



Court File No:

Electronically issued : 04-Feb-2022
Délivré par voie électronique
Ottawa

**ONTARIO
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

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office,

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WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: _____

Issued by: _____

Registrar
Court House,
161 Elgin Street
Ottawa, Ontario

TO: Chris Barber
Swift Current, Saskatchewan

AND TO: Benjamin Dichter
Toronto, Ontario

AND TO: Tamara Lich
Medicine Hat, Alberta

AND TO: Patrick King
Red Deer, Alberta

AND TO: John Doe 1 to John Doe 60

CLAIM

1. The Plaintiff, on behalf of the Class described herein, claims the following:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative Plaintiff for the Class (as defined below);
 - (b) damages for private nuisance in the amount of \$4.8-million or any such amount that this Honourable Court deems appropriate;
 - (c) punitive damages in the amount of \$5-million;
 - (d) injunctive relief prohibiting the continuation of the nuisance;
 - (e) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, as amended;
 - (f) the costs of this action, including HST;
 - (g) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act*, 1992, S O 1992, c. 6; and
 - (h) such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. Over the past two years, the COVID-19 pandemic has caused significant stress, severe illness, death and grief to every person in Canada. Over 33,000 Canadians have died from COVID-19 and thousands more suffer from its prolonged effects.
3. Governments at all levels across the country have adopted public health measures to prevent severe illness and death from COVID-19. These public health

measures have caused significant disruption to the lives of every Canadian. Despite this disruption, the vast majority of Canadians support public health measures, including vaccine mandates, because they believe these measures save lives.

4. A minority of Canadians are strongly opposed to these public health measures. The Defendants are among this minority. To express their political opposition to COVID-19 public health measures, the Defendants organized a “Freedom Convoy” of vehicles, including a large number of semi-trailer-tractor trucks, to travel from different parts of Canada and converge on the national capital of Ottawa.

5. The Defendants planned to organize a large demonstration in the vicinity of the Parliament Buildings in Ottawa. Like many protesters, they wanted their voices heard by political leaders. To ensure that happened, the Defendants designed a plan to block all the streets and roadways around Parliament and the surrounding neighbourhood, and make as much noise as possible and cause discomfort to the political leaders. To make that noise, the Defendants planned, organized, encouraged and directed “Freedom Convoy” participants to blast the horns on their vehicles, non-stop, for several hours.

6. As planned by the Defendants, the Freedom Convoy vehicles began to arrive in Ottawa in Ottawa on Friday, January 28, 2022. As planned by the Defendants, the Freedom Convoy protests formally launched on Saturday, January 29, 2022. Unlike most protests, the Freedom Convoy decided to stay and keep protesting, every day and night, until the Government of Canada met their demands of dropping all public health measures across Canada. The fact that public health measures are predominantly implemented by provincial governments has not deterred the Defendants. At the time this claim is issued, the protest remains ongoing.

7. A key tactic of the Freedom Convoy is blasting vehicle horns non-stop, all day. These horns include the air horns and train horns on the many semi-trucks. Air horns and train horns create an extremely loud noise as a warning. Air horns and train horns emit noise in the range of 100 to 150 decibels. These horns are not meant to be used

for longer than a few seconds because the sound levels are dangerous and cause permanent damage to the human ear. Despite these dangers, the Freedom Convoy trucks have been blasting these dangerous horns continuously for 12 to 16 hours per day.

8. The historical neighbourhood around the Parliament Buildings is home to approximately 24,000 residents. These residents are used to the inconvenience of large demonstrations and protests. Sometimes they even join in if they believe in the cause. These residents understand and respect the importance of democratic freedoms, including the freedoms of association, assembly and expression. But they have never experienced anything like the constant and excruciatingly loud horns of the Defendants' Freedom Convoy. For the approximately 6,000 residents who live closest to the protests, the non-stop blaring horns have caused unbearable torment in the sanctity of their own homes.

9. The Freedom Convoy horn protest organized by the Defendants has caused significant mental distress, suffering and torment to the Plaintiff and the proposed Class Members who live in the six-block radius around the main protest streets. The horn protest has substantially and unreasonably interfered with the private use and enjoyment of the Class Members' property.

PARTIES

10. The Plaintiff Zexi Li resides in Ottawa, Ontario, within five blocks of Parliament Hill. She is a 21-year-old public servant and graduate of the University of Ottawa.

11. The Defendant Chris Barber resides in Swift Current, Saskatchewan. He is one of the organizers of the Freedom Convoy. He is a truck driver, who owns a trucking company in Saskatchewan.

12. The Defendant Benjamin Dichter resides in Toronto, Ontario. He is one of the organizers of the Freedom Convoy. Dichter is a former Conservative Party of Canada candidate and a prominent supporter of the People's Party of Canada.

13. The Defendant Tamara Lich resides in Medicine Hat, Alberta. She is one of the organizers of the Freedom Convoy and frequently acts as a spokesperson on social media accounts associated with the Freedom Convoy. She is listed as the organizer of the Freedom Convoy's fundraiser on the crowdsourced fundraising platform GoFundMe. Lich is the Secretary for the Maverick Party, a western separatist group formerly known as Wexit Canada, and was also an organizer for the Yellow Vests Canada movement.

14. The Defendant Patrick King resides in Red Deer, Alberta. He is one of the organizers of the Freedom Convoy. King was a co-founder of Wexit Canada and an organizer for the Yellow Vest Canada movement.

15. John Does 1 to 60 are drivers of semi-trucks that are parked in the downtown Ottawa core during the Freedom Convoy protest, blasting air horns and train horns on their trucks as a form of protest. The identities of these truck drivers are unknown at the time of the issuance of the claim.

16. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on her own behalf and on behalf of all other persons who reside within two blocks of the main protest streets.

17. The proposed members of the Class are:

all persons who reside in Ottawa, Ontario, from Bay Street to Elgin Street and Lisgar Street to Wellington Street.

ORGANIZING THE FREEDOM CONVOY PROTEST

18. In early January 2022, the Defendants began to organize a protest to express their political opposition to COVID-19 health measures. They discussed and created a common plan to have a “Freedom Convoy” of vehicles, including a large number of semi-trailer-tractor trucks, travel from different parts of Canada and converge in the national capital of Ottawa on January 29, 2022.

19. On or around January 14, 2022, the Defendants created a Facebook page called “Freedom Convoy 2022” which they described as a “meeting place to discuss logistics, organization and mobilization to restore our Freedoms”. Indeed, the Defendants used this Facebook page to discuss logistics, organization and mobilization for the Freedom Convoy.

20. On or around January 23, 2022, the Defendants also created a fundraising page for the Freedom Convoy on the crowdsourced fundraising website GoFundMe. The Defendant Lich is listed as the organizer of this GoFundMe page, and the Defendant Dichter is listed as a Team Member.

21. On their GoFundMe page, the Defendants discussed the logistics and organization for the Freedom Convoy and solicited donations from supporters to assist them with their common plan to travel to and occupy Canada’s capital.

22. The Defendants discussed the common goals that they hoped to achieve by organizing the Freedom Convoy, which included forcing Prime Minister Justin Trudeau and the federal government to announce a repeal of all public health measures.

23. The Defendants discussed and coordinated plans for how they would occupy Ottawa and how they would attempt to reach their common goals. They discussed setting up a command room or war room to further strategize once they reached Ottawa.

24. One of the main tactics coordinated by the Defendants, in support of their goal of forcing the federal government to listen to their demands, was for participants to make as much noise as possible when stationed in Ottawa's downtown. To make that noise, the Defendants planned, organized, encouraged and directed Freedom Convoy participants to continuously blast the horns of their vehicles, as described further below.

SETTING UP IN OTTAWA AND MAIN PROTEST STREETS

25. Starting on or around Friday, January 28, 2022, Freedom Convoy vehicles started to arrive in Ottawa. These vehicles included tractor trailers, tractors with no trailers, passenger vehicles, and large recreational vehicles ("RVs").

26. When they arrived in Ottawa, the Freedom Convoy vehicles began to congregate to block many of the streets surrounding Parliament Hill and in the Centretown neighbourhood.

27. Several hundred vehicles have remained camped out in Ottawa's downtown since January 28, 2022, lined up bumper-to-bumper. The clusters of vehicles are predominantly concentrated on the streets between Bay Street to Elgin Street and Laurier Avenue to Wellington Street.

28. For 24 hours per day, the semi-trucks have primarily remained lined and concentrated on Kent Street and Bank Street running north south, and on Wellington Street running east west. The trucks remain running all day and night, with other Freedom Convoy participants organizing the delivery of fuel in jerry cans.

HORN TACTIC

29. One of the main protest tactics employed by Freedom Convoy participants has been to make as much noise as possible to disturb individuals in Ottawa's downtown.

30. To make that noise, the Defendants planned, organized, encouraged and directed Freedom Convoy participants to blast the horns on their vehicles, non-stop, for several hours.

31. The Defendants coordinated their horn-blasting tactic with Freedom Convoy participants via social media channels, including Facebook and YouTube, and via the walkie-talkie app Zello.

32. As one example of this, on January 31, 2022, the Defendant King posted a YouTube video instructing all Freedom Convoy “truckers” to collectively honk for ten minutes straight every hour and half hour.

33. Initially, this honking would last from approximately 7AM to 1AM. On or around February 1, 2022, a new timeframe was coordinated for the honking, which now occurs from approximately 8AM to 11PM.

34. The Defendants have taken to social media and Zello to celebrate the honking and to encourage participants to continue employing this tactic.

35. The types of horns that have been employed as part of the horn-blasting tactic include air horns, which are only to be used for safety warnings, and train horns.

36. Operator manuals for the types of horns being used by the Freedom Convoy provide warnings that they produce “extreme loudness” and can cause permanent hearing damage.

DEFENDANTS’ CONDUCT IS UNLAWFUL

37. The Plaintiffs plead that the Defendants’ ongoing and concerted horn-blasting tactic is unlawful.

38. The Defendants’ conduct is clearly prohibited by sections 2, 3 and 15 of the City of Ottawa Noise By-Law, By-Law No. 2017-255.

39. Section 2 of By-Law No. 2017-255 states that no person shall cause or permit any bass noise, unusual noise or noise likely to disturb the inhabitants of the City.
40. Section 3 of By-Law No. 2017-255 states that no person shall cause or permit the ringing of any bell, sounding of any horn, or shouting in a manner likely to disturb the inhabitants of the City.
41. Section 15 of By-Law No. 2017-255 states that no person shall cause or permit unnecessary motor vehicle noise such as the sounding of the horn, revving of engine and the squealing of tires of any motor vehicle on any property other than a highway.
42. The level of noise emitted by the Defendants also exceeds the noise levels that would be permitted in a workplace setting, contrary to the Federal Occupational Health and Safety Regulations, SOR/86-304 enacted pursuant to the *Canada Labour Code*, RSC, 1985 c. L-2 and contrary to the Ontario Noise Regulation 381/15 enacted pursuant to the *Occupational Health and Safety Act*, RSO 1990, c 01.
43. The Defendants' horn-blasting also constitutes conduct that violates the *Criminal Code of Canada*, RSC 1985, c C-46 pursuant to sections 430(1)(d) (Mischief), 175(1)(d) (Cause Disturbance), and 180(1)(s) (Common Nuisance).
44. Finally, exposure to loud noise for a prolonged period of time and sleep deprivation are both techniques that have been found to constitute torture, and are considered to be cruel, inhumane and degrading treatment under international law.

IMPACT

45. When walking within 50 feet of the semi-trucks blasting their air horns, the sound pressure decibel level is between 100 and 105 constantly. When the train horns on the semis are blasted, the decibel level increases to 120 to 125.
46. For individuals who live in residences beside the streets where the horns are blasting, the sound within the home is approximately 80 decibels.

47. The normal sound in a home is 35 to 40 decibels. A normal conversation is 55 to 65 decibels. A lawn mower can be 88 to 94 decibels.

48. Sleep is best at 30 decibels or below and there can be significant interference with sleep when sound level decibels exceed 45.

49. Each 10 decibel increase in sound level equates to a doubling of the sound in the listener's perception. An increase of 20 decibels is a fourfold increase.

50. Hearing damage can occur at 90 decibel sound pressure level where the exposure is over 30 minutes. At 100 decibels, sound pressure can cause hearing damage in about 15 minutes; at 120 decibel sound pressure hearing damage can occur in a matter of seconds.

51. Prolonged exposure to sound levels of 70 decibels and above can cause psychological distress and interfere with psychological integrity.

52. The truck horns are causing moral and psychological harm to the Class Members. The horns are substantially interfering with the private use and enjoyment of their homes. With horns ending as late as 1am, and no earlier than 11pm, Class Members are experiencing significant sleep disturbances.

53. Class Members who leave their homes for work, groceries or necessities experience significantly elevated sound exposure. Some Class Members are avoiding going out as much as possible and are prisoners in their own homes. Others have been forced to leave their homes and find alternate accommodation. The Class Members are living in daily torment caused by the incessant blasting of truck horns.

PLAINTIFF'S PERSONAL EXPERIENCE

54. The Plaintiff, a resident of the Centretown neighbourhood in the heart of downtown Ottawa, has suffered mental distress, suffering and torment as a result of

the persistent and loud honking from several large trucks which have been camped outside of her residence since Friday, January 28, 2022.

55. While some of the honking sounds are from regular sized motor vehicle horns, the loudest and most persistent honks have come from large transport trucks. Some of these trucks are equipped with horns emit loud honking noises typical of vehicles of their size. A number of the trucks are equipped with horns which are similar in tone and volume to train horns.

56. From within her unit, the sound of all three types of honking horns from the persists at regular and frequent intervals from morning to night, sometimes as late as 1:30 am. With the exception of some short periods of reprieve late in the night, the sound feels to the Plaintiff as if it is nearly constant. The honking of the horns is frequently accompanied by loud music, sounds of shouting and fireworks. The combination of these sounds makes the Plaintiff feel as though she is living in a war zone.

57. The honking horns, in particular, have interfered with the sense of peace, safety and serenity which the Plaintiff previously enjoyed in her home. During the brief periods when the sound of honking horns subsides, the Plaintiff is unable to enjoy the relative quiet because she becomes riddled with anxious anticipation for the moment it will start up again. The Plaintiff has found this anxious anticipation almost as unbearable as the sounds of the horns themselves.

58. The Plaintiff has been unable to enjoy a restful night's sleep since the Freedom Convoy arrived in her neighbourhood. The only way the Plaintiff can fall asleep and temporarily escape the noise is by playing music on external speakers at 70-80% volume and then inserting noise-cancelling earphones or earplugs into her ears.

59. The Plaintiff is fearful every time she ventures outside. She does not leave her residence without first inserting noise-cancelling headphones into her ears. Even with these devices in her ears, the Plaintiff can still hear the sounds of the honking horns

very clearly. The sound is so loud that she can physically feel vibrations inside her ears.

60. When the Plaintiff ventures outside, she is almost immediately subjected to heckling by members of the Freedom Convoy, yelling at her to remove the mask she wears to protect herself and others from contracting COVID-19. When she ignores the heckles, members of the Convoy respond by honking their horns which invariably causes the Plaintiff to flinch. When the Plaintiff flinches, the hecklers cheer loudly.

61. Since Friday January 28, 2022, the Plaintiff has contacted the Ottawa Police Service on at least 14 occasions to complain about the noise and the distress it is causing her. In response to her calls, she has either been told that there's nothing that can be done or that there are officers on the ground who will address the issue, but no one ever comes and the noise continues unabated. The sense that police are impotent to enforce law and order has contributed to the Plaintiff's fear and anxiety which are further exacerbated by the intolerable levels of noise.

62. The Plaintiff loves her community and is heartbroken by the trauma that is being inflicted on her and her neighbours.

PRIVATE NUISANCE

63. The incessant blaring of the high decibel air horns and train horns substantially interferes with the private use and enjoyment of the Class Members' homes. The conduct is totally unreasonable and unjustified.

64. The Defendants Barber, Dichter, Lich and King have organized, planned, encouraged and directed the horn tactic by Defendants John Doe 1 to John Doe 60.

DAMAGES SUFFERED BY CLASS MEMBERS

65. As a consequence of the private nuisance by the Defendants, Class Members suffered injury and damages including:

- (a) emotional and mental distress;
- (b) difficulty concentrating;
- (c) interference with quiet enjoyment of home;
- (d) headaches; and
- (e) difficulty sleeping.

66. The estimated damages per Class Member is \$100 per day of the continued use of the unlawful horn tactic.

67. Some Class Members have incurred special damages for the cost of alternate accommodations and ear plugs, in an amount to be specified at a future date.

PUNITIVE DAMAGES

68. The Defendants deliberately planned the horn tactic to cause distress and discomfort to the Class Members and substantially interfere with the private enjoyment of their homes. The Defendants are aware or ought to be aware that the prolonged use of the extremely loud air horns and train horns can cause permanent hearing damage and psychological harm. The Defendants have acted with wanton disregard towards the residents of Ottawa.

69. This high-handed and callous conduct of the Defendants warrants the condemnation of this Honourable Court. Canada is a free and democratic society with a long tradition of peaceful protest and assemblies. The Defendants have abused those freedoms to cause serious harm to others, innocent bystanders to the Defendants' pursuit of their misguided political goals.

70. The Plaintiff proposes that this action be tried at the City of Ottawa, Ontario.

Dated this 4th day of February, 2022.

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ZEXI LI

-and -

Court File No.
CHRIS BARBER, BENJAMIN
DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOES 1-60
Defendants

Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

STATEMENT OF CLAIM

Proceedings under the *Class Proceedings Act*,
1992

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