers at*

the same time, unable to decipher words spoken].

MR. WILSON: ...cooperative and *[indiscernible]*.

THE COURT: That's fine. No, I appreciate that you....Okay.

MR. CHAMP: Your Honour, I think - I just note, we didn't paginate it. I'm so sorry. It's two pages and it's not paginated. I'm gonna - I'll see if I can do that and resend it to Mr. Carter.

CLERK REGISTRAR: Carlson.

MR. CHAMP: Carlson.

THE COURT: Carlson.

MR. CHAMP: I'm so sorry. Insert page number - I'm not even....

Meanwhile, Your Honour, maybe you could just take a look to make sure that you don't have any concerns.

THE COURT: Yeah, well you'd better take our "draft order"

MR. CHAMP: Oh, yeah. Oh, yeah, you're right. Well, there we go. Good thing. Order.

THE COURT: Yeah, take out "draft order" and let's see what else.

MR. CHAMP: Okay, I've got the pen right now. So, if there's any other issues. I've taken out draft order and I've paginated.

THE COURT: Put - put Mr. Justice in from of McLean.

MR. CHAMP: Okay. I'm sorry, I know you told us that. I apologize.

THE COURT: It's all right. It's just - I guess I'm getting older.

MR. CHAMP: Oh, it doesn't have Mr. Justice McLean.

THE COURT: We'll, maybe I've got the wrong one then. It - the one I've got is just Justice McLean, draft order. So, maybe I....

MR. CHAMP: What's the - the - so the - the document is called "Li Interim Order CV-22-" that's the one. Unless I sent the - did I - hold on - did I send the wrong one to Mr. Carlson?

THE COURT: You might have.

MR. CHAMP: No, I didn't. No, I sent him the right one.

THE COURT: Okay.

MR. CHAMP: Li - Li - let me. I'm gonna open the one I sent him just to make sure.

THE COURT: Oh, I got draft order. I'm sorry, the one I - the one that's attached to Carlson is one that - Mr. Carlson is draft order.

MR. CHAMP: Yeah. Yeah, I've got Mr. Justice McLean in the one...

THE COURT: Okay.

MR. CHAMP: ...that I sent to Mr. Carlson.

THE COURT: Okay. Well, I'm trying to find it. Li Interim Order, is that the one?

MR. CHAMP: That's it.

THE COURT: Okay. There you go. Okay, that's fine. You - you've gotta take out "draft order".

MR. CHAMP: Yeah, I've taken out "draft order". I've paginated it. And I'll just - if you want....

THE COURT: Send it again. Send it again and then sign it.

MR. CHAMP: Well, is there - is there any other issues there, Your Honour?

5 Oh, yeah, 10:00 a.m., we put - for February the 16th, the returnable time we put at 10:00 a.m., is that fine?

THE COURT: That's fine.

MR. CHAMP: Okay, great. I'll send it right now.

THE COURT: That's fine.

10 ... PAUSE

MR. CHAMP: [phone ringing] Paul Champ.

15 ... PAUSE

MR. CHAMP: So, is that good, Your Honour?

THE COURT: I'm trying to find it. I've got so many e-mail now. It's buried in the electronic....

20 CLERK REGISTRAR: Your Honour?

THE COURT: Yes?

CLERK REGISTRAR: I just got the latest version from Mr. Champ now. So, I can....

25 THE COURT: Okay. Can you just send it as a separate - separate....

CLERK REGISTRAR: Yeah.

THE COURT: Because I'm - I'm lost in an e-mail chain.

30 ... PAUSE

CLERK REGISTRAR: The only thing you'll get is the attachment. Nothing - none - none of the rest of the chain.

THE COURT: That's fine. That's what I want.

Still got "draft order" on it though. The one I've got.

CLERK REGISTRAR: Then you're looking at the wrong one. The one I sent has - just has "order".

THE COURT: Okay, well, just let me see.

... PAUSE

THE COURT: Oh, for glory sake. Well, you're gonna have to send it again, because the one I've got has draft order still on it.

MR. CHAMP: So, is that good, Your Honour?

THE COURT: Yes. Well...

MR. CHAMP: Okay.

THE COURT: ...I've got to get it. I haven't got it yet.

MR. CHAMP: Well, we've all agreed on it. Is it okay, Your Honour, if we - we adjourn the hearing?

THE COURT: Yes.

MR. CHAMP: Okay.

THE COURT: Yes, if you trust me, you can - we'll adjourn the hearing.

MR. CHAMP: I think I trust you.

THE COURT: All right. Well, don't be so sure. But anyways.

MR. CHAMP: Okay. Thank you.

THE COURT: All right, thank you very much to

counsel. I appreciated your help.

MR. CHAMP: Thank you, Your Honour.

MS. STEWART: Thank you.

THE COURT: All right, thank you.

Matter is adjourned.

... MATTER ADJOURNED TO FEBRUARY 16, 2022

(5:15 p.m.)

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FORM 2
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I, Linda A. Lebeau, acknowledge the foregoing document of the court proceeding pertaining to the matter of Liv v. Barber et al held on FEBRUARY 7, 2022 with named participants conducted REMOTELY and live video feed from unidentified remote locations was produced to the best of my skills and ability. **Produced from one channel and live video feed recorded on LIBERTY file number 0411_CR34_20220207_093144__10_MCLEANH.dcr** certified in Form 1 by court-monitor Rosey Rosenberg.

February 23, 2022

Linda A. Lebeau

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