

Analysis: Lawyers Take Close Look at Charges Against Leaders of Canada's Freedom Convoy

Tamara Lich, and Chris Barber

The charges against the Freedom Convoy leaders currently facing trial will be difficult for the prosecution to prove, some lawyers say

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The charges against the Freedom Convoy leaders currently facing trial will be difficult for the prosecution to prove, some lawyers say.

Tamara Lich and Chris Barber are facing charges of mischief, obstructing police, and intimidation, as well as counselling others to commit those three offences.

The mischief allegations are basically about protesters honking their horns, making life difficult for residents in Ottawa, or parking in a way that may have interfered with the daily movement of Ottawa residents, criminal defence lawyer Ari Goldkind told The Epoch Times.

"Mischief is a sort of catch-all term," he said.

It's a fairly common charge, Mr. Goldkind said, and could apply to someone throwing a rock into a shop window, for example, but it's rarely used in a situation like the convoy protest.

"It's not like they're gathering in somebody's backyard. They're gathering in Canada's capital city," Mr. Goldkind said. "That's what makes this more problematic to me as a prosecution."

John Carpay, president of the Justice Centre for Constitutional Freedoms (JCCF), cited text from the Criminal Code related to ["mischief"](#) to show what the prosecution must prove for this charge.

"The question before the court is, did Tamara Lich 'destroy or damage property'? Did

Chris Barber ‘render property dangerous, useless, inoperative, or ineffective?’” Mr. Carpay said.

Hypothetically, the court may find they illegally parked and thus obstructed someone’s use of his or her property, he said, adding however that he thinks “the Crown would have a hard time trying to establish that illegally parking a vehicle is a crime [of major significance].”

Furthermore, the prosecution will have to prove criminal intent, he said.

“So in other words, did Tamara Lich or Chris Barber intend to destroy or damage property? Did they actually intend to ‘obstruct, interrupt, or interfere with the lawful use, enjoyment, or operation of property’?”

JCCF is providing legal representation for Mr. Barber in the trial. The Epoch Times requested an interview with Crown prosecutor Tim Radcliffe but did not receive a reply by press time.

Call to ‘Hold the Line’

The prosecution will also have to prove criminal intent in the “counselling” charges, Mr. Carpay said. For example, the prosecution must prove that Ms. Lich’s call to “hold the line” was not meant figuratively—as in “hold to your values”—but rather was a call for people to obstruct police.

The prosecution will have a strong argument, Mr. Goldkind said, if it can prove either defendant clearly called on protesters to violate a court order. Counselling charges will stick even if people didn’t follow the call, he said, as all that’s required is that defendants did the “counselling.”

In a TikTok video, Mr. Barber called on protesters to honk their horns if approached by a large number of police, although a court order had prohibited honking in the city’s core.

Mr. Carpay explained that, given the narrow circumstances, he doesn’t think this can be considered counselling protesters to break the order.

“If you’re in a situation where police are threatening you, threatening violence to you, or threatening to damage your property, in that situation, honk your horns to let the world know,” he said, summarizing what he thinks the intent was behind Mr. Barber’s statements.

“That’s quite different from a generic ‘everybody should just honk their horns all the time.’”

‘Counselling to Mischief’

Michael Mulligan, a defence lawyer in Victoria, B.C., gave a few examples of the case law behind a “counselling to mischief” charge.

“It’s not the most common charge, but it’s not unique,” he told The Epoch Times via email.

One example was of alleged [Hells Angels](#) gang members counselling to commit mischief.

Another involved a [Toronto man](#) who put up posters that seemed to call on people to murder a city councillor. He was convicted and sentenced to three years' probation, though the conviction was overturned upon appeal because it was deemed a case of miscommunication without criminal intent.

Another was the conviction of Pastor Arthur Pawlowski in relation to a blockade at the Alberta-U.S. border in protest of COVID-19 mandates. This case has some similarities to that of Ms. Lich and Mr. Barber in that the prosecution and defence argued over the intentions behind a speech Mr. Pawlowski gave.

"Don't you dare break the line," Mr. Pawlowski said in a speech in Coutts, Alberta, on Feb. 3, 2022. As with Ms. Lich's "hold the line," the defence argued this was figurative.

Justice G.K. Krinke of Alberta [said](#) this could be true, but analyzed the speech in detail and the manner in which it was given. Ultimately, Justice Krinke decided that

"Mr. Pawlowski intended to incite the audience to continue the blockade. Mr. Pawlowski deliberately incited the protesters to commit mischief."

In Mr. Pawlowski's case, the judge said the blockade clearly constituted "mischief." Ms. Lich and Mr. Barber are not being held responsible for any blockades, so the actions they are allegedly inciting are different and may not be considered "mischief."

Intimidation

The Criminal Code gives various descriptions of what constitutes "intimidation." Those include using "violence or threats of violence," following someone, watching a place someone works or resides, and "block[ing] or obstruct[ing] a highway."

"I'd be surprised if the Crown has any evidence that Tamara Lich or Chris Barber did those things," Mr. Carpay said.

"The intimidation charge, I think, is very weak," Mr. Goldkind said. "This is well known to be a very peaceful protest. It's well known to be non-violent."

Both Mr. Carpay and Mr. Goldkind maintain this prosecution is "political."

Mr. Carpay gave the example of how Manitoba Crown prosecutors decided not to prosecute protesters who toppled a statue of Queen Elizabeth II on the Manitoba legislature grounds on July 1, 2021. The demonstration was over the deaths of indigenous children in residential schools, a cause Mr. Carpay said the government is more sympathetic toward.

"If these people were from Black Lives Matter, there would be no prosecution," Mr. Goldkind said. "And even if they were guilty, they would maybe get a fine or what's called a conditional discharge. To me, you cannot take the politics out of this."

Before protests against COVID-19 mandates, Mr. Carpay said he never saw criminal charges laid against any Canadian who had participated in a peaceful protest.

He said such charges usually only apply in cases where there's clearly property damage, destruction, vandalism, violence, arson, and the like. He thinks it will be difficult for the

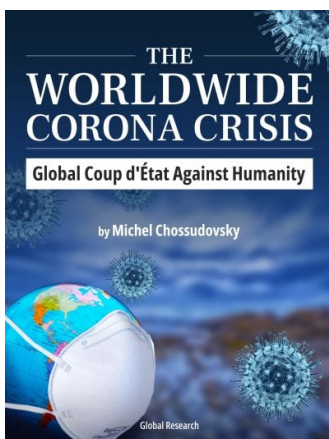
Crown prosecutor to prove criminal culpability for the role Ms. Lich and Mr. Barber played in the Freedom Convoy.

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Featured image: Freedom Convoy organizers Tamara Lich and Chris Barber wait for the Public Order Emergency Commission to begin, on Nov. 1, 2022 in Ottawa. (The Canadian Press/Adrian Wyld)



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