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## Shifting into “Neutral”: Evaluating Mediation as a Peaceful Alternative to the Forceful Resolution of the 2022 Canada–Freedom Convoy Dispute

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**SHIFTING INTO  
“NEUTRAL”:  
EVALUATING MEDIATION  
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OF THE 2022 CANADA–  
FREEDOM CONVOY  
DISPUTE**

**Teresa (Tessa) Griego**

**ABSTRACT**

In early 2022, the Canadian government found itself confronted by a group of truck drivers—in what came to be known as the “Freedom Convoy”—protesting government-imposed restrictions related to the COVID-19 pandemic. This article evaluates how mediation could—and should—have been used as an effective means for the government and protestors to resolve their dispute. It begins by defining the government health and safety measures that prompted the protests and describing the ensuing protest movement by the Freedom Convoy. The article then discusses the protest’s implications on commerce and on the communities where it was located. Next, the article describes the unilateral approach the Canadian government took to shutting the protests down by force. The article then explores some of the general benefits of mediation as a dispute resolution process, and argues that mediation could have been used to avoid some of the consequences of the Canadian government’s retaliation to the Freedom Convoy protest. To demonstrate the potential benefits of the proposed mediation, that such a mediation could have been successful, and that a procedure exists that an appointed mediator

could have followed, the article compares the proposed mediation to two well-established types of mediation: public policy mediation and labor–management mediation. The article goes on to address counterarguments by acknowledging some potential benefits of the government’s unilateral approach, but maintains that mediation could have achieved those benefits as well, particularly an expedient return to the flow of commerce. Finally, the article pushes back on the argument that a “failed mediation” would have been a waste of time, as even mediations with no agreements can bring some satisfaction to the parties involved. The article does not attempt to advocate for what the results of such a mediation should have been.

## I. BACKGROUND

In November 2021, the administration of Canadian Prime Minister Justin Trudeau announced a COVID-19-vaccine requirement for truck drivers that would enter into force on January 15 the following year.<sup>1</sup> Canadian truck drivers entering Canada via the U.S.–Canada border would have to show proof of vaccination or would have to quarantine for ten days under the supervision of the Public Health Agency of Canada.<sup>2</sup> Non-Canadian truck drivers attempting to enter Canada would have to show proof of vaccination or they would be denied entry.<sup>3</sup> In January 2022, the Freedom Convoy, a group of truck drivers from all around Canada, began a weeks-long protest of the aforementioned vaccine requirement in Ottawa, the capital of Canada.<sup>4</sup> This group grew and drew support from opponents of other COVID-19 health and safety measures.<sup>5</sup> In early February, the protesters began to block the Ambassador Bridge

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<sup>1</sup> See Public Health Agency of Canada, *Requirements for Truckers Entering Canada in Effect as of January 15, 2022*, GOV’T OF CAN. (Jan. 13, 2022), <https://www.canada.ca/en/public-health/news/2022/01/requirements-for-truckers-entering-canada-in-effect-as-of-january-15-2022.html>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Key Events in Canada’s Trucker Protests Against COVID Curbs*, REUTERS (Feb. 19, 2022, 2:47 PM), <https://www.reuters.com/world/americas/key-events-canadas-trucker-protests-against-covid-curbs-2022-02-19/>.

<sup>5</sup> Kim Berryman, Holly Yan & Aya Elamroussi, *Protesters Blocking a US–Canada Border Crossing over Covid-19 Mandates Can Face Severe Penalties, Official Says*, CNN (Feb. 13, 2022, 8:00 PM), <https://www.cnn.com/2022/02/13/americas/canada-truckers-protests-covid-sunday/index.html>.

in Windsor, Ontario.<sup>6</sup> Protestors also blocked other border crossings, although none to the extent of the Ambassador Bridge.<sup>7</sup>

The protests had detrimental effects on commerce and on the surrounding communities.<sup>8</sup> The Ambassador Bridge, connecting Windsor, Ontario, to Detroit, Michigan, is the busiest corridor between the United States and Canada,<sup>9</sup> carrying about \$360 million a day in two-way cargoes.<sup>10</sup> The disruption to commerce had an especially detrimental effect on the automobile industry.<sup>11</sup> The protests caused shortages of auto parts and forced General Motors, Ford, Honda, and Toyota to close plants or cancel shifts.<sup>12</sup> In Ottawa, residents lost patience with the demonstrations: “We’re fed up, we’re tired. We want Ottawa to be boring again,” said one resident.<sup>13</sup> Counter-protesters blocked vehicles trying to join the protests.<sup>14</sup>

Ottawa Mayor Jim Watson proposed that the federal government appoint a “high[-]profile, respected senior statesperson” to mediate the dispute between the Freedom Convoy and the government.<sup>15</sup> However, Prime Minister Trudeau was unwilling to negotiate with the protesters.<sup>16</sup> Instead, the government took the approach to unilaterally shut the protests down.<sup>17</sup> Both

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<sup>6</sup> *Key Events in Canada's Trucker Protests Against COVID Curbs*, *supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> See Berryman, Yan & Elamroussi, *supra* note 5.

<sup>9</sup> *Key Events in Canada's Trucker Protests Against COVID Curbs*, *supra* note 4.

<sup>10</sup> Kayla Tarnowski, David Morgan & Chris Helgren, *U.S.–Canada Bridge Reopens After Police Clear Protesters*, REUTERS (Feb. 14, 2022, 12:39 PM), <https://www.reuters.com/world/americas/canada-protesters-police-deadlocked-tensions-simmer-blocked-border-bridge-2022-02-13/>.

<sup>11</sup> See David J. Lynch, *Auto Industry Already Feeling the Pinch from Canadian Bridge Blockade*, WASH. POST (Feb. 9, 2022, 5:35 PM), <https://www.washingtonpost.com/business/2022/02/09/canada-truck-bridge-protest-autos/>.

<sup>12</sup> Rob Gillies, Tom Krisher & Mike Householder, *Canadian Judge Orders an End to Blockade at Border Bridge*, AP NEWS (Feb. 11, 2022), <https://apnews.com/article/coronavirus-pandemic-health-business-detroit-ontario-6e6dcbfaa6717b0aa0f079251663290f>.

<sup>13</sup> Tarnowski, Morgan & Helgren, *supra* note 10.

<sup>14</sup> *Id.*

<sup>15</sup> Nick Boisvert & Peter Zimonjic, “*It Has to Stop*”: *Trudeau Accuses Protesters of Blockading Democracy During Commons Debate*, CBC NEWS (Feb. 7, 2022, 10:20 AM), <https://www.cbc.ca/news/politics/ottawa-protest-parliament-1.6342221>.

<sup>16</sup> *Id.*

<sup>17</sup> Jessica Murphy, *Is Trudeau Losing His Fight Against Truckers?*, BBC NEWS (Feb. 12, 2022), <https://www.bbc.com/news/world-us-canada-60311988>.

Ottawa and Ontario declared states of emergency.<sup>18</sup> As many as 210 bank accounts linked to the protests, holding nearly \$8 million collectively, were frozen under authorization of the nation's Emergencies Act.<sup>19</sup> On February 11, Chief Justice Geoffrey Morawetz of the Ontario Superior Court ordered an end to the blockade of the Ambassador Bridge; however, the Freedom Convoy defied the orders and remained.<sup>20</sup> Ontario Premier Doug Ford threatened up to \$1,000 and up to a year in prison, as well as loss of personal and commercial driver's licenses, for non-compliance.<sup>21</sup> On February 13, police cleared protesters in Ontario and the Ambassador Bridge reopened.<sup>22</sup> Likewise in Ottawa, on February 18, police pushed into crowds of protesters downtown and arrested more than 100 individuals, including key organizers of the Freedom Convoy.<sup>23</sup> The police employed pepper spray and stun grenades in their efforts to disperse the crowds.<sup>24</sup>

## II. ARGUMENTS IN FAVOR OF MEDIATION

### A. THE BENEFITS OF MEDIATION IN GENERAL

Mediation is a voluntary process in which an impartial third party assists disputants in finding a mutually acceptable solution to their conflict.<sup>25</sup> While existing scholarship generally explores the benefits of mediation as opposed to litigation, one may also easily apply this reasoning where the alternative is a government's

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<sup>18</sup> *Id.*

<sup>19</sup> Brad Dress, *Freeze Lifted on Bank Accounts Linked to Canada Protests*, THE HILL (Feb. 23, 2022, 3:15 PM), <https://thehill.com/policy/international/595526-freeze-lifted-on-bank-accounts-linked-to-canada-protests>.

<sup>20</sup> *Key Events in Canada's Trucker Protests Against COVID Curbs*, *supra* note 4; Gillies, Krisher & Householder, *supra* note 12.

<sup>21</sup> Tori B. Powell, *Canadian Official Threatens "Severe" Consequences for Truckers Protesting COVID Mandates Along Border*, CBS NEWS (Feb. 11, 2022, 8:26 PM), <https://www.cbsnews.com/news/canada-freedom-convoy-truckers-protest-covid-mandates-canadian-border/>.

<sup>22</sup> *Key Events in Canada's Trucker Protests Against COVID Curbs*, *supra* note 4.

<sup>23</sup> *Id.*

<sup>24</sup> Eamon Barrett, *Pepper Spray, Tow Trucks, and Bitcoin Seizures: How Canada Finally Ended the Weeks-Long Freedom Convoy Protests in Ottawa*, FORTUNE (Feb. 21, 2022, 6:09 AM), <https://fortune.com/2022/02/21/canada-ottawa-freedom-convoy-protest-ends-truckers-arrest-covid-vaccine-mandate/>.

<sup>25</sup> NVMS CONFLICT RESOLUTION CENTER, MEDIATION SKILLS AND PROCESS 35 (2d ed. 2019); *see also* *What is Mediation?*, CONFLICT SOLS. CTR., <https://cscsb.org/what-is-mediation-2/> (last visited Mar. 28, 2023).

unilateral response to a protest movement. One benefit often cited by scholars is that mediation gives parties a sense of control,<sup>26</sup> whereas the Canadian government asserting force against the Freedom Convoy left protestors feeling disenfranchised and likely to engage in future similar demonstrations.<sup>27</sup> For example, a Freedom Convoy representative stated in a press conference:

[I]t's a dark day in our history. Never in my life would I believe anyone if they told me that our Prime Minister would refuse dialogue [and] choose violence against peaceful protesters. We are all in shock . . . . We are simply peacefully withdrawing from this area because we don't believe that there's anything that can be gained by being a human punching bag for the police or being arrested[.] We're just going to regroup [and] figure out what's next.<sup>28</sup>

Another benefit of mediation is that it presents the opportunity for creative solutions.<sup>29</sup> Through discussion and creative problem-solving, the government and the Freedom Convoy representatives might have come up with a solution that was just as protective of public health without feeling as invasive to the truckers. For example, perhaps officials could have put in place a specialized testing protocol for unvaccinated drivers. Finally, mediation saves parties time and money.<sup>30</sup> Perhaps the Freedom Convoy would have agreed to pause the blocking of the Ambassador Bridge while the mediation was ongoing, allowing commerce to resume and the protesters to return to their day-to-day lives until the parties reached an agreement or mediation efforts ceased.

## B. APPLICATION OF PUBLIC POLICY AND LABOR-MANAGEMENT MEDIATION MODELS

<sup>26</sup> Deborah A. Ferguson, *Eight Benefits of Mediation*, 55 *ADVOC.* 44, 44 (2012).

<sup>27</sup> See Brian Giesbrecht, *Trudeau Has Irreparably Damaged Our Country*, TROY MEDIA (Mar 6, 2022), <https://troymedia.com/politicslaw/trudeau-government-has-irreparably-damaged-our-country/>.

<sup>28</sup> Jan Jekielek (@JanJekielek), TWITTER (Feb. 19, 2022, 4:18 PM), <https://twitter.com/JanJekielek/status/1495145690103701512>; Jan Jekielek (@JanJekielek), TWITTER (Feb. 19, 2022, 4:25 PM), <https://twitter.com/JanJekielek/status/1495151035219857412>.

<sup>29</sup> Ferguson, *supra* note 26, at 44.

<sup>30</sup> *Id.* at 45.

Reflection on two particular models of mediation—public policy and labor–management mediation—demonstrates not only the potential benefits of the mediation proposed in this article, but also the various avenues to success and the procedures that mediators could have leveraged to be successful in this endeavor.

## 1. PUBLIC POLICY MEDIATION

High-stakes, multi-party mediation with the government is not unprecedented. In fact, public policy mediation is a well-developed type of mediation.<sup>31</sup> A mediator appointed to the Canada–Freedom Convoy dispute could have followed the procedures used in public policy mediations so that the parties could have reaped similar benefits. Public policy mediation is “a method for securing actionable agreements among a broad range of interested parties who participate as negotiators, often on behalf of constituencies[,]” and “creates a forum for deliberative negotiations among government, representative stakeholders, and the general public.”<sup>32</sup> Some of the benefits of public policy mediation are that “the public has increased confidence in the [government decision] because of the transparency and inclusiveness of the process; the result is a rule that is balanced and acceptable to the regulated parties.”<sup>33</sup> Additionally, “[i]f properly harnessed, the passions inherent in complex public policy disputes can be a driving force for reaching sustainable agreements.”<sup>34</sup>

High-stakes public policy mediations have been successful in the past. For example, in 2002, Susan Podziba facilitated a negotiated rulemaking for the U.S. Occupational Safety and Health Administration (OSHA) to revise worker-safety standards for construction cranes and derricks.<sup>35</sup> After eleven months of negotiation, a consensus was reached on all issues.<sup>36</sup> One lesson that the mediator of the proposed Canada–Freedom Convoy

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<sup>31</sup> See Ellen Kandell, *Public Policy Mediation: Deliberating for Democracy*, ALT. RESOLS. (Jan. 5, 2015), <https://www.alternativeresolutions.net/2015/01/05/public-policy-mediation/>.

<sup>32</sup> *Id.* (quoting Howard S. Bellman & Susan L. Podziba, *Public Policy Mediation: Best Practices for a Sustainable World*, 20 DISP. RESOL. MAG. 22, 22 (2014)).

<sup>33</sup> FEDERAL MEDIATION & CONCILIATION SERVICE (FMCS), REGULATING BY CONSENSUS (2016), <https://www.fmcs.gov/wp-content/uploads/2016/10/RegNeg.pdf>.

<sup>34</sup> Susan L. Podziba, *The Human Side of Complex Public Policy Mediation*, 19 NEGOT. J. 285, 285 (2003).

<sup>35</sup> SUSAN L. PODZIBA, CIVIC FUSION: MEDIATING POLARIZED PUBLIC DISPUTES 49 (2012).

<sup>36</sup> *Id.* at 51.

mediation could have drawn from this dispute is the importance of deciding who gets to be involved in the mediation. For a mediation to be considered fair and equitable, all interested parties must feel that they have a seat at the table.<sup>37</sup> OSHA conducted this mediation in accordance with the U.S. Negotiated Rulemaking Act<sup>38</sup>: First, the public was asked to nominate members from sufficiently affected stakeholder groups to serve on the negotiated rulemaking committee; next, representatives were chosen from the list; third, OSHA solicited public comments on the proposed committee list; finally, OSHA added more members to the committee based on the public comments.<sup>39</sup> In the proposed Canada–Freedom Convoy mediation, members of surrounding communities and businesses, who were also affected by the disruption in commerce, may have also wanted to be involved in the proposed Canada–Freedom Convoy mediation.

## 2. LABOR–MANAGEMENT MEDIATION

Further, a mediator appointed to facilitate the resolution of the Canada–Freedom Convoy dispute could have learned from the procedures used in many labor–management mediations and the parties could have reaped similar benefits. Labor–management mediation is a well-established method of resolving labor disputes such as strikes and lockouts.<sup>40</sup> In fact, the Federal Mediation & Conciliation Service (FMCS) was developed with the explicit objective of “assist[ing] parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.”<sup>41</sup> The Canada–Freedom Convoy dispute shares many similarities with labor–management disputes.<sup>42</sup> For example, the

<sup>37</sup> See CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS* 128 (4th ed. 2014).

<sup>38</sup> *Negotiated Rulemaking Act*, ADMIN. CONF. U.S., [https://sourcebook.acus.gov/wiki/Negotiated\\_Rulemaking\\_Act/view#:~:text=The%20Negotiated%20Rulemaking%20Act%20of,agencies%20to%20conduct%20negotiated%20rulemaking](https://sourcebook.acus.gov/wiki/Negotiated_Rulemaking_Act/view#:~:text=The%20Negotiated%20Rulemaking%20Act%20of,agencies%20to%20conduct%20negotiated%20rulemaking) (last accessed Oct. 7, 2022).

<sup>39</sup> See 5 U.S.C. § 564.

<sup>40</sup> See FEDERAL MEDIATION & CONCILIATION SERVICE, *FAST FACTS ABOUT THE AGENCY* (2016), <https://www.fmcs.gov/wp-content/uploads/2016/10/FMCS-Fast-Facts-3.10.2016.pdf>.

<sup>41</sup> *Id.*

<sup>42</sup> See generally *Key Events in Canada's Trucker Protests Against COVID Curbs*, *supra* note 4; Brian Holb, *Making the Case for Mediation in Public Sector Labor Relations*, AM. BAR ASS'N. 1 (2017), [https://www.americanbar.org/content/dam/aba/administrative/dispute\\_resolution/boskey/mediation\\_in\\_public\\_sector\\_labor\\_relations.pdf](https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/boskey/mediation_in_public_sector_labor_relations.pdf).



Freedom Convoy largely consists of workers (truck drivers).<sup>43</sup> While the workers were not in dispute with management, their protests, strikes, and lockouts did disrupt the flow of commerce.<sup>44</sup> This made mediation time-sensitive.<sup>45</sup> Scholars who have studied labor–management mediation have written “[s]imply outlawing strikes and lockouts does not seem to be the answer” and “[t]he knowledge of both parties that their disputes have been equitably settled should be the goal.”<sup>46</sup> Similarly, simply ending the protest here was not ideal. The goal should have been to allow the Freedom Convoy to walk away from the negotiating table knowing their interests had been fairly considered. One reason labor–management disputes are particularly well-suited for mediation is because of the need for a continued relationship between the parties.<sup>47</sup> Mediation “gives the parties an opportunity to show their willingness to engage in frank communications about the issues and their interests [that] can go a long way towards preserving, enhancing, or even repairing relationships.”<sup>48</sup> Similarly, the Freedom Convoy, or Canadian truckers more generally, will have a continuous relationship with the Canadian government. Therefore, the proposed mediation could be a first step toward mending that relationship.

High-stakes strikes, with international media coverage, have been mediated to mutually acceptable resolutions in the past. For example, in 1981, the Major League Baseball Players Association went on strike over a disagreement on free-agent compensation.<sup>49</sup> This strike occurred in the middle of the professional baseball season and thus needed a hasty resolution.<sup>50</sup> Ken Moffett of the National Labor Relations Board mediated the dispute, and after a fifty-day strike, an agreement was reached.<sup>51</sup> One lesson that the

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<sup>43</sup> See Erik Hertzberg & Esteban Duarte, *Trucker Protests Threaten Canada with Inflation, Negative Growth*, BLOOMBERG (Feb. 10, 2022), <https://www.bloomberg.com/news/articles/2022-02-10/trucker-protests-threaten-canada-with-inflation-negative-growth>.

<sup>44</sup> See *Key Events in Canada's Trucker Protests Against COVID Curbs*, *supra* note 4.

<sup>45</sup> See Hertzberg & Duarte, *supra* note 43.

<sup>46</sup> Marlyn E. Lugar, *Negotiation, Mediation and Especially Arbitration in Labor Disputes*, 51 W. VA. L. Q. 201, 201 (1949).

<sup>47</sup> See Holb, *supra* note 42, at 3.

<sup>48</sup> *Id.* at 15.

<sup>49</sup> See Chris Bumbaca, *Explaining the 1981 MLB Season: How Baseball Survived Shortened Year*, USA TODAY, <https://www.usatoday.com/story/sports/mlb/2020/03/15/1981-mlb-season-coronavirus-delay-baseball/5054780002/> (last updated Mar. 16, 2020, 12:48 PM ET).

<sup>50</sup> See *id.*

<sup>51</sup> See Julie Cart, *Strike 85?: The Mediator: Moffett Tells How He Worked to Settle the Walkout of '81*, L.A. TIMES (Aug. 6, 1985, 12:00 AM),

mediator of the Canada–Freedom Convoy could have learned from the Major League Baseball mediation was the potential benefit of escaping constant media presence. Moffett had moved the mediation from New York to Washington, D.C., because “[they] weren’t getting anywhere. [They] were meeting all morning, [would] break for lunch, go before the cameras, go back, break, go before the cameras.”<sup>52</sup> Such an approach may have been beneficial in the Canada–Freedom Convoy mediation, since the media had latched onto the protests and may have also been a disturbance to the mediation.<sup>53</sup>

### C. COUNTERARGUMENTS

One might consider the unilateral approach that the Canadian government took as preferable because it resulted in an expedient return to the flow of commerce.<sup>54</sup> However, as previously discussed, a pause on the Ambassador Bridge blockade could have been negotiated while the mediation was in progress to minimize economic damages in the interim. Opponents of mediation may also argue that the Canadian government’s approach was preferable because it would disincentivize future such protests, whereas any concessions obtained from the government in mediation would encourage future protests. However, the reality appears to be the opposite: the Freedom Convoy was further emboldened because the government ignored its demands, thus sparking similar protests around the world.<sup>55</sup> Finally, the Canadian government may have seen a “failed” mediation as a possibility, and chose not to waste time and resources on an uncertain prospect of agreement.<sup>56</sup> However, just because a mediation does not reach an agreement does not mean it was a “failure.” Even mediations that do not reach

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<https://www.latimes.com/archives/la-xpm-1985-08-06-sp-4903-story.html>; *see also* Bumbaca, *supra* note 49.

<sup>52</sup> Cart, *supra* note 51.

<sup>53</sup> For examples of media coverage of the Canada–Freedom Convoy dispute, see, e.g., Berryman, Yan & Elamroussi, *supra* note 5; Tarnowski, Morgan & Helgren, *supra* note 10; and Gillies, Krisher & Householder, *supra* note 12.

<sup>54</sup> *See* Hertzberg & Duarte, *supra* note 43.

<sup>55</sup> *See* Grace Hauck, *After Canada, US Truckers Decided to Start Their Own “Convoy.” What Are they Protesting?*, USA TODAY (Feb. 24, 2022, 5:01 AM),

<https://www.usatoday.com/story/news/nation/2022/02/24/american-trucker-protest-convoy/6908491001/?gnt-cfr=1>.

<sup>56</sup> *See* Susan Rose, *Canadian Trucker Protest Endgame: “They Need a Negotiator or a Mediator,”* WBEN (Feb. 7, 2022, 8:44 AM), <https://www.audacy.com/wben/news/local/canada-trucker-protest-they-need-a-mediator>.

an agreement can achieve many of the aforementioned benefits. For example, Christopher Moore’s mediation satisfaction triangle has three sides, only one of which is mediation’s substantive results.<sup>57</sup> When there is a fair and equitable procedural process, the parties can feel heard and respected, thus leading to satisfaction from the mediation process.<sup>58</sup>

### III. CONCLUSION

The Canadian government’s unilateral approach in shutting down the Freedom Convoy demonstrations arguably led to feelings of disenfranchisement among the group and fanned the flames of future protest. Moreover, in using this approach, the government sent a signal to all Canadian citizens about how it would likely handle such disputes in the future. Though the government’s unilateral approach was expedient here, when the government’s relationship with a large group of citizens is damaged, it can hardly only consider expediency in its calculations. Mediation, on the other hand, could have given the Freedom Convoy and other similarly situated groups a sense of control, facilitated more creative solutions, and saved time and money for all parties involved. A mediator appointed to facilitate this type of discussion could have taken a page from the book of both public policy and labor–management mediators, as the Canada–Freedom Convoy dispute bears a resemblance to situations that call for both of these mediation types. Both public policy and labor–management mediations have unique benefits that the parties to the proposed Canada–Freedom Convoy mediation could have reaped, and lessons from similar past mediations could have helped the proposed mediation succeed. If similar protests emerge in the future, in Canada or elsewhere, governments should consider accepting the proposals of lawmakers like Ottawa Mayor Jim Watson and trying mediation instead of resorting to force.

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<sup>57</sup> See MOORE, *supra* note 37, at 128.

<sup>58</sup> *Id.*