Municipalities and the Right to Protest / Encampments

The Ambassador Bridge Protests

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September 26, 2024
IMLA 89th Annual Conference, Orlando, FL – Canada Day Program

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The Ambassador Bridge Blockade

- January 15, 2022: enforcement of vaccination requirement applies to truckers entering Canada at international border crossings
- January 29: Rigs began to block downtown traffic in Ottawa
- February 7, 2022: Protest obstructs Ambassador Bridge



Source: The Toronto Star. *Protestors could be removed from Ambassador Bridge this evening if court grants injunction, legal expert says*. February 11, 2022. Available: https://www.thestar.com/business/2022/02/11/protesters-could-be-removed-from-ambassador-bridge-this-evening-if-court-grants-injunction-legal-expert-says.html

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Injunctions – Ontario's *Municipal Act*, s. 440

Section 440 Ontario's *Municipal Act*, SO 2001, c 25:

> **440** If any by-law of a municipality or by-law of a local board of a municipality under this or any other Act is contravened, in addition to any other remedy and to any penalty imposed by the by-law, the contravention may be restrained by application at the instance of a taxpayer or the municipality or local board.

Statutory municipal injunctions – Modified Test

- Test for interlocutory injunction under section 101 of the *Courts of Justice Act – RJR MacDonald Inc. v Canada (Attorney-General).* The moving party must demonstrate that:

    1. there is “a serious question to be tried”;
    2. “irreparable harm”; and
    3. balance of convenience favors granting the injunction.

- Modified test for a statutory injunction brought by a municipality to restrain breaches of by-laws: Modified test recognizes presumption municipalities are enforcing the public interest. Injunctive relief may be granted where the Court is satisfied that:

    1) the Applicant has established a strong *prima facie* case that a by-law has been breached and that the breach is ongoing; and
    2) a permanent statutory injunction under section 440 is the appropriate remedy.

    Automotive Parts Manufacturers’ Association v. Boak, 2022 ONSC 1001

Advantages of a statutory injunction

Where a municipal authority seeks an injunction to enforce a by-law which is being breached:

- Court's discretion is more fettered
- No need to prove damages are inadequate or that irreparable harm will result
- Proof of damages / proof of harm to the public not an element of the legal test
- No need for other enforcement remedies to have been pursued

The Court has discretion to *not* grant an injunction even where a municipality has established a *prima facie* breach. This discretion is narrow and "arises only in circumstances that are truly exceptional."

The Corporation of the Town of Wasaga Beach v. Persons Unknown, 2023 ONSC 4929 at para. 23; *The Corporation of the City of Windsor v Persons Unknown*, 2022 ONSC 1168 at para 55 (citing *Amaranth (Township) v Ramdas*, 2020 ONSC 2428 at para 55, and *Newcastle Recycling Ltd v Clarington (Municipality)*, [2005] OJ No 5344 at para 32

Ambassador Bridge injunction timeline

- February 7, 2022: Protest obstructed Ambassador Bridge
- February 10, 2022: Motion for an injunction re Ambassador Bridge – adjourned to Feb. 11
- February 11, 2022: Ontario declaration under the EMCPA (revoked February 23, 2022. Return date of Windsor Injunction motion, injunction granted (RJR test and s. 440)
- Weekend of February 11 – 13: number of protestors increased to 600 to 800 individuals around Ambassador Bridge
- February 13, 2022: Police clear Bridge of protesters and vehicles
- February 14, 2022:
    - Early morning: police announced Bridge was open to traffic
    - Federal declaration of a public order emergency under Emergencies Act, R.S.C. 1985 c.22 (4th Supp) (revoked February 23, 2022)
    - City of Windsor declares state of emergency re blockade of Ambassador Bridge
- February 18, 2022: Hearing to continue Windsor injunction – order granted under s. 440
- October 26, 2022: Leave to appeal sought by The Democracy Fund denied by OCA

The Windsor Injunction

- *Automotive Parts Manufacturers' Association v Boak, 2022 ONSC 1001*
- *The Corporation of the City of Windsor v Persons Unknown, 2022 ONSC 1168*

Breaches of existing City by-laws:

- By-law 9148 (traffic by-law) - ss. 7, 12 prohibits the obstruction of roads and highways
- By-law 233-2001 (vehicle idling by-law) – including:
  - 2. (1) No person shall cause or permit a Motor Vehicle, a Commercial Motor Vehicle or a Boat to idle for more than three (3) continuous minutes (180 seconds)
- By-law 25-2010 (protection of highways by-law)
- By-law 6716 (noise by-law), and
- By-law 9023 (parking by-law);

THE CITY OF WINDSOR
ONTARIO, CANADA

News Release

For Immediate Release
February 18, 2022

Ontario Superior Court Order Extended

After a hearing held on Friday February 18, 2022, Chief Justice Morawetz of the Ontario Superior Court of Justice granted a continuation of the injunction that was ordered on February 11, 2022 to restrain individuals from establishing a blockade, or in any way impeding access, to the Ambassador Bridge.

The February 18, 2022 Order provides that any persons having notice of the Order are restrained and enjoined from impeding or blocking access to the Ambassador Bridge and indirect or direct approaching roadways and access points, until further order of the Court.

The February 18, 2022 Order also, until further order of the Court, restrains and enjoins any persons having notice of the Order from directly or indirectly, by any means whatsoever:

a. breaching the following By-laws of the City of Windsor: 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. threatening, harassing or intimidating the applicant's employees, servants, agents or other persons engaged in the administration or enforcement of municipal by-laws; and

c. 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;

d. 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 Court ordered that notice of the injunction Order shall be given as follows:

"… by the creation of a URL whereby this Order can be viewed and downloaded, with the Plaintiff, The Corporation of the City of Windsor, and the Attorney General of Ontario issuing press releases containing the URL linking to the Order."

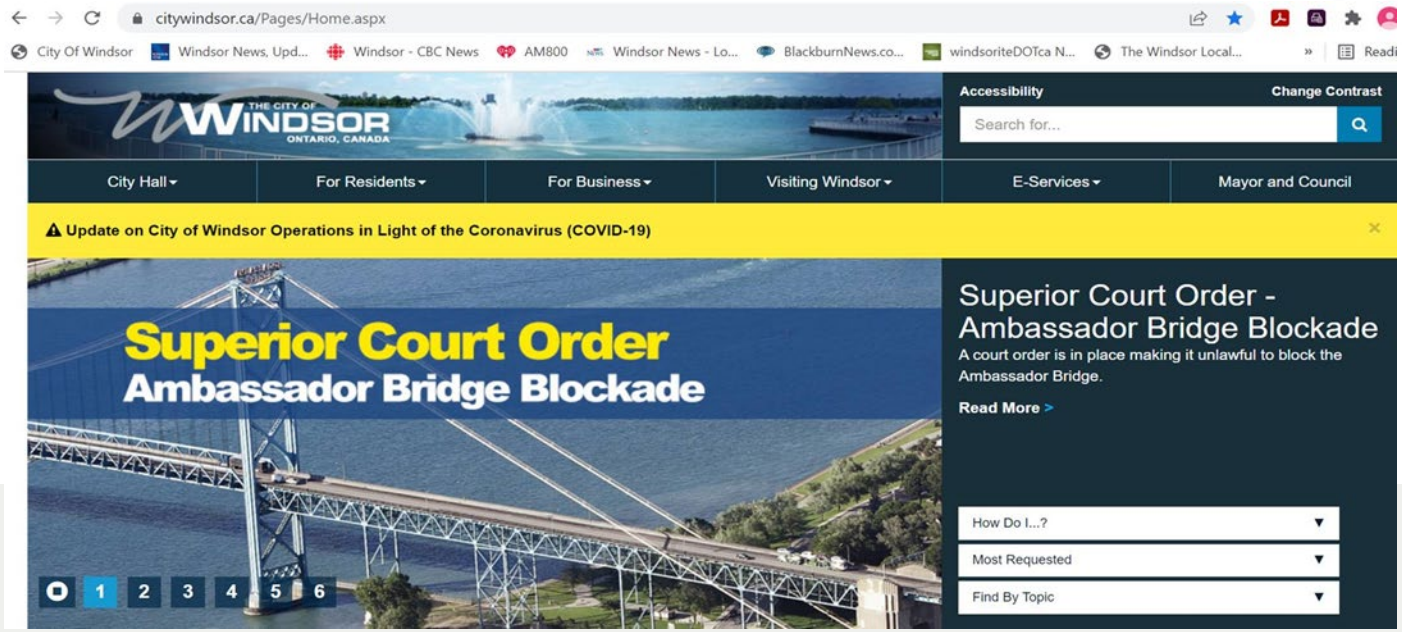
In accordance with the Order of Chief Justice Morawetz issued February 18, 2022, the link to view and download the injunction Order is found at:

http://www.citywindsor.ca/Newsroom/Documents/ISSUED%20FINAL%20Order%20to%20Continue%20Injunction%20Chief%20Justice%20Morawetz%20February%2018%202022.pdf

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Notice



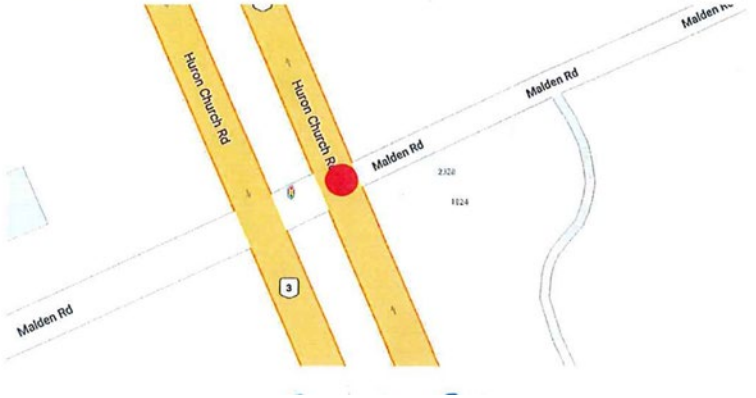


Huron Church Injuctions signs

Location: Huron Church at Malden East side

Date/Time Installed: Feb 15, 2022 @ 9:30am





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The Right to Protest

- *Automotive Parts Manufacturers' Association v Boak,* 2022 ONSC 1001 at paras. 48 – 54:

"The APMA, the City and the Attorney General do not seek to prohibit the right of the Protesters to express their views or exercise their rights. They are seeking to prohibit the Protesters' unlawful activity, which includes preventing and obstructing the public's access to the Bridge.

The Protesters' claim of irreparable harm to their Charter rights if they are enjoined from committing unlawful acts does not outweigh the harm caused by those unlawful acts. The Protesters have no legal right to block or impede access to the Bridge. As Brown, J. (as he then was) said of the protesters blockading a Toronto-Montreal main railway line in Canadian National Railway Co. v. Doe, 2013 ONSC 115, at para. 11:

> … While expressive conduct by lawful means enjoys strong protection in our system of governance and law, expressive conduct by unlawful means does not. No one can seriously suggest that a person can block freight and passenger traffic on one of the main arteries of our economy and then cloak himself with protection by asserting freedom of expression. The Canadian Charter of Rights and Freedoms does not offer such protection …"

The Right to Protest – Cont.

The Corporation of the City of Windsor v Persons Unknown, 2022 ONSC 1168 at paras. 59 – 64:

"Court orders are not recommendations or suggestions to be followed at the discretion of those to whom it applies. The rule of law requires that everyone obey the law. Significant, organized, deliberate and persistent defiance of the law and court orders is a serious threat to the rule of law which is one of the foundations of a functioning democracy."

"… absent a constitutional challenge to the by-laws in question, they are presumptively valid and remain in force and in effect. A consideration of the protesters' Charter rights is therefore not required."

"… neither the municipal by-laws nor the injunction granted on February 11, 2022 prevent the protesters from lawfully expressing their message and exercising their ss. 2(b) and (c) Charter rights. However, the Charter does not protect expressive conduct by unlawful means, which includes breaching presumptively valid laws or court orders. One of the court's most important rules is that if it makes an order, unless and until that order is either stayed or reversed, or an exception to the order is specifically granted, the order must be respected and obeyed."

Other municipal injunctions re: protests

1. Ottawa: February 14, 2022: Granted a permanent injunction

2. Calgary:

    - March 18, 2022: Granted an interim injunction on re: Beltline protests
    - April 22, 2022: The Democracy Fund filed an Application seeking to set aside the interim injunction
    - April 26, 2022: Calgary announced it discontinued its application for a permanent injunction (as it served its intended purpose)

3. Barrie: May 13, 2021: City filed an injunction (adjourned twice and was not rescheduled – respondents undertook not to contravene the *Reopening Ontario Act* on City property until the disposition of the application)

Cont.

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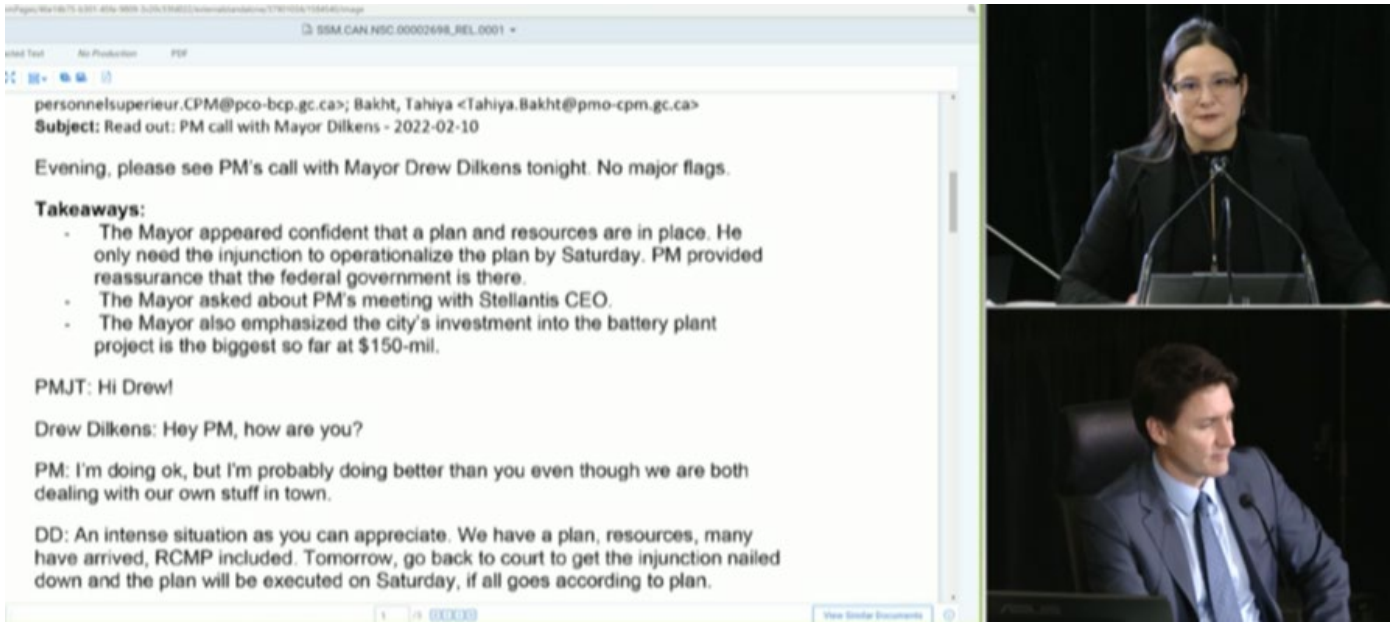
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Public Order Emergency Commission

- Inquiry into the first use of the *Emergencies Act* since it was enacted in 1988
- Commissioner Rouleau ultimately concluded that the federal government met the “very high” threshold needed to invoke the *Emergencies Act.* However, Commissioner Rouleau also found that the situation could have been avoided, citing failures in policing and federalism.





personnelsuperieur.CPM@pco-bcp.gc.ca>; Bakht, Tahiya <Tahiya.Bakht@pmo-cpm.gc.ca>
Subject: Read out: PM call with Mayor Dilkens - 2022-02-10

Evening, please see PM's call with Mayor Drew Dilkens tonight. No major flags.

Takeaways:

- The Mayor appeared confident that a plan and resources are in place. He only need the injunction to operationalize the plan by Saturday. PM provided reassurance that the federal government is there.
- The Mayor asked about PM's meeting with Stellantis CEO.
- The Mayor also emphasized the city's investment into the battery plant project is the biggest so far at $150-mil.

PMJT: Hi Drew!

Drew Dilkens: Hey PM, how are you?

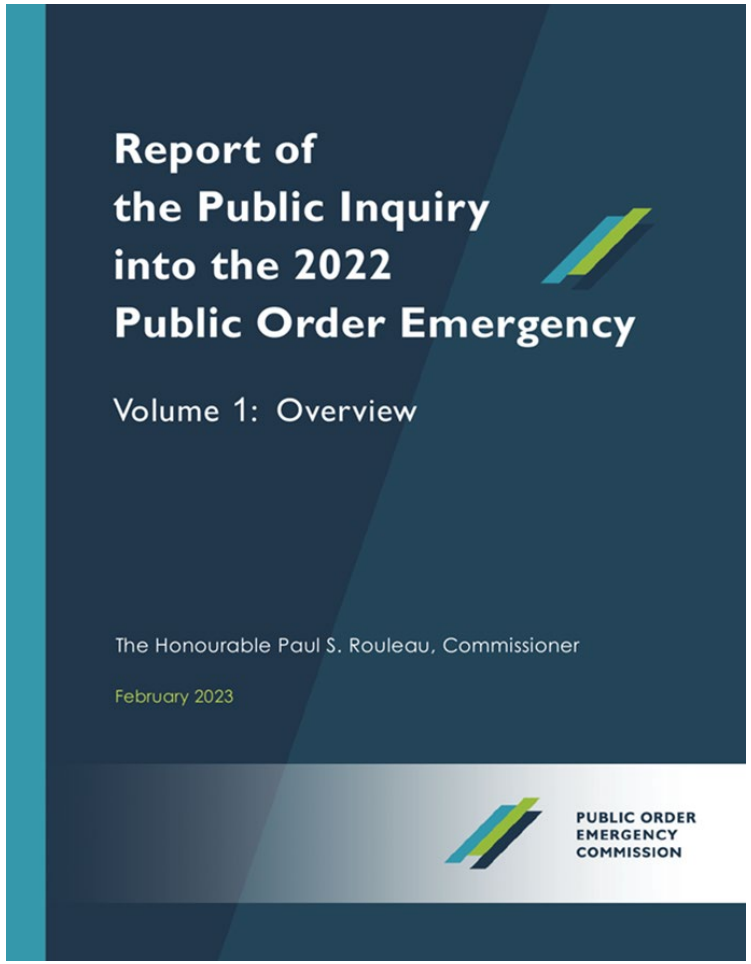
PM: I'm doing ok, but I'm probably doing better than you even though we are both dealing with our own stuff in town.

DD: An intense situation as you can appreciate. We have a plan, resources, many have arrived, RCMP included. Tomorrow, go back to court to get the injunction nailed down and the plan will be executed on Saturday, if all goes according to plan.

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Lessons learned – POEC

- Commissioner Rouleau found, among other things:
  - In an emergency, unified and effective communication is crucial
  - Governments should take early and proactive action with the tools they have at their disposal. This involves active balance of *Charter* rights
  - Value of pre-existing, collaborative relationships
  - Importance of collaboration between levels of government.
- Economic concerns can be relevant to determining whether a national emergency exists, if it is significant enough to put the life, health and safety of Canadians in danger
- Deterrence and negotiation is preferable to removal by force.
- Protest activities are subject to reasonable limits which, when exceeded, may be restricted or even punished. Windsor's successful injunction is an example of an appropriate restriction in this case



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Recommendations

Windsor Recommendation 1

1) All levels of government (federal, provincial/territorial, Indigenous, municipal) must urgently coordinate and agree on an inter-jurisdictional framework for protection of critical infrastructure. This framework should:
    a. Include consideration of prevention, mitigation, preparedness, response and recovery, and not be limited to response alone;
    b. clarify the definition of "critical infrastructure", building on the 10 sectors of critical infrastructure listed in the National Strategy for Critical Infrastructure (for example, confirm that international border crossings and the Parliamentary Precinct are critical infrastructure);
    c. ensure a clear command and control structure;
    d. establish or link to multi-jurisdictional and multi-agency structures to share information nationally about upcoming potential threats and lessons learned for response;
    e. include event planning and execution including assignment of responsibilities;
    f. build in constitutional protection considerations into the emergency response to avoid overreach in an emergency;
    g. provide for resources required to support the framework, including to build local resilience and to respond to all-hazards; and
    h. provide an appropriate and transparent allocation of responsibility for costs.

    A federal ministry – such as Public Safety Canada or Emergency Preparedness – drive the inter-jurisdictional and multi-agency work required to develop and implement this framework.[4]



Commission Recommendation 30

Recommendation 30: The federal government should initiate discussions with provincial and territorial governments, in consultation with Indigenous governments and affected municipalities, to promptly identify critical trade transportation corridors and infrastructure, and establish protocols to protect them and respond to interference with them.

Other select recommendations

Recommendations 1 and 2: The federal government, in conjunction with other stakeholders should develop or enhance protocols on information sharing, intelligence gathering and distribution. The stakeholders should consider the creation of a single national intelligence coordinator for major events with a national or interprovincial or interterritorial dimension.	**Recommendation 14:** Standards for policing a major event, should include among other things "ongoing assessment of community impact" and "coordination with non-policing first responders and relevant public authorities or agencies"
Recommendation 20: The federal government and others should develop an expedited accreditation process for RCMP or interprovincial officers so that they may immediately enforce provincial legislation or municipal by-laws where applicable.	**Recommendation 23:** governments and legislative bodies should analyze and consider whether existing laws are sufficiently responsive to modern protests and provide an appropriate balance between *Charter* rights, public safety and other interests. "The time has come" for a comprehensive examination, led by the federal government, in conjunction with all levels of government and police services and other stakeholders, to "comprehensively examine the scope and limitations on police powers in relation to protest activities."

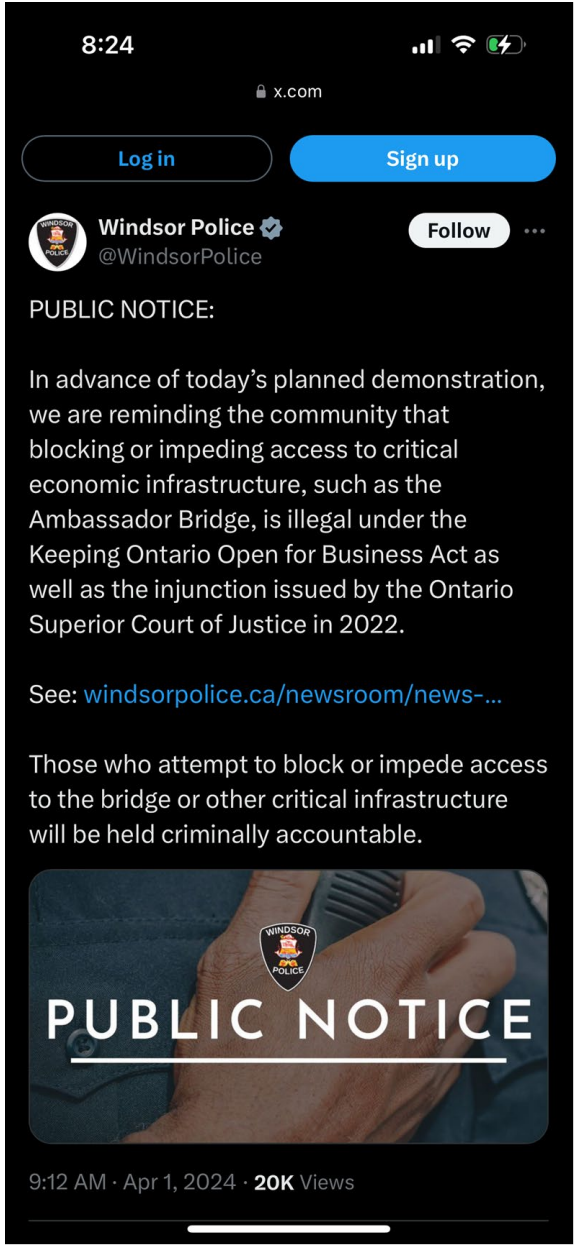
Permanent injunction against unknown persons

- Ambassador Bridge injunction remains in force – notice given in April 1, 2024 related to “Axe the tax” rallies

Wasaga Beach v. Persons Unknown, 2023 ONSC 4929

- Confirms injunctions can issue against “Unknown Persons” (*MacMillan Bloedel Ltd. v. Simpson,* [1996] 2 S.C.R. 1048)
- Granted *quia timet* injunction – restrains wrongful acts threatened or imminent but not yet commenced
- Right to protest (para. 27):

“The car rally can not in any way be compared to a lawful protest nor in my view could a car rally be equated with any of the Charter protected rights of freedom of conscience, peaceful assembly, or freedom of expression. These are all fundamental and important rights in the free and democratic society we call Canada. Even if a car rally could in some way be compared to one of the section 2 (b) Charter rights it is worth remembering that those rights are not absolute. Charter rights do not give a person the right to simply trample on the rights of others There must be a balancing of those rights. In this case on the evidence before me I can see no basis upon which the persons unknown… have the right to violate the Town by law and trample on the rights of others.”



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Questions?

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