



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**TAMARA LICH, CHRIS BARBER, TOM MARAZZO, SEAN TIESSEN,
MIRANDA GASIOR, DANIEL BULFORD, DALE ENNS, RYAN
MIHILEWICZ, BRAD HOWLAND, HAROLD JONKER, JONKER
TRUCKING INC. and FREEDOM 2022 HUMAN RIGHTS AND FREEDOMS**

Plaintiffs

-and-

OTTAWA POLICE SERVICES BOARD

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs.
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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **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 PLAINTIFFS' CLAIM, and \$1,000.00 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 plaintiffs' claim and **\$400.00** for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL BE AUTOMATICALLY 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: February 2, 2024

Issued by: _____
Local registrar

Address of
court office: 161 Elgin Street
Ottawa, ON K2P 2K1

TO:

Ottawa Police Services Board
110 Laurier Avenue West
Ottawa, ON K1P 1J1

Defendant

CLAIM

1. The plaintiffs, Chris Barber, Tamara Lich, Daniel Bulford, Dale Enns, Miranda Gasior, Tom Marazzo, Ryan Mihilewicz, Sean Tiessen, Freedom 2022 Human Rights and Freedoms, Harold Jonker, Jonker Trucking Inc. and Brad Howland, claim against the defendant, Ottawa Police Services Board (“**OPSB**”) for:

- a) contribution, indemnity and relief over with respect to any and all damages, amounts, interest and costs which the plaintiffs in this action are ordered to pay the plaintiffs in the action entitled *Zexi Li et al v. Chris Barber et al.*, and bearing Court File No. CV-22-00088514-00CP (the “**Li Class Action**”); and
- b) such further and other relief as this Court considers appropriate.

2. As particularized in the Further Fresh as Amended Statement of Claim filed in the Li Class Action (as described further below), the plaintiffs in the Li Class Action, Zexi Li, Happy Goat Coffee Company Inc., 7983794 Canada Inc. (c.o.b. as Union: Local 613) and Geoffrey Devaney are the putative class plaintiffs purporting to represent the residents, workers, and business owners of a defined area in downtown Ottawa.

3. As described in the Further Fresh as Amended Statement of Claim in the Li Class Action, the plaintiffs in this action are defendants in the Li Class Action and are alleged by the plaintiffs in the Li Class Action to fall into one of three categories of defendants in the Li Class Action (as described below): “organizers”, “truckers”, and “donors”. In essence, the plaintiffs in this action are all alleged in the Li Class Action to have acted with a “common design” of creating a significant

nuisance in downtown Ottawa during the months of January and February 2022, thereby causing the Li Class Action plaintiffs damage.

4. The defendant, OPSB, is a municipal police services board and a Board within the meaning of the *Police Services Act*, R.S.O. 1990, c P.15 (“PSA”). OPSB is responsible for the provision of adequate and effective police services in the municipality of Ottawa. Pursuant to section 50(1) of the PSA, the OPSB is liable in respect of torts committed by members of the Ottawa Police Service (“OPS”) in the course of their employment.

5. On February 4, 2022, the plaintiff Li commenced an action in this Court, entitled *Zexi Li v. Chris Barber, Benjamin Dichter, Tamara Lich, Patrick King, and John Does 1 to 60* and bearing Court File No. CV-22-00088514-00CP against some of the plaintiffs in this action, and others (the “Li Class Action”). The Li Class Action is a proposed class proceeding commenced under the *Class Proceedings Act*, 1992, SO 1992, c. 6.

6. The Statement of Claim in the Li Class Action was subsequently amended on or about February 18, 2022. The Fresh as Amended Statement of Claim in the Li Class Action bore the new title of proceedings *Zexi Li, Happy Goat Coffee Company Inc., 7983794 Canada Inc. (c.o.b. as UNION: LOCAL 613) and Geoffrey Devaney v. Chris Barber, Benjamin Dichter, Tamara Lich, Patrick King, James Bauder, Brigitte Belton, Daniel Bulford, Dale Enns, Chad Eros, Chris Garrah, Miranda Gasior, Joe Jansen, Jason Laface, Tom Marazzo, Ryan Mihilewicz, Sean Tiessen, Nicholas St. Louis (a.k.a. @NOBODYCARIBOU), Freedom 2022 Human Rights and Freedoms, John Does 1 to 60 and Janes Does 1 and 2*.

7. The Fresh as Amended Statement of Claim in the Li Class Action was amended a second time on or about March 14, 2023. The Further Fresh as Amended Statement of Claim in the Li

Class Action now bears the new title of proceedings *Zexi Li, Happy Goat Coffee Company Inc., 7983794 Canada Inc. (c.o.b. as UNION: LOCAL 613) and Geoffrey Devaney v. Chris Barber, Benjamin Dichter, Tamara Lich, Patrick King, James Bauder, Brigitte Belton, Daniel Bulford, Dale Enns, Chad Eros, Chris Garrah, Miranda Gasior, Joe Jansen, Jason Laface, Tom Marazzo, Ryan Mihilewicz, Sean Tiessen, Nicholas St. Louis (a.k.a. @NOBODYCARIBOU), Freedom 2022 Human Rights and Freedoms, GiveSendGo LLC, Jacob Wells, Harold Jonker, Jonker Trucking Inc. and Brad Howland.*

8. In their Further Fresh as Amended Statement of Claim, the plaintiffs in the Li Class Action claim against the defendants, including the plaintiffs in this action, for the torts of private and public nuisance in connection with their participation in a protest that took place in downtown Ottawa during January and February of 2022. In total, the plaintiffs in the Li Class Action claim from the defendants, including the plaintiffs in this action, at least \$290,000,000 in general, special and punitive damages, as well as other heads of relief, all as particularized in the plaintiffs' Further Fresh as Amended Statement of Claim in the Li Class Action.

9. In response, the plaintiffs in this action have served or will serve a Statement of Defence in the Li Class Action, in which, among other things, they (a) deny all allegations of wrongdoing made against them in the Further Fresh as Amended Statement of Claim in the Li Class Action; (b) deny that the plaintiffs in the Li Class Action have sustained any damages or losses; and (c) plead that if any damages and losses were sustained by the plaintiffs in the Li Class Action, which is not admitted but specifically denied, such damages and losses were caused or contributed to by the negligence or tortious conduct of the OPS, which failed to ensure that Freedom Convoy vehicles did not park in downtown Ottawa at the beginning of the protest, as originally planned.

10. As pleaded in the plaintiffs' Statement of Defence in the Li Class Action, with the exception of Brad Howland, the plaintiffs in this action intended to stage a peaceful demonstration in the vicinity of the Parliament Buildings in downtown Ottawa in January and February 2022 (the "**Protest**"). Their goal was to advance certain grievances to their federal political leaders through the exercise of their *Charter*-protected fundamental freedoms including freedom of expression and peaceful assembly.

11. The OPS is the police force with jurisdiction in downtown Ottawa and in all areas where the Protest occurred.

12. None of the defendants in the Li Class Action, including the plaintiffs in this action, had originally expected to park any vehicles on the streets of downtown Ottawa as part of the Protest. Rather, everyone had been expecting that Freedom Convoy vehicles would park in "staging areas" selected by the Ottawa Police Service located away from residential downtown Ottawa, and that shuttles or other forms of transportation would ferry protestors from those staging areas to Parliament Hill for peaceful assembly. Those staging areas were lengthy designated stretches of Sir John A. MacDonald Parkway (to the west of downtown) and Sir George Etienne Cartier Parkway (to the east of downtown), which collectively were able to accommodate approximately 2,500 tractor-trailer units. A third staging area was located on Wellington St., in front of the Parliament Buildings, which was able to accommodate only a small number of trucks (i.e. less than 40 tractor-trailer units).

13. The OPS provided maps and instructions on where trucks should park and what routes they should take to arrive at the various staging locations. This was a plan that had been communicated to protestors, including the plaintiffs in this action, by the OPS before trucks began to arrive in

Ottawa. All protestors, including the plaintiffs in this action, were expecting to adhere to the police plan.

14. As trucks started to arrive in Ottawa, the OPS changed the plan. The plaintiffs in this action have no knowledge as to why the OPS changed the plan or which member(s) of the OPS chose to change the plan. Rather than guiding trucks to the various agreed-upon staging areas, OPS vehicles instead led trucks to the downtown core and directed them to park all over downtown Ottawa. As required pursuant to section 134(1) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, protestors followed the directions of the OPS (or other authorities) and parked their trucks as directed.

15. Once the trucks were parked downtown, no one subsequently ordered any trucks to move or relocate to a different part of the city until the protest ended weeks later, after the federal government declared a public order emergency.

16. In addition to the above allegations, the plaintiffs in this action repeat, adopt and rely on all of the allegations in their Statement of Defence in the Li Class Action.

17. The plaintiffs in this action plead that members of the OPS owed a common law duty of care to citizens and protestors at the Protest, including the plaintiffs in this action, to act as reasonable police officers would in like circumstances. In particular, members of the OPS owed a duty to both citizens and the plaintiffs in this action to reasonably assist in facilitating an orderly and peaceful protest.

18. In addition, members of the OPS owed statutory duties to the citizens and protestors at the Protest, including the plaintiffs in this action, as set out in the PSA, including, but not limited to, sections 4, 41, and 42 of the PSA.

19. By taking the actions described in this action and in the plaintiffs' Statement of Defence in the Li Class Action, members of the OPS breached their common law and statutory duties of care owed to both the plaintiffs in the Li Class Action and the plaintiffs in this action, and were therefore negligent, particulars of which negligence include, but are not limited to, the following:

- a) contrary to the agreed-upon plan between the OPS and the protestors, the OPS directed hundreds of commercial and other vehicles to park in downtown Ottawa during the Protest, including in residential neighbourhoods. But for such conduct by the OPS, the alleged nuisance claimed by the Li Class Action plaintiffs could never and would never have taken place;
- b) the OPS were overwhelmed by the number of vehicles arriving in downtown Ottawa, despite efforts by the plaintiffs in this action and others to communicate such information to them before arrival;
- c) the OPS did not read available police intelligence reports, watch the national news, or review any other reporting which widely recognized the size and scale of the Protest;
- d) in the alternative, the OPS was aware of the size and scale of the Protest and choose to disregard this information;
- e) the OPS failed to adequately plan for the Protest;
- f) the OPS placed inexperienced officers in leadership positions;

- g) the OPS did not direct protestors' vehicles to leave downtown Ottawa when it became known that they would not leave of their own accord;
- h) in the alternative, the OPS did not direct said vehicles to leave in a timely manner; and
- i) such further and other particulars as may become known throughout the course of this proceeding.

20. In the event that the plaintiffs in this action are found liable for any damages or losses claimed by the plaintiffs in the Li Class Action, which is not admitted but specifically denied, then the plaintiffs in this action plead that such damages or losses were caused or contributed to by the negligence or other tortious conduct of the OPS (for whose conduct OPSB is liable at law) as particularized above and in the plaintiffs' Statement of Defence in the Li Class Action.

21. Accordingly, the plaintiffs in this action plead that by virtue of OPS's negligence or other tortious conduct (for whose conduct OPSB is liable at law), the plaintiffs in this action are entitled to contribution, indemnity and relief over from OPSB for any amounts that the plaintiffs in this action are found liable to pay the plaintiffs in the Li Class Action.

22. The plaintiffs in this action plead and rely on the *Negligence Act*, R.S.O. 1990, c. N.1, the *Police Services Act*, R.S.O. 1990, c. P.15 and the *Highway Traffic Act*, R.S.O. 1990, c. H.8.

23. The plaintiffs in this action propose that the trial of this third party claim take place at the same time as, or immediately before or after, the trial of the Li Class Action, which is presently before the Court in Ottawa.

February 2, 2024

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CHRIS BARBER ET AL.
PLAINTIFFS

-and-

OTTAWA POLICE SERVICES BOARD
DEFENDANT

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT OTTAWA

STATEMENT OF CLAIM

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