

CITATION: County Towing Inc. v. Windsor Police Services Board, 2026 ONSC 4234
COURT FILE NO.: CV-21-00030620-0000
DATE: 2026/07/22

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: COUNTY TOWING INC. and COXON'S SPECIALTY SERVICES INC.,
Plaintiffs

AND:

WINDSOR POLICE SERVICES BOARD and THE CORPORATION OF THE
CITY OF WINDSOR, Defendants

BEFORE: Justice I.F. Leach

COUNSEL: Raymond Colautti, for the Plaintiffs
Sheila C. Handler, for the Defendants

HEARD: May 26, 2025

ENDORSEMENT

[1] Before me are a motion by the plaintiffs and a cross-motion by the defendants, whereby:

- a. the plaintiffs seek summary judgment in their favour in relation to claims which they have not abandoned, (including various forms of declaratory relief tantamount to findings of liability that entitle to the plaintiffs to provable damages), together with an order pursuant to Rule 20.04(3) of the *Rules of Civil Procedure* directing a reference to determine the amount of damages to which the plaintiffs are entitled; and
- b. the defendants seek dismissal of the plaintiffs' motion, as well as summary judgment in favour of the defendants dismissing the claims of the plaintiffs which have not been abandoned.

[2] For the reasons set out herein, I find that the plaintiffs' motion should be dismissed and that the defendants' motion should be granted, resulting in dismissal of the action herein.

Further background

[3] As noted and discussed in further detail below, there was little or no dispute as to the underlying facts giving rise to this litigation, (as opposed to the possible legal consequences that should ensue on the basis of those facts), despite the substantial amount of material filed by the parties.

[4] While I have carefully reviewed and had regard to all of that material, and will have further comments to make regarding specific aspects of those underlying facts during the course of my analysis, I will not attempt to provide an exhaustive summary of all aspects of the extended history of this matter here. For present purposes, I think the following will suffice as initial overview, background and factual findings underlying the present dispute:

- a. The two plaintiffs are Ontario corporations engaged in the business of towing vehicles. Both are based in Harrow, Ontario; a community located approximately 20km to the east of the town of Amherstburg, and 40km to the south of the city of Windsor. Although not formally indicated in the plaintiffs' statement of claim or other material delivered in relation to the parties' motions, counsel for the plaintiffs indicated during the course of oral submissions, (and counsel for the defendants accepted for purposes of the motions), that the plaintiffs are related corporations who share the same owners, that the plaintiff County Towing Inc., ("County Towing"), was the party who enjoyed the rights of contract described in the material, and that the plaintiff Coxon's Specialty Services Inc., ("Coxon's"), essentially was a subcontractor which would be employed by County Towing to "show up to do towing", albeit with the work "all done on behalf of County Towing".
- b. The Windsor Police Services Board, ("the WPSB"), is a police services board duly constituted pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, c.P.15, with the responsibilities and obligations set forth in that legislation. At all material times, it has been the legal entity which oversees police operations and services within the city of Windsor. By way of an agreement which came into effect on January 1, 2019, the WPSB also assumed responsibility for the provision of police operations and services within the town of Amherstburg, (formerly carried out by the Amherstburg Police Services Board or "APSB"), although the city of Windsor and town of Amherstburg remain separate municipalities.
- c. The present dispute stems from arrangements made to address aspects of towing services provided within the two municipalities, with a primary focus on the vehicle towing services in circumstances involving the police, and a secondary but sometimes related focus on licence requirements imposed by the city of Windsor in relation to towing activity occurring within the city of Windsor. In that regard:
 - i. The presented evidence, (which accords with matters in respect of which I feel permitted to take a measure of judicial notice), indicates that police officers encounter a variety of situations, within the course of performing their duties, that may require or involve the towing of vehicles. For example, vehicles may be damaged and/or disabled in single or multiple vehicle collisions or by other forms of accident, may become inoperable for other reasons, may be parked or positioned improperly in a manner that impedes the flow of traffic, or may simply be abandoned. Such varied circumstances also may or may not involve the possible commission of crimes or offences requiring the movement and securing of vehicles as

part of continued police investigation. In some instances, it may be vehicles owned and operated by the police which need to be towed. In short, as part of their general duties to protect and serve the public, and ensure public safety, police officers regularly encounter situations where the towing of vehicles is required to ensure that roadways are cleared of potential hazards and roadway obstructions as quickly as possible; i.e., to ensure the normal and safe flow of traffic.

- ii. The towing of vehicles in such varied situations involving the police nevertheless presents numerous practical challenges and potential concerns. For example:
 - 1. Where towing operations are called to respond on a random or haphazard basis, delays in selecting and making contact with a towing service, uncertainty regarding the availability of a particular towing service, and/or uncertainty or discovered incapacity regarding a responding towing service having necessary or adequate equipment to effect a particular required towing assignment may unduly prolong the necessary clearance of roadway hazards and obstructions.
 - 2. As those requiring towing services are inherently in a state of vulnerability, the prices charged to vehicle owners for towing services inherently carry a risk of pricing for services that some might regard as less than competitive and/or excessive.
 - 3. Reliance on individual police officers to select towing services, and/or their involvement in making towing arrangements, may give rise to allegations of inappropriate preferential treatment, negligence and/or other civil liability claims against such officers and the police services board they represent.
 - 4. While vehicle owners may have established or preferred towing services, balancing respect for vehicle owner autonomy and decisions by owners and/or drivers in that regard may conflict with a need to tow vehicles as soon as possible to ensure safe and normal traffic flow, and/or the need for police to maintain control over vehicles involved in continuing police investigation regarding suspected or possible crimes or offences.
- iii. For such reasons, a number of police services over time, (including the APSB and WPSB), have adopted the practice of selecting a preferred towing contractor, (e.g., to ensure a known level of quality, rapid

response, legal compliance and competitive pricing),¹ with such towing contracts usually being time limited; i.e., such that they deliberately expire and have to be renewed or replaced on a periodic basis.

- iv. Insofar as the provision of towing services for remuneration involves operation of a business within the meaning of section 150 of the *Municipal Act, 2001*, S.O. 2001, c.25, (i.e., “any business wholly or partly carried on within a municipality even if the business is being carried on from a location outside the municipality”), municipalities also are empowered by section 151 of the same legislation to regulate such a business by providing for a system of licences, (e.g., imposing conditions of business operation to obtain, continue to hold or renew such licences), albeit always subject to the general limitation, set forth in subsection 19(1) of the *Municipal Act, 2001*, *supra*, that by-laws and resolutions of a municipality apply only within its boundaries.
- v. In an effort to address various potential concerns regarding towing situations involving the police and/or police vehicles, the APSB, (formerly responsible for the provision of police services within the municipality of Amherstburg), entered into a formal agreement with County Towing on June 23, 2017, whereby County Towing was chosen as the APSB’s preferred towing contractor and provider of towing related services in connection with police-related situations within the geographic region of Amherstburg. That agreement has been provided and reviewed in its entirety, but I will not outline its provisions in exhaustive detail here. For present purposes, its provisions addressed matters that included the following:

¹ In their respective motion material, the parties provided evidence of the reasons for the APSB and WPSB adopting such a practice. In particular:

- a. In his sworn affidavit evidence, Frank Cleminson, (former chairman of the APSB), described how the APSB, prior to 2014, had a “rotation-based” towing system, whereby members of the Amherstburg Police Service would call one of three towing companies based on which company was “next in line”. However, that rotation-based system repeatedly led to frustration; e.g., as some of the responding tow companies did not have the proper equipment needed to deal with certain towing jobs, which in turn created significant delays for officers dealing with collision incidents. That in turn led to the APSB thereafter adopting a “Request for Services” bidding process to select a single contractor to service the community in relation to towing situations involving the police.
- b. In his sworn affidavit, Barry Horrobin, (Director of Planning and Physical Resources for the Windsor Police Service, who has been employed by the WPSB for more than 35 years), explained that the WPSB also has a longstanding practice of using a competitive procurement process to select a preferred towing contractor; e.g., to ensure that, if the Windsor Police Service is calling in a towing contractor, the contractor meets minimum standards, can respond to multiple different accident scenarios within a reasonable time, and offer a fair and competitive price.

1. The APSB acknowledged that, from time to time, it required the services of a towing operator for the purpose of removing and storing motor vehicles, (including vehicles belonging to the Board), and the contents of such vehicles, as one of the requirements of providing police services in its assigned service area.
2. County Towing was recognized as a qualified towing operator which had tendered its contracting services to the APSB as an independent contractor, and which would retain its independent contractor status; i.e., as opposed to being an employee of the APSB.
3. County Towing was required to provide towing services to the APSB at the times/periods determined by the APSB, with the APSB providing County Towing with notice in that regard via telephone or such other means as the APSB and its employees, (e.g., police officers), deemed necessary and expeditious. However, the APSB did not undertake to use County Towing to perform any services, and was not obliged to do so.²
4. County Towing's obligations under the agreement included arrival on site in response to any request for towing services within 25 minutes of the request, provision of a secure and heated indoor area to facilitate vehicle examination by employees, agents and other contractors of the APSB for the purposes of investigation, and other measures whereby County Towing recognized that some of the motor vehicles to be towed would be the subject of ongoing police investigation, with County Towing assuming additional training and conduct responsibilities in that regard.
5. While the agreement contemplated use of County Towing's services in exchange for compensation, such "payment of contracted services" was to be accomplished in one of two ways:
 - a. County Towing was to collect fees for its services from vehicle owners directly, (albeit without charging such

² In the supporting affidavit sworn by Derek Didone, president and director of the plaintiffs, the agreement was characterized as one whereby County Towing was "to be the exclusive provider of towing related services in the geographic region of Amherstburg", and that characterization was repeated in the plaintiffs' factum. However, the agreement itself does not appear to contain any such exclusivity agreement. Insofar as the agreement expressly confirms that the APSB (and its successor WPSB) did not undertake to use County Towing to provide any services, and expressly was (were) not obliged to do so, the suggestion of exclusivity seems inaccurate and misplaced. Other evidence tendered in relation to the motion suggests that the services of County Towing (and its subcontractor Coxon's) may have been called upon frequently in practice, pursuant to the agreement, but there apparently was no obligation on the APSB or WPSB to do so, or to do so to the exclusion of other towing services. Nor is there anything the agreement to suggest that other towing services were not permitted to operate within Amherstburg; e.g., in relation to situations not involving the police that nevertheless required the provision of towing services.

owners any amount in excess of the fees set forth in a Schedule to the agreement), and County Towing was solely responsible for the collection of such fees from vehicle owners, with County Towing being obliged to comply with the provisions of the *Repair and Storage Liens Act*, R.S.O. 1990, c.R.25, in the event any such vehicle owner failed to pay such fees. The APSB was to have no liability whatsoever to County Towing for any such payments, including any uncollected fees.

- b. The APSB nevertheless did assume liability to County Towing for payment of fees for contracted services performed in relation to motor vehicles owned by the APSB.
6. The agreement had a specified duration of two years, but was renewable thereafter for a further period of one year on the further agreement of the parties, subject to the rights of termination specified therein, including the ability of the APSB to terminate the agreement upon the provision of 15 days written notice, prior to the date of termination.
7. Pursuant to paragraph 39 of the agreement, “the contractor”, (identified as County Towing in the agreement), was not to “assign or transfer” the agreement “or *the performance* of any rights or obligations under [the] agreement to a third party”, [emphasis added]; a restriction which, (on its face at least), arguably should have prevented County Towing, (the only named contractor in the agreement), from delegating performance of towing obligations under the agreement to Coxon’s as a sub-contractor. However, as noted above, it was indicated and accepted during the course of submissions before me that County Towing used Coxon as a sub-contractor in that regard.
- vi. As noted above, on or about January 1, 2019, (by virtue of an agreement reached between the corporation of the city of Windsor and the corporation of the town of Amherstburg on October 12, 2018), the WPSB took over responsibility for the provision of police services within the geographic area of Amherstburg. There was no dispute that the rights and obligations of the APSB under the existing agreement between the APSB and County Towing effectively simultaneously were assigned to the WPSB, and that the WPSB thereafter continued to be governed by the agreement for its duration. In that regard, although the original agreement made between the APSB and County Towing expired on June 23, 2019, it was extended by mutual agreement of the parties, (i.e., now the WPSB and County Towing), until August 1, 2020.

- vii. The above agreement governed relations between the APSB/WPSB and County Towing which, as noted above, apparently also used the services of its related company Coxon's in that regard from time to time as a subcontractor. However, at all material times the WPSB also had a standing but periodically updated towing "Directive" which was intended to operationalize relevant laws and regulations, as well as the WPSB's towing contract arrangements; i.e., by providing officers employed by the WPSB with practical direction regarding various matters related to towing.³ The "Directive", (the full title or name of which was indicated to be "Vehicle Towing, Impound & Release", and which was formally identified as "Directive Number 853-01"), includes but is not limited to indications regarding what should be done by officers in the field when a vehicle needs towing, including the process to be followed in that regard. The progressively updated copies of the relevant towing "Directive" supplied to me are lengthy, (i.e., consisting of 14 or 15 pages), and I will not attempt to summarize the entirety of their content here. For present purposes, I note that their content includes the following:

1. The rationale of the directive was expressly outlined at length in its first section, (section I), which reads in its entirety as follows:

The towing of vehicles is often necessary in order to continue investigations, remove safety hazards and roadway obstructions, to prevent the proliferation of abandoned vehicles and to adhere to Ministry Guidelines where impoundments are mandatory.

The purpose of this Directive is to prevent unreasonable inconveniences or unnecessary financial burdens to vehicle owners, to eliminate towing as a matter of routine, and to reduce or eliminate civil liability to this Service and its members for unauthorized or unwarranted towing of vehicles.

The guidelines found in this Directive are intended to assist officers in reaching their decision to tow a vehicle by clearly outlining the process and procedures to be followed in the event a towing authority exists and it is necessary to tow a vehicle.

³ In their motion material, the plaintiffs provided a copy of the WPSB towing directive effective as of December 8, 2017, whereas the defendants provided, in their material, a copy of the WPSB towing directive effective as of October 21, 2020.

2. Definitions included within section II.A(1) of the Directive include reference to the “authorized towing service” currently under contract with the WPSB. In that regard:
 - a. In the version of the towing Directive effective as of December 8, 2017, (at which time the WPSB was responsible for policing in the city of Windsor but not yet responsible for policing in the town of Amherstburg as well), the “authorized towing service” was defined as “a towing service – currently under contract with the Police Services Board ... for the purposes of Light and/or Heavy Motor Vehicle Towing and Storage (**A.M.-P.M. TOWING**) or ... a towing service recognized by the Provincial program known as an “Impound Facility Contractor under the Vehicle Impoundment Program (**V.I.P. Towing**) shall tow vehicles on behalf of the Service ... for offences such as Driving While Disqualified. (Criminal Code.) (**A.M.-P.M. TOWING**). [Original bold print emphasis.]
 - b. In the version of the towing Directive effective as of October 21, 2020, (by which time the WPSB had assumed responsible for policing in the town of Amherstburg as well as in the city of Windsor, and had completed the further new towing service contract selection process described below), the “authorized towing service” was defined as “a towing service – currently under contract with the Police Services Board ... for the purposes of Light and/or Heavy Motor Vehicle Towing and Storage is **A.M.-P.M. TOWING** for the City of Windsor and the Town of Amherstburg, or ... a towing service recognized by the Provincial program known as an “Impound Facility Contractor under the Vehicle Impoundment Program (V.I.P. Towing) shall tow vehicles on behalf of the Service ... for offences such as Driving while Disqualified. (Criminal Code.) (A.M.-P.M. TOWING). [Original bold print emphasis.]
3. A portion of the Directive relating to “Towing Services”, (found in Section II.C of the version of the Directive dated December 8, 2017, and Section II.E of the version of the Directive dated October 21, 2020), provides officers with guidance in relation to how they should approach situations involving “Authorized Towing”. The content of those guidelines has been varied slightly as the Directive has been updated. They read as follows in the supplied 2020 version, with amendments from the 2017 version indicated by way of footnotes:

1. Members shall not utilize any towing service(s) other than an authorized towing service.⁴
 2. When a tow service is required for the authorized towing of a seized vehicle or vessel, only the Authorized Towing Service shall be contacted through the Emergency 911 Centre.
 3. In the event a vehicle is to be towed for reasons other than as the result of a seizure, the driver (or the registered owner if available) should be directed to arrange for the towing of the vehicle at his or her expense, provided that the request does not cause an unreasonable delay and the vehicle is not obstructing the normal or safe flow of traffic. Members shall remain with the vehicle until it is safely removed.
 4. Officers, not the E911 Centre,⁵ may accommodate requests for “private towing” provided the officer advises the driver/owner that arrangement for this towing is a private contract between the driver and/or registered owner and the towing company.
 5. Where a driver and/or registered owner requests assistance to arrange towing services with no stated preference, the Authorized Towing Service shall be utilized.
 6. Where possible, officers shall avoid taking possession of keys for a vehicle that is to be towed pursuant to a private towing arrangement.
4. Another portion of the Directive specifically relates to towing in relation to “Vehicles Involved in a Collision”, (found in Section II.E of the version of the Directive dated December 8, 2017, and Section II.G of the version of the Directive dated October 21, 2020), and provides officers with further guidance in relation to how they should approach such situations. The content of those guidelines

⁴ In the 2017 version of the Directive, this was followed by a sub-paragraph indicating that “Members shall not contact towing services directly to arrange for a vehicle tow”; a sub-paragraph which has been deleted in its entirety from the 2020 version of the Directive.

⁵ In the 2017 version of the Directive, this sub-paragraph began with the words “Members may accommodate”; words which were amended to read “Officers, not the E911 Centre, may accommodate”, in the 2020 version of the Directive.

apparently has not varied as the Directive has been updated, and reads as follows:

1. Where the driver, registered owner or agent has arranged for a private tow of a vehicle involved in a collision, officers shall not interfere with or alter the towing arrangements unless it causes an unreasonable delay and the vehicle is obstructing the normal or safe flow of traffic.
 2. When it is necessary to remove a vehicle, which is not subject to seizure, from the scene of a collision for safety or traffic flow reasons and where the driver or registered owner is not present, or unable to arrange for private towing before leaving the scene, the officer may have the vehicle towed in accordance with this directive.
- viii. According to the evidence presented by County Towing, it earned approximately \$280,000, (i.e., roughly \$93,000 per year), in revenue as a direct result of its towing agreement with the APSB (and then WPSB) which endured from June 23, 2017, through to August 1, 2020; e.g., via the resulting towing fees paid to County Towing by vehicle owners, and the towing charges paid directly by APSB or WPSB in relation to towing services provided by County Towing in relation to vehicles owned by the police. However, it was not disputed that County Towing also had no entitlement to any necessary renewal of that towing agreement beyond its agreed expiry on August 1, 2020.
- ix. In April of 2020, the WPSB put Inspector Jill Lawrence of the Windsor Police Service in charge of the process to replace the expiring towing contract with County Towing. As for that process and its conclusion:
1. Inspector Lawrence's role in that regard stemmed from her already being responsible for the Traffic Enforcement Unit and Patrol Support Unit of the Windsor Police Service, in respect of which towing matters were routinely encountered.
 2. As commencement of the towing contract replacement process had been delayed, (resulting in Inspector Lawrence being given authority over the process with just two months or so remaining before the scheduled expiry of the WPSB's existing towing contract with County Towing on June 23, 2020), it was Inspector Lawrence who asked County Towing to continue providing services under the existing towing contract until August 1, 2020, which County Towing agreed to do. The agreed extension was requested

by Inspector Lawrence, in part, because there had been no concerns with County Towing's provision of services pursuant to the existing but expiring agreement.

3. In approaching the process of replacing the existing and expiring towing contract, Inspector Lawrence was guided by "Purchasing By-law 93-2012", enacted by the city of Windsor. Although the by-law in its entirety has been supplied, reviewed and considered in its entirety, I will not attempt to provide an exhaustive summary of its lengthy content, (45 pages with attached schedules), here. For present purposes, however, insofar as central aspects of the parties' dispute centres on appropriate interpretation and application of the by-law, various provisions of the by-law must be read and understood in detail. Such provisions include the following:
 - a. Sections 1 and 2 of the by-law indicate and emphasize that it was enacted to promote various ethical considerations and goals applicable to purchasing goods and services by the departments and boards of the city of Windsor, including efforts to "meet and balance" various purchasing goals such as:
 - i. efficiency, to maintain the flow of necessary good and services to meet needs over the short and long term "in the most cost effective manner possible";
 - ii. obtaining quality and value -- i.e., the best value for money;
 - iii. honesty, to ensure that purchasing of goods and services by the city's departments and Boards is undertaken with fairness, honesty and integrity, avoiding even the appearance of impropriety;
 - iv. openness, to ensure equal access by suppliers to opportunities to benefit from the expenditure of tax dollars;
 - v. transparency, to ensure that purchasing is undertaken in accordance with policies and procedures accessible and understandable to all; and
 - vi. accountability, through the ongoing exercise of openness and transparency.

- b. Pursuant to section 11 of the by-law, it expressly applies, (apart from certain indicated exceptions, none of which are relevant to the present circumstances), “to all purchasing activities carried out by the city and any Board” using the by-law, with section 3 of the by-law, amongst other things:
 - i. defining “Board” as an “entity independent of the City, but recognized by Council as an agency which may take advantage of the City’s purchasing power or process, in accordance with [the] by-law”, and “without limiting the generality of the foregoing”, expressly indicating that the WPSB “shall be considered a ‘Board’” in that regard;
 - ii. defining “Purchase” to mean “the acquisition of Deliverables by any means, including rental and leasing, and the functions that pertain to the acquisition of Deliverables, with “Purchasing” to have a corresponding meaning; and
 - iii. defining the term “Deliverable” as “the Good, Service or Construction being purchased”.
- c. The by-law includes, in section 41, a list of specified circumstances wherein city council is required to approve the purchase of certain deliverables, but none have any apparent relevance or application to the particular circumstances of this case.
- d. Part VIII of the bylaw, (i.e., sections 54-99, which nevertheless effectively cross-reference definitions found in section 3 and other provisions set forth in section 35), otherwise sets out various forms of “purchasing methods” to be employed by those carrying out purchasing activities by the city and any of its Board, with the ethical considerations and purchasing goals outlined above being “met and balanced” in a manner that generally escalates the necessary approvals and procedures required in any particular procurement situation based on a “threshold calculation” of the “purchase price” payable by the city (or its Board on behalf of the city) in relation to the contemplated purchase. Provisions relating to such matters include the following:
 - i. Section 3 of the by-law defines “Purchase Price” as “The amount *payable by the City* for a Deliverable pursuant to a Contract”. [Emphasis added.]

- ii. Section 54 of the by-law specifies that “purchasing methods are determined based on the threshold calculation rules at section 34” (sic). However, that specific reference to “section 34” of the by-law is now an apparent misnomer, (possibly attributable to amendment of the act and effective corresponding renumbering of sections over time), insofar as the current section 34 refers to irrelevant situations of suppliers wishing to present product or other information to the city outside of a specific purchasing process, and the relevant “threshold calculation rules” obviously intended to be cross-referenced by section 54, (and expressly identified as “Threshold Calculation and Anti-Avoidance” provisions by an express corresponding sub-title), actually are found at sections 35 and 36 of the current version of the by-law. Those two sections, setting out the relevant “threshold calculation rules”, read as follows:

Threshold Calculations and Anti-Avoidance

- 34. In calculating the *Purchase Price* for the purposes of *determining the necessary approvals and procedures*, all taxes and duties shall be excluded. In the case of multi-year contracts, the *Purchase Price* will be the estimated annual *expenditure* under the Contract.
- 35. No action shall be taken to subdivide Purchases in order to reduce the estimated *Contract Price* or to otherwise avoid or circumvent the application of any of the provisions of this Bylaw.

[Emphasis added.]

- iii. Pursuant to the by-law, the most modest levels of purchasing activities carried out by the city and any of its Boards, as determined by the defined “purchase price” or contract price to be expended,

require no formal purchasing process whatsoever. In particular:

- a. Pursuant to sections 55 and 57 of the by-law, the city's departments, (including any area of operation of the city as defined by its organizational charts), are given express authority to use petty cash "for Purchases up to \$200", and "no formal Purchasing process is required for petty cash Purchases".
 - b. Similarly, pursuant to sections 58 and 59 of the by-law, departments are given express authority to use "Small Purchase Orders", (defined by section 3 of the by-law to mean "a contract used for the purchase of deliverables up to \$5,000"), for purchases up to \$5,000, and "no formal Purchasing process is required for Small Purchase Order Purchases".
- iv. As the relevant purchase price to be expended escalates, increasing levels of purchasing process measures, (with correspondingly increased levels of bureaucratic involvement, transparency and accountability), are required. In particular:
- a. In situations where the total dollar amount of the appropriately calculated Purchase Price to be expended falls between \$5,001 and \$25,000, (subject to certain other specified conditions), the purchasing method to be employed is an "Informal Quotation", governed by sections 62-69 of the by-law.⁶

⁶ As that particular "Informal Quotation" purchasing process has relevance here, (for reasons outlined in greater detail below), I will outline those provisions in their entirety for ease of reference:

62. Departments have the authority to solicit quotations for Deliverables without the direct involvement of the Purchasing Department, [defined in section 3 as "the division of the Office of the City Solicitor charged with carrying out the Purchasing function"], when all of the following apply:
- a. total dollar amount between \$5,001 and \$25,000;
 - b. clearly defined Specifications, [with "Specifications" defined in section 3 as "Description of the physical or functional characteristics or the nature of a supply, service, equipment

- b. In situations where the total dollar amount of the appropriately calculated Purchase Price to be expended falls between \$25,001 and \$50,000, (subject to certain other specified conditions), the purchasing method to be employed is a “Formal Quotation”, governed by sections 70-76 of the by-law.⁷

or construction item and may include requirements for inspection, testing, or preparing a Deliverable, and may also include drawings or samples or other means of illustrating the requirement”]; and

- c. no Blanket Contract, [defined by section 3 as “a form of contract requiring a supplier to supply deliverables on an “as required” basis under prearranged terms and conditions, including pricing, over the term of the Contract”], exists for the Deliverables.
- 63. Only those Suppliers invited to give quotations will receive notice.
 - 64. At least three quotations must be solicited. If three Responses are not received, the Purchasing Department will assist the Department in obtaining the quotations. If the Purchasing Department is unable to obtain three quotations, the Purchasing Manager, [defined in section 3 as the city’s Purchasing Manager or, in his or her absence, the City Solicitor], may waive this provision, in his or her discretion.
 - 65. Quotations may be given by any written means of communication, including facsimile and email.
 - 66. Each Supplier shall:
 - a. only be permitted to submit one quotation; and
 - b. not be permitted to change its quotation or negotiate after submitting its quotation unless the criteria and any limitations are included in the Bid Documents.
 - 67. The Purchasing Department shall have authority to solicit additional quotations if it is in the best interests of the City to do so.
 - 68. The Supplier submitting the most favourable compliant Response will be awarded a Contract for the Deliverables.
 - 69. The Purchasing Department shall receive all records of Supplier Responses from the requisitioning department prior to issuing a Purchase Order for the Deliverables.

⁷ For reasons addressed further below, it was not suggested that the “Formal Quotation” purchasing method had immediate significance to the present dispute, and the provisions of ss.70-76 therefore will not be cited in full here. They instead should be regarded as incorporated herein by way of reference. For present purposes, I simply note that, although similar in some respects to the described “Informal Quotation” purchasing method, the “Formal Quotation” purchasing method provides a number of more demanding requirements consistent with the greater purchase price to be paid; e.g., an indication that only the city’s Purchasing Department (rather than any department) has the authority to solicit such formal quotations, a requirement that more detailed information be provided to suppliers invited to give quotations, (e.g., specifications, response requirements including place, date and time for making responses, and “information that could influence a supplier’s decision to provide a response or influence supplier pricing”), and

- c. In situations where the total dollar amount of the appropriately calculated Purchase Price to be expended is \$50,000 or greater, (subject to certain other specified conditions), the purchasing method to be employed is an RFT or RFP”, governed by sections 77-97 of the by-law.⁸

discretion conferred on the Purchasing Manager to require use of the still more demanding purchasing method of a Request for Tender, (or “RFT”, generally defined in section 3 as “a process to request supplier responses to supply deliverables in compliance with stated requirements, performance specifications and terms and conditions and evaluation is made solely on price”), or Request for Proposal, (or “RFP”, generally defined in section 3 as “a process in which a need is identified, but the method by which it will be achieved is not necessarily prescribed at the outset and price is not the only evaluation criterion”), even if the estimated Purchase Price to be paid is less than \$50,000.

⁸ Those provisions are extensive, and therefore will not be replicated in detail here. They instead should be considered incorporated herein by way of reference. However, for ease of reference, I note the following:

- a. The provisions require that an RFT be issued when all of the following apply: two or more sources are considered capable of supplying the deliverables; the estimated contract price is \$50,000 or greater; a blanket contract does not exist; there are clearly defined specifications; and purchase price is the sole criterion for awarding the contract.
- b. The provisions require that an RFP be issued when all of the following apply: two or more sources are considered capable of supplying the deliverables; the estimated contract price is \$50,000 or greater; a blanket contract does not exist; the city’s need is identified but the means of accomplishing it are not identified and may be comprised of many variables; and purchase price is not the sole criterion for awarding the contract.
- c. The specified procedures which must be followed in relation to an RFT or RFP purchasing method are more demanding than those which must be followed in relation to the “Formal Quotation: purchasing method, consistent with the still greater purchase price to be paid. For example, and without limiting the generality of the foregoing:
 - i. There are requirements for more widespread notice to be given.
 - ii. There are more detailed requirements of what an RFT or RFP must contain.
 - iii. The Purchasing Manager is given expanded discretion; e.g., to set fees for the purchase of specifications, to determine the means by which the RFT or RFP will be distributed, and to determine the means by which suppliers are to be registered as bidders.
 - iv. Suppliers are required to register with the Purchasing Department via paying applicable fees and providing required information, failing which the Purchasing Manager has the discretion to reject any supplier who has not complied with the registration requirements.
 - v. There are restrictions imposed on the manner of communications with suppliers during the currency of an RFT or RFP, including: a prohibition on oral questions and answers, except at a meeting to which all suppliers have been invited; permission of supplier questions in writing provided that any responses are given to all participating suppliers;

4. To determine the likely amounts payable for towing services under the new replacement towing services contract by the WPSB, (i.e., as the city of Windsor's Board), Inspector Lawrence obtained information from the WPSB's Director of Finance, Melissa Brindley. The resulting unchallenged evidence indicates that the cost of towing paid by the WPSB in the jurisdiction of Amherstburg, (as distinct from the cost of towing paid by vehicle owners)⁹, was and remains low. For example, there is no disagreement that, in 2019, the WPSB, as the city's Board, paid only \$563.00 to County Towing. Similarly, it was not disputed that, between 2021 and 2023, the most expensive year for towing from the perspective of the WPSB was 2023, during which the WPSB paid a total of \$564.00 for six tows involving police vehicles.
5. Having regard to such realities, (which prevailed prior to the towing services contract being renewed, as well as thereafter), it appeared to Inspector Lawrence that the amount payable for the deliverable towing services under the contemplated new towing contract would not even approach \$5,000.00; i.e., the level of "Purchase Price" as defined by Purchasing By-law 93-2012, (in this case, the estimated annual expenditure under the new multi-year contract being considered, excluding all taxes and duties), that would elevate the purchasing method to be used in relation to the new towing contract from that applicable to a "Small Purchase Order", (for such purchase expenditures up to \$5,000), to a situation requiring use of the "Informal Quotation" purchase method to be applied in relation to for such purchase expenditures with a total purchase price dollar amount between \$5,001 and \$25,000. The relevant "Purchase Price" payable certainly would not elevate the situation to one requiring use of the "Formal Quotation" or RFT/RFP purchase methods to be employed if the purchase price to be expended, (as

and a requirement that all communications be directed through the Purchasing Department in a directed manner.

- vi. There are further requirements, including: the setting of a weekday closing date for submissions; specifications as to the submissions which may be considered and which must be disregarded; a requirement for opening of RFT submissions at a public meeting specified in the RFT, including the reading out of supplier names and total tender prices; and an indication that RFP submissions are to be opened in private at a meeting of the Evaluation Team, defined in section 3 of the by-law as "individuals designated to evaluate responses and make Award recommendations in accordance with the by-law".

⁹ Again, it should be remembered and emphasized that the cost of towing services provided under the towing contract is paid to the towing company in two distinct ways; i.e., by fees charged directly to vehicle owners by the towing company, (and collected directly from vehicle owners by the towing company), and by fees paid by the police services board for the towing of its own vehicles. It is only the latter component that involves expenditure of public funds.

defined by the by-law), had been even greater. In that regard, Inspector Lawrence consulted with Barry Horrobin, (the Director of Planning and Physical Resources of the WPSB, as noted above), and Mr Horrobin concurred with Inspector Lawrence's assessment.

6. Notwithstanding that confirmed assessment, (i.e., that the new towing contract under consideration was a purchase capable of being addressed as a "small purchase order" pursuant to Purchasing By-law 93-2012, which therefore did not require any formal purchasing process, and could have been procured having resort to even just one bid), Inspector Lawrence voluntarily decided that, in order to demonstrate clear due diligence, the WPSB would follow the more demanding "Informal Quotation" purchase method, (applicable to such purchase expenditures with a purchase price -- as defined by the by-law -- between \$5,001 and \$25,000), in relation to selection of a supplier to perform services pursuant to the contemplated new towing contract. In that regard, Inspector Lawrence once again consulted with Mr Horrobin, (the Director of Planning and Physical Resources of the WPSB), and he concurred with the intended purchase method approach contemplated by Inspector Lawrence; i.e., voluntary use of the "Informal Quotation" purchasing method, even though approaching the matter as one involving a "small purchase order" would have been appropriate and permissible according to the provisions of the by-law. In the result:
 - a. Although use of the "Informal Quotation" purchase method outlined in the by-law only required the solicitation of "at least three quotations" from potential suppliers, Inspector Lawrence once again voluntarily decided to go further; in terms of exceeding the minimum standards contemplated by the provisions of the by-law relating to an "Informal Quotation". In particular, at 7:54pm on June 17, 2020, Inspector Lawrence emailed not just three but nine different towing firms in the area, (including County Towing), inviting them to submit quotations in relation to the contemplated new towing contract. The cover email was accompanied by a seven-page attachment entitled "Specifications for Motor Vehicle Towing and Storage Within the Town of Amherstburg"; an attachment which included, (in addition to detailed provisions regarding "Qualifications of Proposed Bidders", "Administrative Requirements", "Service Requirements", "Facilities and

Equipment” and “Inside Secure Storage”)¹⁰, “Offer Document” and “Contractor Information” components to be completed by any supplier submitting a quotation.¹¹ I have reviewed and considered the content of that emailed “package” in its entirety, but will not outline its content in fulsome detail here. The emailed package should instead be considered incorporated into these reasons by way of reference. For ease of reference, I nevertheless think it useful to set forth the entire content of the relevant cover email, which read as follows:

Good evening.

As many of you are aware, the Towing of Vehicles contract within the Town of Amherstburg jurisdiction is coming due. You received this email because you or your towing company expressed an interest in putting in a bid for an agreement with the Windsor Police Service. Be advised that this bid process applies to the Windsor Police Service’s Amherstburg Detachment physical jurisdiction only (Town of Amherstburg), and also includes all Amherstburg detachment police vehicles.

Please see attached PDF and input your fees for vehicle towing and storage. You may have to print out the document, submit your fees and scan it in and email it back to me ... [with Inspector Lawrence’s direct email then being set forth in the original email]. The submission deadline is Thursday, June 25, 2020, at 4:00pm. If after reading this document, you are not interested in the bid process kindly let me know via email.

¹⁰ I note that, among the many detailed provisions in that regard was an indication, under the “Qualifications of Proposed Bidder”, that no bid including any subcontractor arrangement would be accepted; a provision which, (as in relation to the existing and expiring towing services contract), arguably would preclude County Towing’s offer from being accepted if it contemplated use of Coxon’s services as a subcontractor, and/or would have precluded County Towing’s use of Coxon’s services in relation to the towing contract if the contract was awarded to County Towing.

¹¹ The “Offer Document” component required each bidding supplier to provide details in relation to, *inter alia*, its contemplated “Standard Tow Calculation”, “Charges for Services Other than a Standard Tow” and “Storage Calculation”, and instructed each bidding supplier to use additional space to list other charges it might consider applicable.

The successful contractor will be selected by the Windsor Police Service based on an assessment of the overall pricing submitted and confirmation the vendor's equipment and facilities are in acceptable working condition, are accessible, and available.

Thank you and good luck.

[Original underlining emphasis.]

- b. The following day, (i.e., at 11:14am on June 18, 2020), County Towing, (via Mr Derek Didone), sent Inspector Lawrence an email asking numerous questions about the bidding process. I have reviewed and considered that email and its seven numbered paragraphs of questions in its entirety, but will not replicate or describe that content in complete detail here. For present purposes, the numbered paragraphs included questions concerning the following:
 - i. Whether submissions/bids could be dropped off in person in advance of the deadline or whether emailed submissions were the only acceptable method in that regard.
 - ii. Whether there would be "some sort of scoring matrix or point system used to determine the successful bidder", and a request for information about such a matrix or system if there was one.
 - iii. Whether the indoor facility of a bidding towing service needed to be in the Town of Amherstburg.
 - iv. Whether a successful bidder would be able to obtain the name and address of a vehicle's registered owner within 15 days after the date of receiving a vehicle, (thereby enabling the bidder to comply with requirements under the *Repair and Storage Liens Act, supra*, requiring the provision of notice to the consumer and any lien holder within 15 days of receiving a vehicle), rather than the 30 days apparently contemplated by the "Administrative Requirements" set forth in the provided Specifications.
 - v. How the \$50.00 fee addressed by the aforesaid "Administration Requirements", (i.e., a \$50 fee

payable by the vehicle owner to the Windsor Police Service over and above the standard fee charged, which had to be disclosed to the vehicle owner), was intended to work, and what the fee would include.

- vi. Whether the aforesaid \$50.00 fee would be payable in relation to unclaimed vehicles as well.
 - vii. Whether the WPSB, in relation to towing company employees providing services to the Windsor Police Board, would require any record of formal training or qualifications of operators beyond the required “background check” indicated in the “Administrative Requirements”, and whether the training and education of towing company operators would be taken into consideration when choosing a successful bidding candidate.
- c. Purchasing By-Law 93-2012 does not contain provisions expressly addressing the matter or permissible/required manner of possible questions posed by bidding suppliers, and/or responding answers provided by the city or its Boards, in relation to prescribed purchasing methods applicable to situations other than those requiring use of an RFT or RFP; i.e., in situations falling within the “Petty Cash”, “Small Purchase Order”, “Informal Quotation” or “Formal Quotation” provisions of the by-law. However, rather than responding to the questions posed by County Towing by directing a response to County Towing alone, (and thereby providing only one of the suppliers invited to bids with relevant information and clarification to the exclusion of others), Inspector Lawrence voluntarily chose to proceed in a manner analogous to that contemplated by s.87(b) of the by-law applicable to situations involving use of the RFT/RFP purchasing method; i.e., by providing all suppliers participating in the process with the Board’s written responses to the questions that had been posed in writing by County Towing, while simultaneously taking care to refrain from disclosing which supplier had posed the questions received by the WPSB. In particular, Inspector Lawrence sent a further email to all participating suppliers at 3:41pm on June 18, 2020, indicating that questions had been received, quoting or rephrasing those questions in a generic way, and providing corresponding answers to those received questions. I have reviewed and considered that

email and its seven numbered answer paragraphs in its entirety, but will not replicate or describe that content in complete detail here. For present purposes, the provided answers to the posed questions included the following indications:

- i. In light of the prevailing pandemic, bidding suppliers were asked to submit their proposals by email to Inspector Lawrence's indicated email address, instead of dropping them off in person.
- ii. There was "no scoring matrix for the bid submission as the specifications for everyone [were] the same", and "only the prices" would be different. It was emphasized that the purchasing method being used was not an RFP, and that the Board was "strictly looking for price quotes".
- iii. It was confirmed that the indoor facility of a bidding towing service did not have to be in the Town of Amherstburg, but it did have to meet the needs of the police service as described in the specifications. The bidders also were asked to understand that the Windsor Police Service was asking that the facility be maintained in an appropriate condition suitable for the intended contract; something which would be confirmed by inspection if a bidder was the recommended vendor/supplier. Although the posed question had focused on the indoor facility of the bidding towing service, Inspector Lawrence went on to clarify that the outside storage yard of the bidding towing service would need to be within the jurisdictional boundaries of the Town of Amherstburg because that was where the bulk of vehicle releases would occur.
- iv. It was confirmed that the successful bidder would be able to obtain the name and address of a vehicle's registered owner within 15 days after receiving the vehicle, in order to enable compliance with the notice provisions of the *Repair and Storage Lien Act, supra*.
- v. It was clarified and confirmed that the \$50.00 fee addressed by the aforesaid "Administration

Requirements” was an “administration fee” intended to be a partial cost recovery of resources expended by the Windsor Police Service in dealing with incidents involving the police where a vehicle had to be towed, albeit with that partial cost recovery fee being “by no means anywhere close to the full amount” of those expended resources. It was noted that the charging of such a partial cost recovery administration fee was “consistent with the current Windsor contract”.

- vi. As far as unclaimed/abandoned vehicles and the aforesaid \$50.00 partial cost recovery administration fee were concerned, it was indicated that, if the successful bidder or candidate could prove that an unclaimed vehicle was worth less than the otherwise applicable storage fee, (inclusive of scrap metal), then the Windsor Police Service would waive the administration fee and permit the contractor to simply take the vehicle.
 - vii. As for whether the WPSB would require employees of the selected towing service to have any record of formal training or qualifications of operators beyond the required “background check” indicated in the “Administrative Requirements”, and whether the training and education of towing company operators would be taken into consideration when choosing a successful bidding candidate, it was emphasized that background checks were essential. Beyond that, the Windsor Police Service would assume that a valid business licence implied that persons/operators employed by a bidding towing company would be qualified. If that was found not to be the case, the Windsor Police Service reserved the right to receive a record of formal training and qualifications from the company’s operators.
- d. At 11:24am on June 19, 2020, Inspector Lawrence sent a further email to all participating suppliers indicating that she had received a further question, asking for an indication of the approximate annual volume of vehicles towed in relation

to relevant contract.¹² In response, and once again apparently deciding voluntarily to proceed in a manner similar to that contemplated by s.87(b) of Purchasing By-law 93-2012 in relation to RFT/RFP purchasing method situations, (i.e., by providing all suppliers participating in the process with the Board's written response to the additional question that had been posed in writing, while simultaneously taking care to refrain from disclosing who had posed the further question received), Inspector Lawrence informed all of the participating suppliers that the Windsor Police Service had taken over the policing contract for the Town of Amherstburg in 2019 and that, during 2019, the Windsor Police Service's E911 Centre had requested the towing contractor on behalf of the police approximately 100 times.

- e. Four towing companies submitted bids in relation to the intended towing contract prior to the indicated deadline of 4:00pm on June 25, 2020. In that regard:
 - i. It was not disputed that there was no "public opening" of the bids. The submitted and timely bids instead were reviewed by Inspector Lawrence, Mr Horrobin, (the WPSB's Director of Planning and Physical Resources), Bryce Chandler, (the WPSB's Director of Human Resources), and Melissa Brindley, (the WPSB's Director of Finance), to determine which bid was the most favourable compliant response.
 - ii. Sam's City Towing bid \$325.00 for the standard tow.
 - iii. County Towing's bid for a standard tow was increased from its prevailing standard tow fee of \$125.00, (under the existing and expiring contract), to \$200.00.¹³
 - iv. Myer's Towing bid \$175.00 for a standard tow.

¹² Although apparently not addressed specifically in the provided evidence, that further question seems to have come from an interested towing business other than the plaintiffs.

¹³ County Towing's related towing company, Coxon's, apparently did not submit a bid of its own.

- v. The winning bidder was A.M.-P.M. Towing, which bid \$125.00 as a standard tow fee.
 - vi. Although there were many different charges listed in the submitted offer documents, it was determined that the lowest overall bid had been submitted by A.M.-P.M. towing.¹⁴ County Towing was neither the lowest bid, nor even the second lowest bid. In her sworn affidavit evidence, Inspector Lawrence acknowledged that the A.M.-P.M. bid also was viewed as better or more favourable insofar as its proposed inside storage location was in Amherstburg, but simultaneously indicated her belief that the new towing contract would have been awarded to County Towing, despite that consideration, had its bid been the lowest.
 - vii. In the result, it was agreed by Inspector Lawrence and the other aforesaid individuals reviewing the submitted quotations that the relevant new towing contract should be awarded to A.M.-P.M. Towing, subject to confirmation, (subsequently obtained), that A.M.-P.M. Towing met the contract Specifications.
- f. On July 6, 2020, County Towing and the other unsuccessful bidders were notified, (via a further email sent by Inspector Lawrence), that their bids had not been successful, and that the successful bid had been received from A.M.-P.M. Towing. It was undisputed that the competing submitted bids, and the results of the process, were not published on any publicly available site.
 - g. On July 15, 2020, Inspector Lawrence prepared a report to WPSB Chair (and Windsor mayor) Drew Dilkens, as well as other members of the WPSB, requesting that the Board authorize its Chair to sign and execute the contemplated new towing contract with A.M.-P.M. Towing. The Board thereafter granted that authorization during an in camera

¹⁴ During the course of oral discovery examinations, it was expressly acknowledged, on behalf of the plaintiffs, that the quotation submitted by A.M.-P.M. Towing was cheaper in every respect than the quotation submitted by County Towing, except in relation to one item or component of pricing where the price quoted by County Towing was the same as the price quoted by A.M.-P.M. Towing.

meeting held on July 22, 2020.¹⁵ The new towing contract, (with an indicated initial duration of three years, subject to possible renewal for a further period of one year upon further written agreement of the parties), was signed and executed later that day.

- h. It was undisputed that no supplier, (including County Towing), ever sought to engage the dispute resolution process set forth in sections 18-23 of Purchasing By-law 93-2012.¹⁶
- x. Following receipt of notice that County Towing's bid for the new towing contract had been unsuccessful, County Towing, (via the plaintiffs' principal Mr Didone), sought disclosure of further information, including requests for information about prices quoted by other bidding competitors for the towing contract. In that regard:
 - 1. Purchasing By-law 93-2012 includes provisions effectively contemplating and requiring such public disclosure in relation to situations where an RFT is the directed purchasing method. In

¹⁵ The supporting affidavit sworn by Inspector Lawrence suggests that the meeting took place on or about July 24, 2020, but correspondence sent by the WPSB to Chief Mitzuno of the Windsor Police Service on July 24, 2020, indicates that the relevant meeting, at which the Board's resolution authorizing its Chair to sign and execute the contemplated new towing contract, actually was held on July 22, 2020. While it was suggested in the plaintiffs' motion material that the decision to award the new towing contract to A.M.-P.M. Towing "did not go to the WPSB for approval", (an assertion apparently based on indications provided during an earlier discovery examination of Inspector Lawrence), the specific affidavit evidence assertions of Inspector Lawrence in that regard, informed by the aforesaid correspondence clarifying and confirming what actually happened in terms of the Board's consideration and authorization of the suggested contract's execution, indicates that the suggestion of the proposed new contract not going to the Board for approval is simply incorrect.

¹⁶ I have reviewed and considered all of those "dispute resolution" provisions, but will not replicate them in their entirety here. For present purposes, their content includes the following:

- a. The indicated dispute resolution process "shall be available" to suppliers who, *inter alia*, "dispute the fairness of a purchasing process", or an "award", defined in section 3 of the by-law as occurring "when a submission is formally accepted by the City, either by Council or by delegated authority" as permitted by the by-law.
- b. The process is engaged by a supplier, within 60 days of an award "or other circumstances giving rise to the dispute", providing a written request for a meeting with the Purchasing Manager "detailing the legal and factual grounds underlying the dispute and the desired outcome, and including any relevant documents".
- c. The Purchasing Manager is then required to meet with the supplier within 20 days of receiving that request, following which the Purchasing Manager, if satisfied that action should be taken, is to prepare a report to the city solicitor advising that such action be taken. If unsatisfied with the outcome of that meeting process and report, the supplier thereafter is permitted to make a written request, (providing similar detail to the earlier request), seeking a meeting directly with the City Solicitor; a meeting that is required to take place 30 days thereafter.

particular, section 90 of the by-law reads as follows: “RFTs shall be opened at a public meeting as specified in the RFT. Supplier names and total tendered prices *shall be read*, along with such other information as may be required by any Purchasing procedure in place pursuant to this Bylaw”. [Emphasis added.]

2. There nevertheless are no similar or comparable public revelation/reading or disclosure requirements mandated by Purchasing By-law 93-2012 in relation to situations falling within the purchasing methods applicable to a “Petty Cash” or “Small Purchase Order”, nor in relation to the “Informal Quotation” or “Formal Quotation” purchasing methods outlined in the bylaw. Nor is any such disclosure required in relation to situations where an RFP purchasing method is employed; e.g., with section 91 of the bylaw expressly providing that RFPs are to be opened “in private” at a meeting of the Evaluation Team.
3. Inspector Lawrence initially responded to such County Towing inquiries and requests for further disclosure by indicating that she unfortunately felt unable to divulge the submitted bidding prices in this instance due to privacy concerns.
4. On June 16, 2021, counsel for the plaintiffs made a request to the WPSB, (with the request formally being made on behalf of Coxon’s, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56), seeking disclosure of various documents, records, correspondence and/or reports in the possession of the Windsor Police relating to, *inter alia*, “details of the successful bid and resulting contract between the Windsor Police Service Amherstburg Detachment (sic) and AMPM (sic) Towing”.
5. On September 14, 2021, Marilyn Robinet, Co-ordinator of the Information and Privacy Unit of the Windsor Police Service, responded to the aforesaid freedom of information request by noting that “responsive records” had been located, but disclosure of those records had the potential to affect the economic interests of a third party, and that third party accordingly was being given an opportunity to make representations in relation to the requested release of the records in question. Indication of a further decision and response in that regard was promised. In the meantime, further correspondence directed to Ms Robinet disputed the legal ability of the WPSB to withhold release of the requested records.
6. On October 14, 2021, Ms Robinet sent the plaintiffs’ counsel further correspondence indicating, *inter alia*, that the plaintiffs’ request of the aforesaid records was being denied pursuant to sections 10 and

14 of the *Municipal Freedom of Information and Protection of Privacy Act, supra*. In that regard, Ms Robinet noted, amongst other things:

- a. that following third party notification of the request, she was unable to obtain the third party's consent regarding disclosure of information "regarding the bid and resulting contract between Windsor Police Service Amherstburg and AMPM (sic) Towing"; and
 - b. that a review of the representations made by the third party provided what the Windsor Police Service regarded as a "compelling argument" to deny access to the requested records.
7. It was not disputed that the plaintiffs, via Coxon's or otherwise, took no formal steps to appeal that decision; e.g., pursuant to section 29 of the *Municipal Freedom of Information and Protection of Privacy Act, supra*. The plaintiffs instead sought and were provided with such disclosure in the course of this litigation.
- xi. In the period following the aforesaid new towing contract being awarded to A.M.-P.M. Towing rather than County Towing, the plaintiffs felt there were occasions on which the WPSB and/or the city of Windsor improperly interfered with or otherwise prejudiced the plaintiffs' towing business operations and economic interests; e.g., by inhibiting or preventing the plaintiffs' access to customers wanting their services, including alleged forcing of motor vehicle owners to use the towing services of the WPSB's "authorized towing service" A.M.-P.M. Towing, (rather than the plaintiffs' services), and/or by taking the position that the plaintiffs were not permitted to access and tow vehicles from locations within the city of Windsor because they lacked a required licence to do so, despite the plaintiffs being based in Harrow and wanting to tow vehicles from Windsor to Harrow or other locations outside of Windsor. However, for reasons discussed in further detail below, not all of those alleged occasions of such interference remained in issue at the time of the hearing before me. Those that did will be discussed in greater detail below.

Narrowing of issues

- [5] Before turning to analysis of the issues remaining in dispute between the parties, it should be noted that many issues and contentions raised by and in the parties' pleadings and motion material had fallen away by the time the matter was argued before me, or fell away during the course of that hearing. In that regard, I note the following in particular:

- a. At various points in the defendants' cross-motion material, and during the oral submissions made by defence counsel before me, reference was made to the plaintiffs' failure to employ the dispute resolution provisions of Purchasing By-law 93-2012; i.e., to address the plaintiffs' various complaints suggesting that the by-law somehow had been breached, that the purchasing process employed in relation to the relevant new towing contract somehow lacked fairness, and/or that the new towing contract should not have been awarded to A.M.-P.M. Towing. Such repeated references the by-law's dispute resolution provisions suggested that the defendants implicitly, if not expressly, were advancing procedural and/or jurisdictional arguments that there was no genuine issue for trial in this court in relation to the plaintiffs' claims in that regard; i.e., because the plaintiffs had failed to engage the alternative dispute resolution agreed upon by the parties before commencing and pursuing this litigation. However, when pressed for clarification of the defendants' position in that regard during the course of oral submissions, defence counsel then indicated and confirmed that the defendants were not taking the position that the ability of the plaintiffs to advance their various claims was compromised or impeded by their not having followed the alternative dispute resolution process set forth in the by-law. To the extent necessary, I independently agree that the relevant dispute resolution provisions of the by-law created no impediment to the plaintiffs advancing their claims via this litigation. As noted above, the "Dispute Resolution" provisions of the by-law, (and section 18 of the by-law in particular), make it clear that the dispute resolution process described therein is "available" to suppliers. It does not make use of the process mandatory, or a precondition to commencement of formal litigation advancing complaints capable of being addressed by the described alternative dispute resolution process.
- b. In the plaintiffs' statement of claim, and again in the plaintiffs' motion material, references were made to alternative arguments that the WPSB, by entering into the relevant new authorized towing service contract with A.M.-P.M. Towing, breached obligations owed under the Town of Amherstburg's Procurement Policy By-Law No. 2015-69; e.g., by doing so without engaging a formal RFT or RFP purchasing method/mechanism. However, no such arguments were pursued during advancement or argument of the plaintiffs' motion or defendants' cross-motion. the hearing before me. Without limiting the generality of the foregoing, the cited Amherstburg by-law was not addressed or even presented in the evidence filed by the plaintiffs in relation to the motions, (insofar as it was not mentioned by any of the affiants, nor tendered as an exhibit for my review and consideration), the Amherstburg by-law similarly was not mentioned whatsoever by counsel during the course of oral submissions, and the arguments actively advanced by the plaintiffs during the hearing before me were premised in large measure on their position that the process to be followed in relation to the relevant new authorized towing contract was to be governed by the city of Windsor's Purchasing By-law 93-2012. In the circumstances:

- i. I think it fair to infer that the plaintiffs, by the time the matter came before me, effectively had abandoned their alternative arguments based on the cited Amherstburg by-law.
 - ii. Moreover, and in any event, the plaintiffs presented absolutely no evidence that would justify granting summary judgment in their favour based on supposed relevance or application of the cited Amherstburg by-law, and nothing beyond the bare allegations in their pleading and notice of motion to counter the defendants' motion for summary judgment presenting evidence, (consistent with the evidence in that regard presented by the plaintiffs themselves), indicating that the matter was instead governed by the city of Windsor's Purchasing By-law 93-2012.
- c. In the plaintiffs' statement of claim, and again in the plaintiffs' motion material, references were made to allegations that the defendants, by entering into the new authorized towing service contract, issuing the towing directive described herein to officers of the WPSB, and related conduct, improperly had created a "monopoly", and/or were engaged in various other forms of impermissible trade misconduct in relation to towing services, (e.g., deceptive marketing practices, restrictive trade practices, exclusive dealing, tied selling and/or market restriction), thereby violating section 18 of the *Municipal Act, 2001, supra*,¹⁷ and/or provisions of the *Competition Act*, R.S.C. 1985, c.C-34¹⁸. Similar references were made to corresponding claims for relief in that regard. In their motion material, the plaintiffs also included affidavit evidence provided by Gary Vandenheuvel, (a former price consultant for the Ontario Ministry of Transportation and the owner of a towing business based in the city of Sarnia), asserting that it was "common knowledge in the area of towing services that police contracts have created a monopoly over towing jobs stemming from police investigations". However:
- i. By the time the matter came before me, little effort had been made by the plaintiffs to develop or pursue such arguments. Without limiting the generality of the foregoing:
 - 1. The factum filed by counsel for the plaintiffs included only a passing reference to the outcome of the new towing contract being "a de facto monopoly", included no reference to the *Competition Act* arguments.

¹⁷ Section 18 of the *Municipal Act, 2001, supra*, reads in its entirety as follows: "A municipality shall not confer on any person the exclusive right of carrying on any business, trade or occupation unless specifically authorized to do so under any Act".

¹⁸ In their statement of claim and motion material, the plaintiffs indicated, in particular, that they were relying upon ss.75-84 of the *Competition Act, supra*.

2. The plaintiffs also had made no effort, (either in the plaintiffs' initial factum or by way of any reply factum), to address or counter the detailed factual and legal arguments set forth in the factum delivered by counsel for the defendants addressing, *inter alia*, why no monopoly actually had been created, and why the provisions of the *Competition Act* cited and relied upon by the plaintiffs had no application to the present circumstances and/or assigned exclusive jurisdiction over the adjudication of such claims to the Competition Tribunal.
- ii. In the course of oral submissions, counsel for the plaintiffs once again made passing reference to the alleged creation of a monopoly. However, the plaintiffs also had made no effort to address and counter the obvious indications, in the presented evidence, that the WPSB's selection of A.M.-P.M. Towing as its authorized supplier of towing services, in relation to towing situations involving the police, actually did not confer, on A.M.-P.M. Towing, the exclusive right to carry on towing business within the Town of Amherstburg or elsewhere, or "effectively eliminate any meaningful consumer choice" as suggested by counsel for the plaintiffs, even in relation to towing situations involving the police. Without limiting the generality of the foregoing:
1. Both the new towing service contract specifications and the new towing services contract itself indicate that the contract applies only in relation to vehicles towed or stored at the request of the police. Nothing in the contractual arrangements addresses, let alone excludes, the right of any towing service to carry on business in relation to the towing or storage of vehicles in situations not involving the police, or in situations where the provision of such towing or storage services is requested or directed by persons or corporations other than the police. As emphasized by the defendants, nothing in the WPSB's selection of a preferred towing contractor prevented or prevents anyone from operating a towing business in Windsor or Amherstburg, and it was not disputed that there are in fact numerous towing companies, other than A.M.-P.M. Towing, operating within the area serviced by the WPSB.
 2. The contract between the WPSB and A.M.-P.M. Towing expressly confirms, (in paragraph 10), that the contract actually does not oblige the WPSB to utilize A.M.-P.M. Towing to perform any services whatsoever, and that WPSB has provided no undertaking, (by entering into the contract), to use the services of A.M.-P.M. Towing in that regard. In effect, the contract thereby indicates and confirms, implicitly if not explicitly, that no exclusive right to provide towing and stowing services was being conferred or has

been conferred on A.M.-P.M. Towing even in relation to vehicle towing and storage situations involving the police.

3. The towing “Directive” issued by the WPSB to its officers, (to operationalize relevant laws and regulations, as well as the WPSB’s towing contract arrangements), also indicates and confirms that police officers employed by the Board are under standing instructions to proceed in a manner that does not contemplate, let alone direct, that the Board’s authorized towing service, (i.e., A.M.-P.M. Towing under the new towing services contract executed in 2020), has any exclusive jurisdiction to provide towing and storage services in situations involving the police. For example:
 - a. Except in situations where a vehicle has to be towed as the result of a seizure, the Directive requires police officers to direct the vehicle’s driver or registered owner (if available) to arrange for towing at his or her own expense, provided that the request does not cause an unreasonable delay and the vehicle is not obstructing the normal or safe flow of traffic. In my view, that direction clearly contemplates the use of services provided by a towing and storage business, chosen by a vehicle’s driver or owner, that may not be the same as the WPSB’s authorized towing service.
 - b. The Directive also provides that the WPSB’s authorized towing service shall be utilized where a vehicle’s driver and/or registered owner requests assistance to arrange towing services “with no stated preference”. In my view, that provides a further indication that use of a towing and storage service other than the WPSB’s authorized towing service is possible, and indeed probable, if that is the “stated preference” of the vehicle’s owner and/or driver.
 - c. The Directive also indicates that, where a vehicle’s driver, registered owner or agent has arranged for a private tow of a vehicle involved in a collision, officers are not to interfere with or alter those towing arrangements unless those arrangements are causing an unreasonable delay and/or the vehicle is obstructing the normal or safe flow of traffic. In my view, that too contemplates possible use of a towing and storage service chosen by the driver, registered owner or agent which is different than the WPSB’s authorized towing service; i.e., with police officers generally showing deference to that choice of a different towing and storage service provider, unless the circumstances fall within the

exceptional circumstances of delay and/or obstruction described in the Directive.¹⁹

- d. For such reasons, in my view nothing in the defendants' conduct created a "monopoly" within the sense contemplated by section 18 of the *Municipal Act, 2001*, *supra*.
- iii. Counsel for the plaintiffs effectively then confirmed, during the course of oral submissions, that the plaintiffs' claims based on allegations of the defendants having created an illegal monopoly, and/or having engaged in other improper restraint of trade practices addressed by the *Competition Act*, were not being pursued.
- d. In the plaintiffs' statement of claim and motion material, it was alleged that the WPSB's collection of a \$50 "administration fee" from individuals receiving a towing service, pursuant the relevant new towing services contract and/or the towing Directive issued by the WPSB to its officers, "amounts to the imposition of a tax and is a violation of s.17(1)(a) of the *Municipal Act, 2001*", *supra*, and the plaintiffs sought declaratory relief in that regard. However:
 - i. By the time the matter came before me, the plaintiffs had tendered little or no evidence in support of the claim for such declaratory relief, apart from Mr Didone simply referring to the relevant \$50 administrative fee being charged and characterizing that development as "expansive". Without limiting the generality of the foregoing, the plaintiffs had not filed any evidence to support a finding that they had any standing to raise the issue; i.e., insofar as it was vehicle owners who were required to pay the relevant \$50 fee and not towing businesses. Nor had the plaintiffs tendered any evidence to counter that provided by the defendants, (e.g., via the affidavit evidence of Barry Horrobin and Melissa Brindley), indicating that the relevant \$50.00 fee was a cost recovery charge rather than a tax.
 - ii. The plaintiffs also had not addressed, in their initial factum, or by way of any reply factum, the arguments advanced by counsel for the defendants as to why the plaintiffs lacked standing to raise the issue, and why the relevant administrative fee was a legally permissible cost recovery charge rather than an impermissible tax.

¹⁹ For all of the above reasons, I would have found, had I been called upon to do so, that the actions of the defendant had not created an improper monopoly as contemplated by section 18 of the *Municipal Act, 2001*, *supra*.

- iii. Counsel for the plaintiffs then confirmed, during the course of oral submissions, that the plaintiffs were abandoning their allegations and claims that the defendants had imposed any illegal taxes.
- e. The plaintiffs' statement of claim also included a passing reference to the plaintiffs being entitled to various forms of damages on grounds that included "loss of opportunity". However, I agree with the submission of counsel for the defendants, (not disputed by the plaintiffs), that "loss of opportunity", while a possible head of damages capable of being awarded in relation to other established claims, (such as liability in tort and certain forms of liability for breach of contract), it is not a "stand alone" basis for liability. In the course of oral submissions, counsel for the plaintiffs did not suggest that it was. To the extent there had been any suggestion to the contrary in the plaintiffs' statement of claim, (i.e., alleging that "loss of opportunity" was an actionable claim by itself), in my view that claim also effectively had been abandoned.

[6] The plaintiffs' remaining claims are noted and addressed below. However, before turning to my consideration and analysis in relation to those remaining claims, I think it appropriate to pause and note principles relating to motions for summary judgment which I have borne in mind throughout my approach to the matter.

Summary judgment

- [7] As noted at the outset, both the plaintiffs and the defendants contend that their dispute is amenable to resolution by way of summary judgment, and each "side" has brought its own summary judgment motion essentially asking that the dispute between the parties be decided in its favour. In particular:
- a. the plaintiffs contend that they are entitled to various forms of declaratory relief and a corresponding directed reference to quantify damages to which they say they are entitled; and
 - b. the defendants seek dismissal of the plaintiffs' motion as well as formal dismissal of the plaintiffs' claims, to the extent such claims have not already been abandoned.
- [8] In effect, it seemed clear, (and initial impressions in that regard were reinforced by counsel in their written and oral submissions), that there really was no dispute between the parties concerning principles applicable to summary judgment, or that the matter generally was amenable to resolution one way or the other by way of summary judgment, apart from the possibility of damages being assessed by way of a directed reference if the plaintiffs were found to have any entitlement or entitlements in that regard.
- [9] I nevertheless am mindful of my duty to make my own independent assessment in that regard, and therefore begin by noting that rules and principles applicable to summary judgment include the following:

- a. Pursuant to Rule 20.01(1) of the *Rules of Civil Procedure*, a plaintiff may, after the defendant has delivered a statement of defence or served a notice of motion, move with supporting affidavit material or other evidence for summary judgment on all or part of the claim in a statement of claim.
- b. Pursuant to Rule 20.01(3) of the same rules, a defendant may, after delivering a statement of defence, move with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim.
- c. Numerous additional rules outline the manner in which the court must approach any such motion for summary judgment, and the powers the court has in that regard. They include the following:
 - i. Pursuant to Rule 20.02(1), an affidavit for use on a motion for summary judgment may be made on information and belief, if the source of the information and the fact of the belief are specified in the affidavit, as required by subrule 39.01(4). However, on the hearing of the motion, the court may, if appropriate, draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts.
 - ii. Pursuant to Rule 20.02(2), a party responding to a motion for summary judgment, (i.e., defendant responding to a plaintiff's motion for summary judgment or a plaintiff responding to a defendant's motion for summary judgment), may not rest solely on the allegations or denials in the responding party's pleadings, but "must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial". This has been supplemented by repeated judicial admonitions emphasizing, in various ways, that a respondent to a such a motion is not permitted "to sit back and rely on the possibility that more favourable facts may develop at trial", and is instead required to "lead trump or risk losing" and "put its best foot forward", as "the court is entitled to assume that the record contains all the evidence the parties would present at trial".²⁰
 - iii. Pursuant to Rule 20.04(2), the court is obliged to grant summary judgment if:

²⁰ See, for example: *Pizza Pizza Ltd v. Gillespie* (1990), 75 O.R. (2d) 225 (Gen.Div.); *1061590 Ontario Ltd. v. Ontario Jockey Club* (1995), 21 O.R. (3d) 547 (C.A.); *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen.Div.); and *Toronto-Dominion Bank v. Hylton*, [2012] O.J. No. 4309 (C.A.).

1. the court is satisfied “that there is no genuine issue requiring a trial with respect to a claim or defence”,²¹ or
 2. the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment.²²
- iv. In making such determinations, the court is to consider the evidence submitted by the parties, and pursuant to Rule 20.04(2.1), may weigh the evidence, evaluate the credibility of a deponent, and draw any reasonable inference from the evidence, “unless it is in the interest of justice for such powers to be exercise only at trial”. In the exercise of those powers, the court also has the ability, pursuant to Rule 20.04(2.2), to order presentation of oral evidence by one or more of the parties; i.e., to direct a “mini-trial”.
 - v. Where the only genuine issue is the amount to which a moving party may be entitled, the court has the ability, pursuant to Rule 20.04(3), to order a trial of that issue, or grant judgment with a reference to determine the amount. Similarly, pursuant to Rule 20.04(4), where the court is satisfied that the only genuine issue is a question of law, the court may determine the question and grant judgment accordingly.
 - vi. Where summary judgment is refused or granted only in part, the court nevertheless has additional powers, pursuant to Rules 20.05(1) and (2), to specify what material facts are not in dispute, define the issues to be tried, order that the action proceed to trial expeditiously, and make numerous further orders and directions that may be just in the circumstances.

²¹ In that regard, it should be noted and emphasized that the question the court must decide in determining whether or not to grant summary judgment, (i.e., whether or not there is a genuine issue requiring trial), remains the same regardless of whether the court is considering a claim advanced by a plaintiff or a defence advanced by a defendant. See *Unique Lighting v. Green Services*, 2019 ONSC 4438, at paragraph 37. Nor is the required threshold for granting summary judgment, in relation to any claim or defence, affected by the parties’ bringing of reciprocal motions for summary judgment. In particular, if a plaintiff is entitled to summary judgment or a defendant is entitled to summary judgment, it must be because the party obtaining summary judgment has established that there is no genuine issue for trial in that regard in relation to an identified claim or defence, and not simply because the other side’s request for summary judgment in that regard has been unsuccessful. There is no requirement, in such circumstances, that the court grant summary judgment to one side or the other. See *Royal Bank of Canada v. Cadillac Fairview*, [1995] O.J. No. 472, at paragraphs 1, 10 and 13.

²² It nevertheless should be borne in mind that this subrule, while providing an alternative possible pathway to summary judgment, does not establish a different standard for the granting of summary judgment. In other words, it does not enable the parties to essentially compel the granting of summary judgment if the court independently is not or should not be satisfied that it is appropriate to grant summary judgment; e.g., if there is any clear, significant and unresolved conflict of evidence, essential to a just determination of the case, representing a genuine issue requiring a trial. See *Unique Lighting v. Green Services*, *supra*, at paragraph 36; and *Gordashevskiy v. Aharon*, 2019 ONCA 297.

[10] In *Hyrniak v. Mauldin*, [2014] 1 S.C.R. 87, the Supreme Court of Canada encouraged the use of Ontario’s summary judgment rule to resolve cases in an expeditious manner provided that can achieve a fair and just adjudication.

[11] Speaking for the court, the comments of Justice Karakatsanis in that regard included the following, (at paragraphs 1, 2 and 27 of the *Hyrniak* decision):

Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. ...

Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect the modern reality and recognize that new models of adjudication can be fair and just. ...

There is growing support for alternative adjudication of disputes and a developing consensus that the traditional balance struck by extensive pre-trial processes and the conventional trial no longer reflects the modern reality and needs to be re-adjusted. A proper balance must recognize that a process can be fair and just, without the expense and delay of a trial, and that alternative models of adjudication are no less legitimate than the conventional trial.

[12] Consistent with that general approach and philosophy, Justice Karakatsanis indicated, at paragraph 22 of *Bruno Appliance and Furniture, Inc. v. Hyrniak*, [2014] 1 S.C.R. 126, (a companion action to *Hyrniak v. Mauldin*, *supra*), that summary judgment would be appropriate where a matter “can be resolved in a fair and just manner”, which will be the case when the process:

- i. allows the judge to make the necessary findings of fact;
- ii. allows the judge to apply the law to the facts; and
- iii. is a proportionate, more expeditious and less expensive means to achieve a just result.

[13] Justice Karakatsanis went on to say, in the same paragraph, that if there appeared to be a genuine issue requiring a trial, based only on the record before a judge hearing a summary judgment motion, that judge must then ask if the need for a trial can be avoided by using the new powers provided under Rules 20.04(2.1) and (2.2) of the *Rules of Civil Procedure*.

If so, those powers may then be used at the judge's discretion, "provided that their use is not against the interest of justice".

[14] The general law relating to summary judgment motions, brought pursuant to Rule 20 of the *Rules of Civil Procedure*, therefore is now clear and settled.

[15] Applying that law to the circumstances of this particular case:

- a. While the parties and their counsel appeared to be in general agreement that the underlying facts of this case were not materially in dispute, I have been mindful of the need not to rely upon such indications/assurances alone. To the contrary, I have carefully reviewed and considered the evidence, and independently formed the view that there are very few aspects of the presented evidence in conflict, and in my view those were capable of being resolved by weighing the presented evidence and drawing reasonable inferences; e.g., in relation to the plaintiffs' assertions that the described towing service contracts conferred "exclusive" and/or "monopoly" rights, and that the decision to award the new towing contract to A.M.-P.M. Towing had never been approved by the Board of the WPSB, In my view, such ostensible conflicts were either not really conflicts in the factual evidence, (so much as suggested legal characterizations that were not borne out by the evidence), or facts which I felt able to resolve, (in the manner noted above in my review of the underlying facts), having regard to other facts that were not in dispute and drawing what I considered to be reasonable and appropriate inferences, and/or by preferred reliance on contemporaneous documentation rather than assertions and/or characterizations made by affiants long after the fact, for purposes of the litigation. In that regard, I was mindful that some aspects of the presented evidence contained elements of hearsay or double hearsay; e.g., insofar as reliance sometimes was placed, (by both sides), on contemporaneous occurrence reports prepared by police officers who did not directly provide evidence, and themselves sometimes referred to statements made by others. However, I also note that neither side raised any objection to the admissibility of such hearsay, apparently because the relevant hearsay accounts were regarded by both sides as credibility and reliable. In the circumstances, I was inclined to draw no adverse inferences pursuant to Rule 20.02(1) of the *Rules of Civil Procedure*.
- b. In some instances, (e.g., in relation to the plaintiffs' allegations of unlawful interference with the plaintiffs' economic relations, and relations between the plaintiffs and its established customers in particular), I found, (as discussed in more detail below), that the evidence presented by the plaintiffs fell short of establishing an adequate factual basis to justify claims being made by the plaintiffs. In my view, however, such instances did not really involve any conflict in the presented evidence requiring a trial or "mini-trial" or trial, but a simple failure of the plaintiffs to "put their best foot forward" in that regard and present sufficient evidence, (or sometimes any evidence), in response to the defendants' motion for summary judgment and evidence seeking a dismissal of such claims, in a context where the court is entitled to assume that the motion records delivered in relation to the

summary judgment motions contain all the evidence the parties would present at trial. In other words, such instances did not represent any true conflict in the evidence requiring a trial or mini-trial, but simply a disconnect between the plaintiffs' allegations and claims on the one hand, and the adequacy of evidence presented to support such claims (or rebut responding evidence tendered in defence of such claims) on the other.

- c. In the circumstances, I independently found that the summary judgment process allowed me to make all relevant and necessary findings of fact.
- d. For the reasons outlined below, I also independently found myself able to apply the applicable law to those findings of fact, in order to determine whether the remaining claims being asserted by the plaintiff, and defences asserted by the defendants, had merit warranting the granting of judgment in that regard.
- e. I also had no doubt that the summary judgment process presented a proportionate, more expeditious and less expensive means to achieve a just result. Without limiting the generality of the foregoing, the general absence of any conflict in the material evidence made it unnecessary to hear viva voce testimony from witnesses, (i.e., to facilitate further assessments of witness credibility and reliability, and securing dates for an extended "judge alone" trial, to enable a further presentation of the evidence and advancement of the parties' same legal arguments, would simply entail further unnecessary delay and expense.

[16] In short, I independently agreed with the apparent assessment of the parties and their counsel that the claims and defences herein were amenable to resolution by use of the summary judgment procedure, insofar as that process would enable the parties' dispute to be resolved in a fair and just manner.

Analysis of the plaintiffs' remaining claims and defences advance in that regard

[17] With all of the above in mind, I turned to consideration and analysis of the remaining claims being pursued by the plaintiffs, and the defences being advanced in response.

[18] The principal remaining claim advanced by the plaintiffs was that the defendants (and the WPSB in particular) breached their obligations under the city of Windsor's Purchasing By-Law 93-2101, such that the resulting towing services contract between the WPSB and A.M.-P.M. Towing should be regarded as invalid. In that regard:

- a. The formal requests for relief in that regard, as framed by the plaintiffs in their statement of claim and motion record, with original capitalizations and bold print, were as follows:
 - i. "A Declaration that the Defendants breached their obligations under the City of Windsor Purchasing By-Law 93-2012 (the '**Windsor Procurement By-Law**'), when the Defendant, Windsor Police Services Board, entered into a 'Towing of Vehicles Contract' for an 'Authorized

Towing Service’ as defined in Windsor Police Directive No. 853-01 Vehicle Towing, Impound & Release (the ‘**Vehicle Towing Directive**’) without engaging the Request for Tender or a Request for Proposal mechanisms within the Windsor Procurement By-Law”; and

- ii. “A Declaration that all contracts entered into by the Defendant Windsor Police Services Board and A.M.-P.M. Towing & Recovery Inc. for the exclusive possession of towing service in the Town of Amherstburg and the City of Windsor are illegal, *void ab initio*, and are of no force and effect”.
- b. The primary thrust of the plaintiffs arguments, offered in support of their claim that the defendants had breached their obligations under Purchasing By-law 93-2012, was that, in the circumstances relating to the new towing services contract, the by-law called for adherence to the RFT or RFP purchasing methods described therein, insofar as the value of the relevant towing contract had a value greater than \$50,000 from the perspective of the supplier plaintiffs.²³ In that regard, substantial emphasis was placed on evidence tendered by the plaintiffs that included the following:
- i. In his sworn affidavit, the plaintiffs’ principal Mr Didone emphasized that, over the course of the towing contract that previously existed between County Towing on the one hand and the APSB and/or WPSB on the other, (i.e., a period that actually extended more than three years, from June 23, 2017, to August 1, 2020), “County Towing *earned revenue* in the approximate amount of \$280,000, or roughly \$93,000 per year as a direct result” of that contract. [Emphasis added.]
 - ii. In his sworn affidavit, Gary Vandenneuvel, (former price consultant for the Ontario Ministry of Transportation and the owner of a towing business based in Sarnia), opined that it was “obvious that *the value* of [such] a private police contract” generally, or of being placed on rotation in relation to the police towing contract applicable to Sarnia in particular, “is well above \$5,000”.
 - iii. In his sworn affidavit, Frank Cleminson, (former Chairman of the APSB), described the prior contract for towing services reached between the APSB and County Towing, (which he described as a “Request for Services” of “RFS” contract), and said this: “In my opinion, the value of the RFS contract was well over \$5,000.00, as in almost all cases, the

²³ Although the plaintiffs’ statement of claim includes a passing reference in sub-paragraph 24(a) to the “estimated contract price” of the new towing contract allegedly exceeding \$50,000, and other perhaps unavoidable references to the “purchase price” of the relevant towing services, (given the express focus on “purchase price” in Purchasing By-Law 93-2012), the plaintiffs then clearly redirect their focus to the value of the contract from the supplier perspective; i.e., apparently ignoring the obvious distinction between the two concepts, particularly given the clear definition of “Purchase Price” in the by-law.

individual(s) involved in an accident would received the towing services of the company contracted by the Town of Amherstburg”.

- iv. In his sworn affidavit, Mark Graves, (President of the Provincial Towing Association of Ontario, or the “PTAO”), similarly stated that, in his opinion, that value of such “police contracts” relating to towing, “in any given area”, is “well above \$5,000”.
- c. In the submission of the plaintiffs and their counsel, that value of the new towing contract from the supplier perspective was such that Purchasing By-Law 93-2012 in turn required use of the RFT or RFP purchasing methods described in the by-law, and the by-law accordingly was breached insofar as a choice was made by the WPSB to employ the “Information Quotation” purchasing method described therein, which was said to have resulted in a corresponding disadvantage or detriment to County Towing. The position of the plaintiffs in that regard was described, at paragraphs 28 and 29 of the plaintiffs’ factum, as follows:

ISSUE 1: Did WPSB breach the City of Windsor Purchasing By-Law 93-2012?

28. Yes. WPSB breached the City of Windsor Purchasing By-Law 93-2012 by improperly using an Informal Quotation procurement method rather than conducting a formal Request for Tender (RFT) or Request for Proposal (RFP). The By-Law explicitly requires an RFT or RFP process when *the estimated contract value* is \$100,000 (sic) or more,²⁴ multiple qualified suppliers exist, and the specifications are clearly defined. Here, *the annual value of the towing services* exceeded \$100,000, County Towing and the other companies were qualified providers, and the specifications were straightforward.

29. By ignoring these clear requirements and awarding the contract informally, WPSB circumvented the By-Law’s mandated procedures, undermined transparency and fairness, and disadvantaged County Towing.

²⁴ It will be noted that the plaintiffs’ suggestion of Purchasing By-Law 93-2012 referring to a monetary threshold of \$100,000 or more, triggering requiring use of the RFT/RFP purchase methods described in the by-law, is at odds with the indication, noted above, that the relevant monetary threshold identified by the by-law in that regard is an estimated contract price or purchase price of “\$50,000 or greater”. In that regard, there were indications, during the course of oral submissions, that the parties may have been looking at different versions of the by-law, updated over time, when formulating their positions and preparing their material. In the result, I received indications and assurances from counsel that the relevant and proper version of the by-law, applicable to the underlying circumstances as they stood at all material times, is the version introduced and marked as Exhibit “M” to the affidavit of Inspector Lawrence sworn on October 24, 2024. That accordingly is the version of the by-law quoted and relied upon herein; a version which indicates, at sub-paragraphs 77(b) and 79(b), that the indicated monetary threshold for required application of the RFT or RFP purchasing method is a situation wherein “the estimated Contract Price is \$50,000 or greater”.

[Emphasis added.]

- d. With respect, the assertions made in that regard are problematic not only because they contain factual exaggerations and/or inaccuracies having regard to the plaintiffs' own submitted evidence, but also represent a fundamentally flawed and incorrect reading of the relevant provisions of Purchasing By-Law 93-2012. Without limiting the generality of the foregoing:
- i. Neither Mr Vandenheuvel nor Mr Cleminson nor Mr Graves offered any evidence indicating that the value of the relevant new towing contract, (ultimately made between the WSPB and A.M.-P.M. Towing), was \$100,000 or more. Again, Mr Vandenheuvel merely indicated his opinion that the value of such a contract was "well over \$5,000", Mr Cleminson merely indicated his opinion that the value of the particular contract reached between County Towing and the APSB was "well over \$5,000", and Mr Graves indicated his opinion that the value of such "police contracts" relating to towing services, "in any given area", was "well above \$5,000".
 - ii. As far as the particular value of the contract to County Towing was concerned, it is noteworthy that the sworn evidence of the plaintiffs' principal Mr Didone speaks only to the total \$280,000 (or roughly \$93,000 per year) in "revenue" earned by County Towing during the revenue earned by County Towing over the course of its previous towing services contract with the APSB and WPSB. As noted and emphasized by counsel for the defendants, "revenue" is not synonymous with "profit", (which would turn on a particular supplier's costs corresponding with revenue, and corresponding profit margins), but even if it was, the sworn evidence of Mr Didone was focused only on gross revenue, and did not indicate that the "annual value of the towing services exceeded \$100,000".
 - iii. Of most immediate importance, however, is the reality that Purchasing By-Law 93-2012 does not "explicitly" or even implicitly "require an RFT or RFP process when the estimated contract value is \$100,000 or more" - - which I approach as an intended reference to "\$50,000 or more" for the reasons noted above.²⁵ Nor does the by-law focus at all on the value of a contract from a supplier's perspective, when determination of the applicable purchasing method to be employed is concerned. To the contrary, and as noted above:
 1. The by-law defines a "Purchase" as "The acquisition of Deliverables by any means, including rental and leasing, and the functions that

²⁵ See footnote 24, *supra*.

pertain to the acquisition of Deliverables, and specifies that “Purchasing” shall have a corresponding meaning.²⁶

2. The by-law expressly indicates that “purchasing methods” are to be determined based on the threshold calculation rules set forth in the by-law.²⁷
3. Those threshold calculation rules of the by-law explicitly indicate that “the *Purchase Price*” is the controlling factor “for the purposes of determining the necessary approvals and procedures” required, with that “*Purchase Price*” being defined by the by-law as “The *amount payable by the City for a Deliverable* pursuant to a Contract”, with the threshold calculation rules going on to specify that, in calculating the “Purchase Price” for the purposes of determining the necessary approvals and procedures:
 - a. all taxes and duties shall be excluded; and
 - b. in the case of multi-year Contracts, the Purchase Price will be “the estimated annual *expenditure* under the contract”.²⁸

[Emphasis added.]

4. Although the various purchasing methods described in sections 54-97 then employ wording such as “purchases up to \$200”, (characterized by the by-law as “Petty Cash” situations in which no formal purchasing process is required), “purchases up to \$5,000”, (characterized by the by-law as “Small Purchase Order” situations in which no formal purchasing process is required), situations involving a “total dollar amount between \$5,001 and \$25,000”, (wherein the by-law required adherence to the “Information Quotation” purchasing method procedure described therein), situations involving a “total dollar amount between \$25,001 and \$50,000”, (wherein the by-law required adherence to the “Formal Quotation” purchasing method procedure described therein), and situations where “the estimated Contract Price is \$50,000 or greater”, (wherein the by-law required used of the RFT or RFP procedures), in my view all of those provisions, read and interpreted in their proper context, including regard to the by-law as a whole, make it clear that the purchase price expenditure to be paid by the

²⁶ Again, see Purchasing By-law 93-2012, section 3.

²⁷ Ibid, section 54.

²⁸ Ibid, sections 3 and 35-36.

city (or in this case the Board on the city's behalf), rather than the value of the contract to the supplier who would be providing the "deliverable" good or service", was always intended to be the guiding touchstone or determinant of the purchasing method required by the by-law. Even focusing on the provisions of the by-law relating to the RFT and RFP purchasing methods specifically and in isolation, one sees that those purchasing methods were required by the by-law only when "the estimated Contract Price", (i.e., the price to be paid to the supplier for the purchased good or service, rather than the value of the arrangement to the supplier providing the relevant good or service), was \$50,000 or greater.

5. When repeatedly pressed on the above points during the course of oral submissions, counsel for the plaintiffs eventually acknowledged the above wording of the by-law and that, according to the provisions of the by-law itself, the relevant purchasing method to be employed, (amongst the escalating hierarchy of described purchasing methods), was to be determined according to the purchase price to be paid by the city/Board, as defined by the by-law, and not by the value of a potential contract to any potential supplier of goods or services to the city/Board. It similarly was acknowledged that there accordingly had been no breach of Purchasing By-law 93-2012 "on its face". The plaintiffs instead would rely on "wider" alternative arguments, (addressed below), that there had been a violation of what was described as "the spirit of the by-law" as opposed to its provisions; e.g., insofar as there was said to have a violation of the defendants' contractual obligations and/or "overriding duties" of good faith, fairness, and transparency, addressing "a larger problem" to which the law should respond.
- iv. In any event, I independently find that the plaintiffs have established no breach of the provisions of Purchasing By-Law 93-2012 in the circumstances of this case, and/or that the defendants have established that there was no such breach of those provisions. Without limiting the generality of the foregoing:
1. It bears repeating and emphasizing that, in this particular case, the purchase price or expenditure to be paid by the city, (or in this case the WPSB on the city's behalf), pursuant to the new towing services contract, actually was limited to the amounts to be paid for towing and storage services provided in relation to vehicles owned by the WPSB; i.e., as vehicle owners were responsible for direct payment of amounts charged by the authorized towing service in relation to the towing and storing of other vehicles, not owned by the WPSB. In that regard, the unchallenged evidence provided by the defendants made it clear that the purchase price to be paid by the

city/WPSB in relation to the new towing contract, for towing services provided in relation to vehicles owned by the WPSB, actually was unlikely to exceed \$5,000 annually; i.e., even if the amounts likely to be paid by vehicle owners to the selected authorized towing service by way of towing and storage fees was likely to be greater than \$5,000 annually.

2. In the circumstances, the provisions of Purchasing By-law 93-2012 contemplated that such a situation would be approached as a “Small Purchase Order”, in respect of which the municipality had determined that no formal purchasing process was required to address the stated “purchasing goals” set forth in the by-law. The WPSB self-evidently could not contravene the requirements of a mandated formal purchasing process when no such process was mandated in the circumstances.
3. While Inspector Lawrence and others employed by the WPSB made a voluntary decision to employ the purchasing method procedures applicable to situations in respect of which Purchasing By-law 93-2012 would have required compliance with the “Informal Quotation” purchasing process, and made a similarly voluntary decision to follow aspects of the procedures to be employed in relation to situations in respect of which the by-law would have required compliance with the “RFT” or “RFP” purchasing method described therein, (e.g., in relation to the manner of receiving and answering questions from suppliers), there was no obligation on the WPSB and its representative to do so in the prevailing circumstances; i.e., having regard to the provisions of the by-law, read in their complete context, and their natural and ordinary meaning.
4. In my view, the plaintiffs’ suggested interpretation of Purchasing By-law 93-2012, (i.e., making value of a contract to a potential supplier rather than the purchase price to be paid by the city/Board the determinant of which purchasing method was to be used), also is not a purposive, sensible or practical interpretation of the legislation. Without limiting the generality of the foregoing:
 - a. As emphasized by the Supreme Court of Canada in *Shell Canada Products Ltd. v. Vancouver*, [1994] 1 S.C.R. 231, at paragraph 46, the key feature of public contracting and corresponding exercise of the government procurement or purchasing power rendering it amenable to judicial review and accountability, (as distinct from the freedom of contract enjoyed by private parties), is that governments, including municipalities “undertake their commercial and contractual

activities with the *use of public funds*". [Emphasis added.] In other words, it is the expenditure of public funds, by a government's payment of amounts or price to purchase the delivery of goods and services, which is the inherent basis, purpose and natural focus of regulatory legislation such as Purchasing By-Law 93-2012, intended to promote and safeguard the public interest in that regard; i.e., as opposed to promoting and safeguarding the private commercial interests of any particular business hoping to engage in the potential supply of goods and services to the government.

- b. Not surprisingly, when one reads the provisions of Purchasing By-law 93-2012 in their entirety, (to obtain necessary and proper context for legislative interpretation), one sees that the by-law therefore repeatedly emphasizes that its principal focus is on the perspective of the municipality, as a purchaser of goods and services in exchange for payment, (and incurring corresponding cost in that regard), rather than the value of doing business with the city from the perspective of a supplier. For example:
 - i. The by-law emphasizes "*purchasing goals*" that include:
 - a. ensuring that "the *city's* needs" for goods and services are not only met over time but met "in the most *cost* effective manner possible";
 - b. ensuring that the municipality *obtains* the "best value for money" paid to obtain goods and services;
 - c. ensuring that the city's "*purchasing* is undertaken with fairness, honesty and integrity", avoiding even the appearance of impropriety in relation to such purchasing;
 - d. promoting openness by ensuring equal access to suppliers to opportunities to benefit "from *the expenditure of tax dollars by the city*";
 - e. promoting transparency to ensure "that *purchasing* is undertaken in accordance with policies and procedures that are accessible to and understandable by all";

- f. creating an environment of continuous improvement by, inter alia, “reducing costs” paid by the city, and “improving quality” of the goods and services obtained by the city; and
- g. encouraging “the *procurement*” of “green” goods wherever possible within the context of obtaining best value for the city.

[Emphasis added.]

- ii. Many terms defined by the by-law similarly focus on the city’s perspective as a purchaser, and the exercise of the city’s purchasing power, rather than a supplier’s perspective – including the value of such transactions or potential transactions from the perspective of a potential supplier . To cite just some of many possible examples in that regard:
 - a. “bid documents” refer to “city documents used in connection with a *purchasing process*”;
 - b. a “Board”, (such as the WPSB), is defined as an entity that may be formally independent of the city but recognized as an agency that “may take advantage of the city’s *purchasing power*”;
 - c. a “Contract” is defined as “a document to evidence an agreement for the *purchase* of Deliverables”;
 - d. a “Deliverable” is defined as “the good, service or construction being *purchased*”;
 - e. a “Purchase” is defined as “the *acquisition* of deliverables by any means”, with “Purchasing” having a corresponding meaning; and
 - f. a “Purchase Price” is defined as “the amount *payable by the city* for a deliverable pursuant to a contract”.

[Emphasis added.]

- iii. Throughout other provisions of the by-law, but particularly its Part VIII provisions principally relied upon by the plaintiffs, the focus is clearly on “*Purchasing Methods*”, [emphasis added], and the manner in, and extent to which, purchases and expenditures by the city and/or its Boards are to proceed and be regulated.
- c. The purchase price or amount of expenditure the city and/or its Boards contemplate spending to acquire a good or service deliverable by suppliers is information within the possession of the city or its Boards, making it a sensible and practical touchstone for determining the purchasing method to be applied in relation to such an acquisition. In stark contrast, information concerning the subjective value any and all potential individual suppliers of goods and services may place on doing business with the city and its Boards, from the perspective of such individual potential suppliers, inherently is not information readily available to the city and/or its Boards.²⁹ Without limiting the generality of the foregoing:
 - i. While the by-law imposes certain minimums on the number of quotations or bids to be invited/solicited in certain prescribed situations, there notably appears to be no maximum limit on the number of potential suppliers permitted to express an interest in providing a good or service to the city or its Boards in exchange for payment. If one adopted the interpretation of Purchasing By-Law 93-2012 suggested by the plaintiffs, making the subjective value placed by a potential supplier on a possible contract with the city the touchstone of determining the appropriate purchase method to be applied by the city or its relevant Board, the

²⁹ I note, for example, the acknowledged reality that the plaintiffs never shared, with the defendants, prior to this litigation, the plaintiffs’ valuation that the previous towing contract was worth approximately \$93,000 a year in revenue to the plaintiffs. Without limiting the generality of the foregoing, invoices said to have been issued by the plaintiffs to vehicle owner customers for services provided by the plaintiffs during the course of County Towing’s contract with the APSB and WPSB were not provided to the APSB or WPSB during the course of that contract, and were provided to the defendants only after this matter was committed to litigation; i.e., via the plaintiffs’ affidavit of documents. Moreover, even then, there was no way for the invoices to be linked to actual vehicles, vehicle owners or licence plates that may have been the subject of tows made in connection with the towing services contract, as such records had been discarded. In effect, the defendants accordingly have no meaningful way to question or test the plaintiffs’ assertion regarding the revenue they derived from the previous towing services contract.

number of suppliers in respect of which the city or Board would be required to obtain such information, (i.e., as to the subjective value each potential supplier would place on a contemplated purchase contract by the city or Board), accordingly is not only expansive but in theory limitless, as are the possible variations in the subjective valuations placed on such a contract by different buyers, which would lead to further uncertainty. Using the amount of the purchase price to be paid by the city or its relevant Board instead provides a readily available, single and certain determinant of which purchasing method should be employed in relation to any contemplated procurement.

- ii. As noted earlier, even if the city or Board had access to information allowing it to make projections as to the amount of gross revenue a supplier might earn from engaging in a contract, pursuant to which the city or Board would purchase goods or services from the supplier, that in itself is no reliable determinant of the value any particular potential supplier might place on such a contract; i.e., without the city or Board also having access to the particular supplier's associated costs, (in the way of overhead, incremental costs and indebtedness), thereby enabling the city or board to ascertain a particular supplier's net profit margins, and the actual corresponding net value a potential supplier might derive from the city purchasing a particular good or service from the supplier.
- iii. Moreover, the interpretation of the by-law suggested by the plaintiffs inherently would require the city or Board to elicit, receive and consider such supplier information, and make such calculations, before the city or Board could determine the required purchasing method to be applied, and therefore before the city or Board could even begin to move forward with necessary arrangements to purchase goods and services. Such an approach seems completely antithetical to the municipality's stated purchasing goal of ensuring efficiency by maintaining the flow of goods and services to meet the needs of the city or

Board over both the short and long term, and doing so in the most cost-effective manner possible.

- iv. It also should be noted that there are no provisions in Purchasing By-Law 93-2012 authorizing or directing those purchasing goods or services on behalf of the city or its Boards to request, receive or assess information regarding the subjective value any potential supplier or suppliers may place on a contract to supply such goods or services to the city or its Boards; a reality which also reinforces an inference that the municipality did not think such information or considerations were relevant to determination of the purchasing method to be employed in relation to a contemplated procurement.
- v. In short, in my view the interpretation of Purchasing By-Law 93-2012 suggested by the plaintiffs effectively would cast an unrealistic, impractical, uncertain and effectively unworkable obligation on the city or Board, in determination of a purchasing method to be employed in relation to contemplated procurements, that would not promote the public interest. That too supports a conclusion that such an interpretation was not intended by the by-law, and must be rejected.³⁰

[19] It was suggested that, despite the eventually acknowledged absence of any breach of Purchasing By-Law 93-2012 on its face, the defendants should be regarded as having breached suggested “wider” obligations in that regard. However, in my view the suggestions ultimately were not persuasive, and also provided no basis for the relief sought by the plaintiffs. Without limiting the generality of the foregoing:

- a. It was broadly suggested by counsel for the plaintiffs that the conduct of the defendants may not have breached the “letter” of Purchasing By-Law 93-2012, but instead breached “the spirit of the by-law”; e.g., insofar as the by-law was said to reflect a general intention to have the city and its Boards address more significant contracts, (and correspondingly heightened concerns about transparency and accountability underlying the purchasing goals identified in the by-law), by following the more detailed and demanding requirements contemplated by the

³⁰ Not surprisingly perhaps, having regard to such considerations, it was undisputed that the WPSB, (during the 35 years in which Barry Horrobin has been employed by the Board as its Director of Planning and Physical Resources, and involved in the Board’s procurement contracts), has never sought out a supplier’s asserted gross revenues or net profits in relation to any contemplated contract in relation to any kind of procurement.

“RFT” and “RFP” purchasing methods. With respect, in my view this ignores the wording and actual legislative intent of the by-law, (for the reasons outlined above), and essentially invites the court to rewrite the provisions of the by-law in a manner contrary to the municipality’s legislative intent. In that regard:

- i. As Purchasing By-law 93-2012 itself notes in its stated purchasing goals, objectives such as openness, transparency and accountability in relation to the expenditure of public funds do not stand in splendid isolation from other relevant and competing objectives that need to be weighed in the balance by public entities, and the legislative bodies that govern them.
- ii. One of the most important of those competing goals, and the one expressly identified as the first of the numerous goals intended to be “balanced” by the provisions of Purchasing By-law 93-2012, is efficiency. In that regard:
 1. In an ideal world of limitless time and resources, one could envision a system of public expenditure protocols where detailed and exacting procedures, up to and including RFT and RFP procedures such as those outlined in Purchasing By-law 93-2012, would be carried out, and completed immediately, in relation to each and every instance of public funds being spent to acquire goods and services, including the disbursement of extremely modest sums the by-law characterizes as “petty cash” disbursements below \$200.00.
 2. We nevertheless obviously do not live in such a utopian world, and there clearly is a point where the benefits of applying more detailed and exacting purchasing methods to more modest public expenditures would be outweighed by the associated costs. In particular, not only would the objective value of the public resources devoted to such procedures to ensure proper public spending frequently exceed the objective value of the underlying public spending in issue, but the time necessarily required to complete such processes would delay the necessary acquisition of goods and services required by public entities to a point where the flow of such goods and services would be severely delayed and disrupted, to the detriment of the public.
 3. I acknowledge that public contracting must reflect public accountability, and courts therefore may intervene where a municipality acts unreasonably; e.g., for an improper purpose, or in a discriminatory or procedurally unfair manner.³¹ However, I see

³¹ See *Shell Canada Products Ltd. v. Vancouver*, [1994] 1 S.C.R. 231; *Bot Construction Ltd. v. Ontario (Ministry of Transportation)*, [2009] O.J. No. 359; and *Metercor Inc. v. Kamloops (City)*, 2011 BCSC 382, at paragraph 3

no basis for such intervention grounded in simple disagreement with the manner in which a municipality has sought to prioritize and balance competing objectives of its procurement process in circumstances where that chosen balance that cannot be characterized as unreasonable – which in my view is the situation in this case. In that regard, it should be remembered that the necessary balancing of such objectives is inherently an exercise in the determination of public policy, and therefore generally, (e.g., barring adoption of a policy that clearly reflects an improper purpose, discrimination or procedural unfairness), a matter for the public’s elected legislative bodies rather than the courts to decide.

4. In this instance, the municipality of Windsor considered the matter and enacted a by-law setting forth, in detailed provisions grounded in objective and rationally justifiable criteria, alternative purchasing methods to be followed, and the precise method of determining which of those purchasing methods was to be followed in relation to any contemplated public expenditure, commensurate with the extent of that public expenditure. I see no justification for the court to interfere with, and essentially rewrite, that legislated policy. Without limiting the generality of the foregoing, the decisions made in that regard by the municipality controlling the purchasing decisions of the WPSB may have differed from those of the municipality controlling the purchasing decisions of the APSB, (in terms of deciding how to strike an appropriate balance of the various concerns and objectives relating to expenditure of public funds), but in my view there is no demonstrated justification for this court to declare that one legislative policy was superior or inferior to the other.
- iii. Although it was pleaded that the WPSB was in breach of responsibilities legally imposed upon it via the purchasing goals enunciated in section 2 of Purchasing By-Law 93-2012, in my view the WSPB should be regarded as having satisfied those duties, to the standard expected by the by-law, by complying with (and indeed exceeding) the requirements of the by-law.
 - b. Counsel for the defendants devoted considerable attention to whether or not any tort liability actionable by the plaintiffs could or should flow from any established breach of a by-law, and Purchasing By-Law 93-2012 in particular; e.g., focusing on associated issues such as whether or not there was any independent tort of “statutory breach” giving rise to a right of recovery upon proof of such a breach and damages, whether there was any private law duty of care owed by the defendants to the plaintiffs in that regard, what the standard of care in that regard should be, whether the conduct of the defendants was reasonable in the circumstances and met that standard of care, and whether or not any such possible

basis of liability should be considered at all in light of the plaintiffs' failure to plead and rely upon any such liability of the defendants in tort.³² In my view, such questions effectively were rendered academic not only by the plaintiffs' failure to plead and rely upon any such tort, but in light of my finding that no breach of the relevant by-law had been established.

- c. As for claims of the plaintiffs based upon or relating to principles of contract law:
 - i. As noted by counsel for the defendants, the plaintiffs' statement of claim includes no allegation of breach of contract *per se*, nor any express claim that the plaintiffs are entitled to damages for breach of contract. In their pleading, the plaintiffs instead assert that one basis for awarding the various forms of damages they seek is an alleged "breach of the Defendants' common law duty to act honestly and in good faith in the performance of the Defendants' contractual obligations"; a claim of a somewhat different character, considered in more detail below.
 - ii. It was not disputed that the previous towing services contract between County Towing and APSB, (assigned to the WPSB), expired on August 1, 2020, after its specified final renewal and agreed limited extension, and that nothing in that contract guaranteed County Towing, or the plaintiffs generally, an award of any further contract in that regard. The plaintiffs did not expressly plead or suggest that there had been any breach of that earlier contract, and I find no basis in the evidence for a finding that there was. Nor was it suggested that the defendants breached any other obligations relating to performance of that contract, and I find no basis for such a suggestion in any event.
 - iii. The plaintiffs obviously were not parties to the new towing services contract ultimately entered into by WPSB and A.M.-P.M. Towing, so there also is no question of the defendants, (and the WPSB in particular), having breached any contractual obligations in that regard vis-à-vis the plaintiffs; i.e., in relation to that particular contract.
 - iv. I nevertheless am mindful that, pursuant to the analysis and principles set forth in authorities such as *The Queen (Ontario) v. Ron Engineering*, [1981] S.C.R. 111, and *M.J.B. Enterprises Ltd. v. Defence Construction*

³² In that regard, it was emphasized, and I agree, that the plaintiffs also had not pleaded and relied upon the existence of any other established torts, including negligence; an omission of significance, having regard to the Supreme Court of Canada's indication, in *The Queen (Canada) v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205, at p.227, that the civil consequences of breach of statute should be subsumed in the law of negligence. In that regard, the Supreme Court of Canada noted that proof of statutory breach, causative of damages, may be evidence of negligence. Again, however, in my view no such proof of statutory breach was established in this particular case. Insofar as it has relevance to my comments below regarding causation, I also note the Supreme Court of Canada's emphasis that, insofar as a civil action for statutory breach is subsumed within the law of negligence, the principles of causation and damages, (i.e., other elements required to establish tortious responsibility), also apply to any such claims.

(1951) Ltd., [1999] 1 S.C.R. 619, a preliminary contract may arise the procurement context between a party who invites or solicits bids or tenders for a principally contemplated contract to supply goods or services to the party inviting/soliciting such bids and tenders, and others who then submit bids or tenders in response to such an invitation/solicitation. In that regard, and at the risk of over-simplification for present purposes:

1. Based on fundamental principles of offer and acceptance, an invitation/solicitation or “call” for such bids or tenders may be regarded as an “offer”, and the submission of responding bids or tenders as “acceptance”, giving rise to a preliminary contract, (frequently described in the vernacular as “contract A”), that is separate and distinct from the contemplated principal contract, (frequently described in the vernacular as “contract B”), ultimately to be entered into between the party inviting/soliciting such bids or tenders and the successful bidder. In that regard, the preliminary contract, (or “contract A”), is essentially a contract or agreement as to how the tender call is going to be managed.
2. The question of whether the submission of a tender in response to an invitation to tender gave rise to contractual obligations by way of such a preliminary contract, (quite apart from the obligations associated with the principal contract to be entered into upon the acceptance of a tender), depends upon whether the parties intended to initiate contractual relations by the submission of a bid.
3. If there was such an intention, the basic terms and conditions of the preliminary contract, (or “contract A”), governing how the tender call is to be managed, essentially are determined and governed by the terms and conditions set forth in the call for tenders.
4. In addition to those basic terms and conditions, (a violation of which will constitute breach of contract in the conventional sense), our law typically also requires parties to such contracts to abide by additional duties of fairness and good faith in relation to the performance of such contracts; additional duties which may be viewed as ancillary obligations, but more usually as implied terms of such preliminary contracts created in the procurement context. The concepts of “fairness” and “good faith” are flexible, but normally include a duty to treat all bidders fairly by treating all bidders and bids equally, in a consistent manner, applying assumptions and assessment criteria evenly, and not engaging in colourable attempts to achieve a desired outcome; i.e., to give an unfair advantage to any of the bidders. For example, the party inviting/soliciting bids has an obligation to disclose any preference or selection criteria to all bidders, to accept only conforming bids,

and refrain from use of wording creating a material difference between what is contemplated by “contract A” and “contract B”.³³

- v. In this case, the “final terms” of the relevant tender circulated by the WPSB did not require and were not subject to any negotiation, and I think it appropriate to find that a preliminary contract, (or “contract A”), in the sense described above, therefore came into existence between the WPSB and the interested towing business suppliers who submitted bids or quotations in response to the tender.
- vi. That having been said, it was not suggested that those acting on behalf of the WPSB in relation to the relevant procurement process, (and Inspector Lawrence in particular), deviated in any way from the terms and conditions set forth in the relevant tender documents, and I accordingly find no basis for finding that there was any breach of contract established in that sense.
- vii. It was the contention of the plaintiffs that the WPSB nevertheless breached its ancillary and/or implied duties of fairness and good faith that were owed to the plaintiffs; i.e., in relation to the performance of the WSPB’s obligations associated with the relevant preliminary contract. However, I am not persuaded that was the case. In that regard:

- 1. The particulars pleaded by the plaintiffs, in support of their allegation that the WPSB breached its duty of good faith, are found in paragraph 46 of the statement of claim, which reads in its entirety as follows:

The Plaintiffs plead that the Defendant WPSB and County Towing were in a contractual agreement, such that the Defendant WPSB had a common law duty to act in good faith in performance of the contract. The Plaintiffs plead that the Defendant WPSB breached its duty of good faith in the following particulars:

- a. Rather than engaging the correct processes under the City of Windsor Purchasing By-Law and/or the Amherstburg Procurement By-Law by way of an RFT/RFP, the Defendant WPSB illegally proceeded by way of an “Informal Quotation”, thereby depriving the

³³ In addition to *The Queen (Ontario) v. Ron Engineering, supra*, and *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, *supra*, see: *Martel Building Ltd. v. Canada*, [2000] 2 S.C.R. 860; *Melico Developments Ltd. v. Portage La Prairie (City)*, 2002 MBCA 125; and *Inzola Group Ltd. v. City of Brampton*, 2019 ONSC 7632.

Plaintiffs of procedural fairness in the tender and bidding process; and

- b. The Plaintiffs plead such action was taken with the explicit purpose of denying the Plaintiffs their right to transparency, openness and procedural fairness under the Purchasing By-Law.
2. In my view, those pleaded particulars are inadequate, in the circumstances, to justify any finding that the WPSB breached its duty to perform its obligations under the preliminary contract, (or “contract A”), in good faith. Without limiting the generality of the foregoing:
 - a. The first argument circles back to the plaintiffs’ unsuccessful contention, rejected for the reasons outlined above, that the WPSB breached the provisions of Purchasing By-law 93-2012 by choosing to follow the “Informal Quotation” purchasing method procedures described therein, and/or by failing to follow the RFT/RFP purchasing method procedures described therein. Moreover, even if the WPSB had improperly or “illegally” failed to follow the provisions of Purchasing By-Law 93-2012 in some way, that failure or deviation was applied to all bidding towing businesses equally, which does not suggest an exercise of unfairness or bad faith, let alone one that disadvantaged the plaintiffs.
 - b. The second argument fails on the provided evidence. In particular, the plaintiffs not only failed to provide any evidence to support their contention that the WPSB acted with such an “explicit purpose”, but it was expressly acknowledged on behalf of the plaintiffs, (by counsel for the plaintiffs), during the course of discovery examinations, that there actually was no allegation on the part of the plaintiffs that any particular individual acting on behalf of the defendants had the intent of denying the plaintiffs procedural fairness, openness and/or transparency in their application of the relevant purchasing by-law and arrangements to secure a new towing services contract for the WPSB. Counsel for the plaintiffs confirmed that it was merely the effect of the decision reached by the WPSB to award the contract to A.M.-P.M. Towing that was in issue.
3. More generally, in my view there is no evidence that the defendants acted unfairly or in bad faith at any point throughout the process

employed to arrive at a new towing services contract. Without limiting the generality of the foregoing:

- a. As noted earlier, Purchasing By-Law 93-2012 actually did not require the use of any formal purchasing process in the circumstances, as the relevant “Purchase Price” for the services to be procured, (as defined by the by-law), brought the situation within the described category of a “Small Purchase Order”, and the by-law expressly provides that “No formal Purchasing process is required for Small Purchase Order Purchases”. In my view, the voluntary decision nevertheless made by the WPSB’s representatives to generally employ the “Informal Quotation” purchasing method outlined in the by-law, and to deal with questions from interests suppliers in a manner similar to that outlined by the by-law in relation to situations involving use of the outlined RFT and RFP purchasing methods, demonstrated a WPSB commitment to fairness and good faith going above and beyond what was required in the circumstances. The WPSB also went beyond the indicated minimum requirements of the “Informal Quotation” purchasing method process by inviting quotations from nine towing services, rather than just three.
- b. There was no suggestion or evidence that the plaintiffs did not receive WPSB’s request for quotations in relation to the new towing services contract at the same time, and in the same manner, as all other towing services invited to submit quotations. Nor was there any suggestion that the WPSB did not supply exactly the same contract specifications to each of those towing services.
- c. There was no suggestion or evidence that the plaintiffs did not apply the chosen purchasing method process equally in relation to all interested towing service suppliers, including the plaintiffs.
- d. It was expressly acknowledged by the plaintiffs, during the course of discovery examinations, that the plaintiffs felt free to ask questions and did ask questions, that the questions asked by the plaintiffs were answered, and that the answers to those questions were provided in the same manner, to all of the interested towing services, at the same time and in the same manner.

- e. There was no suggestion or evidence that A.M.-P.M. Towing was not the successful bidder according to the previously indicated and understood selection criteria, (i.e., an assessment of the overall pricing submitted and confirmation that the vendor's equipment and facilities were in acceptable working condition, accessible and available), made equally clear to all the towing businesses invited to submit quotations. Nor was there any suggestion or evidence that A.M.-P.M. Towing did not meet the indicated specifications for the contract provided to all such towing businesses at the same time and in the same way.
- f. I see no evidence of any procedural unfairness that operated in any way to the disadvantage of the plaintiffs during the course of this particular procurement exercise. In that regard, I think it rather telling that the plaintiffs made no complaints whatsoever about the indicated purchasing method and process the WPSB had chosen to employ, or about any conduct of the defendants in that regard, before submitting a quotation pursuant to that indicated purchasing method and process, nor until the plaintiffs had learned that the new towing service contract had not been awarded to County Towing because it was not the lowest bid, or even the second lowest bid. Indeed, it was acknowledged during the course of discovery examinations that the plaintiffs made no complaints whatsoever about the purchasing method selected or employed by the WPSB until service of the plaintiffs' statement of claim.
- g. In support of their contention that there had been an absence of "openness" and "transparency" by the WPSB, the plaintiffs placed significant emphasis on the fact that there was no public opening or disclosure of the submitted quotation particulars, even after such disclosure was requested by the plaintiffs, prior to commencement of this litigation.³⁴ In that regard:
 - i. Such a complaint or concern was not advanced or particularized in the plaintiffs' statement of claim.
 - ii. The non-disclosure now emphasized by the plaintiffs obviously entailed an absence of full

³⁴ As noted above, full particulars of the submitted quotations, (described above), apparently were provided to the plaintiffs during the course of discovery in this litigation.

transparency, in the conventional sense, in relation to all information in the possession of the WPSB relating to the procurement process in question. However, it was not a level of transparency required by the terms and conditions of the tender process, (i.e., the preliminary contract or “contract A” formed during that tender process), nor by the provisions of Purchasing By-Law 93-2012. Again, the latter reflected a policy decision that disclosure of such information was required only in relation to purchases involving a much higher level of public expenditure in respect of which use of the described RFT/RFP procedure was required.

- iii. Moreover, I think it noteworthy that the provisions of Purchasing By-law 93-2012 expressly indicated that the municipality’s purchasing goal of “openness” was focused on ensuring “equal access by suppliers to opportunities to benefit from the expenditure of tax dollars”, and that the municipality’s purchasing goal of “transparency” was focused on sufficient transparency “to ensure that purchasing is undertaken in accordance with policies and procedures accessible and understandable to all”. The focus was not on ensuring complete openness and transparency in relation to any and all information received by the WPSB, including potentially commercially sensitive information received from third parties, the disclosure of which had the stated potential to detrimentally affect their economic interests. In my view, the conduct of the WPSB fairly and adequately satisfied the goals of openness and transparency in the sense contemplated by the by-law.
- iv. Furthermore, although the plaintiffs regard the non-disclosure of such information and associated lack of complete transparency as unfairness from their perspective, in my view that ignores the broader perspective and countervailing concerns and obligations. In particular, if there was indeed a preliminary “contract A” that arose in the circumstances of this particular tender process, it was one that applied between the WPSB and each towing business who submitted a quotation,

including the successful bidder. The WPSB accordingly had a duty to treat all those towing businesses submitting quotations, (including not only County Towing but A.M.-P.M. Towing), with fairness. In that regard:

- a. The evidence indicates that the WPSB made efforts to respect the privacy interests of County Towing as a bidder, (i.e., by not disclosing to other bidders that County Towing was the interested bidder raising certain concerns and posing circulated questions), as well as the privacy interests of the other businesses submitting quotations, including A.M.-P.M. Towing. In my view, such evidence indicates that WPSB was sensitive to its good faith obligation to treat all bidders equally and fairly in that regard.
- b. The position and actions of the WPSB, in relation to initial non-disclosure of the further information being sought by County Towing, were not arbitrary or unreasoned. Without limiting the generality of the foregoing, the WPSB did not ignore the inquiries being made by County Towing. To the contrary, the WPSB was responsive, explained that its reticence to disclose the requested information reflected concerns related to the countervailing privacy interests of a third party and its obligations in that regard as a public entity to respect and protect such interests, and proactively made inquiries of the third party in an unsuccessful effort to secure the third party's consent to the plaintiffs' continued requests for release of the requested information. The WPSB then provided a further reasoned response for its decision not to release the requested information in response to the formal request that had been made by Coxon's under the *Municipal Freedom of Information and Protection of Privacy Act*, *supra*, based on the WPSB's perceived obligations under that legislation to protect the privacy of third party information, with the correctness of that

response not being challenged by way of the prescribed appeal procedures.

- c. In the circumstances, while the actions of the WPSB fell short of complete openness and transparency in the conventional sense, in terms of freely and readily disclosing all information obtained by the WPSB during the relevant procurement process, in my view that was not inappropriate or without justification in the circumstances, did not reflect any unfairness or lack of good faith on the part of the WSPB, and adequately and reasonably served the goals of openness and transparency in accordance with the expectations in that regard established by the applicable purchasing by-law; i.e., in terms of ensuring equal access by suppliers to opportunities to benefit from the expenditure of tax dollars, while simultaneously ensuring that the relevant purchasing was undertaken in accordance with policies and procedures accessible and understandable to all concerned.

- viii. For such reasons, in my view, claims of the plaintiffs based upon or relating to principles of contract law in this case also have no merit, and should be dismissed.

[20] Even if the plaintiffs had succeeded in establishing that Procurement By-Law 93-2012 had been breached in some manner, that the defendants somehow had employed the incorrect purchasing method, that the defendants somehow had breached a contractual duty owed to the plaintiffs, and/or that the defendants somehow had breached any duty of fairness, good faith and/or transparency owed to the plaintiffs, in my view the plaintiffs have failed to establish any requisite causation between any such breach or failure of the defendants and any loss or deprivation that may have been experienced by the plaintiffs. Without limiting the generality of the foregoing:

- a. In my view, the arguments and submissions made on behalf of the plaintiffs studiously ignored the reality that County Towing was not awarded the renewal contract because its bid was not the lowest, or even the second lowest, received by the WPSB in relation to the new towing services contract. As noted above, the plaintiffs expressly acknowledged, during discovery examinations, that the quotation submitted by A.M.-P.M. Towing was cheaper in every respect than the quotation submitted by County Towing, except for one term or element of pricing where the price quoted by County Towing was the same as that quoted by A.M.-

P.M. Towing. That, rather than any alleged defect or failing related to the procurement process, was the fundamental reason why County Towing was not awarded the new towing services contract. In that regard, I note in particular the Supreme Court of Canada's confirmation that damages for breach of a preliminary contract formed during the tendering process, (which would include damages for breach of duties to act fairly and in good faith implied into a preliminary contract or "contract A"), are precluded when the claimant's "loss" of the principal contract was not caused by the breach, but by another bidder making a better offer.³⁵

- b. There also was nothing in the evidence before me to suggest that the outcome of the procurement process would have been materially different if any different purchasing method had been employed.
- c. It also was expressly acknowledged on behalf of the plaintiffs, during discovery examinations, that there was no prejudice experienced by the plaintiffs arising from the absence of any public opening/disclosure of submitted quotations.
- d. I fail to see how the plaintiff Coxon's, in particular, suffered any deprivation by the relevant new towing services contract being awarded to A.M.-P.M. Towing. Although the plaintiffs may be related corporations, they remain distinct legal entities, and the simple fact of the matter is that Coxon's chose not to submit any bid or quotation of its own in relation to the new towing services contract. Moreover, to the extent this somehow reflected a contemplation that Coxon's would benefit indirectly from the new towing services contract being awarded to County Towing, it should be remembered that the specifications for the new towing services contract, and the terms of that resulting contract, expressly indicated that the supplier awarded the new towing services contract would not be permitted to use a sub-contractor in relation to services provided pursuant to the contract. Indeed, the express inclusion of such a subcontractor arrangement in County Towing's quotation would have been a sufficient reason by itself for the WPSB to decline acceptance of County Towing's bid. As noted earlier, the former towing services contract between County Towing and the APSB and WPSB contained a similar restriction/prohibition regarding the sub-contracting of services to be delivered pursuant to that contract. Although it appears that restriction at times may have been disregarded in practice, (i.e., insofar as the plaintiffs may have dispatched Coxon's to provide towing services County Towing was under contract to provide pursuant to the previous towing services contract, despite the contract's prohibition on subcontracting in that regard), the reality remains that Coxon's *per se* had no rights under the former towing services contract, and similarly would have had no rights under the new towing services contract had it been awarded to County Towing.

³⁵ See *Martel Building Ltd. v. Canada*, *supra*, at paragraph 102.

- [21] Insofar as the allegations and claims addressed above must be dismissed, I also see no basis for declaring the towing services contract entered into between the WPSB and A.M.-P.M. Towing to be “illegal, void ab initio, [or] of no force and effect”, as requested by the plaintiffs. The plaintiffs’ claim in that regard should be dismissed as well.
- [22] In their statement of claim and notice of motion, the plaintiffs also sought declaratory relief in relation to licensing requirements. In that regard:
- a. The precise relief sought by the plaintiffs was framed, in their statement of claim and notice of motion, as follows: “A Declaration that the Plaintiffs are not required to obtain a licence under the City of Windsor By-Law 15-2018, being a By-Law Respecting the Licensing and Regulating of Public Vehicles (the “**Windsor Licensing By-Law**”) pursuant to s.19 of the *Municipal Act, 2001*”, *supra*. [Original bold print emphasis.] By way of further particulars set forth in their statement of claim and notice of motion, the plaintiffs asserted:
 - i. that Windsor had no jurisdiction to impose a licensing obligation on the plaintiffs by way of that licensing by-law, as the plaintiffs’ head office and base of operations are in Harrow, Ontario, and therefore “well beyond the geographic borders of the City of Windsor”;
 - ii. that the WPSB nevertheless improperly has relied upon the Windsor licensing by-law “to bar the Plaintiffs from servicing their customers”, and/or have barred the plaintiffs “from accessing the scene of accidents to service the plaintiffs’ customers and clients”, and “instead turned over towing services to AMPM (sic) despite the vehicle owner’s explicit request that the plaintiffs service their vehicle”; and
 - iii. that the Windsor licensing by-law “cannot extend to those business (sic) that are based and operating outside of the geographical boundaries of the City of Windsor”.
 - b. By way of evidentiary support for its claim regarding the city of Windsor’s licensing requirements:
 - i. The plaintiffs’ principal Derek Didone, in his supporting affidavit, referred to an incident said to have taken place on May 12, 2001, within the geographical boundaries of the city of Windsor. In that regard:
 1. An accident was said to have occurred involving a dual axle dump truck and a small sports utility vehicle, resulting in the dump truck becoming overturned “on its back” in a ditch, and the owner of the dump truck advising the WPSB officer on scene that the owner had requested Coxon’s to attend. The attending officer nevertheless was advised by the Staff Sergeant on duty that Coxon’s did not have the necessary business licence required to haul anything away from the city of Windsor.

2. Conflict between towing services ensued when A.M.-P.M. Towing arrived on scene first with a vehicle capable of flipping or tipping the dump truck over, and Coxon's then attended with two other heavy machines to haul away the dump truck (and another dump truck on scene belonging to the same owner) at the request of the owner.
 3. In the result, (and to what was described as "disbelief" by the attending officer in his occurrence report), after an argument between the two towing services that included what was described by the attending officer as "an intense shouting match and threats of legal action"), A.M.-P.M. Towing tipped the "dump trucks" over, towed away the SUV, and then left the scene, allowing Coxon's to take the dump trucks to the owner's lot for repair. It was the officer's understanding that the "two [towing business] owners decided that it would be foolish to have AM/PM hook up the dump trucks only to tow them to the City of Windsor border, just so that they could be unloaded, then reloaded by Coxon's for the rest of the trip".
- ii. The plaintiffs also tendered sworn affidavit evidence from Mark Graves, the President of the Provincial Towing Association of Ontario, (or "PTAO", as noted above), who provided more general information about a history of mounting problems experienced within the towing and recovery industry in Ontario, (including violence, corruption and licensing complications), which the provincial government progressively has been attempting to address through remedial legislation after extended consultation with the PTAO, Ontario Provincial Police, Ministry of Transportation and the Canadian Automobile Association. In relation to licensing, the evidence provided by Mr Graves included the following indications:
1. Prior to progressive implementation of the *Towing and Storage Safety and Enforcement Act, 2021*, S.O. 2021, c.26, Schedule 3, ("the TSSEA"), tow truck licensing across the province of Ontario was addressed through what Mr Graves described as a "patchwork of often contradictory municipal licensing by-laws". In particular, many municipalities had no licensing by-laws whatsoever regulating tow truck companies, and municipalities that did enact licensing by-laws adopted different licensing rules and requirements that were said to reflect "a variety of standards as varied as the municipalities that passed them".
 2. A perceived "major problem" with that described municipal licensing structure or system was that it required tow companies working in more than one municipality to pay for more than one

permit fee, which could add up to “tens of thousands of dollars per company per year” for such municipal permits.

3. Another perceived problem with that described municipal licensing scheme was said to be uncertainty as to whether some tow truck companies were required to obtain a licence in certain scenarios. By way of specific example:
 - a. Mr Graves indicated that it can be common for a tow truck company that operates primarily outside of a municipality to have a service request that requires an incidental or brief attendance within that the limits of that municipality to pick up a customer’s vehicle for transportation back outside those municipal limits.
 - b. It was said that such a scenario created uncertainty as to whether such a tow truck operator was required to hold a licence within that municipality; i.e., when it was attending with that municipality’s limits only to pick up a vehicle at its customer’s request, but its head office, compound and majority of operations otherwise were located outside that municipality’s limits.
4. In an effort to address and remedy such concerns, PTAO “advocated for a provincially mandated licensing scheme”, and such a system “has now been put into effect via the TSSEA”. Without limiting the generality of the foregoing:
 - a. Via “phase 1” of the TSSEA’s gradual implementation, which came into effect on January 1, 2023, the towing industry was brought into the registration system for full commercial vehicle operators, and required to follow the same regulations as “over the road” commercial vehicles.
 - b. Via “phase 2” the TSSEA’s gradual implementation, which came into effect on July 1, 2023, the towing industry is now required to apply for a provincial certificate to operate as a tow provider, storage provider and/or a tow truck driver.
 - c. Via “phase 3” of the TSSEA’s gradual implementation, which came into effect on January 1, 2024, the legislation implemented what Mr Graves described as a “modernized customer protection requirement and standards of practice”, thereby replacing previous oversight requirements under municipal regimes and upgrading standards of practice in relation to the towing industry on a province-wide basis.

- c. As acknowledged by counsel during the course of oral submissions, the legislative changes described by Mr Graves essentially have rendered the plaintiffs' requested declaratory relief in relation to the city of Windsor's previous licensing by-law relating to towing businesses largely moot. In particular, there is no need for the court to grant a declaration that the plaintiffs are not required to obtain a licence under the city of Windsor's By-Law 15-2018 when, as a matter of law, intervening provincial legislation effectively has ended that requirement and supplanted it with a provincial certification requirement regulating the towing industry in a uniform and standardized manner across the province.
- d. At best, in my view, a determination of whether the plaintiffs previously needed to obtain a licence under the city of Windsor's By-Law 15-2018 now has relevance only to other disputed issues raised by the plaintiffs; i.e., insofar as the plaintiffs relied upon the defendants' use of that licensing by-law, and the plaintiffs' failure to obtain a licence pursuant to that by-law as a suggested improper impediment to the plaintiffs providing requested service to their customers within the city of Windsor, and in my view the licensing issue has a bearing, (for reasons outlined below), on "unlawful means" determinations to be made in relation to the plaintiffs' claim alleging "unlawful interference with economic interests". However, in my view the issue arguably is also moot even in relation to the first of those two issues, based on the presented evidence. In particular:
 - i. In marshalling their evidence to support their position in that regard, the plaintiffs were able to identify only one instance wherein police officers employed by the WPSB identified the plaintiffs' lack of a such a business licence, issued pursuant to Windsor's By-Law 15-2018, as a possible impediment to servicing their customers; i.e., the incident said to have taken place on May 12, 2001, when the WPSB officer on scene involving the overturned dump truck(s) apparently was advised by the officer's Staff Sergeant that Coxon's "did not have the necessary business licence to haul away anything in the city of Windsor".
 - ii. Even in that described instance, however, the presented evidence indicates that the police officer on scene did not intervene to prevent Coxon's involvement on that basis, that A.M.-P.M. Towing and Coxon's worked out a solution to the tipping/towing service dispute to the officer's "disbelief", (i.e., a solution not dependent on his involvement or direction), and that Coxon's was permitted to tow damaged vehicles from the accident scene within the city of Windsor to the owner's lot despite its not having a business licence to haul anything in the city of Windsor. Nor did the presented evidence indicate or even suggest that Coxon's experienced any financial loss whatsoever in relation to the incident.
- e. In any event, I nevertheless indicate my view that the city of Windsor was entitled to require the plaintiffs to obtain a business licence, pursuant to the city's By-Law 15-2018, if the plaintiffs wished to tow vehicles anywhere within the geographic

limits of the city of Windsor, regardless of whether or not the head office, compound and/or majority of operations otherwise were located outside the city of Windsor. Without limiting the generality of the foregoing:

- i. Perhaps it would go without saying, but provincial implementation of what may be regarded as a “new and improved” towing business authorization and regulation system, now applicable across the province, does not entail a conclusion that there was anything inherently illegal or improper about the previous system of “patchwork” municipal licensing and regulation that the new provincial legislation essentially has replaced.
- ii. Subject to certain specified exceptions, (none of which are relevant in the present context), by-laws and resolutions of a municipality generally apply only within its boundaries.³⁶
- iii. However, in relation to matters within its boundaries, a single-tier municipality such as the city of Windsor not only has broad authority to provide any service or thing that the municipality considers necessary or desirable for the public, but express authority to pass by-laws respecting various matters, including matters relating to:
 1. health, safety and well-being of persons;
 2. protection of persons and property, including consumer protection; and
 3. business licencing.³⁷
- iv. The Legislature has expressly indicated that powers awarded to municipalities in that regard, pursuant to the *Municipal Act, 2001, supra*, “shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues”.³⁸ Without limiting the generality of the foregoing, a by-law enacted by a municipality pursuant to such powers, respecting such matters, may “regulate or prohibit” respecting the matter; “require persons to do things” respecting the matter; and/or “provide for a system of licences respecting the matter”.³⁹ Such a by-law also may be “general

³⁶ See the *Municipal Act, 2001, supra*, s.19.

³⁷ See the *Municipal Act, 2001, supra*, at section 10, and ss.10(1), 10(2)6, 10(2)8 and 10(2)11 in particular.

³⁸ See the *Municipal Act, 2001, supra*, at s.8(1).

³⁹ See the *Municipal Act, 2001, supra*, at s.8(3).

or specific in its application”, and “may differentiate in any way and on any basis a municipality considers appropriate”.⁴⁰

- v. In relation to the broad authority conferred on municipalities to pass by-laws respecting matters relating to business licensing:
 - 1. the Legislature has expressly defined “business” to mean “any business wholly *or partly* carried on within a municipality *even if the business is being carried on from a location outside the municipality*”,⁴¹ [emphasis added]; and
 - 2. without limiting the scope of the broad authority conferred on municipalities to pass by-laws relating to business licensing, such municipalities are expressly authorized to provide for a system of licences with respect to a business, (as defined above), and may:
 - a. *prohibit the carrying on or engaging in the business without a licence*;
 - b. refuse to grant a licence or to revoke or suspend a licence;
 - c. *impose conditions as a requirement of obtaining, continuing to hold or renewing a licence*;
 - d. impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
 - e. impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence; and
 - f. *licence, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it.*⁴²

[Emphasis added.]

⁴⁰ See the *Municipal Act, 2001*, *supra*, at s.8(4).

⁴¹ See the *Municipal Act, 2001*, *supra*, at s.150.

⁴² See the *Municipal Act, 2001*, *supra*, at s.151(1).

- vi. Notwithstanding the broad licencing authority outlined above, the Legislature also has expressly directed that municipalities generally may not refuse to grant a licence for a business “by reason only of the location of the business”; a restriction that would, for example, prohibit the city of Windsor from denying a towing business licence to either of the plaintiffs simply because their operations are based outside the city of Windsor, in Harrow.⁴³
- vii. Despite the plaintiffs’ emphatic arguments to the contrary, in my view the location of the plaintiffs’ head office, compound and majority of operations outside the city of Windsor nevertheless clearly did not entail any exemption from the scope of the city of Windsor’s business licencing authority. Again, the Legislature has expressly indicated that a municipality may provide for a system of licences with respect to a “business”, and “business” is expressly defined to mean any business wholly or partly carried on within a municipality, *even if the business is being carried on from a location outside the municipality*. It accordingly matters not whether the plaintiffs’ office, base or compound is located outside of Windsor, (in the community of Harrow or otherwise), or whether the majority of the plaintiffs’ business operations are carried on outside the city of Windsor. To the extent the plaintiffs were carrying on their towing business partly within the city of Windsor, the city of Windsor was legally entitled to extend the application of its business licensing authority to the plaintiffs in that regard, including:
 1. prohibiting the plaintiffs from carrying on or engaging in the business of towing within the city of Windsor without a licence;
 2. licensing, regulating and/or governing the personal property of the plaintiffs to the extent it was being used to carry on towing business within the city of Windsor; and
 3. licensing, regulating and/or governing persons carrying on or engaged in the plaintiffs’ towing business, to the extent they were doing so within the city of Windsor.
- viii. It was strenuously argued, on behalf of the plaintiffs, that they should not be regarded as carrying on any towing business whatsoever within the city of Windsor in circumstances where they enter the city solely for the purpose of towing vehicles from the city to another location. I fundamentally disagree. In my view, if a towing operation chooses to enter the city of Windsor with towing equipment, and operate that towing equipment within the city of Windsor to hook up and tow vehicles through

⁴³ See the *Municipal Act, 2001*, *supra*, at s.153(1).

the streets of Windsor, all for the purpose of earning remuneration by providing that service, such towing operations self-evidently are engaged in the business of towing partly within the city of Windsor regardless of their origin or ultimate destination. In my view, such an interpretation also accords with a purposive interpretation of the legislation, insofar as the city of Windsor clearly has a legitimate interest in the regulation and governing of such activity being carried on within its city limits, and on its city streets. Without limiting the generality of the foregoing:

1. I believe I am entitled to take judicial notice of the reality that towing operations, and particularly those capable of moving very large and heavy vehicles, involve sizeable and very powerful equipment easily capable of harming persons and property if not operated properly by qualified personnel. Similarly, vehicles being towed and transported through public streets obviously have the capacity to cause serious harm to persons and property if they have not been properly and adequately secured by qualified personnel, using appropriate and sufficient equipment to ensure the safe transport and movement of such vehicles.
2. The existence of such realities, amenable to judicial notice, is buttressed by the evidence tendered in relation to the particular motions before me; e.g., insofar as that evidence includes confirmation of the ability of County Towing and its subcontractor Coxon's to satisfy the demands of County Towing's previous contract with the APSB and WPSB by maintaining and operating "a large versatile fleet of tow trucks and supporting emergency response equipment capable of handling incidents of any size", and the described demonstrated ability of Coxon's to move vehicles as large and heavy as dump trucks.
3. Given such realities, in my view the city of Windsor clearly had a legitimate interest, (i.e., from the perspective of protecting the health, safety and well-being of persons within the city of Windsor, and protecting property within the city of Windsor), to use its licensing power to ensure that only proper towing equipment was used, and used properly, by qualified personnel, in relation to any towing operation conducted anywhere within the city, and on its public streets in particular. In my view, it mattered not, from that perspective, that any particular towing operation might have been coming from outside of Windsor, intent on picking up a vehicle within the city of Windsor and towing it elsewhere. While within the city of Windsor, such a towing operation poses inherent risks to the health, safety and well-being of persons within the city of Windsor, as well as other property within the city of Windsor, for the reasons outlined above; risks which the city of Windsor was

entitled to address, with a view to preventing them from materializing, through valid use of the city's business licensing authority.

4. In my view, the city of Windsor also had a legitimate "consumer protection" interest in situations where any person within its boundaries was initiating a commercial towing business transaction by calling for the provision of towing services, even if those requested services were intended to tow a vehicle from, through and out of the city of Windsor. As noted earlier, those in need of towing services, (e.g., drivers and owners of damaged or otherwise inoperable vehicles, who effectively are "stranded" and dependent on others for safe transport of their vehicles to homes or repair facilities), inherently are in a situation of vulnerability; a reality reflected not only in efforts made in the towing service contracts before me in this case to standardize towing service charges, but in the Legislature's efforts to modernize customer protection as a significant component of the recent TSSEA legislation.

- f. For such reasons, in my view the plaintiffs have failed to demonstrate any merit to their licensing by-law arguments and claims, and requests for associated relief in that regard. Conversely, the defendants have succeeded in demonstrating that such arguments, claims and requests for relief have no merit.

[23] Also included in the plaintiffs' motion material were various assertions and claims alleging that the defendants, on various occasions, had unlawfully interfered with the plaintiffs' economic interests; i.e., by interfering in relations between the plaintiffs and their customers. In particular, it was said that officers of the WPSB, on such occasions, had forced vehicle-owning customers of the plaintiffs to use the towing services of A.M.-P.M., (the authorized towing service of the WPSB), despite such WPSB officers knowing that the customers in question had valid and enforceable contracts with the plaintiffs for the provision of towing services; i.e., thereby inducing the plaintiffs' customers to breach their contracts with the plaintiffs, with resulting financial loss to the plaintiffs, in circumstances where the WPSB knew that would be the result. In that regard:

- a. Such a claim is expressly referred to in the prayer for relief paragraphs of the plaintiffs' statement of claim, albeit in a somewhat incidental way; i.e., with the pleading broadly alleging that the plaintiffs are entitled to various forms of damages on various grounds, including "unlawful interference with economic interests". The plaintiffs' pleading then goes on to include, (at paragraphs 33-45 of the statement of claim), allegations offered in support of the claims that "Members of the Defendant (sic) Illegally Barred the Plaintiffs from Servicing the Plaintiffs' Clients". I have regard to the entire content of those allegations, and the brief quotations, paraphrasing and summary indicated here should not suggest otherwise. However, those 13 paragraphs of the plaintiffs' statement of claim include the following assertions:

- i. It was said that members of the WPSB had “improperly relied” on the “illegal” towing services contract between the WPSB and A.M.-P.M. Towing, acted “in breach” of the WPSB’s towing Directive, and improperly “relied on the Windsor Licensing By-Law” in order “to bar the Plaintiffs from accessing the scenes of accidents to service the Plaintiffs’ customers and clients”.
- ii. It was said that there were “a minimum of four (4) occasions that occurred in less than one (1) year where the Plaintiffs were illegally and improperly barred from accessing their customers by the Defendant WPSB”, and that “the basis on which the Defendant WPSB purports to have such authority is a contract entered illegally and in violation of the Windsor Purchasing By-Law, and a misapplication of the Windsor Licensing By-law”.
- iii. Reference was made to four specific incidents during which the WPSB was said to have engaged in such alleged misconduct. In particular:
 1. Paragraphs 34-38 of the statement of claim refer to an incident that was said to have occurred on or about July 22, 2020. The paragraphs speak for themselves, but the incident was described as one involving an accident wherein a “large tanker truck had rolled over and had to be up righted and towed from the scene”. The owner of the truck, (D’Amore Construction), was said to have had a contract with County Towing to provide towing services, to have advised WPSB officers about that contract and the owner’s corresponding desire to use the services of County Towing, and to have called County Towing requesting its services, which in turn led to County Towing attending at the scene. It was alleged that WPSB officers nevertheless then refused to allow County Towing to attend on scene to service its customer, and instead called and utilized the services of A.M.-P.M. Towing, thereby acting “illegally”, (by relying on the “illegal” towing services contract between WPSB and A.M.-P.M. Towing, or breaching the WPSB’s towing Directive), and causing County Towing to suffer damages in the approximate amount of \$20,000.
 2. Paragraphs 39 and 40 of the statement of claim refer to an incident that was said to have occurred on or about February 15, 2021. Once again, the paragraphs speak for themselves, but the incident was described as an accident involving “a truck that fell into a ditch at County Road 42 and Lauzon Road”. The owner of the truck, (Transit Logistics), was said to have had a contract with Coxon’s to provide towing services, and to have called Coxon’s to attend on scene and tow the truck away. It was alleged that, when Coxon’s then contacted the WPSB dispatch to advise that Coxon’s was en route to the scene and approximately five minutes away from

arriving there, the WPSB then informed Coxon's that the WPSB already had instructed A.M.-P.M. Towing to tow the vehicle away.

3. Paragraphs 41 and 42 of the statement of claim refer to an accident on or about May 12, 2021, already described above, involving a dual axle dump truck and a small sport utility vehicle, resulting in the dump truck having been "flipped on its back" in a ditch. Once again, the paragraphs of the statement of claim speak for themselves, but it was said that the owner of the dump truck, (apparently Green Earth Trucking, according to the attending officer's quoted General Occurrence Report), had a contract with Coxon's to provide towing services, and advised the attending WPSB officer on scene that it had requested Coxon's to attend and tow the vehicle. As noted above, (and at the risk of repetition but for ease of reference), A.M.-P.M. Towing arrived on scene first with a vehicle capable of uprighting and towing the truck, but two vehicles described as "heavy machines" from Coxon's then arrived to "haul away the dump trucks as per the request of the owner". During the argument that ensued, (involving "an intense shouting match" and "threats of legal action"), the WPSB officer on scene was advised by the Staff Sergeant on duty that Coxon's "did not have the necessary business licence to haul away anything in the city of Windsor". However, to the "disbelief" of the attending officer, A.M.-P.M. then tipped the dump truck over and towed away the SUV before leaving the scene, with Coxon's being permitted to take the "dump trucks" to the owners for repair, as the two towing companies decided that it would be foolish to have AM/PM hook up the dump trucks only to tow them away to the City of Windsor border, just so that they could be unloaded, then reloaded by Coxon's for the rest of the trip.
 4. Paragraphs 43 and 44 of the statement of claim refer to an incident that was said to have occurred on or about July 21, 2021. Once again, the relevant paragraphs of the pleading speak for themselves, but the incident was described as involving employees of the Town of Amherstburg contacting Coxon's through public works "to attend at a scene where a car had been consumed by fire". It was said that, despite that request by the town's employees, a member of the WPSB instructed A.M.-P.M. Towing to take the vehicle away, "thereby depriving the Plaintiff" Coxon's.
- b. As for evidence tendered by the plaintiffs in support of such alleged incidents of WPSB members supposedly having illegally barred the plaintiffs from servicing the plaintiffs' clients:
 - i. The plaintiffs' principal Mr Didone, in his sworn affidavit, refers in similar terms only to the pleaded incidents that were said to have occurred

on July 22, 2020, February 15, 2021 and May 12, 2021; i.e., asserting that there were “a minimum of three (3) occasions that occurred in less than one (1) year where County Towing (sic) was illegally and improperly barred from accessing their customers by WPSB”. I nevertheless note the following in that regard:

1. No reference is made by Mr Didone to the pleaded incident on July 21, 2021, involving a vehicle consumed by fire.
2. References to County Towing and Coxon’s by the plaintiffs sometimes appear to be used somewhat interchangeably; e.g., insofar as the pleaded descriptions of what was said to have occurred on February 15, 2021, and May 12, 2021, were said to have involved the plaintiff Coxon’s, whereas Mr Didone, in his sworn affidavit evidence, apparently cites the incidents as occasions wherein “*County Towing* was illegally and improperly barred from accessing their customers”. [Emphasis added.]
3. The sworn affidavit evidence provided by Mr Didone, describing the alleged incidents that were said to have occurred on July 22, 2020, February 15, 2021, and May 12, 2021, differs slightly in detail from the plaintiffs’ pleaded allegations in that regard. I have regard to the relevant paragraphs of Mr Didone’s affidavit, (paragraphs 25-30), and Exhibits 12 and 13 referred to therein, in their entirety, and that material speaks for itself. However, by way of summary of Mr Didone’ evidence in that regard:
 - a. In relation to the incident said to have taken place on July 22, 2020:
 - i. Mr Didone says that the plaintiffs’ dispatch office received a call directly from D’Amore Construction, (with which County Towing has a contract to provide towing services), asking County Towing to attend the scene of an accident where one of D’Amore’s large tanker trucks had rolled over and had to be uprighted and towed from the scene.
 - ii. The owner of the truck was said to have advised WPSB officers that the vehicle’s owner had a contract with County Towing, wanted to use the services of County Towing, and was “undesirous of using any other towing service”. It also was said that those WPSB officers nevertheless then “refused to allow County Towing to attend on

scene to service [its] customer, and instead called and utilized the services of AMPM (sic) Towing”.

- iii. Mr Didone described how communications about the incident then ensued between Mr Didone, Mr Horrobin, (WPSB’s Director of Planning and Physical Resources), and Inspector Lawrence, (who still had responsibility for the Patrol Support Unit of the WPSB), with the relevant email/correspondence chain, (nine pages long), being included in its entirety as Exhibit 12 to Mr Didone’s affidavit. I have reviewed and considered those communications in their entirety, and will not replicate or summarize them in detail here. For present purposes, and at the risk of oversimplification and paraphrasing, I note that they included the following indications:
 - a. Mr Didone expressed concern that D’Amore was the plaintiffs’ client and had requested the plaintiffs’ services, that the plaintiffs were the first towing service on scene with “two heavy duty wreckers” and could have performed the service, that the plaintiffs personnel nevertheless were stopped by a police cruiser blocking the road and told they were not permitted to be on scene, and that AM-PM’s heavy wrecker was then observed arriving and approaching the scene to perform necessary towing services. It was Mr Didone’s understanding that Didone’s vehicle was not being held in relation to any police investigation.
 - b. Mr Horrobin relayed Mr Didone’s correspondence and concerns to Inspector Lawrence, as the WPSB officer dealing with operational aspects of the WPSB’s towing contract.
 - c. Inspector Lawrence investigated the incident, (e.g., by familiarizing herself with the call, by reading the various reports prepared in relation to the incident, and by speaking with the responding sergeant who attended and took charge of the scene to obtain the

reasoning for his actions), and explained/emphasized the following additional and in some ways corrective information to Mr Didone:

- i. When police arrived to deal with the accident, the driver of the overturned tanker truck was missing from the scene for unknown reasons, and a 200-foot tire track on the road and shoulder suggested that the tanker truck had drifted slowly off the road into the ditch. The resulting situation was an extremely hazardous one, insofar as diesel fuel was leaking from the top of the truck and in danger of igniting, necessitating the involvement of the Windsor Fire and Rescue service, the Ministry of the Environment, the Ministry of Transportation, and City of Windsor Environmental Services; e.g., to obtain additional expertise to ensure proper uprighting and removal of the vehicle. The incident also was causing severe traffic disruption; e.g., closing the westbound lanes of the EC Row Expressway, a very important and busy thoroughfare in the city of Windsor.
- ii. In the circumstances, (particularly given the unexplained absence of the tanker truck's driver, in itself a criminal offence), attending officers felt obliged to treat the matter not only as a police controlled scene involving a serious collision and potential hazard situation, but one involving a matter under active police investigation; a situation that would persist until officers were able to locate and obtain a statement from the missing tanker

truck driver that might clear the driver of any criminality.⁴⁴

- iii. In those dynamic circumstances, a decision was made to cancel the involvement of the owner's private towing contractor; i.e., the plaintiffs. In particular, as the driver and the truck were the subject of an active ongoing active police investigation, the vehicle owner's private towing service would have to have been "pulled off" if evidence still being gathered led investigators to charge the driver and/or place a continued "hold" on the vehicle as evidence. The WPSB therefore instead used the services of its authorized towing service, (as per its contract in that regard), which would facilitate continued custody of the vehicle/evidence. As noted by Inspector Lawrence, it was the position of the WPSB that the situation, including the status of the matter as an active criminal investigation, (as per the Criminal Code and the WSPB's *Hazardous Materials and Dangerous Goods Directive 813-04*), effectively took precedence over the WPSB's usual policy, (reflected in the Towing Directive), allowing a vehicle owner to arrange for towing at the owner's expense, and generally directing officers not to interfere with or alter such towing arrangements. In the circumstances, the call by the vehicle's owner to the plaintiffs, to have them tow the tanker truck away, was premature.

⁴⁴ In other words, Mr Didone's understanding that the vehicle was not being held in relation to any police investigation was simply incorrect – and I prefer and accept the evidence presented by Inspector Lawrence in that regard.

- iv. After reviewing and considering the additional information provided by Inspector Lawrence, Mr Didone thanked the Inspector for her “thorough response” and for giving the matter the attention he “felt it deserved”, before indicating that he also felt the issue had been resolved.
- b. In relation to the incident said to have taken place on February 15, 2020, Mr Didone indicated that Transit Logistics, (with whom the plaintiffs had a contract for the provision of towing services), called the plaintiffs that day to indicate that one of its trucks “fell into a ditch” at County Road 42 and Lauzon Road, and to request that the plaintiffs attend on scene to tow the truck away. While Coxon’s was en route to the scene, the plaintiffs’ office contacted the WPSB to advise that Coxon’s was on the way to tow the truck away. However, when Coxon’s was approximately five minutes away from the scene, a WPSB officer had AM-PM Towing tow the vehicle away.
- c. As for the incident said to have taken place on May 12, 2021, (i.e., the incident involving a dual axle truck and small sports utility vehicle), Mr Didone’s sworn affidavit evidence indicated the nature of the vehicles involved, the fact that the dump truck had been flipped on its back in a ditch, and that the owner of the dump truck, (not identified by Mr Didone directly but identified in the General Occurrence Report prepared by the attending on-scene officer and quoted by Mr Didone as “Green Earth Trucking”), had requested Coxon’s to attend and tow the vehicle. The same General Occurrence Report, quoted by Mr Didone, then outlined the ensuing situation already described earlier; i.e., A.M.-P.M. Towing arriving at the scene before Coxon’s, a dispute involving an “intense shouting match and threats of legal action”, the Staff Sergeant on duty advising that Coxon’s did not have the necessary business licence to haul away anything in the city of Windsor, and the dispute being resolved, (to the attending officer’s “disbelief”), by A.M.-P.M. flipping the truck over and towing away the SUV, while leaving the dump trucks to be towed away by Coxon’s, as “the 2 owners decided it would be foolish to have AM/PM hook up the dump trucks only to tow them away to the City of Windsor border, just so that they could be unloaded, then reloaded by Coxon’s for the rest of the trip”.

4. Although there were some pleaded references in the statement of claim to the plaintiffs having sustained monetary loss as a result of such incidents, I note that the sworn affidavit evidence of Mr Didone actually includes no evidence whatsoever in that regard, in relation to any of the described incidents.
- ii. In the course of oral submissions, reference was made to correspondence between counsel, (a portion of which, in the form of a letter from counsel for the defendants dated August 8, 2023, was attached informally to the defendants' factum at page B-1-675 of the documents uploaded to Case Centre), in which counsel for the plaintiffs apparently had suggested the existence of additional occasions on which the defendants were said to have illegally and improperly barred the plaintiffs from accessing their customers. In that regard:
1. Drawing inferences from the responding correspondence sent by defence counsel on August 8, 2023, it seems that counsel for the plaintiffs had sent earlier correspondence, (not produced to the court in any way for review or consideration), suggesting that there had been four additional incidents of that nature, (i.e., beyond those referenced in the plaintiffs' pleadings or motion material), that had occurred on April 7, April 21, April 23 and June 7, 2023. The first two of those additional alleged incidents apparently were said to have involved a company and customer named "Dontrans", while the customers involved in the other two alleged incidents had not been identified.
 2. In the responding correspondence sent on August 8, 2023, counsel for the defendants indicated that investigation and inquiries made by the defendants and their counsel in relation to the additional alleged complaints being made by the plaintiffs had located only one incident involving "Dontrans", (apparently relating to whatever was said to have happened on April 21, 2023), with counsel for the defendants requesting further information about the incidents alleged to have taken place on April 7, April 23 and June 7, 2023, including the name or names of the customer or customers said to have been involved in the latter two alleged incidents.
 3. It was not disputed that the plaintiffs never provided the additional particulars or information requested by counsel for the defendants about such additional alleged incidents of the plaintiffs illegally or improperly barring the plaintiffs from accessing and servicing their customers.
 4. In the result, the allegations of further such incidents raised by counsel for the plaintiffs informally, in correspondence, are simply

not pleaded nor addressed by way of any properly filed evidence submitted to the court for consideration in relation to the motions, despite the plaintiff's obligation to put their figurative "best foot" forward in that regard, knowing that the court was entitled to assume that all the evidence properly presented in relation to the motion would be all the evidence forthcoming at trial. Nor were the defendants provided with any meaningful opportunity to investigate such further alleged incidents; i.e., to ascertain the true circumstances underlying them. In my view, such informal allegations of additional incidents of the defendants somehow illegally or improperly barring the plaintiffs from accessing or servicing their customers therefore must be disregarded for purposes of the motion.

- iii. In the course of oral submissions, I also was advised, (and it was not disputed), that the plaintiffs, during discovery examinations held in relation to this matter, formally had withdrawn their allegations in relation to one of the four pleaded instances in which the WPSB was alleged to have barred the plaintiffs from servicing the plaintiffs' clients. The pleaded instance in respect of which the plaintiffs' allegations were withdrawn was not specified. However, insofar as the sworn evidence of Mr Didone refers to there being "a minimum of three (3) occasions" in that regard, and includes evidence regarding the incidents that were said to have occurred on July 22, 2020, February 21, 2021, and May 12, 2021, but also makes no mention of the pleaded incident that was said to have occurred on July 21, 2021, (i.e., the pleaded incident that was said to have involved a car consumed by fire, in respect of which employees of the Town of Amherstburg were said to have contacted Coxon's), I infer that latter pleaded incident was the one in respect of which the plaintiffs' allegations were withdrawn.
 - iv. In the result, the only alleged incidents pleaded and relied upon by the plaintiffs in support of their allegation that members of the WPSB improperly or illegally barred the plaintiffs from servicing the plaintiffs' customers, (and the only incidents in respect of which the plaintiffs presented any supporting evidence to substantiate such claims), were the three incidents which were said to have taken place on July 22, 2020, February 21, 2021, and May 12, 2021, respectively.
 - c. As for the evidence tendered by the defendants in response to the plaintiffs' motion and in support of the defendants' cross-motion, in relation to the incidents of supposed illegal or improper conduct by the WPSB barring the plaintiffs from accessing and servicing the plaintiffs' customers:
 - i. In relation to the incident that was said to have occurred on July 22, 2020:

1. The sworn affidavit evidence provided by Inspector Lawrence confirmed directly that she investigated the incident herself.
2. In addition to providing additional copies of the communications exchanged with Mr Didone between July 23, 2022, Inspector Lawrence provided, as an exhibit, a complete (albeit somewhat redacted) copy of the occurrence documents relating to the incident. I have reviewed and considered those documents in their entirety as well, but will not replicate or summarize their content in exhaustive detail here. For present purposes:
 - a. The documents included reports prepared by attending officer PC Marentette, supervising officer Sergeant Morgan Evans, and a statement obtained by PC Dearsley from the vehicle's driver.
 - b. The reports confirm that the incident involved a tanker truck, carrying approximately 10,000 litres of diesel fuel, which had left the roadway and overturned in a ditch, causing fuel to leak from its roof and thereby creating a danger of explosion. The driver had left the scene of the accident. (It was later determined that the driver had obtained a ride from a passing motorist, and had returned to the business premises of the vehicle's owner.) Due to the severity of the scene and risk of an explosion, the scene was secured, the nearby westbound lanes of the EC Row Expressway were closed, an officer was dispatched to take a statement from the vehicle's driver, while the overturned tanker truck was uprighted and towed by AM-PM Towing to another location where it could be inspected by an officer of the Ministry of Transportation; i.e., one of the other various public authorities who became involved in the situation. In his formal statement to police, the subsequently interviewed driver, (in respect of whom the police carried out various searches and inquiries), indicated that the truck had hit a bump in the road, causing its front right wheel to veer onto the shoulder in a way the driver could not correct, with the vehicle then overturning in a manner that caused the driver to hit his head, after which the driver admittedly climbed out of the overturned vehicle without access to a phone. He admittedly had not remained at the scene of the accident, or made any other effort to contact the police immediately.
 - c. As Inspector Lawrence explained to Mr Didone, the WPSB made a decision, (via the supervising officer on scene, Sergeant Evans), that the vehicle owner's call to the

plaintiffs requesting their towing services was premature given, *inter alia*, the ongoing police investigation, the question of whether it would become a criminal investigation, and the involvement of other public authorities looking into the incident. As Inspector Lawrence also explained to Mr Didone, it was her belief that Sergeant Evans had made the correct judgment call in that regard, based on the situation confronting him “in the field”.

- ii. In relation to the incident that was said to have occurred on February 15, 2021:
 1. Inspector Lawrence confirmed that Police Constable Dale Harvie was the police officer who responded to the incident involving the tractor trailer belonging to Transit Logistics on the day in question. However, P.C. Harvie thereafter had retired, before dying suddenly on April 9, 2024.
 2. Inspector Lawrence nevertheless had reviewed and considered the general occurrence report prepared in relation to the incident, which was provided as an exhibit for my review. Indications within the report include the following:
 - a. When P.C. Harvie arrived on scene, at approximately 7:00am on a Monday morning, he observed that a tractor trailer vehicle, (the only vehicle involved in the accident), was completely blocking County Road 42; i.e., with the tractor embedded into the side of a deep ditch and the remainder of the vehicle extending completely across both lanes of traffic. The situation in that regard was confirmed by a diagram prepared by P.C. Harvie, depicting how the tractor trailer was blocking both lanes of County Road 42, effectively preventing traffic from passing in either direction.
 - b. In the circumstances, P.C. Harvie felt it necessary to have other police units temporarily block traffic to the east and west of the accident; i.e., at County Road 42’s intersections with Lauzon Parkway and the 9th Concession Road. The resulting police investigation nevertheless apparently was relatively brief, as no other vehicles were involved in the accident and, although the cautioned driver declined to provide a statement, it was clear to P.C. Harvie that there was no apparent reason for the tractor trailer to depart the roadway except for the driver operating the vehicle at excessive speed given the prevailing winter road conditions.

P.C. Harvie therefore had “AMPM Recovery” remove the unit from the ditch and tow it from the scene.

3. Inspector Lawrence’s interpretation of the incident is that, when P.C. Harvie arrived on scene and found the tractor trailer completely blocking the roadway, the priority in such circumstances would have been to have the roadway cleared as soon as possible regardless of what the vehicle owner’s preference may have been concerning the use of a particular towing service. As noted by Inspector Lawrence, there is no indication that towing vehicles from either of the plaintiffs arrived on scene before P.C. Harvey employed A.M.-P.M. towing to have the tractor trailer removed. Moreover, and in any event, the incident occurred within the city of Windsor, where neither of the plaintiffs was licensed to tow vehicles.
- iii. In relation to the incident that was said to have happened on May 12, 2021, (i.e., the incident involving the overturned dump truck and SUV, also occurring within the city of Windsor), Inspector Lawrence had nothing to add to the evidence already outlined above. However, the defendants provided sworn evidence from Police Constable Darko Jerant, the WPSB officer who attended at the scene to deal with the accident and its aftermath. P.C. Jerant’s unchallenged evidence in that regard included the following indications, by way of direct affidavit and his attached occurrence report relating to the incident:
1. At the time of the incident, P.C. Jerant had returned to patrol duties earlier in the year after having spent time in a different unit of the WPSB, and therefore admittedly was “still getting up to speed on the various patrol directives”.
 2. When he arrived at the scene of the accident, (on Lauzon Road in the city of Windsor, approximately 300 meters south of its intersection with Twin Oaks Drive), he found that three damaged vehicles had been involved in the accident and/or its immediate aftermath. In that regard:
 - a. According to statements obtained from the principal drivers involved and an independent witness, a small SUV vehicle had crossed over from its lane into the lane of oncoming traffic, owing to the driver of the SUV experiencing a heart condition – which ultimately led to her not being charged in relation to the incident. The SUV had struck the rear axle of a dump truck owned by Green Earth Trucking, which not only damaged the SUV, (i.e., ripping off a wheel and axle which were left in the middle of the roadway, while the SUV itself had wound up in the farmer’s field to the east of the

roadway), but caused the dump truck in question to lose control and thereafter slide into a ditch on the east side of the roadway where it flipped over into the same adjacent farmer's field. Another dump truck owned by Green Earth Trucking, which had been following the first dump truck, was also damaged by driving over debris from the accident; i.e., causing its transmission line to come loose and begin leaking transmission fluid while parked at the side of the road, also near or on the same adjacent farmer's field to the east of the roadway.

- b. P.C. Jerant emphasized that his "primary concern was getting the vehicles uprighted quickly and the accident cleared to mitigate the flow of traffic on Lauzon which was backing up, and as well to get the trucks up and out of the farmer's field as fast a possible in case there was some kind of seepage". In relation to traffic issues, P.C. Jerant noted that there was not only accident debris still on the road, (i.e., in addition to the distractions being caused by the vehicles damaged in the accident and efforts being carried out to care for the injured drivers), but several other vehicles, including a number of other large trucks, had stopped at the scene in an effort to lend assistance.
- c. At the time of the accident, P.C. Jerant did not know that A.M.-P.M. Towing had equipment sufficient to upright the overturned dump truck. Nor was he immediately aware that Coxon's lacked the business licence required to haul vehicles within/from the city of Windsor; something brought to his attention only later by the Staff Sergeant on duty, as PC Jerant was still in the course of dealing with the accident and its aftermath.
- d. In the circumstances, P.C. Jerant himself initially contacted Coxon's to "flip the truck over", while also contacting A.M.-P.M. Towing to tow the damaged vehicles away.
- e. P.C. Jerant then was made aware that the owner of the dump trucks, (Green Earth Trucking), also had contacted Coxon's; i.e., with a request that Coxon's attend to tow its two vehicles, as the owner not only had a "contract with Coxon's for towing" but also "despised AM/PM due to a previous towing issue where [the owner's] truck was held for a long period of time".

- f. However, A.M.-P.M. Towing then showed up at the scene almost immediately, with the heavy equipment needed to upright the overturned truck before towing the damaged vehicles. Coxon's then arrived at the scene as well, with two other heavy machines to haul away the two damaged dump trucks, (as requested by their owner Green Earth Services), but without equipment at the scene capable of uprighting the dump truck that had been flipped over.
- g. It was then that the argument between the owners of A.M.-P.M. Towing and Coxon's, (involving an "intense shouting match" and "threats of legal action), ensued. In that regard:
 - i. As noted above, P.C. Jerant was advised, after the argument started, that Coxon's did not have the necessary business licence to haul away anything in the city of Windsor.
 - ii. P.C. Jerant personally was not involved in the argument between A.M.-P.M. Towing and Coxon's. It was the two towing businesses who, "between them", then "reached some kind of understanding" that resulted in Coxon's towing the two Green Earth Services dump trucks away after the overturned dump truck had been uprighted by A.M.-P.M., with A.M.-P.M. Towing removing the damaged SUV vehicle.
 - iii. P.C. Jerant emphasized in his sworn affidavit, (as he had in his occurrence report), that he "could not believe" A.M.-P.M. Towing left the dump trucks to Coxon's to take, but it was his understanding that the two towing businesses decided it would be "silly" to have Coxon's tow the dump trucks to the limits of the city of Windsor and then switch the companies towing the trucks at that point.
- d. In my view, the provided evidence regarding the three incidents was generally consistent in all significant respects. To the extent there were inconsistencies, I prefer the accounts provided directly or indirectly from the officers on scene, who not only made relatively contemporaneous notes about their observations and experience on the occasions in question, (in accordance with their normal duties in that regard), at a time before there was any litigious dispute between the plaintiffs and their police service. In the circumstances, I see no reason to doubt their credibility and reliability, and their largely first-hand accounts of what happened are preferable to hearsay.

- e. As noted by the Supreme Court of Canada in *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, [2014] 1 S.C.R. 177, “unlawful interference with economic relations” is one of several names, (along with “interference with a trade or business by unlawful means”, “intentional interference with economic relations” and “causing loss by unlawful means”), given to a long-recognized tort that nevertheless was surrounded by considerable uncertainty until the Supreme Court clarified matters in that regard, at least insofar as the law of Canada is concerned.⁴⁵
- f. It is now settled law that the following general principles apply in relation to what the Supreme Court of Canada preferred to describe as the tort of “causing loss by unlawful means”, or simply the tort of “unlawful means”:
 - i. The tort is available even if there are one or more other causes of action available to the plaintiff against the defendant in relation to the defendant’s alleged misconduct. However, having regard to the history and rationale of the tort, and taking into account where it fits within the broader scheme of modern tort liability, the tort is to be “kept within narrow bounds”.⁴⁶
 - ii. The tort is available in three-party situations in which the defendant commits an unlawful act against a third party and that act intentionally causes economic harm to the plaintiff.⁴⁷

⁴⁵ See *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, *supra*, at paragraphs 2 and 3.

⁴⁶ See *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, *supra*, at paragraph 5, and paragraphs 29-35. The Supreme Court of Canada identified numerous policy reasons justifying adoption of such a narrow scope to the “unlawful means” tort, including: the common law generally according less protection to purely economic interests; the reluctance of the common law to develop rules to enforce fair competition; the common law’s concern to avoid undermining of certainty in commercial affairs; and common law history’s demonstration that tort liability has a tendency to undermine fundamental rights if unduly expanded.

⁴⁷ *Ibid.*, at paragraph 5. The Supreme Court of Canada emphasized that two key ingredients, “intention” and “unlawfulness”, lay at the core of the “unlawful means” tort. In doing so, however, it expressly rejected a broader “intentional harm” rationale for the tort, (i.e., one broadly focused on whether harm has been intentionally inflicted), and instead adopted a preferred and more narrow “liability stretching” rationale for the tort, focused on “extending an existing right to sue from the immediate victim of the unlawful act to another party whom the defendant intended to target with the unlawful conduct”; i.e., a tort focusing “not on enlarging the basis of civil liability, but on allowing those intentionally targeted by actionable wrongs to sue for the resulting harm”. In other words, the tort extends civil liability but “without creating new actionable wrongs”; i.e., by closing a “perceived liability gap” where the wrongdoer’s acts in relation to a third party, which are “in breach of established legal obligations to that third party”, intentionally target the injured plaintiff. Put another way, the tort “does not seek to create any new actionable wrongs, but simply to expand the range of persons who may sue for harm intentionally caused by existing actionable wrongs to a third party”. Without limiting the generality of the foregoing, that narrow approach to the “unlawful means” tort deliberately “avoids ‘tortifying’ the criminal and regulatory law by imposing civil liability where there would not otherwise be any”. See *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, *supra*, at paragraphs 37 and 43-45.

- iii. In this context, conduct by the defendant is “unlawful”, in the sense required by the tort of unlawful means, if it would be actionable by the third party, (i.e., if the acts of the defendant would give rise to civil liability to the third party), or would have been actionable if the third party had suffered loss as a result of it.⁴⁸
- iv. The “unlawfulness” requirement, thus defined for purposes of the “unlawful means” tort, is not subject to any “principled exceptions”; e.g., for situations wherein the defendant’s conduct would not be actionable by the third party, (or have been actionable if the third party had suffered loss as a result of the conduct), owing to judicial leave requirements, or other statutory processes or barriers, that effectively prevent such conduct from being actionable by the third party.⁴⁹
- g. Returning to the remaining three specific occasions identified and still relied upon by the plaintiff in support of its “unlawful means” tort claim, (i.e., its assertion that the defendants should be held liable for damages payable to the plaintiffs owing to the defendants allegedly having engaged in “unlawful interference with economic interests”), properly in evidence before me, in my view, the evidence falls short of establishing that any of the three instances involved the defendants engaging in “unlawful means” in the sense required. Without limiting the generality of the foregoing:
 - i. In relation to the incident that occurred on or about July 22, 2020:
 - 1. Plaintiff demonstration of the “unlawful means” required to bring the situation within the ambit of the tort of “unlawful means”, requires the plaintiffs to demonstrate, on a balance of probabilities,

⁴⁸ Ibid. Again, the Supreme Court of Canada emphasized that the narrow definition of “unlawful means” in this context, (i.e., conduct by the defendant that would be “actionable” by the third party, in the sense the defendants committed “acts that would give rise to civil liability to the third party ... or would do so if the third party suffered loss from them”), did not extend to “conduct rendered illegal by statute for reasons remote from civil liability”; e.g., conduct “illegal” having regard to criminal and/or regulatory law. See *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, *supra*, at paragraphs 45 and 74.

⁴⁹ In that regard, the Supreme Court of Canada expressly rejected the notion that trial judges essentially should be provided with “wiggle room” to deal “adequately: with cases not falling within the narrow scope of the “unlawful means” tort liability requirements. In particular, such an approach was condemned as simply conferring “an unstructured judicial discretion to do what appears to the particular judge to be just in the particular circumstances”, which was regarded as “the antithesis of a principled approach”, and something that “would largely undercut the efforts to give a certain and narrow ambit to the tort”. Allowing for exceptions without clearly outlining the principles to guide the development of the law would invite the danger of “ad hoc decisions tailored to achieve a vision of commercial morality”, which was precisely the danger the narrow definition of the “unlawful means” requirement was meant to avoid. For purposes of the “unlawful means” tort, the defendant’s “means” would be “unlawful” in the sense required if and only if, (i.e., without exception), they “support a civil action for damages or compensation by the third party, or would do so except for the fact that the third party did not suffer any loss as a result of the defendant’s acts”. See *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, *supra*, at paragraphs 83-86.

that the conduct of the defendants on the described occasion supported a civil action for damages or compensation from the defendants by D'Amore Construction, (the relevant "third party" owner of the overturned and leaking tanker truck), or would have supported such a civil action for damages or compensation except for the fact that D'Amore Construction did not suffer any loss as a result of the defendants' conduct.

2. In my view, the underlying circumstances gave rise to no such actionable claim on the part of D'Amore Construction against the defendants, regardless of whether or not D'Amore Construction sustained any loss in the circumstances. Without limiting the generality of the foregoing:
 - a. Such a claim would need to be premised on assertions that, notwithstanding prevailing circumstances, the defendants had no legal right or justification to prevent or otherwise interfere with D'Amore Construction's desire to have its preferred towing service immediately access, upright and tow its overturned, leaking and abandoned tanker truck property from the scene of the accident; i.e., that D'Amore Construction had a right, immediately enforceable in the prevailing circumstances, to have its preferred towing service access, upright and tow away its abandoned, overturned and leaking tanker truck, in turn giving D'Amore Construction a claim for damages from the defendants for preventing and/or interfering with such a right.
 - b. Counsel for the plaintiffs cited no authority in suggested support of such an actionable claim on the part of D'Amore Construction, and in my view there was no such actionable claim in the circumstances. Without limiting the generality of the foregoing:
 - i. Police have a common law duty to preserve peace, prevent crime, and protect life and property.⁵⁰ They also have the power to control access to certain areas relevant to the performance of their duties,⁵¹ including protection of a potential crime scene to preserve evidence,⁵² and restricting access

⁵⁰ See *R. v. Mann*, [2004] 3 S.C.R. 59, at paragraph 26.

⁵¹ See *Figueiras v. Toronto Police Services Board*, 2015 ONCA 208, at paragraph 59.

⁵² See *R. v. Edwards*, 2004 ABPC 14, at paragraphs 4-6, 24-48, and 66.

to hazardous areas, (such as those created by crash sites and/or fires and potential fires), to preserve public safety.⁵³

- ii. Moreover, the common law ancillary powers doctrine permits a police officer to interfere with a person's liberty or property during the lawful execution of such duties, so long as the police are acting in the execution of their duties under common law or statute, and their conduct constitutes a justifiable interference in that regard.⁵⁴
- iii. In my view, the prevailing circumstances surrounding the described tanker truck accident were such that the police not only had a right to control and restrict access to the accident scene, (thereby initially preventing access to the overturned vehicle by the owner's preferred towing service), but to prevent the vehicle's owner, (via the owner's preferred towing service), from taking possession of the vehicle and removing it from the scene, in a manner no longer under control of the police, while the police were still engaged in an active police investigation of a potential crime or offence, (e.g., dangerous driving, abandonment of the vehicle, leaving the scene of the accident and otherwise creating an extremely hazardous situation), wherein the vehicle in question was relevant evidence. Conversely, in my view, the vehicle's owner had no actionable right, in the prevailing circumstances, to demand immediate access to the vehicle despite the hazardous situation, and/or to demand immediate possession of the vehicle, (via its preferred towing service agent), for the purpose of removing the owner's vehicle from the accident scene despite the vehicle

⁵³ See *R. v. Rousseau*, [1982] C.S. 461, at pp.462-464; and *Figueiras v. Toronto Police Services Board*, *supra*, at paragraph 60.

⁵⁴ See *R. v. Stenning*, [1970] S.C.R. 631, at pp.636-637; *Dedman v. The Queen*, [1985] 2 S.C.R. 2; and *Brown v. Regional Municipality of Durham Police Service Board* (1998), 131 C.C.C. (3d) 1

being evidence relevant to an active/ongoing police investigation.

- iv. Those basic legal realities were supplemented by the fact that the relevant accident had taken place within the city of Windsor, wherein the vehicle owner's preferred towing service had no business licence to operate, as required by the city of Windsor's by-laws. For the reasons outlined above, those by-law licensing requirements were a valid exercise of the city of Windsor's business licensing authority, and the police were entitled and obliged to enforce those licensing laws as well. Conversely, in my view, the vehicle's owner had no actionable right to insist on use of its preferred towing service within the city of Windsor when that preferred towing service was not licensed to do so, and the provision of such contemplated towing services by the vehicle owner's preferred towing service accordingly would have been contrary to law.

ii. In relation to the incident that occurred on or about February 15, 2021:

1. For the reasons noted above, the common law duties of the police attending at the scene of the described accident, including P.C. Harvie, included protection of life and property, which would include the safe and unobstructed flow of traffic.
2. At the time of the incident in question, the attending police officers, including P.C. Harvie, were presented with a situation wherein an east-west thoroughfare within the city of Windsor was blocked completely in both directions by a tractor-trailer vehicle, (owned by Transit Logistics), extending across both lanes of the roadway, in turn requiring the attendance of additional police units to block the flow of traffic at locations to the east and west of the accident.
3. In my view, the attending officers, including P.C. Harvie, were entitled to take steps to have the complete roadway obstruction, created by the relevant tractor trailer, removed as quickly as possible by use of the first available towing service on scene, (i.e., A.M.-P.M. Towing), without tolerating any further delay while waiting for the preferred towing service of the vehicle's owner Transit Logistics; an approach entirely consistent with the WPSB towing Directive, which contemplates general respect for the towing arrangement preferences of a vehicle's owner, provided any request in that regard

is not causing unreasonable delay and the vehicle is not obstructing the normal or safe flow of traffic. Conversely, in my view, the vehicle's owner, Transit Logistics, had no actionable right to insist on its vehicle's continued complete obstruction of the roadway in the circumstances.

4. Once again, however, those basic legal realities were supplemented by the fact that the relevant accident had taken place within the city of Windsor, wherein the vehicle owner's preferred towing service had no business licence to operate, as required by the city of Windsor's by-laws. At the risk of repetition:
 - a. For the reasons outlined above, those by-law licensing requirements were a valid exercise of the city of Windsor's business licensing authority, and the police were entitled and obliged to enforce those licensing laws as well.
 - b. Conversely, in my view, the vehicle's owner, Transit Logistics, had no actionable right to insist on use of its preferred towing service within the city of Windsor when that preferred towing service was not licensed to perform such services, and the provision of such contemplated towing services by the vehicle owner's preferred towing service accordingly would have been contrary to law.

iii. In relation to the incident that occurred on or about May 12, 2021:

1. For the reasons noted above, the common law duties of the police attending at the scene of the described accident, including P.C. Jerant, included protection of life and property, which in my view included not only the safe and unobstructed flow of traffic but the prevention of contaminants possibly seeping onto an agricultural property.
2. As noted above, the police officers attending the scene of the accident, including P.C. Jerant, were presented with a situation wherein the accident was causing traffic to back up significantly along Lauzon Road, (a major north-south arterial route in east Windsor), as well as concerns about potential contamination of a farmer's field on which the damaged vehicles had come to rest.
3. In my view, the attending officers, including P.C. Jerant, were entitled to take steps to have the damaged vehicles removed as quickly as possible by use of the first available towing service on scene, (i.e., A.M.-P.M. Towing), without tolerating any further delay while waiting for the preferred towing service of the vehicle's

owner Green Earth Services; once again, an approach entirely consistent with the WPSB towing Directive, which contemplates general respect for the towing arrangement preferences of a vehicle's owner, provided any request in that regard is not causing unreasonable delay and the vehicle is not obstructing the normal or safe flow of traffic. Conversely, in my view, Green Earth Services, which owned the two damaged dump trucks, had no actionable right to insist on its vehicles being left in place with resulting continued disruption of safe and normal traffic flow along Lauzon Road, and/or possible resulting contamination of the relevant farmer's field.

4. Once again, however, those basic legal realities were supplemented by the fact that the relevant accident had taken place within the city of Windsor, wherein the preferred towing service of Green Earth Services had no business licence to operate, as required by the city of Windsor's by-laws. At the risk of further repetition:
 - a. For the reasons outlined above, those by-law licensing requirements were a valid exercise of the city of Windsor's business licensing authority, and the police were entitled and obliged to enforce those licensing laws as well.
 - b. Conversely, in my view, the owner of the two relevant dump trucks, Green Earth Services, had no actionable right to insist on use of its preferred towing service within the city of Windsor when that preferred towing service was not licensed to perform such services, and the provision of such contemplated towing services by the vehicle owner's preferred towing service accordingly would be contrary to law.
5. Moreover, the presented evidence only refers to Green Earth Trucking requesting Coxon's to provide towing services to remove its vehicles from the city of Windsor, i.e., as opposed to a request to have Coxon's upright the overturned dump truck as well before the two trucks were towed – which seems consistent with Coxon's attending the scene with equipment sufficient to two but not upright the relevant trucks. The same evidence makes it clear that the stated desire of Green Earth Trucking to have Coxon's tow its two trucks from the accident scene and Windsor actually was fulfilled; i.e., insofar as Coxon's was permitted to hook up and tow the relevant dump trucks from the accident scene and the city of Windsor, (after the overturned truck had been uprighted by A.M.-P.M. Towing), despite Coxon's not having the licence required by the city's applicable and valid business licensing by-law. In other words, the

presented evidence indicates that the presiding WPSB officer not only was the one who proactively called for Coxon's involvement in the first place, before then refraining from any involvement in the argument about whether Coxon's would be permitted to tow the two damaged trucks as requested by Green Earth Services, but then also refrained from enforcing the relevant towing business licensing requirement on that particular occasion. In my view, such realities reinforce a conclusion that Green Earth Services did not have an actionable claim against the defendants in the circumstances; i.e., insofar as there is no evidence of the WPSB preventing the use of the preferred towing service of Green Earth Services. To the contrary, the attending officer in charge of the situation actively invited Coxon's involvement, and then refrained from any conduct to prevent such involvement, which ended with Coxon's towing the two dump trucks as requested by the owner of the vehicles. It seems self-evident that Green Earth Trucking could be no claim based on it supposedly being denied use of its preferred towing service when it actually was permitted to use that preferred towing service in the circumstances – despite apparent contravention of the applicable towing business licensing requirements.

- h. The plaintiffs' failure to establish the existence of "unlawful means" in the sense required, in relation to any of the remaining three occasions properly in evidence and relied upon by the plaintiffs in support of their claim that the defendants engaged in "unlawful interference with economic interests", is a sufficient reason to dismiss that "unlawful means" tort claim by the plaintiffs. I nevertheless note my view that there also were other fatal defects in relation to that claim warranting its dismissal, including the following:
 - i. In my view, there was simply no evidence presented to justify any finding that the conduct of the defendants in relation to the three specified occasions, even if capable of being characterized as "unlawful means" in the sense required, was carried out with the intention of causing economic harm to the plaintiffs.
 - ii. In my view, there also was simply no presented evidence, (as opposed to pleaded allegations), to support the plaintiffs' general contention that the conduct of the defendants, relied upon by the plaintiffs in support of their "unlawful means" tort claim, actually caused any economic harm to the plaintiffs. Without limiting the generality of the foregoing:
 - 1. In this context, the existence of "unlawful means" is determined without a plaintiff advancing such a tort claim having to establish

that the relevant third party suffered any loss as a result of the alleged misconduct of the relevant tort defendant.⁵⁵

2. In relation to the “unlawful means” tort claimant, however, the requirement of establishing that the defendant’s conduct “intentionally caused economic harm to the plaintiff” remains.⁵⁶
3. Rule 20.04(3) of the *Rules of Civil Procedure* permits a directed reference “to determine the *amount*” of damages to which a plaintiff is entitled, in circumstances “where the court is satisfied that *the only genuine issue is the amount* to which the moving party is entitled”. [Emphasis added.] However, quantification of the amount of damages to be awarded, pursuant to an entitlement, is not the same thing as a determination of an entitlement to damages. In relation to the plaintiffs’ claim alleging the tort of “unlawful means”, entitlement to damages based on that tort required the plaintiff to establish all elements of the tort on a balance of probabilities. That included proof on a balance of probabilities that the defendants, through “unlawful means” in the sense required, also intentionally *caused economic harm to the plaintiffs*. In my view, the plaintiffs accordingly were required to lead at least some evidence in that regard, (i.e., to establish that the pleaded and relied upon conduct of the defendants had caused them at least some degree of economic harm), even if the amount of that harm would then have to be quantified. The plaintiffs nevertheless failed to do so.
 - i. For such reasons, in my view the plaintiffs “unlawful means” tort claim, (described in the plaintiffs’ statement of claim as “unlawful interference with economic interests), also lacks merit and must be dismissed.

[24] As noted above, the plaintiffs’ motion for summary judgment included a general request for an Order, pursuant to Rule 20.04(3) of the *Rules of Civil Procedure*, directing a reference to determine damages payable by the defendants to the plaintiffs. In that regard:

- a. Perhaps it would go without saying, but there is no free-standing cause of action entitling a claimant to an assessment of damages, by way of a directed reference or

⁵⁵ As noted above, conduct is “unlawful” in the sense required “if it would be actionable by the third party, or *would have been* actionable if the third party had suffered loss because of it”. [Emphasis added.] Again, see *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, *supra*, at paragraph 5.

⁵⁶ Again, see *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, *supra*, at paragraph 5. A plaintiff asserting the tort must establish that the act of a defendant, constituting the “unlawful means” relied upon by the plaintiff, “intentionally *causes harm to the plaintiff*”. [Emphasis added.]

otherwise, in the absence of a demonstrated entitlement to such damages arising from one or more established claims.

- b. In my view, for the reasons outlined above, the plaintiffs have failed to establish any such claims, or any such entitlement, and there is no genuine issue requiring a trial in that regard. The plaintiffs' request for a directed reference, pursuant to Rule 20.04, is therefore denied as well.

Conclusion

[25] For the reasons outlined above, in my view:

- a. the plaintiffs' motion for summary judgment and the associated relief requested therein must be dismissed; and
- b. the defendants' cross-motion seeking dismissal of the plaintiffs' summary judgment motion, and summary judgment dismissing the plaintiffs' remaining claims herein, must be granted.

[26] An order shall go accordingly.

Costs

[27] Because my decision was reserved, the parties were unable to make cost submissions having regard to the substantive outcome of the motions.

[28] Subject to hearing from the parties, if and as necessary, my preliminary view is that the defendants should be entitled to their costs of the motions and of the action, (insofar as the defendants appear to have been entirely successful in that regard), although I currently am unaware of any settlement offers that may have been exchanged, and lack sufficient information to express any preliminary views regarding any appropriate quantification of those costs.

[29] Having regard to the substantial time, effort and expense which the parties already clearly have devoted to the matter, I would urge them to discuss and resolve the outstanding issue of costs by way of agreement.

[30] However, if the parties are unable to reach agreement in that regard, costs will be decided by way of written cost submissions to be delivered according to the following timetable, the intervals of which have been extended longer than usual owing to the time of year and possible counsel and/or party summer vacation absences:

- a. The defendants shall deliver their written cost submissions within three weeks of the date upon which this decision is released, limited to seven pages, not including any Bill of Costs or settlement offers.

- b. The plaintiffs shall deliver their written responding cost submissions within three weeks of receiving the defendant's written cost submissions, similarly limited to seven pages, not including any Bill of Costs or settlement offers.
- c. The defendants shall deliver their written reply cost submissions, (if any), limited to three pages, within two weeks of receiving the plaintiffs' written responding cost submissions.

Ian F. Leach

Justice I.F. Leach

Date: July 22, 2026