

File No. 0760 999 20 309 00

0760 999 20 310 00

0760 999 20 319 00

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

KIMBERLY NEUDORF

R E A S O N S F O R S E N T E N C E

BEFORE HER WORSHIP JUSTICE OF THE PEACE A. HAMPSON

On July 26th, 2023 , at ST. THOMAS, Ontario

APPEARANCES:

J. HUBER

R. RUMPAL

Provincial Prosecutor
Agent for the Defendant

(i)
Table of Contents

ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

5

10

Page

Submissions on Sentencing

4

Reasons for Sentence

34

15

20

25

Transcript Ordered:

August 10, 2023

Transcript Completed:

November 27, 2023

Ordering Party Notified:

November 28, 2023

30

Wednesday, July 26, 2023

MR. HUBER: Good afternoon Your Worship. I see Ms. Rumpal is with us. Miss Neudorf herself is present in the courtroom, and I'm wondering if we should have the warning read please.

THE COURT: Please. Thank you.

CLERK OF THE COURT: You are not permitted to make any recording of the proceedings or take photos or screen captures of the proceedings. It is an offence under Section 136 of the *Courts of Justice Act* and it may constitute contempt of court for anyone to copy, record, screen shot, photograph, broadcast, or disseminate a court hearing or any portion of it including on social media and/or other internet sites without express permission of The Court. We kindly ask that you stay muted until your name is called.

THE COURT: All right thank you, and just a couple of reminders okay. This is - my name is Justice of the Peace Hampson. This is the St. Thomas Provincial Offences Court. It is a hybrid court, which means we have potentially - and we do have - individuals physically in the body of the court. We have a number of individuals appearing by Zoom as well. For those on Zoom please do not unmute or say anything. It's extremely important that everyone remember that. You can keep your cameras on or you can keep your cameras off that's fine as well. If you have your camera on I would kindly ask that you not walk around with it, we may lose you and it's extremely distracting as well; and for those that have your cameras on, please

remember that this is still court. It is appropriate perhaps to have a drink of water. It's not appropriate to be eating, smoking, or drinking anything other than water and please just keep those things in mind as well okay. And obviously for individuals in the body of the court you can't be eating, smoking, drinking or having anything in the body of the court as well. Okay. So good afternoon, if you could please stand and just state your name okay. Thank you.

K. NEUDORF: Kimberly Neudorf.

THE COURT: Thank you very much. And I see Ms. Rumpal is on the screen.

MS. RUMPAL: Yes good afternoon Your Worship.

THE COURT: Thank you. You are appearing by Zoom as well. I just want to make everyone understand as well okay, this is - this is court so there are expectations with respect to conduct as well and that includes conduct on Zoom. I will not tolerate anyone making comments interrupting this court as well. If that happens, I have authority under Section 135 of The Courts of Justice Act to exclude members of the public, and I would make that order if there was a possibility of serious harm or injustice to anyone and that would justify departure from the general principle that court hearings should be open to the public. So in my view if anyone is disruptive that can cause injustice to a person and I will exercise my authority under The Courts of Justice Act to have anyone excluded from the courtroom. If that happens on Zoom they will be put into a waiting

5 room and you will not be allowed back into the
courtroom. If it happens physically in the body
of the court I will ask the individual to be
escorted out of the courtroom. So I will not
tolerate any conduct like that okay. So just a
reminder for everyone and - or two other
housekeeping matters okay. I have actually three
informations before me. I think they were
supposed to have been withdrawn at some point in
10 time, two of them, and then we were only
proceeding on the one information.

MR. HUBER: Correct.

15 THE COURT: So Ms. Rumpal I'm looking at an
information 20-310 and 20-309. I understand that
they should be marked as withdrawn. We simply
proceeded on the information - the four count
information 20-319. All right can those two other
informations be marked as withdrawn then?

20 MR. HUBER: I'm just wondering Your Worship; I'm
just looking at the decision. The decision - your
decision says 20-310 at the top.

THE COURT: Okay. And that may be my - I don't
know which one's for sure.

MR. HUBER: Okay.

25 THE COURT: In my view it looks like the same
ones, but uhm, maybe we'll deal with that at the
end.

MR. HUBER: Okay.

30 THE COURT: The wording looks exactly the same so
let's deal with that at the end then. In any
event it is only four convictions all right. Ms.
Rumpal I want to confirm with you, you did receive

my reasons for the Charter Application?

Dismissing the Charter Application?

MS. RUMPAL: Yes. Yes Your Worship I did thank you.

THE COURT: All right. Thank you. And you did have occasion to share that with your client?

MS. RUMPAL: Yes I have Your Worship.

THE COURT: Okay. Thank you, and I believe the Prosecution's office received it. I don't know if the Attorney Generals are joining us or not, but they were not participating in the merit.

MR. HUBER: No, I don't believe they are.

THE COURT: Okay. All right. Okay so this afternoon - and I'm thankful that everyone has had a copy of those reasons as well because today was supposed to have been the judgement on the Charter Application but I was able to hand it out sooner than that and I'm thankful that everyone has had a chance to read that. So just in a nutshell I dismissed the Charter Application. I did find that Ms. Neudorf's rights were violated. However, I also found that the limits were reasonable and justified in a free and democratic society. So as a result the convictions will be registered for all four counts. So now we proceed to the sentencing phase. Okay.

MR. HUBER: Thank you very much Your Worship.

With regard to submissions, as you are aware, and I'm not going to repeat everything I said in my submissions but because of the response to the Covid 19 pandemic, the Province of Ontario as you are aware, enacted legislation to protect the

public. The emergency management civil procedures act specifically stated it was to promote the public good by protecting the health, safety, and welfare of the people of Ontario in times of declared emergencies in a manner that is subject to the Charter of Rights and Freedoms, and we know that there were various pieces of legislations - specifically gather - specifically dealing with the number of people that could gather at this time in an area and that limit was 25 people. And we have this - that was made for the safety of the public, and in your decision, which we've all read, you made a number of findings in that decision. Specifically with the October 24th, 2020 date you found that Ms. Neudorf was aware of the - on both of these dates - she was aware of the 25 limit to people. You also found that she organized the event on October 24th, 2020. She organized the event on November 7th, 2020 and she attended at both of those people - or both of those protests. She called them peaceful protests but as a result of that, Your Worship, you also found that they - these two events caused disruptions to the Aylmer community and necessitated additional police resources. Somewhat - not so much on the October 24th, but on the November 7th, 2020 event there was approximately 25 to 30 police officers; and as you noted in your decision, on any given day especially on a Saturday afternoon there was two police officers on, so they had to bring in all of their police officers. They had to bring in

5 police officers from St. Thomas, police officers
from the OPP to assist in this matter to keep the
- to keep the peace and to protect the public,
which obviously is significant cost to the - to
the Town of Aylmer for this policing. You also
noted - and your words were specific in the
November 7th public event that the events she
organized caused - and your words were significant
disruption to Aylmer and again necessitated
10 additional police resources. As a matter of fact
because of Ms. Neudorf's actions and planning on
this November 7th, the Town of Aylmer on November
2nd as you found declared a state of emergency.
That's how concerned they were with regard to
this. You also heard that with regard to the
15 November 7th matter that the officers testified
approximately 60 business - 60 percent I'm sorry
of the businesses in downtown Aylmer had to close.
In essence downtown Aylmer, in my submission, on
November 7th was basically shut down for about four
20 hours. The main street from the arena and down
past the main intersection was closed. You found
in your decision traffic had to be rerouted. As a
matter of fact Ms. Neudorf knew this. She knew
there was going to be disruption and she knew
25 there was going to be disruption because she had
her own traffic signal - traffic people there.
She also had approached the police to see if they
would assist with the - with the traffic. It was
a great - the Town of Aylmer through this whole
30 event and even up to now, and I think you can take
notice of it, is that it's divided this community.

Covid was extremely tough on many people. It was tough on people because some people got laid off. Some people lost their jobs. People got sick. People died - and I'm not saying people died because of these two events, but I'm saying it had a significant impact and although these events kept going. And what is striking in a lot of this is when you have a major impact that people are suffering and then you have a major event which attracts anywhere between 1000 and 1500 people and as you noted in your decision there was no actual count, but it was pretty well given to everybody there was 1000 to 1500 people and then they march down the town. Certain events had to be closed. The hockey at the East Elgin Community Complex we heard had to be shut down. The arena had to be shutdown. And what is really striking in this is Ms. Neudorf on the stage, and we saw that, she laughed about it, it was funny okay it was funny. I don't understand what the humour was there but it was certainly funny to Ms. Neudorf's eyes that that had to be closed. You had made comment that she specifically and intentionally closed down that road, Highway 3, in the downtown. Initially it was supposed to be the right lane of the highway and you found in your decision it would obviously impact the traffic. With regard to this, Your Worship, it goes without saying and like I have noted before, many people suffered in Covid 19 but they respected the law. It hurt them but they respected the law. Their routines were disrupted. It was clear in your findings that Ms.

Neudorf added to the disruptions in peoples' lives and caused significant issues with the people. People were suffering during the Covid. Businesses were suffering and then they had to close down because the main street had a protest and these businesses closed. Your Worship this is the prime example of where this Court shall deal very seriously with this type of activity. And I handed up to you, and you are aware of the case of Regina v. Cotton felts. Now Cottonfelts I believe is a *Provincial Offences* case but if I'm not mistaken it was an occupational health and safety case, but the issue is in Cottonfelts for instance it's the - I'm sorry I thought someone came on and spoke okay - in Cottonfelts paragraph 20 it says:

In conclusion I feel a fine is more than nominal which is not harsh and should be appropriate in the case. The amount must be substantial and significant so it not be viewed as merely a licence for an illegality nor a mere slap on the wrist. The amount must be one which will be felt by the defendant. It should also serve as a warning to others who might be minded to engage in similar activity that it would be costly for them to do so even if they do not succeed in their legal aims.

And we know that Cottonfelt pretty much stands for the premise that - you know - that it's more than a slap on the wrist and it's more than just a cost

of doing business with this. Paragraph 21 they note:

The fine must not be tantamount to a licence fee to commit illegal activity but must be sufficiently substantial to warn others that such illegal activity will not be tolerated.

In Aylmer, Your Worship, and I think it goes without saying was a hotbed of this type of activity during the main part of the Covid period, and I do note Your Worship that there are, there has been a few decisions out of this Court right here with regard to these type of events. As a matter of fact in - if I can just see the date - on the 14th day of November 2020, a week after Ms. Neudorf's protest, there was a small one in St. Thomas, and the small one in St. Thomas they met at an arena, they marched down this path behind the arena, marched down this path along railroad tracks, marched down to the cenotaph, had a meeting, turned around and marched back. There weren't main streets closed, there weren't business closed. There was about 200 to 250 people there, and Lamont Dagle had a trial, I have actually got a certified copy of the endorsement, but Lamont Dagle was found guilty of 10(1), not the organizing, just the attendance okay. He was fined \$20,000 for that. Now Mr. Dagle, he got on the back of trucks. He made statements with megaphones, he was pretty much seen as one of the leaders, but he wasn't the main organizer of that

5 and he was fined \$20,000 Your Worship. Kristen Nagle appeared in April 25th, 2021 at the Aylmer Church of God. She appeared inside, there was limits, she was on the stage at the front with five other people I think, and held their hands up. She was found guilty of the 10(1), she was fined \$10,000. Now that Your Worship, that case is under appeal right now. That will be heard in October of this year. Sylvia Benneweis in this Court, just very recently on June 29th, 2023, she actually attended on the 24th day of January, 2021 at The Church of God with many other people. She wasn't an organizer. She was at the back of the church. She didn't get up to speak. She didn't get up to do anything. She was in that - she was in - she was found guilty at the trial with a \$1000 fine.

THE COURT: What was the fine?

MR. HUBER: \$1000 for her. She was just an attender. One of many, didn't speak, didn't get up on the stage, didn't do anything, but what we're seeing from these fines are the more you participate the higher the level the fine is going to be. And Your Worship I had provided earlier on to Ms. Rumpel and to yourself, the *Reopening Ontario Act* and if I can take you Your Worship please to Section 10

THE COURT: One moment.

MR. HUBER: and I'll wait til you get there.

THE COURT: Okay this is Section 10.

MR. HUBER: Sections 10(1) which Ms. Neudorf has been found guilty on two of these. One from October 24th, 2020, one from November 7th, 2020:

That every person who fails to comply with subsection 9.1(2) or (3) or with a continuant section 7.02 order or who interferes or obstructs any person in the exercise of a power or performance of a duty confirmed by such an order is guilty of an offence and is liable upon conviction to a) in the case of an individual, Ms. Neudorf, subject to clause (b) to a fine not more than \$100,000.00 and to a term of imprisonment for not more than one year.

To make it very clear, I'm not asking that Ms. Neudorf be given a jail sentence okay, I'm not even anywhere near, I'm not asking that. But interestingly enough if you go down to Number 3 Your Worship, (3) increased penalty:

Despite the maximum fine set out in subsection 1, the Court that convicts a person of such an offence may increase a fine imposed on the person by an amount equal to the financial benefit that was acquired by or accrued to the person as a result of the commission.

Now she did not get any financial benefit as far as I know, but one can only think about the

financial benefits that were lost on this day. The financial benefit that Aylmer lost with regard to having to hire all these extra police officers and pay for those. I also direct your attention, Your Worship, to Section 10.1(a) which Ms. Neudorf is found guilty of two, one for October 24th, 2020, one for November 7th, 2020.

A person is guilty of an offence if the person hosts or organizes a public event or other gathering at a residential premise or other prescribed premise and the number of people in attendance exceeds the number permitted under a continued Section 7.02 order.

And we'll go down to 3

The penalties a person who is convicted of an offence under subsection 1 is liable.

And if I turn to the next page under (a):

In the case of an individual, Ms. Neudorf, subject to, clause (b) not less than \$10,000.00 not more than \$100,000.00 and for a term of imprisonment not more than a year.

These fines, Your Worship, these are significant fines. They are put for a purpose. This legislation as I know it was made to protect the public. You found that people were gathered in

5 groups of more than 25 people. You found the
people were not social distancing. You found the
people were not wearing masks. They didn't care.
That's the essence here, and Your Worship I am
submitting that you have to send a very very
strong message to both Ms. Neudorf in specific and
general deterrence, and we know what Cottonfelt
says regulatory offences, speak to deterrence and
general deterrence; and you have to let the
10 community know that if you're going to organize
this type of activity which affects the lives of
several people, hundreds of people, that you're
going to pay a price dearly in order that someone
is not going to do that again. And with that in
mind Your Worship what I'm seeking is this: with
15 regard to the October 24th, 2020 10(1) charge a
fine of \$1,000.00.

THE COURT: Okay just one moment. Yes.

MR. HUBER: With regard to the October 24th
20 10(1)(a) charge a fine in the amount of \$10,000.00
which is the minimum fine Your Worship. With
regard to the November 7th on the 10(1), a fine of
\$2,500.00.

THE COURT: Sorry \$2,500.00?

MR. HUBER: Yes.

THE COURT: Yes.

MR. HUBER: And with regard to the 10.1(1) a fine
in the amount of \$40,000.00 and the reason I am
asking for \$40,000.00, Your Worship, is because
30 there were between 1000 and 1500 people and as I
noted before not to continue to repeat myself, she
in essence shut down a town at least for four

5 hours if not longer than that, which had to reroute traffic which had to - which had a total inconvenience on people on that day, and I would submit that with the amount of people there, with the amount of resources, Aylmer should have had two police officers on, there were 30 there to protect the public and I would submit that \$40,000 is a reasonable fine.

THE COURT: Okay.

10 MR. HUBER: Subject to any questions you have.

THE COURT: I do have a question...

MR. HUBER: Yeah.

THE COURT: ...before I hear from Ms. Rumpel...

MR. HUBER: Sure.

15 THE COURT: ...and I understood you to say that you were not seeking a period of custody.

MR. HUBER: Correct.

20 THE COURT: Is that right? Then maybe you can help me with that because Section 10(1)(a):

In the case of an individual subject to clause (b) to a fine of not more than \$100,000.00 and for a term of imprisonment of not more than one year.

25 Is it your submission you read that as being disjunctive?

MR. HUBER: Yes. I don't combine them. I think it's and, that I could ask for both if I wanted.

30 THE COURT: Okay but and you're not.

MR. HUBER: I am not. I'm not asking that she be incarcerated.

THE COURT: Okay.

MR. HUBER: And part of the reason I'm not asking that she be incarcerated is I'm quite aware, she's made it quite know with regard to small children and that, and I think fines will send the message to her.

THE COURT: Right. Okay. All right and I guess that would be the same reading that you're suggesting for sub paragraph 10.1(3)(a) that when it says:

In the case of an individual subject to Clause (b) to a fine of not less than \$10,000 and not more than \$100,000.00 and a term of imprisonment of not greater than one year.

MR. HUBER: Correct.

THE COURT: You read that as disjunctive?

MR. HUBER: Correct.

THE COURT: Okay. I just wanted to make sure I understood your argument.

MR. HUBER: Yeah yeah yes.

THE COURT: Okay anything else then Mr. Huber that you have?

MR. HUBER: Not, subject to any questions you have Your Worship.

THE COURT: All right. Okay Ms. Neudorf or Ms. Rumpel go ahead please.

MS. RUMPAL: All right, Your Worship, Ms. Neudorf comes before you with no criminal record, as a law abiding citizen save and except for this

conviction before you. She is a devoted wife, home schooling mother of three children who has always believed in strong family ties and doing things together as a family. She has lived in Aylmer for over ten years, and in her years of living in Aylmer she was always involved in the community whenever it came to the arts, drama, and music performances at the Aylmer Bandshell and Town Hall as well and she has always enjoyed her time and her community connections in Aylmer. She has since moved to New Brunswick to live with her family and that is where she resides.

THE COURT: Sorry, where Ms. Rumpal? I didn't hear.

MS. RUMPAL: New Brunswick.

THE COURT: Okay thank you.

MS. RUMPAL: Your Worship, ultimately in - with reference to sentencing under the *Provincial Offences Act*, I would like to bring your attention to Section 59(2) under *The Provincial Offences Act* which indicates relief against minimum fine. And although - I can read out the section for you:

Although the provision creates a penalty for an offence prescribes a minimum fine, where in the opinion of The Court exceptions or concessions exist so that to impose a minimum fine would be unduly oppressive or otherwise not in the interest of justice, The Court may impose a fine that is less than the minimum or suspend the sentence.

At this point in time I would like to focus on a few factors which can support not imposing the minimum fine as it's not in the interest of justice. We are looking at the four charges before Ms. Neudorf that she's been convicted of, yes the goal in mind - to keep in mind specific and general deterrence and is not in the interest of justice to impose the minimum fine for those charges for numerous reasons. For one, and we can almost look at this as a mitigating factor, but both of the offences yes they took place on two separate days, they were for a few hours, disruption to that point would be somewhat minimal over the span of the entire weekend. It was not violent, even the police also described that for the most part save and except for one or two instances between individuals it was a peaceful gathering and also in dealing with Ms. Neudorf at any point in time there was extensive police cooperation in the sense of Ms. Neudorf was fair and open in communicating her - you know - intention to have a gathering, intention to have a peaceful protest and the police described all communication with her as friendly and pleasant. In fact plans were created, there was always transparency with reference to what type of parade route etc. that would be created even when the parade route changed, that was communicated as well, and everyone had the same goal in mind, both police in their duty to ensure safety and traffic safety as well, so safety during the actual event along with traffic safety as well. This is one -

5 definitely one factor that can be taken into
consideration as both a mitigating factor and
supports the - you know - not having the interest
of justice. Furthermore, I want to focus on
specifically the communications and actions of
police. I don't submit - sorry we submit that
ultimately the police were - did not view these
events as anything that was pressing and
substantial...

10 THE COURT: ...Ms. Rumpal you are making some
submissions and I will give you - you know -
opportunity to make some submissions but I - I
mean I want to remind you I made some very
specific findings of fact in my decisions, so and
15 you know it is improper to go behind and beyond
those submissions - or sorry not the submissions
but those findings of fact, and specifically I
rejected your client's and your argument with
respect to the officially induced error. So I
20 just want to remind you to be very conscious of
that when you are making your submissions with
respect to what I found in my decision because
you're bound by that as is the prosecution's
office. So I'm just cautioning you to be very
25 mindful of that and be very careful that you are
not mischaracterizing what my findings of fact
were, because I have them. Okay.

MS. RUMPAL: Yes absolutely.

30 THE COURT: So I'm just - I will give you ample
opportunity to make your submissions but you need
to be very careful with how you are characterizing
the facts that I found okay.

MS. RUMPAL: Absolutely. Yes.

THE COURT: Thank you.

MS. RUMPAL: So ultimately just looking kind of the timing of events, you know I do want to bring it to your attention that - you know after the first event, which was October 24th, Ms. Neudorf was not charged and the second event she was not immediately charged...

THE COURT: Ms. Rumpal I'm going - you know I want to give you ample opportunity, I made - I believe I made comments with respect to that in my decision. Okay, so - you know - please if you want an opportunity to review my decision I'll give you ten minutes right now to review that, but I want to - you know - be very fair to you but it's mostly important to be fair to Ms. Neudorf that - you know - your submissions are proper first of all. So please, please be very careful with how you are characterizing the facts that I found. And you know I made comments to the fact that you know, not charged at the time we know that, I mean there are limitation periods and so on. So just be - please please please, I'm asking you to help me craft a decision on sentencing and you need to help me by being very careful with what your submissions are and your characterization of the findings of fact that I made okay. So please. Thank you. Go ahead.

MS. RUMPAL: All right so with reference to, once again focusing on why imposing a minimum fine would not be in the interest of justice would be looking at kind of the situation we are in as a

whole right now. For example, well for one the timing since the charges have elapsed has been over two and a half years and once Ms. Neudorf was charged there were no further protests. She did not continue to hold protests or organize any protests once she was charged. That was it. There was no protest that she had - that she had organized. Now one could argue that had she continued to organize different protests or continued to put together gatherings or try and organize something that could be an aggravating factor, but - you know - the fact that she did not, that should also be considered and given at least some form of weight. Furthermore, where we are today we're no longer in the pandemic so sending - at least as of right now there are no current - you know - protests or peaceful gatherings happening with reference to any form of government mandates etcetera, but we aren't in a pandemic anymore and sending a - you know - imposing a minimum fine for example is not necessarily a way to send the signal - you know it won't have the same effect you could say whereas if this was about a year and a half ago while both the pandemic was ongoing and protests were still happening. Ultimately there are some - I mean - in terms of similar cases my - I didn't actually receive the case that my friend was referring to, I don't have any information with reference to the Miller cases, but he has made reference to them in submissions. Ultimately as of right now there are no reported decisions of any particular

convictions or anything with reference to organizing a gathering aside from the decision of [inaudible] Trinity Bible and that is with specific reference to gatherings when it comes to religious gatherings that we know of, and ultimately there have been - or I mean it's almost certainly you are in a unique position where you are going to be determining the sentence for Ms. Neudorf and taking into account that there aren't any other reported decisions at this time. My friend does make reference to - you know - similar convictions that were in this court house, that and one of them again under appeal, and ultimately my understanding is that anybody who has been charged with 10(1) under the *Reopening Act*, there is a set fine that has been ordered - I did provide a copy to you I'm not sure if you have it as of this time but I did submit it in...

THE COURT: Have what? What are you talking - this is we can't talk about a set fine because these are Part III proceedings. Set fine is if somebody receives a ticket, so set fines are not applicable.

MS. RUMPAL: Okay, all right. Yes you are correct.

MS. RUMPAL: Ultimately anybody who has been attending these events and whatnot, they've been charged accordingly. At the same time we are aware that other entities have been charged as well under its church's or uhm - churches and ultimately we're in this position now where the defendant - sorry - the reality is that we made

5 this clear in you know the affidavit for the
Notice of Constitutional Question that there have
been numerous protests that have taken place and
you know - the defendant does have valid concerns
as to the arbitrariness of the gathering
restrictions and the selective enforcement across
the country, ranging from Black Lives Matters to
Farmers and activists seeking a peaceful protest
and where we are today is in a situation where -
10 yes, the highest court as of now is the *Ontario
Court of Appeal's* decision with Trinity Bible but
that case has also - there is leave to appeal for
an act of *The Supreme Court of Canada* and tomorrow
itself, the *Ontario Superior Court of Justice* is
hearing this exact very same Notice of
15 Constitutional Questions which are the ability to
protest during this time, this is the Randy
Hillier case that's going to be heard tomorrow and
the 28th at the *Ontario Superior Court of Justice*.
The fact is that in and of itself did Ms. - did
20 Ms...[inaudible]

THE COURT: Oh, we're losing you. Ms. Neudorf or
Ms. Rumpal we're losing you. This is a continuous
issue with Zoom from your office actually. I
25 don't know - are you back Ms. Rumpal?

MS. RUMPAL: I'm here, can you hear me?

THE COURT: Yes, all I got was in and of itself,
that was it.

30 MS. RUMPAL: Uhm, in and of itself the offences
before this Court, you know, have been deemed
offensive - you know due to the particular
situation that you're in; however, if next month

5 or a few months from now until *Ontario Superior Court of Justice* renders a decision indicating that a peaceful protest is protected and the mandates are not saved by Section 1. We're in the situation where this is no longer an offence in any shape or form. So ultimately taking into account those factors and you know addressing - addressing many things that - sorry addressing a few of the submissions that my friend has made. 10 Yes he has made reference to some of the convictions that have been rendered by The Court, similar convictions; however, you know I do also want to bring it to the Court's attention that - and I don't have - I haven't ordered transcripts for any of these proceedings, but I am aware of the proceedings where - you know - a lot of these charges have been resolved. There has been a very big effort with the province as well in jurisdictions across the province where many charges have been either stayed or withdrawn. 20

THE COURT: Right.

MS. RUMPAL: And you know whether it's an exchange for donation or some other type of - some other type of resolution, and there's - you know - it is something that is happening and uhm that has been appreciated by many of the courts as well, and you know ultimately what my request would be - we are submitting that, you know, given these - given the factors we don't really think it's in the interest of justice to impose such a significant fine as of this time given the foregoing reasons and the reality is that with any type of gathering there 30

5 will be some of militant temporary disruption.
There will always be people who agree with a
message or don't agree with a message, you know
and ultimately we - you know it's the defendant
still submits that you know the arbitrariness and
selective enforcement of these protests is an
issue and you know had this been a Black Lives
Matter protest would it have been different; and
10 regardless, ultimately taking into account all of
the factors that I've mentioned is my humble
request to The Court today to consider a sentence
as follows, and that would be for the October 24th
charges Section 10(1) a charge of \$750.00...

15 THE COURT: Just - I want to make sure I get what
you're saying sorry, I don't type that fast.

Sorry go ahead, \$750.00 yes for attending right?

20 MS. RUMPAL: Yes. The reason why we picked
\$750.00 is because it is equivalent to - you know
- the set fine for attending and it is our
suggestion. 10.1 under Section 10.1 we find if
you could provide relief under Section 59(2) and
impose a fine of \$1,000. And then November 7th
10(1) would be \$750.00 and the final charge of
November 7th gathering 10.1 if you could provide
25 relief under Section 59.2 and set the fine at
another \$1,000.00. In the alternative, Your
Worship, if this Court finds that it is not in the
position to provide relief under Section 59.2
relief on both of the organizing charges then we
30 would submit to The Court to find relief on at
least one of the charges and - one of the
organizing charges - and it would be in your hands

whether it's the October 24th or November 7th charge as well, but at least provide some type of relief against imposing the minimal fine. Subject to any other questions you would have. Those are my submissions.

THE COURT: You've lost me a little bit on that last submission. So are you - maybe it's - let me see if I understand your argument on the 59(2). I understand your argument to be that you're asking me to exercise some discretion with respect - because of the administration of justice I guess it is. Right? Of that section.

MS. RUMPAL: Yes I don't believe it's in the interest of justice. Yes.

THE COURT: All right and then you said in the alternative. Are you asking me to exercise that discretion on one of them and maybe not on the other one?

MS. RUMPAL: Yes.

THE COURT: You lost me.

MS. RUMPAL: I mean I would submit if - you know - The Court is just not in the position to find that on either charge they cannot provide relief for one of the minimum charges then - you know - could The Court to at the very least provide relief on one of the charges. You know because it's - it's a matter of the quantity of charges here whether it's two or three or four. It's significant and I don't believe imposing any kind of a significant fine would be in the interest of justice at this point in time.

THE COURT: Okay. Just give me one moment. Okay thank you.

MS. RUMPAL: Thank you Your Worship.

THE COURT: Mr. Huber do you have anything?

MR. HUBER: Yeah, very briefly. Ms. Rumpal has asked you to consider Section 59(2). I'm bound to advise you with regard to the decision of Mr. Justice Donald out of this jurisdiction that you have to consider the Henry of Pelham case. More specifically Section 63 of the Henry of Pelham case is the test given to you in six paragraphs, and you are well aware Your Worship because you have used this a number of times in this Court that the bar is very high. I mean all we have heard today from Ms. Rumpal is well it's not in the interest of justice. I would - I would submit it is more in the interest of justice for the reasons that I outlined of the effect that it had on this community, and this was a global pandemic. This just wasn't a pandemic in Aylmer, and I would submit, Your Worship, that section that Ms. Rumpal has not even come close to the six point test in Henry of Pelham and I urge you to review that when you're making your decisions Your Worship.

THE COURT: Uhm, Ms. Rumpal are you aware of that Turner decision? It is from this jurisdiction. It's Justice Donald. It was at an appeal of a uhm - it was a guilty plea to a compulsory automobile insurance act charge and the presiding Justice of the Peace at that time exercised 59(2) discretion and imposed a fine - reduced it by \$1,000.00 from I think - well it is from \$5,000 to \$4,000. I

5 think that's what it is. So the defendant
appealed it. Justice Donald released his decision
and said that the Justice of the Peace made an
error. Did not apply Henry of Pelham. He was
bound to apply Henry of Pelham and then the
circumstances of applying Henry of Pelham he had
to impose the minimum fine of \$5,000. So it kind
of worked against the defendant in the
circumstances. Do you want a copy of that to
10 review it? Because Justice Donald's pretty clear
that you have to apply the Henry of Pelham case
so, the six points. You didn't reference Henry of
Pelham at all, so I don't know if you want that or
not. I am well aware of the Henry of Pelham case.
It's a very insightful case. First time that the
15 *Ontario Court of Appeal* gave some direction on how
to apply and interpret Section 59(2).

MS. RUMPAL: Yes I am aware of the case, so I'm
happy to have a few minutes to review it and then
I could incorporate that into my submissions if
20 you would like.

THE COURT: You want a copy of the Turner case?
Because you would have Henry of Pelham.

MS. RUMPAL: Yes I mean I can pull it up and if
25 you would like...

THE COURT: Ms. Rumpal, it's not whether I would
like it. I just wanted to give you that
opportunity. Mr. Huber referenced it. I'm aware
of it because this is our jurisdiction, you know
30 so we get copies of you know when our decisions
are reviewed we get copies. It wasn't my
decision, it was someone else - my colleague's

decision, but we are made aware of what decisions come out of the appellate level. But that is basic - Mr. Huber that's basically what it is in a nutshell correct?

MR. HUBER: The gist is that both defence and prosecution have an obligation to remind the justice that if there is going to be an application pursuant to Section 59(2) that you have to review the Henry of Pelham case...

THE COURT: Right.

MR. HUBER: ...which is an *Ontario Court of Appeal* case as you are aware...

THE COURT: Right.

MR. HUBER: ...and more specifically paragraph 63, the six factors, which I believe Ms. Rumpal has not established.

THE COURT: Yep yep, I mean you didn't reference Henry of Pelham. Mr. Huber has. I'm well aware of it so I don't - I don't know.

MS. RUMPAL: Well as of this time I mean I'm somewhat aware of the case and I can refamiliarize myself with it if I have an opportunity and then I can incorporate it in that I would that I can, if I can you know given a few minutes and given The Court's indulgence for a few minutes and that way I can incorporate that if possible.

THE COURT: Okay. Ms. Neudorf would you like Ms. Rumpal to have that opportunity?

MS. NEUDORF: Certainly.

THE COURT: Okay. I'm coming back at 3:45. You have a copy of it. You can get a copy of it Ms. Rumpal?

MS. RUMPAL: The Pelham case?

THE COURT: Yes Henry of Pelham.

MS. RUMPAL: Yeah, I believe it's an *Ontario Court of Appeal* case correct?

THE COURT: It is. It is.

MS. RUMPAL: Okay if I have any issues I will connect with my friend right now, but I believe I have it and I'm going to pull it up right now.

THE COURT: I don't know, it's Turner's report I think it's a canlee(sp) report.

MR. HUBER: Turner is reported, but Turner simply just says you have to remind of the Henry of Pelham case Your Worship.

THE COURT: Okay. All right we'll stand down until - what did I say - 3:45.

CLERK OF THE COURT: All rise. Court is now in recess.

R E C E S S

U P O N R E S U M I N G:

CLERK OF THE COURT: All rise. Please be seated.

THE COURT: Thank you. Ms. Rumpal did you have any other submissions?

MS. RUMPAL: Your Worship yes. I have - like I reviewed the case and I do remember - I do remember this case as well. Specifically with reference to the Pelham case and looking at Section 63, particularly 63(5), I understand that ultimately when seeking relief specifically for not in the interest of justice, you know, many

factors have to be taken into consideration, including those of community. So as of this point in time - I mean asking for relief from this section, our submission is that it could be a bit of both, that it would be unduly oppressive, but I'm not saying unduly oppressive in the sense that's a financial burden, but unduly oppressive in the actual put together facts of this case. Not in the interest of justice I've made my submission with reference to where things are right now in terms of the law where things stand. The fact that there is a higher court making a - going to be deciding on these exact issues as well in the near future. You know, ultimately we are going to ask for relief on the minimum fine to these charges, but in the alternative if Your Worship is not going to invoke Section 59(2), then our submission would be as to please consider keeping, just imposing the minimum fine only and not such a high significant fine, so that would be our submissions for both organization for October 24th and November 7th, to keep the fine at \$10,000.00 the minimum fine and not imposing anything significantly higher.

THE COURT: Okay thank you. All right. Ms. Neudorf, you - is there anything that you want to say. You don't have to say anything at all, but if you want to say something now, it's your opportunity. It's not your opportunity to relitigate [laughter], okay it's to help me to make a decision on the sentencing. Okay if you

want to you can but you don't have to, it's up to you.

MS. NEUDORF: No I don't think I should that's why I have Rosie, she's a lot more eloquent than I am and that's why I got her.

THE COURT: Okay that's fine and you know, individuals they don't have to say anything. It's just that there's a...

MS. NEUDORF: I might regret it because I didn't take the opportunity, but I really am not prepared or a lawyer.

THE COURT: Okay no that's fine. There's just a section in the *Provincial Offences Act* that, you know, I would like to give you that opportunity that's all, but you don't have to it doesn't matter.

MS. NEUDORF: I would like to take it but I don't know if I could but thank you.

THE COURT: Okay thank you, so I just want to make sure you don't want to say anything right? Is that yes?

MS. NEUDORF: Right.

THE COURT: Yes you don't want it, sorry that didn't come out very well.

MS. NEUDORF: You know how I would go on

THE COURT: You don't want to say anything in terms of sentencing is that right?

MS. NEUDORF: I mean of course I would prefer to have no fines, but I mean wouldn't that be obvious.

THE COURT: Okay. No I understand that for sure.

MS. NEUDORF: Correct.

THE COURT: I just wanted to know if there was anything else that you wanted to say about sentencing.

MS. NEUDORF: I don't think so. Sorry.

THE COURT: No need to apologize, and I want you to understand as well. You are entitled to have a trial okay. You were entitled to challenge the evidence and everything. So it's not anything you weren't entitled to do okay. And that's what you did, you had your trial. Okay? All right thank you. I'm going to take just some time right now. I'm prepared to give my decision today. I just don't know when I'm coming back, so I will let Madam Clerk know. I'm going to probably be at least half an hour okay, but I'll let Madam Clerk know when I'm ready for - if I need more time I will let Madam Clerk know, but I think everyone can have a break until 4:20. It is ten to four now so we'll break until 4:20 and I'll let Madam Clerk know. Okay? All right thanks very much.

MS. NEUDORF: Thanks.

CLERK OF THE COURT: All rise. Court is now in recess.

R E C E S S

U P O N R E S U M I N G:

CLERK OF THE COURT: All rise. Court is now in session. Please be seated. Your Worship we've had other people join us in the call in the break. Would you like me to read the caution again?

THE COURT: Sure. I would please.

CLERK OF THE COURT: You are not permitted to make any recording of the proceedings or take photos or screen captures of the proceedings. It is an offence under Section 136 of the *Courts of Justice Act* and it may constitute contempt of court for anyone to copy, record, screen shot, photograph, broadcast, or disseminate a court hearing or any portion of it including on social media and/or other internet sites without express permission of The Court.

THE COURT: Thank you. Again I just want to remind everyone, my name is Justice of the Peace Hampson. This is the St. Thomas *Provincial Offences Court*; it is a hybrid court. We have individuals physically in the courtroom and we also have a number of individuals appearing by Zoom. Those individuals on Zoom please do not unmute or say anything. I'm about to give my reasons for sentencing in this matter, and again as I indicated before, if there are any outbursts by anyone I will have Madam Clerk place those individuals on Zoom into a breakout room and they will not be allowed back into the - into the virtual court similarly for in the body of the court as well and I would be exercising my discretion pursuant to Section 135(2) of the *Courts of Justice Act*. So with that in mind, Ms. Rumpal I see that you are back as well, so thank you very much.

R E A S O N S F O R J U D G M E N T

HAMPSON, J.P. (Orally):

5 So as I've already indicated in reasons that I've
given both in terms of the substantive aspects to
this matter, as well as the charter application
that was dismissed, these are - these are very
serious allegations and Ms. Neudorf quite rightly
is entitled to have her day in court and she has
10 had her day in court. She is entitled to
challenge evidence and present evidence and make
every argument that is possible and she has done
that, and I accept Ms. Neudorf and her
presentation of the evidence. I accept Ms.
15 Rumpal's representations with respect to - on
behalf of her client as well and I just want
everyone to understand that this is not an easy
decision for me to make at all. I'm well aware
that individuals have an interest in this matter
and most particularly I'm aware that Ms. Neudorf
20 has the most interest in this matter because this
is her matter.

25 So as I indicated I'm just going to summarize a
little bit of what I said in the Charter
Application as well as in my findings of fact. I
found Ms. Neudorf guilty of four offences having
to do with attending and hosting outdoor events on
October 24th, 2020 and November 7th, 2020 in
30 Aylmer. There were regulations that were in place
at the time that limited the number of individuals
who could gather. It also is to be remembered

that at this point in time those limitations are no longer in effect and have been repealed; however, at the relevant time and that's where I have to make my decision is in terms of the relevant time, they were in effect.

I found that all of the essential elements had been proven. I found that Ms. Neudorf had called the events peaceful protests and I found that a peaceful protest, which they were, or a freedom march or a freedom rally was a public event that was set out in the regulation. She, as I already indicated, attended at and organized the two events.

The 25 person limitations were in effect at that time, at both relevant times, and there were more than 25 people at these events. Estimates for the October 24th event were between 100 to 300 people that I found. The demonstrators had gathered at the bandshell and then walked down the streets of Aylmer. The estimates for the November 7th event were between 1,000 to 1,500 people that I found. Again the demonstrators gathered at the East Elgin Community Centre and then walked down the streets of Aylmer causing roads to be closed. There were pick up trucks and cars and tractors also being present.

Significant additional police resources were required for both events and for the specifics of my findings, I invite everyone to read my reasons

5 for February 14th, 2023. The defendant had provided the routes for the march. Had advertised the events through various social media, spoke at the events, and was fully aware of the gathering limitations in place at the relevant times. I had rejected any type of due diligence defence and I did not find it was an officially induced error as well.

10 As indicated the Charter Application was dismissed, as a I started by saying in these reasons. Right at the beginning of the sentencing provisions and submissions.

15 The way I understand the arguments being presented on behalf of Ms. Rumpal through - sorry on behalf of Ms. Neudorf through Ms. Rumpal is that Ms. Neudorf is making an application under Section 59(2) of the *Provincial Offences Act*, and I will have more to say on that in just a moment. It realistically is because, as I understand the argument being, because of the changes that have happened from when these events occurred to now.

25 When these events occurred, as I found in the Charter Application, they were occurring at a time during the - during Covid 19 when Covid 19 had been declared a pandemic and the number of cases were rising, and the legislation - the legislature had enacted various pieces of
30 legislation to address various issues including social gathering, masking, and so on. One of the

5 experts that I heard evidence from at the - on the
Charter Application described what was going on at
that particular time and I accepted his evidence,
and he said in it that at the time of these
restrictions in place the temporary limits
including the outdoor gathering restrictions
translated to thousands fewer people dead. That
the strictest gathering limits corresponded to a
time when the rate of Covid 19 transmission in
10 Ontario and the burden on the Ontario health care
system was at its highest; and that the risk of
transmission at a gathering was particularly high
in October and November of 2020 as the Covid 19
cases were at their highest since the start of the
pandemic and were increasing; and that the Covid
15 19 hospitalizations were also increasing during
this time, and thus there was a risk of
overwhelming the health care system. That was the
evidence of Dr. Hodge. That was the evidence that
was accepted by Justice Pomerance in the Trinity
Bible case. That was also the evidence that the
20 *Ontario Court of Appeal* accepted and found no
error by Justice Pomerance in terms of those
findings that she made.

25 As Ms. Rumpal had indicated in her submissions,
this case was not about challenging the science
behind Covid 19. As Justice Pomerance and others
have said, it's not for The Court to second guess,
30 it's not for The Court to resolve the issues with
respect to the science behind Covid 19 and, you
know, I want to emphasize that as well. So in

terms of sentencing, I have to place myself into what was happening at that time and the circumstances surrounding the events in place, and what was in place at that time, and what the types of penalties were at that time.

So, with those comments, as I understand the arguments on behalf of Ms. Neudorf, is that Ms. Rumpal argues that I should be able to exercise some discretion under Section 59(2) of the *Ontario Provincial Offences Act* and what that says is:

That although the provision that creates the penalty for an offence prescribes the minimum fine wherein the opinion of The Court exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interest of justice. The Court may impose a minimum fine that is less than the minimum or the suspended sentence.

Now the reason why Section 59(2) is applicable is because the penalty provisions for the offence, certainly the organizer of the offence, calls for a minimum fine of \$10,000, and as I understand it the application for the 59(2) is with respect to both sets of charges. The one from October 24th and then the one from November 7th, and Ms. Rumpal argues that it would be contrary to the interest of justice to impose a minimum fine for Ms. Neudorf in these circumstances.

5 Mr. Huber on behalf of the prosecution is arguing for the imposition of the minimum fine for the event that happened on October 24th of \$10,000 as being an organizer and is also arguing for an increased fine for the incident from November 7th of 2020 for \$40,000.

10 Ms. Rumpal's alternative argument, as I understand it, is to impose - if I have to impose the minimum fine to impose the minimum fine for both events as an organizer and not to increase the - from the minimum fine.

15 There was a little bit of a dispute between what penalty should be imposed as an attendee of the events, and realistically in my view the real arguments have to do with being as the organizer. That's where the emphasis is going to be in these reasons.

20 So Henry of Pelham as we all know, is the case that the *Ontario Court of Appeal* released with respect to some guidance in terms of how to interpret 59(2) because up until that point in time there wasn't a lot of guidance from the Ontario Court of Appeal, and it sets out very clearly what needs to be considered in a 59(2) application. And as I understand the argument from Ms. Rumpal, it's not the portion of the test that has to do with personal hardship where the exercise of discretion is being asked. It has to

25

30

do with the contrary to the interest of justice. And just while I'm on that note, I am - as I found in my reasons as well, Ms. Neudorf is, you know, she was from this community as I understand it she is now living in New Brunswick, she's a mom, she's a stay at home mom, she has three children. Ms. Rumpal indicates she was a law abiding citizen and I think I found in my reasons as well that, you know, initially was in - you know, took a great interest in what was happening with respect to the Covid 19 and so on, so she had exercised, you know, what she believed to be her rights, and what I found in the Charter Application was that those limitations were reasonable justified in a free and democratic society.

So Ms. Neudorf is uhm - is she is very passionate. It came very clear through the evidence as well. She's very passionate about what she believes in and what she - what she undertook in these circumstances, and she was very clear - you know - that she was a mom that was - you know - against what was going on and wanted to share that with other individuals.

The issue is however, as I've already found, that the restrictions were in place and although the restrictions did amount to a violation of her charter rights they were demonstratively justified in a free and democratic society so that's the reason why her Charter Application was dismissed.

5 So in all of that context I look at whether or not
the 59 - I have some discretion under Section
59(2). Because Henry of Pelham tells us in
Paragraph 63 that the minimum fines of established
sentencing floor apply regardless of ordinary
sentencing principles. The imposition of fines
above the minimum threshold, and this is what Mr.
Huber's asking for with respect to the second
10 incident, is governed by the ordinary sentencing
principles as well as any principles set out in
the legislation.

15 The next item to consider, that the *Court of
Appeal* tells me, is that this is discretionary.
It's not automatic. It's discretionary for The
Court to impose something other than the minimum
fine, and it will apply only in exceptional
circumstances, and the burden is on those who are
seeking the relief to establish that the relief is
warranted based on the considerations. It is to
20 apply exceptionally, it will be an unusual case in
which the imposition of a minimum fine may be
considered unduly oppressive, and that's not where
we are arguing as I understand the argument, or
25 otherwise is not in the interest of justice.

30 So when we look at whether a minimum fine is
otherwise not in the interest of justice, *The
Court of Appeal* said this involves a consideration
of not only the interest of the individual
offender, but also the interest of the community
protected by the relevant public welfare

5 legislation. And lastly it cannot - the discretion cannot be exercised arbitrarily. I must explain my reasons if I'm going to invoke Section 59(2), and in particular I must demonstrate both that the circumstances are exceptional and that it would be otherwise not in the interest of justice to apply the minimum fine.

10 So it's a very difficult, very tough test to me. In these circumstances, as I found, the amount of disruption to the community was significant. It was significant to the effect that, you know, I don't think it's an exaggeration that this community, the community of Aylmer was divided. You know the hockey was cancelled. Streets were closed and yes there were counter protestors that were there, but they were there as a result of the gathering - as a result of the peaceful protest. So the amount of disruption to the community was significant. The fact that, and I found in my reasons, the fact that a declaration of emergency had been declared was as a result of the first protest. And I - I'm having difficulty seeing and understanding and finding that there would be a better example of what happened in these proceedings in terms of the two protests, of imposition of restrictions on public - you know - public gatherings and being in the interest of the community. It's - the community that I take into consideration is everyone in Aylmer because that's where these incidents happened. But to say that it is - you know that the amount of time that was

25

30

involved was a short period of time over a weekend in my view that is just simply not realistic and I find it actually quite offensive particularly given the findings that I made in these proceedings. This was disruptive. This was planned. This was encouraged. This was advertised on social media, and when I look at some of the video as well of Ms. Neudorf, there was some - and maybe in her mind - there was some satisfaction as to what was going on. However, the limitations were in place. They ought to have been respected. Most people, as Mr. Huber had indicated, were respecting the limitations. So I - I am unable to see how imposing a minimum fine in these circumstances would be contrary to the interest of justice.

I appreciate Ms. Rumpal's argument that there is another case out there that apparently arguments are being made at the Superior Court. I anticipate it would have probably a Charter Application to find these provisions unconstitutional; however, in my view that is irrelevant to a sentencing in these circumstances. If the arguments that are to be made, I suppose, in that other case if they are similar to the arguments that were made in the Trinity Bible case before Justice Pomerance that were rejected, and if they are similar, you know, to the decisions - to the decision of the *Ontario Court of Appeal* in the Trinity Bible case that upheld Justice Pomerance's decision, they were rejected. And in

my view I do not accept that the fact that that case may be ongoing and may come out, it has any relevance at all to a sentencing before me.

5 And the other comment that I want to make is that I know Ms. Rumpal on behalf of Ms. Neudorf made some submissions and presented some evidence in terms of the affidavit material with respect to other protests that may have been happening at the time. In my view, as I already found, the fact that other protests mentioned by Ms. Neudorf and Ms. Rumpal such as the Black Lives Matter or the Pro Gun Activists were occurring without any charges, according to the defendant, it is of absolutely no merit to the defendant, to Ms. Neudorf's argument, that her rights were violated. And as I already indicated that is an issue of enforcement of the regulations. And also, again it was argued, that there were no charges in between the two events, again is absolutely irrelevant. These are - individuals are not necessarily, you know, assessed a ticket at the time. As long as the time within which the information was laid was accurate and proper then it's absolutely irrelevant that, you know, no charges were laid as a result of the first incident. So I want Ms. Neudorf to understand that I've taken all of that into consideration, but again I can't articulate why I should reduce the minimum fine. I can't. In my view I think it would be contrary to the interest of justice to reduce from the minimum fine. In my view, I think

10

15

20

25

30

5 the public needs to be - the community needs to be
protected and was protected by the legislation
that was in place whether individuals agreed with
it or not. In my view the public was protected by
this relevant public welfare legislation and I
find it very difficult to find any other case
where that was front and foremost, and I believe,
again I'm going to reference a part of Justice
Pomerance's decision that the *Court of Appeal*
10 found no error in. She found that this was a
crisis of the highest order requiring early and
effective intervention by public officials.
Ontario was entitled to impose restrictions in the
interest of the public health and the public was
entitled to have those restrictions imposed. In
15 my view the public is entitled to have the minimum
fine imposed in these circumstances as well. I do
not accept that the defendant has established
enough for me to exercise some discretion under
Section 59(2). I reject the application for that
20 relief.

25 As a result in the circumstances, Ms. Neudorf if
you could please stand. All right. For the
incident from October 24th for being in attendance
at the event, the fine will be \$1,000.00. For
being the organizer of that event, the minimum
fine is going to be imposed of \$10,000.00. For
the incident that happened on November 7th, some
30 two weeks later maybe three weeks later, the fine
for being in attendance at that event will be
\$1,000.00. And the fine for being an organizer of

5 this event in my view calls for more than the
minimum fine. I have to take into consideration
general deterrence to everyone else out there with
respect to this legislation that it needed to be
complied with. I also take into consideration
specific deterrence to you. I appreciate that you
are no longer in the community, you're living in
New Brunswick, you have a family, you are a stay
at home parent, I think I called you that in my
10 reasons you are a stay at home parent, I accept
all of that and I anticipate any type of fine may
have some - will have a financial impact on you as
well. I have to take into consideration the
provisions as discussed in the Cottonfelt
15 decision. That was the decision that Mr. Huber
referred to. The fines cannot be seen as simply a
licence to commit illegalities and in my view
that's where the emphasis needs to be as well.
And it's a warning to everyone else in the
20 community about activity. If there's a violation
there will be consequences, and also in my view
the gravity of the offence, the potential, the
gravity of the offence had to do with the number
of individuals that were there in the
25 circumstances that we were in as I've already
indicated as found by Justice - found by Dr. Hodge
and accepted by Justice Pomerance from the Court
of Appeal and is accepted by me as well. So in
those circumstances the fine for the second event
30 will be \$25,000.00. There is always the costs on
top of that and the victim fine charge, and I'll
ask Ms. Rumpal give me a - you know - what your

client is requesting with respect to time to pay those fines. They're significant so whatever you would think is reasonable, I will be prepared to impose that.

5 MS. RUMPAL: I think that at this time I would ask for a year to pay that amount please.

10 THE COURT: That's fine. Obviously if you need more time, you can simply apply to The Court and make an application before the year is up for an extension to pay. You need to show good faith efforts to pay and you do that by making payments and then The Court can grant a further extension. And Ms. Neudorf we need your current address. You don't have to say it on the record if you could just write it down for Madam Clerk okay.

15 MS. NEUDORF: Sure.

20 THE COURT: And then the reminder notice will go to you. If you change your address while the fines are outstanding you need to let The Court know okay.

MS. NEUDORF: Sorry I missed the last part.

25 THE COURT: So if you change your address while the fines are still outstanding, you need to let The Court know of any change in address okay. You don't have to place it on record if you could just provide that to Madam Clerk. And I will give you, you know, a year to start paying those fines.

MS. NEUDORF: To finish paying them or start paying them?

30 THE COURT: Well, I'm giving you a year. That's a very good question.

MS. NEUDORF: Yeah.

THE COURT: I'm giving you a year, one year to pay.

MS. NEUDORF: Okay yup.

THE COURT: Okay and as I said if you need more time to pay okay, you need to make your application before the year is up.

MS. NEUDORF: Okay.

THE COURT: Okay, and then you have to show good faith efforts to pay and realistically you do that by making payments.

MS. NEUDORF: Okay.

THE COURT: Okay?

MS. NEUDORF: Yup.

THE COURT: All right and as far as the housekeeping things go, my reasons and right up at the top said that information 20-310, it really should be the 20-319. Okay that was my mistake.

MR. HUBER: Yeah okay. So the other ones will be withdrawn then so long as they are both identical.

THE COURT: Information 20-310 and 20-309 are both marked as withdrawn. Okay.

MR. HUBER: I believe that's your docket Your Worship thank you.

MS. RUMPAL: Okay thank you Your Worship and thank you my friend.

MR. HUBER: Thank you Ms. Rumpal.

THE COURT: Okay thank you. You're free to go Ms. Neudorf.

MS. NEUDORF: Thanks. Have a great night. All the best Jack.

MR. HUBER: Good luck to you.

MS. NEUDORF: It has been a slice.

CLERK OF THE COURT: Court is now closed.

FORM 2

Certificate of Transcript

Evidence Act, subsection 5(2)

I, Elaine Hunter, certify that this document is a true and accurate transcript of the recording of R. v. KIMBERLY NEUDORF, in the Ontario Court of Justice, Provincial Offences Court, held at ST. THOMAS, Ontario, taken from Recording No.

20230726_08391_083913, dated July 26, 2023, which has been certified in Form 1.

November 27, 2023

(Signature of Certified Transcriptionist)