

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. King, 2026 ONCA 522

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Paciocco, Madsen and Pomerance JJ.A.

BETWEEN

His Majesty the King

Appellant

and

Patrick King

Respondent

Vallery Bayly and Emily Marrocco, for the appellant

Brian Doody, for the respondent

Heard: May 11, 2026

On appeal from the acquittal entered by Justice Charles T. Hackland of the Superior Court of Justice on November 22, 2024, with reasons reported at 2024 ONSC 6458, and from the sentence imposed on February 19, 2025, with reasons reported at 2025 ONSC 1067.

By the Court:

I. OVERVIEW

[1] In late January 2022, hundreds of transport trucks travelled to Ottawa as part of a planned political protest against federal COVID-19 mandates in what has

come to be known as the “Freedom Convoy”. Between January 28, 2022, and February 20, 2022, hundreds of Freedom Convoy trucks and other vehicles, as well as thousands of individuals, occupied public roads, gridlocking a large area of downtown Ottawa proximate to Parliament Hill. Evidence presented at the trial that is the subject of this appeal showed that the gridlock was planned, and that truck air horns were used strategically by protestors to disrupt public transportation and commercial activity, and to impede residents’ and business owners’ enjoyment of their property. The gridlock and disruption ended only with multi-force police involvement, after the federal government declared a state of emergency pursuant to the *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.).

[2] When properly wielded, political protest is a critically important democratic tool that must be jealously guarded. As such, it is constitutionally protected under ss. 2(b) and 2(d) of the *Canadian Charter of Rights and Freedoms*. However, as we explain below, the freedom to protest does not include the right to engage in illegal conduct, and this protest evolved into what can fairly be described as an illegal occupation of a significant tract of downtown Ottawa. The adoption of this strategy resulted in numerous criminal charges, including against the respondent, Patrick King.

[3] During his judge-alone Superior Court trial, Mr. King was shown on evidence largely secured from his own social media posts to have assumed a leadership role in illegal activities associated with the Freedom Convoy. He was convicted of

five criminal offences: (1) counselling mischief;¹ (2) mischief; (3) counselling others to obstruct police; (4) counselling others to disobey a court order; and (5) disobeying a court order. None of those convictions and none of the underlying factual findings have been appealed.

[4] Mr. King was also acquitted of a charge of personally obstructing police and three counts related to the offence of intimidation, each such charge being based on a different theory of commission.

[5] With respect to the counselling mischief count, the trial judge imposed a 12-month conditional sentence, less nine months pre-sentence credit for time spent in custody and harsh bail conditions. He imposed a three-month conditional sentence and one year of probation on all remaining counts, to be served concurrently with each other and the counselling mischief count.

[6] This is a Crown appeal of Mr. King's acquittal on the count of intimidation contrary to s. 423(1)(g) of the *Criminal Code*, R.S.C. 1985, c. C-46. The gravamen of this form of intimidation is blocking or obstructing a highway. The trial judge acquitted Mr. King of this offence after finding that, although he encouraged and participated in blocking or obstructing highways, the Crown had not proved the offence of intimidation because, in the trial judge's view, it cannot be committed by

¹ For each of the counselling offences, Mr. King was charged under s. 464(a) of the *Criminal Code*, R.S.C. 1985, c. C-46. This is a standalone offence where liability is imposed notwithstanding that the offence was not committed. If the offence is committed, the accused is liable as a party under s. 22(1) of the *Criminal Code*.

blocking or obstructing a highway during a political protest unless threats or acts of violence are used with the intent to intimidate, which had not occurred. He also held that blocking or obstructing a highway for the purpose of pressuring the government is not undertaken “for the purpose of compelling another person”, which is another required element of the offence. Finally, he concluded that the offence could not be committed by attempting to compel the government to change the law.

[7] As we explain below, each of these conclusions relating to the required elements of s. 423(1)(g) are wrong in law, and those errors gave rise to the acquittal. Moreover, we are of the opinion that the charged offence was readily established beyond a reasonable doubt on the factual findings made by the trial judge. We therefore allow the appeal of the acquittal, set the finding of not guilty aside, and substitute a conviction.

[8] The Crown is also seeking leave to appeal Mr. King’s sentence, arguing that it is demonstrably unfit and the product of legal error. It is not necessary to resolve the Crown’s application for leave or to address the grounds of the sentence appeal in detail because Mr. King must be re-sentenced to account for the additional conviction we are imposing. In our view, the interests of justice are best served by remitting the re-sentencing to the Superior Court of Justice. However, having had the benefit of the appeal submissions relating to sentencing, we do offer observations that may be of guidance to the sentencing judge below.

II. THE MATERIAL FACTS

[9] Based on his social media posts and testimony from police, City of Ottawa officials, and fellow Convoy participants, the trial judge found Mr. King to be “an organizer and a leader of at least a major component of the Freedom Convoy.” This evidence confirmed that Mr. King had a significant online presence, reaching up to 300,000 social media followers. Some of those followers were Freedom Convoy participants. Indeed, the evidence made clear that Mr. King directed strategy during the occupation by livestreaming events and giving instructions online.

[10] Posts Mr. King made before and after his arrival in Ottawa on January 28, 2022, that were admitted into evidence, verify the significant role that Mr. King played in the evolution and conduct of the occupation.

[11] In a January 12, 2022, social media post he made before leading his convoy of vehicles to Ottawa, he told his followers, “We have threatened to put transport trucks on a standstill That’s just the start We put the fear of God in the government and the government reversed the mandate for truck drivers And they’re gonna be even more scared when we roll into Ottawa with a million fuckin’ trucks.”

[12] In a January 20, 2022, post, he encouraged truckers to “bear hug” Ottawa, a term he used throughout his posts to refer to the truck blockade of Ottawa roads.

In that same post, he described the leadership role he was taking as a so-called “road captain”, and commented, “we’re staying ... until everything is fixed.”

[13] By January 28, 2022, hundreds of trucks, including trucks from the convoy that Mr. King led, arrived in Ottawa and began blocking road access to multiple blocks of the downtown core, including nearby residential streets. Roadways were congregated with milling protestors, and in the days that followed, structures were built on blocked city streets and bonfires were lit.

[14] In a January 29, 2022, post, Mr. King described the role he had been playing: “I’ve been running logistics and coordinating fuel and food and stuff for everybody all day”. He said, “We’re not moving. We’re not leaving It’s all gridlocked”. The trial judge also found on the evidence before him that Mr. King “had participated in moving 80 trucks in the middle of the night to ‘jam’ up Kent Street, which became a three-lane parking lot.”

[15] Mr. King was found not only to have encouraged and counselled the jamming up of downtown streets, but also to have encouraged the use of truck air horns. In his January 30, 2022, post, he commented, “It’s just a sea of horns all around here”. Then, on January 31, 2022, he posted, “Every half hour for ten minutes, you’re blowin’ horns Don’t forget, horns every half hour. For ten minutes.”

[16] The gridlock and the continuous blasting of air horns had significant negative impact on many Ottawa residents. Evidence before the trial judge confirmed that the trucks parked on the roadways prevented vehicle access to affected areas. Indeed, the City of Ottawa had to tow Convoy vehicles out of lanes reserved for emergency vehicles, and there was a several day period where emergency vehicles could not access Wellington Street. The Convoy also disrupted public transit, even impeding the ability of one resident, who suffered from a visual impairment, to secure necessities. The noise of the air horns, loud music and heavy diesel fumes disrupted the sleep of residents and damaged commercial activity and the conduct of business in the federal government core.

[17] Frustrated residents initiated a class action against Patrick King and other leaders and Convoy participants and then sought an interlocutory injunction. On February 7, 2022, McLean J. granted the injunction, restraining any persons having notice of the order from using air horns or train horns in the vicinity of downtown Ottawa for 10 days: see *Li v. Barber et al.*, 2022 ONSC 1513. This injunction was ordered to be continued on February 16, 2022, for a period of 60 days. It overlapped with an injunction obtained by the City on February 14, 2022, under s. 440 of the *Municipal Act, 2001*, S.O. 2001, c. 25, which prohibited “persons unknown” from creating excessive noise, idling in their vehicles, and lighting open fires, among other bylaw contraventions.

[18] Mr. King was aware the February 7 injunction had been granted. Later that day, he instructed his followers to comply. But he said:

We are winning Remember these people haven't been able to sleep for ten days I'm not gonna lie. It's pretty hilarious And now they put an injunction in there and, and now they're asking for the feds to come and negotiate and get us outta their city It's working beautiful, it's awesome guys.

The trial judge said of this post that Mr. King was “expressing his delight online about creating this misery”.

[19] On February 8, 2022, Mr. King, who had evidently changed his mind about encouraging compliance with the injunction, posted encouragement to his followers to “stand with us and honk the horns”. He said, “[L]et the heavens hear you”, and “I don't give a shit anymore. It's game on boys. Blow those horns Let those horns fire as loud as you can”. He continued, “Get to Ottawa now. Let's encircle Ottawa. Let's give Ottawa a bear hug by citizens and cars and trucks, it doesn't matter ... we need to bear hug this city 100% and this needs to be done ASAP.”

[20] The trial judge found that on February 10, 2022, “Mr. King personally organized and led a slow roll to jam up traffic at the Ottawa airport and later on Highway 417, a major traffic artery in Ottawa.” He noted that the “slow roll” constituted “serious public mischief aimed at a major transportation hub with the intent of disrupting passenger arrivals and departures.” The trial judge concluded

that “[t]his disrupted the operations of the airport authority for several hours.” He found that during the “slow roll”, Mr. King “encouraged honking and laughed at people who were left ‘scramblin’”.

[21] The trial judge also found that “[w]hen the police finally became focused on applying some pressure on Convoy participants to leave the city and began handing out notices threatening arrest if they did not leave”, Mr. King, on February 16 and 17, 2022, responded by “actively participating in the blocking of streets, encouraging honking, warning of expected enforcement action, and telling protesters to hold the line.”

[22] In support of this finding, the trial judge noted that Mr. King gave his followers detailed instructions for resisting police attempts to intervene:

Where one goes, two more enter! Jam it! See that? See that? One moves, two more moved up And when comes time, if need be, this message doesn't reach the ears of those, those police officers, we link arms, we sit on the ground, we turn our back to the men and women in our law enforcement because they have already turned their backs on us.

[23] Against this backdrop, the trial judge referenced a post Mr. King made on February 13, 2022, where he instructed his followers, “Do not leave Ottawa. Do not back your trucks out. Do not leave the residential areas. You are good to go. Stand your ground Hold the line, you guys.”

[24] Then, on February 18, 2022, Mr. King instructed his followers to block roads to avoid being towed. The trial judge found that later that morning, he broadcast a message that Convoy leadership had a contingency plan to evacuate to a truck stop west of the city, regroup, and possibly return. In the final post before his arrest, Mr. King asked truckers by Coventry Road to “pull your truck up, stick her jackknifed on Riverside Road, and hold that friggin’ line”, to prevent tow trucks from getting in.

III. THE TRIAL JUDGE’S REASONS FOR CONVICTION AND SENTENCE

[25] As indicated, Mr. King was convicted of and sentenced for: (1) counselling mischief; (2) mischief; (3) counselling others to obstruct police; (4) counselling others to disobey a court order; and (5) disobeying a court order.

A. REASONS FOR CONVICTION (2024 ONSC 6458)

[26] Mischief contrary to s. 430(1)(c) of the *Criminal Code*, which grounded the first two convictions, is a “general intent” offence that can be committed by intentional interference with the lawful use or enjoyment of property: see *R. v. Schmidtke* (1985), 19 C.C.C. (3d) 390 (Ont. C.A.), at p. 394. Mr. King was convicted of these offences because he was found to have planned, encouraged as a leader, and participated in the “occupation of downtown Ottawa by hundreds of large trucks and other vehicles ... to gridlock the area ... and to cause acute distress to residents, merchants, and workers by continuous honking of truck horns

and other disruptive activities and to extend this occupation and this conduct for a lengthy and indefinite period". The trial judge found that "[t]his conduct was designed to, and had the effect of, interfering with and obstructing the use and enjoyment of property of downtown residents and workers." He said, "The evidence is overwhelming that Mr. King incited and encouraged these activities, both initially and on an ongoing basis, for a period of three weeks."

[27] The offence of obstructing the police, contrary to s. 129(a), can be committed by resisting peace officers in the lawful execution of their duties. Mr. King was convicted of counselling others to commit this offence by deliberately encouraging or inducing his followers, at least some of whom were among the Freedom Convoy, through social media posts, to make it more difficult for the police to carry out their duties in clearing the affected area. Mention was given by the trial judge to Mr. King's instructions to "link arms", "sit on the ground", and "turn our backs on the men and women in our law enforcement". In his reasons for judgment, the trial judge also described as an "extraordinary online message" Mr. King's instruction to followers to leave the city but regroup and "hold the line" by jackknifing trucks on Riverside Road, with a view to a possible return.

[28] The offence of disobeying a court order, contrary to s. 127(1), that Mr. King was convicted of committing and counselling, involved repeated incitement to his followers to use air horns while McLean J.'s February 7, 2022, and February 16, 2022, injunctions were in force. He gave this encouragement and

incitement despite being a named party in the action that resulted in these orders being issued. This encouragement of his followers to defy these court orders was repeated and punctuated by his statement on February 8, 2022, that he didn't "give a shit anymore" and that it was "game on boys" for he and his followers to disobey the injunctions.

B. REASONS FOR SENTENCE (2025 ONSC 1067)

[29] The Crown asked for a 10-year global sentence, less pre-sentence credit. Mr. King asked for a three-year probationary sentence after credit for time served. In the alternative, he submitted that a conditional sentence, followed by probation, would be appropriate. He provided what the trial judge accepted to be a sincere apology. After awarding pre-sentence credit for the equivalent of nine months in custody, the trial judge imposed a three-month conditional sentence, followed by one year of probation.

[30] In his reasons for sentence, the trial judge said that the paramount sentencing objectives of denunciation and deterrence could be satisfied by the sentence he imposed, notwithstanding the significant aggravating features of the offences. He emphasized that "the Freedom Convoy began as a lawful constitutionally protected form of protest that unfortunately grew out of control and was allowed to go on and on and morphed into criminal activity." He rejected the need for a longer sentence after expressing concern that "an overly severe sentence of imprisonment in the context of legitimate constitutionally protected

activity can have the effect of creating a chill or a fear of participation in political expression such as demonstrations or protests”.

IV. THE ISSUES

[31] As indicated, Mr. King had also been charged with, but was acquitted of, committing three intimidation-related offences. Two of those offences were intimidation charges that he was alleged to have committed personally, by “blocking or obstruct[ing] a highway”, contrary to s. 423(1)(g) (count 6), and intimidating or attempting to intimidate by “threats that ... violence or other injury will be done”, contrary to s. 423(1)(b) (count 8). The third charge was a count of counselling others “to commit the indictable offence of Intimidation which offence was not committed by one or more persons”, contrary to s. 464(a) (count 2).

[32] The Crown appeal of acquittal is confined to count 6, relating to the offence of intimidation by blocking or obstructing a highway. The Crown alleges that the trial judge erred in law by: (1) requiring the Crown to prove that Mr. King used threats or violence; (2) treating Mr. King’s ulterior motive to effect political change as a defence; and (3) holding that the government is not “a person” who can be compelled within the meaning of s. 423(1). These three alleged legal errors can most conveniently be analyzed together by addressing a single, general ground of appeal, namely, whether the trial judge erred in the identification of the elements of s. 423(1)(g). If its appeal of the acquittal on count 6 succeeds, the Crown submits

that this court should substitute a conviction pursuant to s. 686(4)(b)(ii) of the *Criminal Code*.

[33] In opposing this ground of appeal, Mr. King's appellate counsel disputes the Crown's reading of the trial judge's reasons. He submits that the trial judge correctly held that the offence of intimidation requires a coercive purpose and that Mr. King's conduct was constitutionally protected expression, not coercion. He argues that the Crown improperly conflates a wrongful act in disobeying a civil injunction with a coercive purpose, thereby eliminating the requisite *mens rea* under s. 423(1)(g). These submissions do not raise additional issues and are addressed below.

[34] Mr. King's appellate counsel also takes issue with some of the trial judge's factual findings but did not institute a cross-appeal. He is most critical of errors the trial judge made in describing a judicial order made on February 9, 2022, permitting an increase in fines under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as an injunction. This error has no impact on the issues on this appeal. The only court orders that factored into the trial judge's analysis of the mischief and intimidation counts were those made by McLean J. on February 7, 2022, and February 16, 2022, and he identified them correctly.

[35] Therefore, there are only two issues for consideration in the conviction appeal:

(1) Whether the trial judge committed legal errors in identifying the elements of s. 423(1)(g)?

(2) If so, should a conviction be substituted?

[36] On the sentence appeal, the Crown contends that Mr. King's unusually lenient sentence on the mischief, breach, and obstruction charges is demonstrably unfit and tainted by errors in principle. As noted above, it is unnecessary to resolve these issues because we are substituting a conviction on count 6.

V. ANALYSIS

A. DID THE TRIAL JUDGE ERR IN THE IDENTIFICATION OF THE ELEMENTS OF SECTION 423(1)(g)?

[37] We are persuaded that the trial judge erred in identifying the elements of the offence of intimidation by blocking a highway, contrary to s. 423(1)(g). This is an error of statutory interpretation. It is thus an error of law that permits the Crown to appeal an acquittal under s. 676(1)(a) of the *Criminal Code*: *R. v. McSween*, 2020 ONCA 343, 151 O.R. (3d) 38, at paras. 36-38, leave to appeal refused, [2020] S.C.C.A. No. 285.

1. The elements of intimidation by blocking a public highway

[38] As this appeal concerns a question of statutory interpretation, we are guided by the "modern approach" to interpreting legislation. It holds that the meaning of s. 423(1)(g) must be "determined by reference to its text, context and purpose":

Telus Communications Inc. v. Federation of Canadian Municipalities, 2025 SCC 15, 502 D.L.R. (4th) 59, at para. 30. Of these three indicators of legislative intent, the text of the provision must be the “anchor of the interpretive exercise”: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, 498 D.L.R. (4th) 316, at para. 24.

[39] With that in mind, the offence of intimidation can be committed in various ways. They are described in *Criminal Code*, s. 423(1), which provides:

423 (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

(a) uses violence or threats of violence to that person or their intimate partner or children, or injures the person’s property;

(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;

(c) persistently follows that person;

(d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;

(e) with one or more other persons, follows that person, in a disorderly manner, on a highway;

(f) besets or watches the place where that person resides, works, carries on business or happens to be; or

(g) blocks or obstructs a highway.

[40] There are three base elements material to this case that the Crown must prove to secure a conviction for the offence of intimidation. The first two are physical or *actus reus* elements that we will refer to as “the act requirement” and “the condition requirement”, respectively. We will refer to the third element, which describes the requisite mental state or *mens rea* for the offence as “the specific intent requirement”.²

[41] The act requirement is met if the accused personally commits, or aids or abets (or in other words, “encourages”) the conduct described in the intimidation offence charged: *Criminal Code*, s. 21(1). The act requirement is also met if the accused counsels (i.e., deliberately encourages or actively incites) a person to do any of the above: *Criminal Code*, s. 22(1); *R. v. Hamilton*, 2005 SCC 47, [2005] 2 S.C.R. 432, at para. 29. To commit an offence contrary to s. 423(1)(g), the act done, assisted or encouraged by the accused must be one that “blocks or obstructs a highway”: see *R. v. Stockley* (1977), 36 C.C.C. (3d) 387 (N.L. C.A.). Section 2 of the *Criminal Code* defines “highway” as “a road to which the public has the right of

² We refer to the “base elements” because there are additional elements required by general criminal law principles that can arise but are not material in the instant case. For example, the prohibited act must be done voluntarily, and intentionally or recklessly, and an offender must have knowledge or be wilfully blind to the material condition, in this case that the place blocked or obstructed is a public road and hence a highway.

access”. The Ottawa roads that were gridlocked are highways within the meaning of s. 423(1)(g).

[42] The condition requirement is met only if the required act, in this case the act of blocking or obstructing the highway, is undertaken “wrongfully and without lawful authority”. It is settled law that an act will have been undertaken “wrongfully and without lawful authority” if it is done through civilly actionable conduct, such as a trespass, common nuisance, unlawful assembly, or breach of an injunction: *The King v. Reners*, [1926] S.C.R. 499, at pp. 505-8; *R. v. Billy et al*, 2004 BCSC 1474, 191 C.C.C. (3d) 410, at paras. 37, 42.³ As the *Reners* decision shows, the act of blocking or obstructing a highway will readily be civilly actionable under the law of trespass or common nuisance.

[43] Indeed, it is our view that if the blocking or obstruction of the highway is undertaken by someone who does not have lawful authority to do so, even without the commission of an additional civil or criminal wrong, it is wrongful, and the condition requirement is met. For example, a police officer managing the scene of an accident or incident, or a contractor authorized to repair a road would not be acting wrongfully or without lawful authority by obstructing access. But someone who, for purposes of their own, intentionally blocks or obstructs a highway is acting wrongfully and without lawful authority, thereby satisfying the condition

³ If conduct is illegal, it is necessarily wrongful and without lawful authority. Cases addressing the “colour of right defence”, such as *Billy*, are informative in identifying conduct that is illegal and therefore wrongful and without lawful authority.

requirement. We agree with Levine J.A.'s observation in *R. v. Manuel*, 2008 BCCA 143, 231 C.C.C. (3d) 468, leave to appeal refused, [2008] S.C.C.A No. 265, that blocking highways as a self-help remedy for grievances is "not condoned anywhere in Canadian law, which includes aboriginal, common and criminal law", because such conduct undermines the rule of law: at para. 62. We are persuaded that this is inherently wrongful conduct.

[44] Third, intimidation is a "specific intent" offence that is not committed unless it has been proved beyond a reasonable doubt that the prohibited act was undertaken for the specific purpose of "compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing": *Criminal Code*, s. 423(1); *R. v. Boast*, 2017 ONCA 602, at paras. 5-7; *R. v. Branscombe* (1956), 25 C.R. 88 (Ont. C.A.), at pp. 89-90. Put otherwise, the inherently wrongful act of blocking or obstructing a highway without lawful authority does not amount to the crime of intimidation unless done with the specific intent described. The intent to compel someone to abstain from their lawful use of a public highway is sufficient to satisfy the specific intent requirement: *R. v. Orton*, 2019 ONCA 334, at paras. 36-39.

2. The trial judge's errors

[45] In the Crown's view, it proved that Mr. King both participated in and encouraged the blocking or obstruction of highways, and that he did so wrongfully and without lawful authority. In addition, it offered two theories relating to the

specific intent requirement, based on two equally available characterizations of Mr. King's purpose. Namely, that he engaged in this conduct:

- (1) For the purpose of compelling residents to abstain from doing things they had a lawful right to do, so that this would put pressure on the government to change its COVID-19 policies; or,
- (2) To compel the government to change its COVID-19 policies, regardless of the view of the government relating to whether this change of policy was in the public interest.

[46] The trial judge rejected both Crown theories, effectively finding that none of the elements of s. 423(1)(g) were satisfied. Although his reasoning is complicated by his decision to address the three intimidation-related charges together, the trial judge's reasons remain clear.

[47] First, he found that Mr. King did not act "wrongly by participating in the Freedom Convoy's protest against the Government of Canada's COVID-19 mandates", since "a lawful protest is a *Charter* protected activity" (emphasis added). The implication of this finding is that, in the trial judge's view, the condition requirement was not met, which alone would forestall conviction.

[48] Second, and relatedly, he concluded that "[w]hen [Mr. King] obstructs a highway in the course of an otherwise lawful demonstration intended to protest government policy and not to intimidate individuals, in the absence of threats and

acts of violence listed in s. 423(1) of the *Criminal Code*, he should not be convicted of the offence of intimidation.” He explained:

Obstructing a highway in the context of an otherwise lawful protest against government policy should not be interpreted as intimidation, even if, as in the present case, it constitutes or involves mischief. To do so would unduly broaden [the] interpretation of section 423 as it would capture a broad range of lawful protests against government actions in which there is no proven intent to intimidate individuals.

[49] Although, in the foregoing passage, the trial judge clearly called for proof of “threats” or “acts of violence” to support a conviction under s. 423(1)(g), he then turned his focus to the specific intent requirement. Specifically, he explained that “[s]tated otherwise, the specific intent offence of intimidation is not made out in the circumstances of this case, notwithstanding mischief may have occurred, when a highway is obstructed in the course of protest against government action.”

[50] Based on this reasoning, he concluded that “attempt[ing] to pressure and intimidate the government to withdraw its COVID-19 mandates” by disrupting and occupying downtown Ottawa by “blocking highways and thereby pressuring residents and business people in that area ... would not fall within section 423 of the *Criminal Code*.” Given his factual finding that “[t]he conduct directed at downtown Ottawa residents and workers was not intended to intimidate them by violence or otherwise”, Mr. King was not proven to have committed the offence of intimidation contrary to s. 423(1)(g).

[51] He added that “[t]he Government of Canada is not a person within section 423 of the *Criminal Code*.” The implication of this conclusion is that, in the trial judge’s view, the Government of Canada cannot be found to be a party compelled within the meaning of s. 423(1).

3. Analysis

[52] With respect, we are persuaded that each of these conclusions about the interpretation of s. 423(1) is incorrect. These errors appear to have arisen from the trial judge’s well-intentioned effort to interpret the law to accommodate political protest, but the outcome he achieved cannot be sustained as a matter of law.

[53] We begin with the use he made of the fact that the Freedom Convoy was part of a political protest. The Crown argues that the trial judge erred in finding that Mr. King did not act “wrongly” because he was participating in a lawful protest. We agree that the trial judge erred in this way. There have been multiple cases of criminal convictions arising from criminal acts committed during protests, including convictions contrary to s. 423(1)(g): see e.g., *Manuel*; *Billy*; *R. v. Pascal*, 2006 BCSC 1311, [2006] B.C.T.C. 1311. The jealous protection the law provides to the right of political protest applies only so long as the protest is being conducted lawfully. As Chiasson J.A. put it in *R. v. De Felice*, 2010 BCCA 273, 255 C.C.C. (3d) 296, at para. 4: “undertaking illegal activity as part of expressing disagreement and advocating is not lawful.” While this dictum comes from a sentence appeal, it has been cited with approval by Canadian appellate courts affirming convictions

for mischief and criminal harassment associated with protests: see *R. v. Pawlowski*, 2024 ABCA 342, at para. 59, *per de Wit and Woolley JJ.A.*, leave to appeal refused, [2004] S.C.C.A. No. 524 (mischief relating to a COVID-19 protest); *Bertrand c. R.*, 2011 QCCA 1412, at para. 149 (criminal harassment relating to an animal rights protest).

[54] Indeed, we agree with Slatter J.A. when he said, in concurring reasons in *Pawlowski*, at para. 107, that “mass obstruction of public highways is not a form of peaceful protest. The fundamental freedoms of expression and assembly do not encompass obstructing public highways, or inciting anyone else to do so.”

[55] Put simply, criminal conduct is not less criminal because it occurs during a lawful protest. We are therefore persuaded that the trial judge erred by concluding that Mr. King did not act “wrongfully and without lawful authority” because events occurred as part of a political protest.

[56] The trial judge similarly erred in treating s. 423(1) of the *Criminal Code* as requiring proof of threats or violence when highways are obstructed during otherwise lawful demonstrations. He offered a policy explanation for this conclusion, explaining that otherwise, s. 423(1) would “capture a broad range of lawful protests against government actions in which there is no proven intent to intimidate individuals.” Whatever one may think of the policy choice this reasoning entails, the concern expressed by the trial judge fails to recognize the point just

made, that as a matter of law, the right to peaceful protest does not include the right to engage in otherwise criminal conduct in support of protest goals. With respect, by attempting to limit the reach of s. 423(1) in this way, the trial judge moved beyond interpretation of the provision and engaged in impermissible legislating: see *Wilson v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 47, [2015] 3 S.C.R. 300, at para. 27. There was no constitutional challenge before him to invite such reasoning, nor is there an ambiguity in the legislation that could invite the use of *Charter* principles into the interpretation: see *R. v. Rodgers*, 2006 SCC 15, [2006] 1 S.C.R. 554, at paras. 18-19; *Piekut v. Canada (National Revenue)*, 2025 SCC 13, 502 D.L.R. (4th) 1, at para. 48.

[57] The approach the trial judge took was therefore in error, and so too was the conclusion he arrived at. There is no basis in the language of the enactment, interpreted in its context, for finding that an offence charged contrary to s. 423(1)(g) requires proof of “threats” or “acts of violence”.

[58] Moreover, including this additional element would contravene the “presumption against tautology”, a principle of statutory interpretation that presumes legislators avoid superfluous words and that “[e]very word in a statute ... make[s] sense and has a role to play in advancing the legislative purpose”: *R. v. Gallone*, 2019 ONCA 663, 147 O.R. (3d) 225, at para. 31, citing Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis, 2014), at p. 211. Interpreting s. 423(1)(g) as requiring proof of threats or violence would

make this mode of committing intimidation redundant, depriving it of all meaning, since s. 423(1)(a) already prohibits using violence or threats of violence as a means of compelling a person, whether this conduct is done to block or obstruct a highway or otherwise. The only times that proof of acts of violence or threats is a required element of an intimidation offence is if the charge is laid contrary to s. 423(1)(a) or s. 423(1)(b), the latter of which prohibits threats that “violence or other injury will be done”.

[59] Relatedly, the trial judge erred by finding that the specific intent requirement necessitates proof of intention to intimidate individuals. The requisite specific intention is spelled out in the chapeau to s. 423(1), and nowhere does it refer to the need for an intention to intimidate. This is no doubt because it was unnecessary for Parliament to include such an element. Each of the modes of commission enumerated in s. 423 involve inherently intimidating conduct, such that the intention to do any of the enumerated acts in ss. 423(1)(a) to 423(1)(g) inherently includes the intention to intimidate.⁴ As Slatter J.A. commented in *Pawlowski*, at para. 107, “[B]lockading a highway is an inherently aggressive and potentially

⁴ It may appear, on its face, that the conduct described in s. 423(1)(d), i.e., hiding “tools, clothes or other property owned or used by that person”, is not inherently intimidating, but predecessor legislation first appeared in Canada in 1886 (see *An Act respecting Threats, Intimidation and Other Offences*, R.S.C. 1886, c. 173, s. 173), and appears to be modeled on English legislation, including the *Conspiracy, and Protection of Property Act, 1875*, 38 & 39 Vict., c. 86 (U.K.). These enactments were frequently used in the hard-scrabble context of Industrial Age labour disputes, where hiding tools, clothes and other property of other workers would be inherently intimidating.

violent form of conduct, designed to intimidate and impede the movement of third parties.”

[60] If the trial judge was influenced in adopting the interpretation he did by the fact that the offence appears under the heading “Intimidation” in the *Criminal Code*, he should not have been. While headings may be relevant in the interpretation of federal legislation, they “will never be determinative of legislative intention” and cannot “operate to change the clear and unambiguous meaning” of a particular provision: *R. v. Davis*, [1999] 3 S.C.R. 759, at paras. 53-54. Here, all required elements of the offence of intimidation are spelled out in the text of s. 423(1)(g) itself. It is clear and unambiguous that neither a subjective intention to intimidate individuals, nor threats or acts of violence are essential elements of s. 423(1)(g).

[61] The trial judge therefore erred in requiring proof of an act of violence or threat, and an intention to intimidate. These are not elements that have to be proved to support a conviction contrary to s. 423(1)(g).

[62] Finally, we agree that the trial judge erred in finding that the Government of Canada is not a “person” and rejecting, on this basis, the Crown’s second theory as to how the specific intent requirement was satisfied. Section 2 of the *Criminal Code* stipulates that the terms “every one, person and owner, and similar expressions, include Her Majesty” (emphasis added). We need not decide whether the House of Commons and the Senate, the legislative branches of the

Government of Canada, are captured by the term “Her Majesty”, but certainly the Crown in Right of Canada through the executive is: see *Interpretation Act*, R.S.C. 1985, c. I-21, s. 35(1) (“Her Majesty”); *Alberta Government Telephones v. (Canada) Canadian Radio-television and Telecommunications Commission*, [1989] 2 S.C.R. 225, at p. 274.⁵ Since Mr. King’s focus was on government COVID-19 policies at large, including executive initiatives, his conduct was aimed at “another person” who can be compelled, contrary to s. 423(1), “to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing”.

[63] The trial judge therefore committed layered legal errors in his interpretation of s. 423(1)(g). The acquittal ordered on count 6 must be set aside, based on the authority in *R. v. Graveline*, 2006 SCC 16, [2006] 1 S.C.R. 609, at paras. 14-16. It is not only certain that the errors described had material bearing on Mr. King’s acquittal, but they led directly to that outcome, which cannot stand.

B. SHOULD A CONVICTION BE SUBSTITUTED?

[64] Indeed, this is an appropriate case for entering a verdict of guilty, pursuant to s. 686(4)(b)(ii) of the *Criminal Code*, rather than sending this charge back to be

⁵ In *Alberta Government Telephones*, the Supreme Court of Canada concluded that the term “Her Majesty” in the *Interpretation Act* includes the Crown in Right of Canada. The definition of “Her Majesty” in the *Interpretation Act* applies to all federal legislation, including the *Criminal Code*.

retried. On a correct application of the law, Mr. King should have been found guilty of count 6: see *R. v. Katigbak*, 2011 SCC 48, [2011] 3 S.C.R. 326, at para. 50.

[65] First, the trial judge found that Mr. King personally participated in blocking or obstructing Kent Street, personally led a slow roll that crippled access to Ottawa Airport, and encouraged his followers repeatedly to block and obstruct roads. This satisfies the act requirement of s. 423(1)(g).

[66] Second, it is obvious, based on the trial judge's factual findings, that the blocking and obstruction were done "wrongfully and without lawful authority". Blocking roads as a protest tactic was inherently wrong, and there was no pretense made of a lawful right to do so. This was an inherently intimidating act of power, undertaken to prevent others entitled to use those roads from using them. As the trial judge found, "This conduct was designed to, and had the effect of, interfering with and obstructing the use and enjoyment of property of downtown residents and workers."

[67] Moreover, the trial judge found that Mr. King was guilty of the offence of mischief when participating in and encouraging the gridlock. There can be no doubt, on this basis alone, that the blocking and obstructing of streets was being conducted "wrongfully and without lawful authority", satisfying the condition requirement of the offence.

[68] We are therefore of the opinion that the condition requirement is also proved beyond a reasonable doubt on the factual findings the trial judge made.

[69] Third, we are persuaded, based on the trial judge's factual findings, that the required specific intent was also present. Those findings leave no reasonable doubt that the tactic that Mr. King employed to compel the government to change its COVID-19 policies was to block and obstruct roads for the purpose of compelling residents to abstain from enjoying their lawful rights to use their area roads and enjoy their lawful property rights, thereby satisfying the Crown's first theory relating to the specific intent requirement. Characterized alternatively, his purpose was to use the pressure that was being exerted against area residents to compel the Government of Canada to abstain from exercising its lawful authority to pursue the COVID-19 policies it considered to be in the public interest, and to instead change these policies to satisfy Mr. King. The trial judge's muted characterization of the intention of those involved in the Freedom Convoy as being "to persuade the government to change its policies" is not a finding to the contrary. The trial judge fully appreciated that participants were not relying on persuasion alone but were using "pressure tactics".

[70] Specifically, the trial judge found that Mr. King intended, along with other Freedom Convoy participants, to bring the central core of the city to a standstill and that his intention was to stay until the government agreed to terminate COVID-19 mandates. It is obvious that he was not relying on political persuasion to

accomplish this outcome. Instead, his preferred tactic was the threat that, in the words of the trial judge, “downtown residents as well as owners and employees of small businesses and other institutions” would continue to suffer “significant interferences in the use and enjoyment of their property” until Mr. King got what he and the other protestors wanted. The trial judge found, in this regard, that Mr. King told his followers at the outset that they had “put the fear of God in the government” and that the rolling into Ottawa with “a million fuckin’ trucks” would make the government “even more scared”. He said in a post that their strategy was working “beautiful” when he believed the government was being brought in to negotiate. The trial judge also found that on February 10, 2022, Mr. King posted, “We haven’t left, Ottawa, and we don’t plan on leaving any time soon until you get those politicians, get them goin’, get them talkin ... get them understanding that ‘[h]ey, things need to change in Canada and they need to change really fast’”.

[71] It can be seen from the foregoing that we do not accept the submissions made by Mr. King’s appellate counsel. First, the conduct by Mr. King that satisfied the act requirement of blocking or obstructing a highway was not constitutionally protected expression. It was an illegal act, done “wrongfully and without lawful authority”, because blocking or obstructing a road is both civilly actionable conduct and an inherently wrongful act. Mr. King’s unlawful act of blocking and obstructing highways became criminal in this case because it was undertaken for the purpose of compelling the area residents to abstain from what they had a lawful right to do,

and the Government of Canada to do what it had the lawful right to abstain from doing. There is no conflation between the wrongful act and the coercive purpose here. They are distinct elements of the offence, all of which are present in the trial judge's findings.

[72] We therefore allow the conviction appeal, set aside the acquittal on count 6, and substitute a conviction.

C. THE SENTENCE

[73] Because this court has substituted a conviction on the count of intimidation, contrary to s. 423(1)(g) of the *Criminal Code*, the matter must be remitted back to the Superior Court of Justice for a new sentencing hearing. While it is for the new sentencing judge to determine a fit and appropriate sentence, we offer the following observations by way of guidance.

[74] The trial judge imposed a global sentence consisting of a 12-month conditional sentence of imprisonment. Applying nine-months credit for pre-sentence custody and restrictive bail conditions, he sentenced Mr. King to serve the remaining 3 months of the conditional sentence, followed by one year of probation. In opting for this lenient penalty, the trial judge expressed a concern that too harsh a sentence could chill legitimate political expression. As he put it at para. 31 of his sentencing decision: "The risk is that an overly severe sentence of imprisonment in the context of legitimate constitutionally protected activity can

have the effect of creating a chill or a fear of participation in political expression such as demonstrations or protests”.

[75] We agree that caution is warranted when sentencing individuals for conduct that could potentially fall within a constitutional zone of protection. However, the conduct in this case far exceeded the bounds of legitimate expression. This was not a peaceful protest that “unfortunately grew out of control and was allowed to go on and on and morphed into criminal activity”, as the trial judge suggested in his sentencing reasons. Rather, this was, from the outset, a coordinated, targeted attack on Ottawa residents aimed at coercing change through highly disruptive criminal conduct. As the trial judge observed in his reasons for judgment, there was “overwhelming evidence” that, even before the arrival of the Freedom Convoy in Ottawa, Mr. King planned to effect an occupation; gridlock the area; and cause acute distress to residents, merchants and workers through the continuous honking of truck horns and other disruptive activities. Mr. King not only incited these activities, he instructed his followers to resist police and ignore court-ordered injunctions.

[76] This conduct, properly characterized, was an attack on the rule of law, and the democratic principles essential to the maintenance of a just, peaceful and safe society. We have not had the benefit of complete sentencing submissions and make no comments on what a fit sentence would be. However, a fit sentence must

reflect a full appreciation of the public impact of the offences, as well as the scope, duration and persistence of Mr. King's actions.

Released: July 17, 2026 "D.M.P."

"David M. Paciocco J.A."

"L. Madsen J.A."

"R. Pomerance J.A."