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REGISTRAR / GREFFIER
COUR D'APPEL DE L'ONTARIO

Court of Appeal File No.: M53286
Court File No.: CV-22-00030791-0000

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE CORPORATION OF THE CITY OF WINDSOR

Applicant

-and-

PERSONS UNKNOWN

Respondents

-and-

ATTORNEY GENERAL OF ONTARIO and AUTOMOTIVE PARTS MANUFACTURERS
ASSOCIATION

Intervening Parties

-and-

THE DEMOCRACY FUND

Intervener as Friend of the Court

**NOTICE OF MOTION
(Leave to Appeal)**

THE DEMOCRACY FUND will make a motion in writing pursuant to Rule 61.03.1 of the *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194.

PROPOSED METHOD OF HEARING: The motion is to be heard in writing on a date to be fixed by the Registrar.

THE MOTION IS FOR:

1. An order granting The Democracy Fund standing to commence an appeal of Chief Justice Morawetz's order dated February 18, 2022, which granted a permanent injunction restraining all persons with notice of the order from:
 - a. Blockading and impeding access to the Ambassador Bridge and its direct or indirect approaching roadways and access points;
 - b. Breaching City of Windsor by-laws, including By-Law 9148 (Traffic By-Law), By-Law 233-2001 (Vehicle Idling By-Law), By-Law 25-2010 (Protection of Highways By-Law) By-Law 6716 (Noise By-Law) and By-Law 9023 (Parking By-Law);
 - c. Threatening, harassing or intimidating The City of Windsor's employees, servants, agents or other persons engaged in the administration or enforcement of municipal by-laws;
 - d. Counselling, via social media or otherwise, any person to impede or block access to the Ambassador Bridge and indirect or direct approaching roadways and access points; and
 - e. Physically preventing, impeding, restricting or in any way physically interfering with, or counselling others to impede, restrict or in any way physically interfere with, another person's compliance with this Order.

THE GROUNDS FOR THE MOTION ARE:

History of Proceedings

1. This proposed appeal has its origins in the “Freedom Convoy” protests which occurred at the Ambassador Bridge in The City of Windsor, Ontario, in February 2022.
2. On February 10, 2022, the Automotive Parts Manufacturer’s Association (“APMA”) brought an urgent without notice motion for an “interim, interlocutory, and/or permanent” injunction restraining certain named defendants and other persons from impeding access to and from the Ambassador Bridge.
3. There was no action or application underlying the APMA’s motion, but the APMA undertook to bring an action for damages on a forthwith basis pursuant to Rule 37.17 of the *Rules of Civil Procedure*.
4. A second motion was brought on February 10, 2022, in which The Corporation of the City of Windsor (“the City”) sought leave to intervene as a party.
5. Chief Justice Morawetz granted the City’s motion for intervener status but adjourned the APMA’s motion for one day until February 11, 2022. The adjournment was made to permit the motion to come to the attention of the defendants by way of a press release with URL links to download the motion materials and access the video hearing.

6. The Democracy Fund brought a motion for intervenor status as a friend of the court at the commencement of the APMA's motion on February 11, 2022. Chief Justice Morawetz orally granted this motion.
7. The Attorney General of Ontario was added as an intervener with party status on February 11, 2022.
8. The Chief Justice allowed Citizens for Freedom to make submissions on the motion. It is unclear whether this group made submissions as a party or as an intervener or simply as an interested person without status.
9. No defendants attended the APMA's motion for an interim injunction on February 11, 2022.
10. At the conclusion of the February 11, 2022, motion, Chief Justice Morawetz issued an order for an interim interlocutory injunction restraining the impeding and blocking of the Ambassador Bridge. The order stipulated that the matter would return by videoconference on February 18, 2022, for a hearing to continue the order.
11. The order of February 11, 2022, made provision for how notice of the order and hearing could be made, which was by press release containing a URL link. It did not make any provision for service of additional motion materials.

12. On the evening of February 17, 2022, one day before the motion to continue the order, the APMA served a supplementary motion record on the interveners which contained an affidavit from their general counsel attaching a draft notice of action as an exhibit. This document revealed, for the first time, the causes of action in the underlying proceeding, which were public nuisance, intentional interference with economic relations, inducement of breach of contract, intimidation, mischief and conspiracy.
13. Later in the evening of February 17, 2022, at approximately 8:18 p.m., the City served a supplemental motion record on the APMA and the interveners. This supplementary motion record contained four affidavits, three of which contained extensive hearsay evidence on the activities and the suspected activities of protestors. Importantly, the affidavit evidence also established that Ambassador Bridge was no longer blockaded as of February 14, 2022.
14. At approximately 8:34 p.m. on February 17, 2022, the City e-mailed an unissued Notice of Application to the APMA and the interveners. The City advised that it would be asking the court to continue the injunction under section 440 of the *Municipal Act* with itself as the main applicant. This unissued Notice of Application was not otherwise circulated.
15. The aforesaid unissued Notice of Application sought an order for an interlocutory injunction restraining and enjoining the respondents from impeding or blocking access to the Ambassador Bridge and its indirect or direct approaching roadways and access points. It did not seek an order for city wide compliance with by-laws or for any other injunctive relief, including a permanent injunction.

16. At the hearing of February 18, 2022, Chief Justice Morawetz granted the City's request to make the unissued application the underlying proceeding for the motion. The effect of this order was that it substituted the roles of the City and the APMA by making the City the main party and the APMA an intervenor. The order also changed the defendants from certain named persons to "persons unknown."

17. At the conclusion of the hearing, Chief Justice Morawetz issued a permanent injunction restraining persons from impeding or blocking access to the Ambassador Bridge and its indirect or direct approaching roadways and access points.

18. The Chief Justice also ordered other relief, which was not set out in the claim for relief, including:

- a. An injunction restraining any person from breaching certain City of Windsor by-laws, including By-law 9148 (Traffic By-Law), By-Law 233-2001 (Vehicle Idling By-Law), By-Law 25-2010 (Protection of Highways By-Law), By-Law 6716 (Noise By-Law) and By-Law 9023 (Parking By-Law);
- b. An injunction restraining any person from threatening, harassing or intimidating City of Windsor employees, servants, agents or person engaged in the administration or enforcement of municipal by-laws;

- c. An injunction restraining any person from counselling, via social media or otherwise, any person to impede or block access to the Ambassador Bridge and indirect or direct approaching roadways and access points for as long as this Order is in effect; and
 - d. An injunction physically preventing, impeding, restricting or in any way physically interfering with, or counselling others to impede, restrict or in any way physically interfere with, another person's compliance with this order.
19. In reasons which were subsequently released, the Chief Justice stated that he found that the City met the test for a permanent injunction under section 440 of the *Municipal Act*.

Errors

20. The Democracy Fund submits that the Chief Justice committed the following errors:
- a. The Chief Justice erred in granting the extraordinary remedy of a permanent injunction on the basis of an application which was not issued and for which notice was not provided to the defendants;
 - b. The Chief Justice erred in granting the extraordinary remedy of a permanent injunction without adhering to fundamental procedural safeguards including the right of notice and the right to be heard;

- c. The Chief Justice erred in granting the extraordinary remedy of a permanent injunction where the evidence showed that defendants had ceased their unlawful activity and that an injunction would serve no purpose;
- d. The Chief Justice erred in ordering a permanent injunction restraining activity which was not included in the claim for relief;
- e. The Chief Justice erred in ordering a permanent injunction restraining activity which falls outside the scope of s. 440 of the *Municipal Act*;
- f. The Chief Justice erred in ordering the extraordinary remedy of a permanent injunction on the basis of affidavit evidence that contained hearsay statements that were not tested by cross-examination and which could not be tested by cross-examination due to untimely notice or a complete lack of notice.

Standing

21. The court has inherent jurisdiction to grant leave to a non-party to commence an appeal.

22. Several factors support this application for leave to commence an appeal as a non-party, including that the facts that:

- a. The appeal relates to the equitable remedy of an injunction;

- b. The Democracy Fund has a personal stake in the appeal as a civil liberties charity whose mandate is to preserve and protect *Charter* rights, including the right to peaceful assembly.
- c. The Democracy Fund has been heavily involved in providing free legal information to peaceful protestors associated with the Freedom Convoy throughout Ontario. It is currently defending several persons whose criminal charges associated with the Freedom Convoy have underlying *Charter* issues.
- d. The Democracy Fund was granted leave to intervene in the motion as a friend of the court where it preserved the adversarial process by opposing the relief sought by the moving parties and its supporting intervenors.
- e. The defendants are “persons unknown” who did not appear at the motion and who were not given notice of City of Windsor’s application. These unknown persons are very unlikely to commence an appeal.
- f. There is no reasonable or effective means for an appeal to be heard unless the court grants leave to The Democracy Fund to commence an appeal.
- g. The appeal raises serious justiciable issues about procedural fairness in the civil context and the law of injunctions.

- h. There is a public interest in appealing the Chief Justice's order because it has the effect of permanently converting by-law infractions into arrestable offences which can be punished by criminal contempt and disobeying a court order.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED at the hearing of the motion:

1. The Motion Record of the APMA dated February 10, 2022;
2. The Motion Record of the City of Windsor dated February 10, 2022;
3. The Supplementary Motion Record of the APMA dated February 11, 2022;
4. The Supplemental Affidavit of Jason Bellaire sworn February 11, 2022;
5. The Affidavit of Clifford Rosen sworn February 11, 2022;
6. The Affidavit of Adam Blake-Gallipeau sworn February 11, 2022;
7. The Supplemental Affidavit of Jason Ward Reynar sworn February 11, 2022;
8. The order of Chief Justice Morawetz dated February 11, 2022;
9. The reasons of Chief Justice Morawetz dated February 14, 2022;
10. The Supplementary Supplementary Motion Record of the APMA dated February 17, 2022;
11. The Affidavit of Stephen Heimann sworn February 17, 2022;
12. The Supplementary Factum of the AMPA dated February 17, 2022;
13. The Supplementary Factum of the AMPA dated February 17, 2022;
14. The Supplemental Motion Record of the Intervenor, City of Windsor dated February 17, 2022;
15. The City of Windsor's e-mail containing the unissued Notice of Application dated February 17, 2022;
16. The City of Windsor's Unissued Notice of Application;

17. The Affidavit of Nicolas Wansbutter sworn February 18, 2022;
18. The Affidavit of Sherrie Marie Peroni sworn February 18, 2022;
19. The Supplemental Affidavit of Sherri Marie Peroni sworn February 18, 2022;
20. The Consolidation Order of Chief Justice Morawetz dated February 18, 2022;
21. The Injunctive Order of Chief Justice Morawetz dated February 18, 2022;
22. The Reasons of Chief Justice Morawetz dated February 22, 2022;
23. Such other materials as counsel may advise and the court may permit.

March 3, 2022

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The Corporation of the City of Windsor v. Persons Unknown

Court of Appeal File No: M53286

Superior Court File No: CV-22-0030791-0000

ONTARIO
COURT OF APPEAL

Proceeding commenced at Windsor

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(Leave for Appeal)

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