Report of the Public Inquiry into the 2022 Public Order Emergency

Volume 4: Process and Appendices

The Honourable Paul S. Rouleau, Commissioner

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PUBLIC ORDER EMERGENCY COMMISSION

PUBLIC ORDER EMERGENCY COMMISSION | COMMISSION SUR L'ÉTAT D'URGENCE

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The Commission's Process

1. Introduction

Acting as the Commissioner for the first-ever public inquiry held pursuant to the provisions of the *Emergencies Act* was an honour and a daunting task. It presented unique challenges, long hours, and difficult work. It was also one of the most rewarding mandates of my career. In this chapter, I describe the work of the Commission in fulfilling its mandate, from its first days to the preparation of this Report.

2. Establishing the Commission

The Commission was established on April 25, 2022, by Order in Council 2022-392. Under the *Emergencies Act*, the deadline for the Commission to table its Report was 360 days after the Public Order Emergency ended. The Federal Government established the Commission two months after the end of the Public Order Emergency, which meant that I was left with only 300 days to fulfill my mandate. Much of what the Commission did throughout its existence was driven by this exceptionally short timeline.

2.1 Assembling the Commission's staff

After being appointed Commissioner, the first person I reached out to was Shantona Chaudhury, whom I asked to act as my co-lead counsel. She accepted, and together we began to assemble the team that I would need to fulfill my mandate. Shantona proved to be invaluable and thanks to her good judgment, the team we assembled was exceptional and made the task we faced achievable. I also reached out to Jeffrey

Leon, who agreed to join as co-lead counsel. He brought a wealth of experience and quickly became a key resource for me. I relied on Shantona and Jeff to organize and manage the Commission's legal staff, to devise and execute the Commission's investigative plan, and to advise me on dozens of legal and policy issues that arose throughout my tenure in delivering on my daunting mandate.

Organizing a commission of inquiry is a difficult and monumental task. I knew that I quickly needed to retain a senior staff member who would work closely with me to get the Commission up and running. I was exceptionally fortunate that Hélène Laurendeau, a former deputy minister within the federal government, agreed to act as the Commission's executive director. Hélène was responsible for all aspects of the Commission's administration, including financial and human resource matters, contract administration, and operational planning. Her experience, intelligence, and good judgment made her invaluable to the Commission's work. I relied heavily on her to assist me in understanding and applying the myriad of rules, policies, and procedures that apply to federal commissions of inquiry. Without her, I literally would not have been able to do my job.

With the Commission's senior staff in place, we began the work of creating the foundation of the Commission. We selected a core team of senior Commission counsel, based out of Toronto and Ottawa, along with a pair of talented juniors to assist them. As the Commission's workload grew, I hired additional counsel. By the time the Commission held its public hearings, there were 20 Commission counsel members, including the co-leads. In addition, the Commission retained three regional counsel to assist in its work in British Columbia, Alberta, and Manitoba.

While building our legal team, the Commission also hired dedicated administrative staff. Their duties included providing administrative assistance to Commission counsel as well as office management, file management, contract administration, and the hundreds of other duties necessary to move the work of the Commission forward.

Given the wide-ranging public interest in the Commission's mandate and the importance of effectively communicating with the public, I also hired a communications advisor to assist with media relations, the website, and our social media presence.

I was fortunate to obtain the assistance of several senior policy advisors with specialized experience in subject areas important to the Commission, including policing, national security, and the machinery of government. The Commission also benefited from the advice and assistance of senior policy advisors who had significant experience in the conduct of public inquiries.

It is impossible to describe the quantity and quality of work these individuals provided to the Commission. I will simply say that all of them demonstrated commitment, skill, and professionalism throughout their tenures with the Commission. I do not think I could have assembled a better team to assist me in discharging my mandate. Each of them has my sincere thanks for their efforts.

2.2 The Commission's offices

The Commission had offices located in Ottawa and Toronto. The Ottawa office was established first and housed the Commission's executive director, most of its administrative staff, and much of the legal team. The remainder of Commission counsel were based out of a satellite office in Toronto and relocated to Ottawa just before the start of the public hearings.

The Commission had some challenges in setting up these offices, especially in Toronto. Extensive workspace modifications were necessary to accommodate the security systems required to handle classified materials. Due to the limited number of offices that were set up to access the secured networks, Commission counsel were sometimes unable to access classified documents.

Technology created multiple operational issues that required workarounds in order for counsel to keep the Commission moving forward. The Toronto office had internet

connectivity issues during the first two months of the Commission's operation, and a specialized secure video link between the Toronto and Ottawa offices frequently malfunctioned, making it impossible for Commission counsel to discuss classified information during all-counsel meetings. Fortunately, the Privy Council Office — which was responsible for providing Information Technology resources for the Commission — was responsive to these issues. It expended significant efforts to resolve the technical problems that plagued the Commission in the early months.

There were several other challenges to deal with as we set up our offices. Some were related to the sensitive nature of the Commission's work, such as the time it took to acquire secure filing cabinets and briefcases, as well as top-secret rated paper shredders. Others included ensuring that Commission staff had the security passes necessary to move between the Ottawa and Toronto offices. However, by the end of May, the Commission's offices were up and running.

3. The Commission's investigative process

3.1 Structuring the investigation

The broad scope of my mandate required an equally broad investigation. This was the first time a Public Order Emergency had been declared pursuant to the *Emergencies Act* and the first inquiry held pursuant to the Act. The Order in Council appointing me and containing my mandate included a series of additional areas for enquiry. In order to examine all the topics within my mandate, I was required to review the conduct of a wide range of institutions and individuals from across Canada, from protesters to police services to political bodies such as Cabinet. Examining the Federal Government alone meant looking into the actions of dozens of ministers, departments, and agencies. Investigating each of the entities that played a role in the events I was mandated to examine required a distinct knowledge base, skill set, and investigative strategy.

An additional challenge facing the Commission was the need to complete its investigation by a very short deadline. Meaningful public hearings were an essential part of this Inquiry; to permit this, however, the Commission's pre-hearing investigation had to be conducted in an incredibly short time frame. Once the Commission was set up, there were only three or four months to request and review documents and undertake the necessary investigations. In order to accomplish this, the Commission was required to conduct a series of parallel, distinct investigations.

The Commission's investigation was conducted based on a set of distinct dossiers or areas of focus. Each dossier was led by one of the senior Commission counsel members. Initially, there were five areas of focus: the Federal Government (headed by the co-lead counsel), the protesters, the municipalities, the provinces, and the police. A sixth was later created to explore issues related to fundraising and financial issues. The work on each dossier was conducted largely independently from the others.

It rapidly became apparent that, while this parallel investigation strategy worked in terms of pursuing a range of different avenues quickly and efficiently, the Commission needed to ensure that knowledge was shared between the teams, as information uncovered through one investigation frequently shed light on matters relevant to others. Two principal strategies were used to create a consistent flow of shared information. First, junior Commission counsel were cross-appointed to assist on multiple dossiers, ensuring that each investigation team had direct knowledge of the work being done within other dossiers. Second, the Commission held weekly all-counsel meetings, where senior Commission counsel provided updates on work done the previous week. Senior Commission counsel also maintained constant contact with each other and frequently met to discuss their respective investigations.

While senior Commission counsel conducted their investigations according to the unique requirements of the persons and bodies that they were examining, commonalities between investigations included document collection, witness interviews, and the preparation of materials for the public hearing.

3.2 Collecting documents

It was clear from the beginning that our investigation would be document heavy. Early in the process, the Commission sent out document requests to a range of record holders. In several cases, the Commission was asked by the subjects of these requests to exercise its power to compel the production of documents. While this power was not used as a first resort, as Commissioner, I issued summonses under section 4(b) of the *Inquiries Act* where record holders requested it. Some record holders were located outside of Canada and it may have been beyond my ability to require the production of documents. In these cases, Commission counsel negotiated with the relevant persons to obtain their voluntary co-operation. Generally speaking, such co-operation was forthcoming.

The Commission obtained documents in two ways: one unique to the Federal Government and one for all other record holders. The Federal Government had hundreds of thousands of documents identified as potentially relevant to my mandate. Managing this number of documents would have been difficult enough under normal circumstances; it was virtually impossible given the Commission's compressed time frame. Document management was further complicated by the fact that thousands of the relevant documents were classified by the Federal Government as "Secret" or "Top Secret." Thousands more contained information that was the subject of claims under sections 37 – 39 of the *Canada Evidence Act* (i.e., public interest privilege, national security confidentiality, and perhaps more problematic, Cabinet confidences).

As a result, the Commission had to be creative and proportionate in its approach. At the outset, the Commission decided that it would not seek to review each and every document potentially relevant to its mandate. Instead, the Commission sent the Federal Government a series of increasingly specific document production requests. Early requests identified types or categories of documents that the Commission had reason to believe were relevant to its work. As Commission counsel reviewed these documents and learned more about the activities of the Federal Government,

it issued a series of supplementary disclosure requests. This iterative approach had the benefit of avoiding "document dumps" from the Federal Government, which would have been impossible to review in the time available, with little practical benefit for the Commission. The Federal Government ultimately produced over 23,000 documents.

The Commission also negotiated an agreement with the Federal Government that documents would initially be produced without redactions for sections 37 – 38 of the *Canada Evidence Act*. Documents provided to the Commission containing information that could be subject to a claim under these sections would be flagged but un-redacted. This allowed the Commission to view all information potentially subject to these privileges, and greatly enhanced its understanding of the evidence during the investigation. The documents produced were redacted, if applicable, for solicitor – client privilege, litigation privilege, irrelevant information, personal information, informer privilege, and because they contained information falling under certain statutory disclosure prohibitions, including section 55 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and section 18.1 of the *Canadian Security Intelligence Service Act*.

The question of Cabinet confidences was dealt with separately and proved much more difficult to overcome. The Federal Government was initially very reluctant to permit the Commission to examine any information that was covered by Cabinet confidence. Unlike information potentially subject to a privilege claim under section 37 or 38 of the *Canada Evidence Act*, there was no possibility of the Commission receiving un-redacted versions of documents containing Cabinet confidences. The Federal Government initially took the position that the Commission should not receive any information protected by Cabinet confidence. However, I formed the view that it would be challenging, if not impossible, to fulfill my mandate without knowing what information was before Cabinet when it made the decision to invoke the *Emergencies Act*. What followed were weeks of difficult negotiations between Commission counsel and representatives of the Federal Government. While this process was not an easy one, it ultimately resulted in an agreement that permitted the Commission to do its

job. The Commission received full access to the information that was before Cabinet when it considered the circumstances leading to the declaration of the Public Order Emergency and the special temporary measures for dealing with the emergency. The substance of the deliberations and positions taken by individual Cabinet members, however, remained protected. This agreement suited the Commission as our interest was in knowing what information was before Cabinet, not the opinions of individual ministers. Because of this agreement, the Commission was able to examine all the information Cabinet relied upon to make the decisions that are at the heart of this Inquiry.

The Commission's mandate required it to "use the automated litigation support system specified by the Attorney General of Canada." This was a reference to a system called *Ringtail*, which the Department of Justice uses to manage and produce its documents. Commission staff could only access *Ringtail* on the secure network known as CABNET, which was only accessible in person at the Commission's Ottawa and Toronto offices. Only security-cleared Commission staff and contractors had access to CABNET.

Other parties produced documents to the Commission directly. These documents were often produced in un-redacted format, without prejudice to any privilege claims that a party might assert. Almost 62,000 documents were produced from more than 30 record holders. These documents were placed into a cloud-based document management system called *Relativity*. Unlike *Ringtail, Relativity* could be accessed by Commission staff from any location. It was therefore also possible to grant individuals outside of the Commission access to *Relativity*. It was for this reason that the Commission ultimately used *Relativity* as its document management platform during the public hearings themselves.

The Commission retained a legal advisor with specialized experience in complex document management to manage the large volume of documents. It also contracted an external electronic document management firm to process, code, and organize documents and manage the Commission's *Ringtail* and *Relativity* databases.

Like Commission counsel, the lawyers working for the Commission's document management firm were required to obtain the necessary security clearances to access CABNET.

The requirement to operate a separate document management system for the Federal Government resulted in a number of issues for the Commission. First, the version of *Ringtail* used by the Department of Justice was a legacy platform, and few people outside of the government are familiar with it. The external document management firm retained by the Commission had difficulty locating people with sufficient expertise and ultimately had to bring in a project manager from British Columbia.

Second, the Commission had to work on two different platforms simultaneously. While some of the Federal Government's documents were migrated to *Relativity* for the purposes of the public hearings, this was a very slow process. Before any Federal Government documents flagged as potentially containing information subject to section 37 or 38 of the *Canada Evidence Act* could be exported, they had to go through a line-by-line review for national security information by Department of Justice counsel and the appropriate departments and agencies. The Federal Government did not begin delivery of documents in publicly releasable and *Relativity*-compatible format until the end of September 2022. The Commission then had to consider whether these documents were over-redacted, which presented its own set of problems. While the Commission was aware of the information behind the redactions, other parties were not. The redactions also limited the evidence that Commission counsel could present during the public hearings. In certain instances, Commission counsel challenged these redactions and were successful in having them lifted before the documents were provided, in publicly releasable format, to the parties. Fortunately, the majority of documents produced by the Federal Government were publicly releasable without redactions.

Finally, documents containing information classified as "Top Secret" had to be addressed separately because they could only be viewed in person at a secure facility

by Commission counsel with proper security clearance and access levels. Fortunately, the volume of this information was low, as only two federal entities produced documents classified at the "Top Secret" level.

Four Commission counsel, in addition to myself, obtained the necessary security clearances for accessing top-secret information. They were provided with access to a secure location and network which was facilitated by the Privy Council Office. With this process in place, Commission counsel were able to review the approximately 300 top-secret documents produced by the Federal Government to the Commission. Of these, roughly 65 documents were identified as relevant to the Commission's mandate. In addition to the classified documents that were produced to the Commission, all the Commission's related work product was, and continues to be, separately stored on the top-secret network in order to guard against accidental disclosure of classified information. The removal, transfer, and storage of classified information is subject to strict security protocols, which require that this component of the Commission's work be maintained and archived on the top-secret network as well.

3.3 Witness interviews

Commission counsel began witness interviews in July 2022. Initial interviews were largely exploratory, as they were often conducted before Commission counsel had received or reviewed any documents from the parties. As they received documents and gathered information from prior interviews, Commission counsel were able to focus subsequent interviews more precisely. Some witnesses were re-interviewed as additional facts informed the investigation.

At the outset, the Commission had to decide on the format of interviews. The style and format of such interviews ranges widely among commissions of inquiry, depending on their needs. At one end of the spectrum are inquiries that conduct formal witness interviews under oath and prepare transcripts of the interviews. On the other end are

commissions that conduct informal interviews without recording answers or receiving them under oath.

Ultimately, the Commission chose an approach leaning toward the informal end of the spectrum. This was due, in part, to the diversity of the interviewees and our desire to obtain as much candour as possible. The Commission believed that witnesses would be more willing to provide full and candid information in an informal interview setting, compared to one that approached a civil examination for discovery. By choosing an informal approach, Commission counsel were also free from issues related to the admissibility of evidence and could ask witnesses to speculate or provide opinions. This approach worked well, and the Commission's interviews largely avoided delays, disputes, and objections to questions or overly guarded answers from witnesses.

The Commission's interview process followed this general model: Once witnesses agreed to be interviewed, they were asked to sign an undertaking form indicating their agreement not to disclose any documents that the Commission might show them during the course of their interview. This was necessary to protect the integrity of the investigation process, and because documents were often obtained by the Commission based on a commitment that they be kept confidential during the investigation. The requirement to sign an undertaking was occasionally misunderstood by witnesses, some of whom believed it required them to keep their interviews secret or prohibited them from discussing relevant matters with anyone. In most cases, Commission counsel were able to explain the limited scope of the undertaking forms, but there was a small handful of witnesses who refused to sign and therefore were not interviewed.

Once witnesses provided their undertakings to the Commission, Commission counsel normally gave them a list of topics or copies of the documents they intended to ask the witnesses about in the interview. This was particularly useful when witnesses were representing large organizations, as it permitted them to familiarize themselves with the information that the Commission was seeking. Commission counsel had

no interest in taking anyone by surprise, and the pre-interview disclosure made to witnesses helped to make the interviews productive.

During pre-hearing interviews, witnesses were not placed under oath and the interviews were not transcribed. Instead, Commission counsel took detailed notes, which were then used to produce summaries of what was said. While a small number of interviews were conducted in person, most were done by video conference. This was useful because many of the interview subjects were located outside of Ottawa or Toronto, including several who resided outside of Canada. Most interviews of Federal Government witnesses occurred in person, in part because the interviews were being conducted at the "Secret" (or in one case, "Top Secret") level. For security reasons, these interviews could only take place in person or by secure link. The Commission conducted in-person interviews in Ottawa, Toronto, Vancouver, and Regina.

Most interviews were conducted with a single witness; however, in some cases, Commission counsel conducted interviews with panels of witnesses. For example, over the course of approximately two weeks in late August 2022, Commission counsel conducted interviews with more than 50 senior officials from more than a dozen federal departments and agencies. These interviews were frequently conducted in panel format due to the department-wide scope of the questioning. No one person could effectively provide the information sought by the Commission. Commission counsel found the panel format of interviews useful in obtaining relevant information from large institutions, though the interviews were occasionally lengthy due to multiple individuals providing responses.

3.4 Producing summaries of interviews

Once interviews were completed, Commission counsel prepared summaries and shared them with the witnesses in one of two types of documents — Interview Summaries and Statements of Anticipated Evidence — depending on whether or not the witness formally approved the document.

In the case of Interview Summaries, witnesses reviewed the summaries produced by Commission counsel and were given the opportunity to correct, clarify, or revise the information contained in them. Where information was sensitive due to national security or other reasons, Commission counsel attempted to word the document in such a way as to ensure that the essence of the information was clear to the reader. Once the witness and Commission counsel agreed on the accuracy of the summary, the witness communicated their approval of the document, and the summary could be attributed to the witness. Under the Commission's *Rules of Practice and Procedure,* these summaries could be submitted at the public hearings as substantive evidence.

Statements of Anticipated Evidence were different in that, while they were based on interviews conducted by Commission counsel, they were not approved by the witnesses and may not have even been reviewed by them. They were most commonly produced when the Commission spoke to individuals who were or might be facing criminal charges or civil proceedings. Because the Commission did not compel anyone to participate in an interview, witnesses facing legal jeopardy were unable to obtain the protections of section 13 of the *Charter of Rights and Freedoms* or section 5 of the *Canada Evidence Act*. Agreeing to an interview summary that could be attributed to them might conflict with their individual legal interests.

Statements of Anticipated Evidence were purely Commission-produced documents and therefore could not be attributed to the witness in question. These documents were largely produced to help parties at the public hearings anticipate what an individual might say if called to give evidence.

To ensure that individuals in this situation had adequate legal advice, the Commission retained the services of duty counsel. The role of duty counsel was to speak with potential witnesses and give them information and advice about the possible consequences of providing a voluntary statement to the Commission. The Commission paid for the services of duty counsel but was not privy to any communication they had with potential witnesses. The Commission's only involvement was to provide potential

witnesses with duty counsel's contact information and to encourage them to take advantage of this resource.

Many individuals who were or might be facing charges declined to be interviewed by the Commission. Those who did agree frequently did so only on the understanding that they were not agreeing to an interview summary. The Commission recognized the legitimacy of this position and used Statements of Anticipated Evidence as a middle ground.

In total, Commission counsel interviewed approximately 140 individuals, ranging from grassroots protest participants to the most senior members of government.

4. The Commission's research program

My Terms of Reference included a direction to consider making recommendations related to matters within my mandate. To do so required expert assistance in a range of fields including law, sociology, economics, policing, and disaster management. No one individual had the expertise needed to assist the Commission in all of these aspects; therefore, I decided early on that the Commission required policy and research staff in addition to the Commission counsel team. I recruited Geneviève Cartier — a full Professor of Law at the Université de Sherbrooke, with experience working with the Charbonneau Commission in Quebec — to head up this team. Professor Cartier led a seven-member Research Council composed of academic experts from across Canada.

The Research Council provided key services to the Commission. In consultation with me and Commission counsel, Research Council members prepared a research agenda and an implementation plan to map out the areas of enquiry required for the Commission to successfully deliver on its policy mandate. Based on this, the Council recommended a series of more than a dozen research papers that were commissioned to help inform our work. The Council identified topics, sourced expert authors, and

reviewed drafts of materials before they were presented to the Commission. While these papers represented only the views of their individual authors and did not in any way bind me, they did help me to understand the many underlying policy issues that arose within my mandate. I ultimately elected to publish these papers and share them with parties to the Inquiry. I have also included them in a separate volume of this Report so that readers considering my recommendations can benefit from their content as well.

The Research Council also provided me with briefing notes on other topics that Commission counsel and I identified as needing analysis, but which did not merit a full research paper. Finally, the Research Council held an important role in designing and executing the policy phase of the public hearings. I describe that aspect of the Commission's work later in this chapter.

5. Parties and funding

My mandate directed me to grant standing and provide participatory rights to individuals and groups with a direct and substantial interest in the subject matter of the Inquiry if I was convinced that they would provide a necessary contribution to the work of the Commission. I was also directed to give both the Government of Canada and the government of any province that requested it "an opportunity for appropriate participation." My Order in Council also indicated that I could make recommendations to the clerk of the Privy Council to provide funding to a party if, in my view, they would otherwise be unable to participate in the Inquiry. The power to award funding remained in the hands of the clerk; however, I am satisfied that she gave my recommendations due consideration.

On June 1, 2022, the Commission published a notice to its website informing the members of the public about the process for seeking standing and funding. On the same day, the Commission released its *Rules on Standing and Funding*. I set June 15, 2022 as the deadline to file standing applications with the Commission. By that

deadline, I received 39 applications from individuals, organizations, and groups, including applications in which multiple people or organizations jointly sought standing with each other. Several applications also included a request that I make a recommendation for funding. Out of these 39 applications, I granted standing to 20 parties or groups of parties. In the months that followed, I received a small number of late-filed requests for standing and funding, as well as requests to change the scope of standing or to seek funding where none had previously been requested. These requests were addressed in a series of decisions that were released from June to October 2022. The decisions were published on the Commission's website and are included in this Report as appendices to this volume.

Different applicants were granted different forms of standing. Many applicants had their standing limited to specific topics or areas, or had their participatory rights limited in some way, such as only making written submissions. Others were permitted to participate in all aspects of the Commission's mandate and were given full participatory rights. Some applicants were required to share a single grant of standing. This occurred when I concluded that their interests and perspectives substantially overlapped to the point where it was not necessary to grant them separate standing. Ultimately, there were 22 grants of standing made to individuals and organizations. A final list of the parties with standing is included as an appendix to this volume.

6. Preparation for the hearing

Preparing for and organizing the public hearings required a great deal of work. These efforts were led by the Commission's executive director, with extensive involvement of her administrative team, as well as a group of Commission counsel who took on operational duties in addition to their investigative work.

6.1 Document management

One of the most difficult aspects of the Commission involved the document management system used to give access to relevant materials to parties with standing both before and during the hearings. As I discuss earlier in this chapter, the Commission utilized two different systems: *Ringtail* to manage the confidential federal documents, and *Relativity* for documents produced by other parties as well as the subsequently redacted federal documents that were considered relevant to the work of the Commission. The Commission chose *Relativity* as the platform for sharing documents with parties and for use during the hearings because, as a cloud-based platform, it was accessible from anywhere in the world. The Commission provided approximately 220 *Relativity* access licences to the parties, approximately half of which went to the Federal Government. *Relativity* was also the platform that the Commission's document management firm was most familiar with, and therefore was least likely to create issues during the hearings.

The Commission ultimately ran three distinct databases on *Relativity*: the Commission Review Database, the Party Database, and the Multimedia Database.

The Commission provided parties with a Document Management Protocol that set out the requirements for importing "load files" to *Relativity* as well as guidelines for the metadata needed to accompany the files. While some parties were able to comply with the technical requirements of the Document Management Protocol, others lacked the resources, knowledge, or in some cases, interest necessary to comply with this process. The Commission was required to be flexible in how it received documents.

Once documents were entered into the Commission Review Database, Commission counsel reviewed them and identified those that should be disclosed to the parties. This process required Commission counsel to exercise careful judgment. While the Commission wanted to be as transparent as possible and provide parties with broad access to materials, many of the tens of thousands of documents were of minimal

significance and only marginally relevant to the Commission's mandate. Quite frankly, it would not have been helpful to expect the parties to sort through a massive dump of documents in the limited time available before the hearings started. Ultimately, the Commission adopted a standard based on relevance and proportionality. A document would be promoted to the Party Database if Commission counsel reasonably expected that a party might want to review it, subject to the overarching consideration of proportionality. With this approach, of the approximately 62,000 documents reviewed by the Commission, about 21,000 were promoted to the Party Database. An additional 7,284 documents from the Federal Government were exported from *Ringtail* into the Party Database at the request of Commission counsel.

Before a document was moved to the Party Database, it had to be returned to the party that originally produced it for review and possible redaction. The Commission's *Rules* required parties to produce un-redacted documents without prejudice to their position on claims of privilege. This approach was necessary in light of the Commission's timeline, as the Commission could not afford to wait for the parties to redact the documents before producing them. However, this delayed the process of disclosing documents to the parties. Once per week, all documents flagged by the Commission as being promoted to the Party Database were sent to their originators with instructions to review and produce copies that were redacted for privilege and that had irrelevant personal information removed. Unfortunately, while most complied with the Commission's instructions and provided redacted documents promptly, some — including parties with standing — did not provide redacted documents in a timely way. This resulted in delays in documents being sent to the Party Database, as well as delays in the release of other types of documents, such as Overview Reports (discussed in more detail later in this chapter).

Obtaining redacted documents from the Federal Government presented the most significant challenges due to the national security, Cabinet confidence, and public interest immunity issues involved in those productions. As I discuss earlier in this chapter, the Commission benefited greatly from receiving copies of these materials

largely un-redacted for national security privilege and public interest immunity. However, before they could be produced to the parties, they had to go through a lengthy review process. In the case of documents flagged for national security, this involved a line-by-line review by numerous individuals, departments, and agencies. As a result, parties with standing did not have access to Federal Government documents in the Party Database until about two weeks before hearings began. Commission counsel continued to review and challenge problematic redactions during the course of the hearings. This process yielded significant results and, in cases where complete disclosure was not possible, summaries of the underlying information were produced in a manner that captured the relevance of the information for the benefit of the public and the parties. While far from ideal, witnesses were scheduled in such a way as to ensure that the parties had as much time as possible with relevant documents before these witnesses were called to testify.

The Commission also encountered problems with parties over-redacting documents. For example, some producing parties chose to redact all personal information contained in documents regardless of relevance, resulting in some documents being rendered incoherent and worthless. In other cases, parties applied national security or public interest immunity claims in a manner that the Commission found to be overly broad. As a result, Commission counsel were required to spend a great deal of time and effort negotiating with producing parties to receive properly redacted versions of documents that could be released to the Party Database.

The Commission also established a Multimedia Database to house the hundreds of hours of video and audio files submitted. Some of these files were too large to be housed in the Party Database, such as a series of 24-hour-long traffic camera videos provided to the Commission by the City of Ottawa. To address this problem, a separate database was created solely for the purpose of making these documents accessible to the parties.

6.2 Producing reports

In addition to documents provided to the Commission, the Commission itself generated a great deal of documentary evidence in the form of Overview Reports. These reports, which are similar to reports prepared by other commissions of inquiry, were designed to summarize a large body of evidence into a single document to prevent wasting precious hearing time on important but uncontroversial background evidence.

The Commission began the process for drafting Overview Reports by identifying topics that could effectively be presented in written format. Reports were then assigned to Commission counsel to draft. Counsel relied both on documents provided to the Commission by the parties, as well as materials obtained through their own efforts. Overview Reports were drafted in neutral, descriptive language and were heavily footnoted to provide reliable sources of information.

Once drafted, Overview Reports were reviewed by at least two other members of the Commission team, including at least one senior or co-lead counsel. Overview Reports were then distributed in draft form to all parties with standing for their feedback and comments. Although some parties provided comments that were more in the nature of advocacy, most of the feedback the Commission received was about clarifying areas in the reports and correcting minor errors. In keeping with the Commission's commitment to bilingualism, finalized Overview Reports were produced in both French and English.

Overview Reports were not taken as the final word on any of the matters addressed in them. All parties were free to challenge the content of these reports, or to make submissions on their relevance or the weight that should be assigned to them. I did not place greater weight on them because they were the product of work by Commission counsel.

In addition to formal Overview Reports, the Commission's staff produced material intended to assist in the hearing, such as slide decks. Because these documents

were not often presented as evidence or made into exhibits, they were not reviewed by the parties prior to the hearing. While I did not rely on these documents to make any findings of fact, they were useful tools for sharing information during the hearing.

The Commission also relied on various entities to produce their own reports for use by the Commission. Commission counsel asked both parties and non-parties to prepare reports, referred to as Institutional Reports, that described their structure and organization, and that summarized their actions and decisions with respect to matters relevant to the Commission's mandate. These reports, which could be adopted by a representative witness under oath, appended to an affidavit, or integrated into an Overview Report, served as an efficient and effective way for the Commission to obtain a significant amount of information along with its document review and interview activities, and to submit that information as evidence. The Institutional Reports provided to the Commission varied significantly in their style and level of detail, due in part to the fact that they were requested from a variety of different entities, ranging from technology companies to provinces. Many were heavily footnoted and served as useful tools for both the Commission and the parties to identify and review relevant documents that had been disclosed. In other cases, these reports allowed witnesses to testify more efficiently by adopting an Institutional Report at the outset of their evidence. At all times, the Commission treated Institutional Reports with appropriate caution, given that they were the product of individual parties. Parties with standing and Commission counsel were entitled to challenge the content of an Institutional Report.

6.3 The hearing venue

One of the first decisions the Commission had to make regarding the public hearings was the location. I did not want to use a courtroom for the hearings, because most courtrooms would not be large enough, and because I did not think that it would set the right tone for the hearings. In my view, it was important to remind both the parties and members of the public that this was not an adversarial legal proceeding, but

rather an open, less formal process designed to find facts and discover the truth of what led to the declaration of a Public Order Emergency and the measures chosen to address it.

Commission staff identified a number of possible venues for the hearings in Ottawa, including locations that had previously hosted public inquiries. Ultimately, I settled on the National Archives of Canada. The building was large enough to accommodate the hearings and to allow Commission staff to work on site. It had dedicated space for the parties, the media, and the interpretation services required. The building also contains a large auditorium that could be used as overflow space should the main hearing room reach capacity. The National Archives is also located on Wellington Street in Ottawa, near where many of the events that were central to the invocation of the Public Order Emergency took place. While it proved to be impractical to hold hearings in all the communities where important events occurred, I felt that it was appropriate to hold the hearings within steps of where the Ottawa protests took place.

The physical space required specific preparation to meet the needs of the hearings. Access to a secure network had to be arranged and adjustments made to ensure that workspace was available for the Commission and for parties with standing, as well as last-minute witness interviews and preparation. The venue was altered to permit simultaneous interpretation, including both spoken and sign language, and to give the media the ability to record and report on the proceedings. These changes were made with the understanding that the venue would continue to serve its regular role under the auspices of Library and Archives Canada.

Extensive alterations were required to make the hearing fully functional. It was necessary to ensure that the hearing could operate on a hybrid basis, involving both in-person and remote participation. While I preferred in-person proceedings whenever possible, I wanted to facilitate remote attendance when required. Many of the parties to the proceeding were located outside of Ottawa. Without remote participation, requiring their presence during the Inquiry would have presented an unfair burden. In addition,

while the public health situation was relatively favourable during the Commission's tenure, the potential for further COVID-19-related issues had to be considered. It was important to have contingency plans in place in case large in-person gatherings were not possible when hearings were scheduled to occur.

7. The public input process

In addition to providing participatory rights to individuals and groups who met the legal test to obtain standing, I considered it important to get a broader understanding of the views and experiences of a wide cross-section of Canadians. To gather this information, the Commission established a public submission process. Starting on August 18, 2022, and continuing until October 31, 2022, members of the public were invited to share their views and experiences on all aspects of the Commission's mandate. Individuals were welcome to provide their views in any format, but were given general guidelines and suggested questions in order to assist them in focusing their submissions.

The Commission ultimately received approximately 8,800 submissions from the public. Respondents self-identified as being from all age groups — primarily between the ages of 25 and 64, consistent with being representative of the Canadian population. Respondents were from nine provinces and territories across Canada, primarily from British Columbia, Alberta, Ontario, and Quebec — the provinces with the largest concentration of the population. Submissions were provided by those involved in the protests, those affected by the protests, and members of the Canadian public at large.

To assist the Commission in reviewing and analyzing this feedback, I retained the services of persons experienced in working with the media and managing public consultations. They ultimately provided the Commission with a report of their analysis, which is attached as an appendix. The submissions received were not part of the Commission's evidentiary record, but they were of great assistance to the Commission in appreciating how Canadians were affected and impacted by the

events of January – February 2022. They provided helpful and necessary context and background for the Commission's deliberations in this public Inquiry.

8. The hearing process

The Inquiry's public hearings were originally scheduled to begin on September 17, 2022, and to last for seven weeks, with six weeks of factual hearings followed immediately by one week of policy hearings. Preparing for a September 17 start was challenging given the delays in obtaining and disclosing documents; the large number of individuals the Commission sought to interview; and the need to prepare witness summaries, Overview Reports, and other documents before the hearings. However, it was also important to schedule hearings to allow sufficient time for me to prepare my final Report.

As it turned out, things did not go entirely according to plan. On September 2, 2022, the Commission announced that the public hearings would be delayed by approximately a month because I had recently been informed of a medical issue that required surgery. While I briefly considered resigning as Commissioner, given the advanced state of the proceedings and the reassuring medical advice that I received, I concluded that it was more appropriate for me to continue to serve. However, I needed time to recover, so the start of the hearings was moved to October 13, 2022. Because the seven weeks of planned hearings were already highly compressed, with Commission counsel input, I concluded that the length of the public hearings should remain unchanged.

In some respects, this delay benefited the Commission and the parties. It allowed Commission counsel additional time to obtain documents and conduct interviews, as well as prepare reports and prepare for the hearing itself. It also provided the parties with additional time to review documents and prepare for their own participation. The extra month was well used, as the Commission's staff continued to work long hours throughout to ensure that the hearings would be successful. In retrospect, while I am

satisfied that the September 17 start date could have worked, the delayed start to the hearings did not harm and, in fact, helped the work of the Commission.

The factual hearings began on Thursday, October 13, 2022, and concluded on November 25. With two exceptions, witnesses attended the hearings in person. Parties' counsel had the option to attend in person or via Zoom video conference.

As the Commission was only scheduled to hear evidence from witnesses for 31 days, I wanted the hearing time to be focused on testimony and not procedural matters. As such, Commission counsel and I regularly encouraged parties to raise evidentiary, procedural, or other issues with Commission counsel as soon as they arose, so they could be discussed and, ideally, resolved without requiring additional hearing time.

I am grateful for the co-operation of all parties in this endeavour. Most issues were resolved without my intervention. When I did need to make a decision, discussions between Commission counsel and the parties narrowed the grounds of disagreement.

More contested or complex matters were addressed through applications in writing. Where a party brought an application, Commission counsel set a deadline for the parties to provide their positions, following which I made my decision. In one case, counsel for a witness brought an application to have their client's testimony heard *in camera* or, alternatively, under a form of publication ban. This application, in addition to being shared with the parties, was shared with the media, who were invited to make submissions.

Decisions on these applications had to be produced quickly. As a result, they were often quite short. The decisions were posted to the Commission's website and are also contained as appendices to this Report.

Counsel's co-operation and collegiality did not spare them long hearing days. Most days, the Commission heard from two to three witnesses or panels of witnesses. In

all, the Commission heard from 76 witnesses. We regularly sat beyond 7 p.m. During the longest hearing day, we sat for 11 hours and 20 minutes. It was quite the feat.

In terms of examining witnesses, Commission counsel led all of the examinations. In advance of a witness's testimony, Commission counsel determined how much time they planned to examine a witness, which ranged from 45 minutes to seven hours. Parties then had the opportunity to request cross-examination, again in advance of the testimony itself. I worked from the general rule, established in other inquiries, that the parties would collectively have as much examination time as Commission counsel.

In requesting to cross-examine, parties were required to ask for a specific amount of time and provide a list of topics on which they sought to examine. With the assistance of Commission counsel, I then allocated time to parties based on these requests. With 20 parties, this proved to be challenging at times. Often, parties received 5 – 10 minutes of cross-examination time. The greater the party's interest in the evidence of the witness, the more time they were allocated. I also often allocated more time to the parties than Commission counsel, to avoid arbitrary limitations on who could cross-examine and for how long. Finally, I was regularly asked by parties for extra time during the course of their examinations. I granted all such reasonable requests, and on occasion, parties significantly exceeded their time allocations. It was ultimately up to each of the parties to determine how to best use their cross-examination time.

Unless the parties agreed otherwise, once the time allocations had been made, cross-examination proceeded from longest allocated time to shortest, with the witnesses' own counsel proceeding last. Commission counsel had a final right of re-examination, after which I would sometimes ask my own questions of the witnesses.

With respect to documentary evidence, documents became exhibits during the hearings in a few different ways.

First, all documents appended to Overview Reports, Institutional Reports, interview summaries, or affidavits became exhibits at the same time those reports were entered into evidence. Commission counsel presented a number of Overview Reports on the first day of the public hearings. Additional Overview Reports were introduced through the hearings when their content related to the upcoming witnesses' testimony. Institutional Reports were adopted by a representative witness of the relevant institution during their testimony, or by way of affidavit.

Second, documents shown to witnesses during their examination at the hearings were marked as exhibits, absent a successful objection.

Finally, from time to time, Commission counsel sent the parties lists of documents that they intended to enter into evidence, but not in one of the manners described previously in this chapter. These became known as the "bulk entry" documents. The Commission's timelines made it impossible for Commission counsel to enter into evidence every material document through a report, affidavit, interview summary, or oral testimony. Bulk entry lists allowed the Commission to ensure that important documents were available to the Commission, as well as the parties and the public. Approximately once a week, Commission counsel provided the parties with a list of documents they proposed to bulk enter the following week. Parties then had the opportunity to object. Most documents were entered the following week without objection. Where there was an objection, Commission counsel and the objecting party often resolved the objection. In a handful of instances, where no agreement could be reached, I had to rule on whether or not a document was admissible.

Regardless of how a document was entered into evidence, parties were given the opportunity to review and object to a document before it was admitted. Documents were marked as exhibits using the unique identification number that they had been assigned when loaded into the *Relativity* platform. In reports, affidavits, summaries, and during testimony, documents were always referred to by their unique document ID number. This allows anyone to go on the Commission's website and quickly find

any documents referenced in an Overview Report, Institutional Report, interview summary, affidavit, or testimony transcript.

Commission counsel and parties were required to provide notice of the documents they might put to witnesses in advance of each witness's testimony. This had a few benefits. First, it allowed witnesses the opportunity to familiarize themselves with any documents they had not previously reviewed. Second, it allowed parties or Commission counsel to raise and resolve any admissibility or redaction concerns before the witness testified. Third, the disclosure allowed parties to understand what material might be covered by other counsel and adjust their examinations as a result.

Commission counsel provided their list of documents three days before a witness testified and parties provided their lists two days before. As was expected, where Commission counsel and parties identified additional documents after these deadlines, they provided notice and, in almost all cases, were allowed to also examine on these additional documents. Again, I am grateful to all counsel for their co-operation in dealing with the many documents the Commission reviewed.

Once a document was marked as an exhibit, it was part of the public record and posted to the Commission's website. As there was some delay between a document being tabled at the hearing and being posted online, media could request a copy of the document immediately from Commission staff.

Following the factual hearings, the Commission held an additional week of policy hearings. The policy phase of the Inquiry was designed to assist me in the forward-looking aspect of my mandate. In designing the policy phase of the hearings, I relied on both the assistance of the Commission's Research Council and the perspectives of the parties. More than a month before the policy phase began, the Research Council provided me with a proposal for eight roundtable discussions on various topics that were relevant to my mandate. This proposal was circulated to the parties for their comments. The Commission solicited feedback from the parties about the topics —

including whether additional roundtables should be held — as well as who should be invited to participate in the roundtables, and how those hearings should be held.

The Commission received a wide range of perspectives, including dozens of proposed participants and several suggestions to modify the scope of the proposed roundtables. Different parties had very different views on what the policy phase should look like. Some believed that roundtable discussions should occur in private, in the absence of either the public or the parties themselves. Others suggested a process similar to the factual hearing, in which counsel for the parties would have a right to cross-examine roundtable participants, or even be participants themselves.

Ultimately, the Commission held nine roundtables — one having been added as a result of the consultation process. Participants were recruited by the Research Council based on the suggestions of the parties, consultations with Commission counsel, and the Research Council's own views. I directed that the Council select participants that represented a range of backgrounds and viewpoints on the relevant topics, so that I could benefit from different perspectives.

In order to be as transparent as possible to Canadians, the roundtables were held in public sessions, just like the factual phase of the Inquiry. However, unlike the factual phase, the questioning of participants was taken out of the hands of lawyers and put into the hands of experts. Each roundtable had a moderator, most of whom were external to the Commission's staff.[1] Moderators met with roundtable participants prior to the hearings to map out the topics to be addressed and to have a preliminary exchange of ideas and viewpoints. Parties were invited to submit questions in writing a week prior to each roundtable, which were also discussed by the participants ahead of the hearings. During the hearings, parties could submit additional questions in writing to Commission counsel. The last half hour of each roundtable was reserved for addressing questions or topics that were submitted in this manner.

[1] Three roundtables were moderated by members of the Research Council.

During both the factual and policy hearings, the Commission provided simultaneous interpretation into English and French, as well as into American Sign Language and Langue des signes québécoise. This interpretation was available both to individuals present at the hearing, as well as those watching the livestream on the Commission's website.

Throughout the proceedings, the Commission's website played a critical role. The website was up by May 2022, and was used to post updates, formal notices to the parties, rules, and decisions that I released on standing and funding. When the hearings began, the website became one of the main tools by which the Commission made its proceedings transparent and open to the public. The public hearings were livestreamed on the Commission's website and were available for broadcast by the media. The videos of the hearings, as well as written transcripts, were also made available on the website. When documents were introduced into evidence and marked as exhibits, they were subsequently posted online. Documents generated by the Commission, such as Overview Reports, were posted in both English and French, often simultaneously. By the end of the hearings, the public had access to more than 300 hours of recorded testimony, thousands of pages of transcripts, and approximately 9,000 exhibits.

The Commission also held a one-day, *in-camera* hearing for the examination of three witnesses from federal intelligence agencies. The purpose of this hearing was to allow the witnesses to be examined on classified information that had been produced by their institutions. Having received a written request for the *in-camera* hearing from the Government of Canada, as well as representations as to the injury to national security that would arise if the information was publicly disclosed, I was satisfied that a closed hearing for the classified portion of the evidence was necessary.

The *in-camera* hearing was held on November 5, 2022, in a secure facility provided by the Designated Proceedings Unit at the Federal Court of Canada which offered exceptional support and accommodation, and to whom I wish to express my sincere

thanks. Parties were invited to provide questions or topics to Commission counsel in advance of the hearing. These questions and topics were then raised on the parties' behalf during the closed hearing. Commission counsel subsequently prepared a public summary of the *in-camera* hearing that was shared with the parties prior to the examination of the witnesses at the public hearing to ensure fairness and transparency.

9. Preparing the Report

While the delay in the start of the public hearings benefited the Commission and the parties in terms of the hearing itself, it caused significant issues in the production of this Report. The Commission was already facing serious challenges in meeting its statutory deadline to file a report to Parliament, and the delay in the hearings intensified them.

Producing a public report involves many steps beyond the simple drafting of text, and each of these steps can take a significant amount of time. A commission's report must be edited, usually by a team of professional editors. In the case of many inquiries — including this one — a report must be produced in both English and French. Finalized text must be formatted, typeset, and prepared for publication both in print and online, and the printed version of the report must be sent to a printer for production. Finally, in the case of inquiries such as this one, the entire report must be submitted to the Department of Justice for a line-by-line national security review to ensure that it can be tabled in Parliament and released to the public. Typically, the time needed for these steps is measured not in days or weeks, but in months. Only when one understands how long these steps take can the Commission's 300-day timeline truly be placed in context.

To put it differently, under the Commission's original timelines, I budgeted approximately seven to eight weeks to complete a finalized text of the Report in one language following the conclusion of the public hearings. This would allow about two months for editing, national security review, translation, and printing. With the delayed start of the

hearings, the Commission had only three or four weeks to write this Report, unless a different approach was taken. Unlike other commissions of inquiry, I was facing a statutory deadline that could not be extended absent an Act of Parliament, something I was loath to seek and could not count on obtaining.

I determined that the only way the Commission could meet its deadline was to begin the drafting process early and somehow compress the period needed for national security review, editing, translation, and publishing. For example, much of the present chapter was drafted prior to the public hearings, since it describes events that took place well before October 2022. Other portions of the Report, which did not turn on the evidence that would be heard at the hearings, could be drafted between September and November and adjusted to reflect relevant testimony.

Once evidence in a particular area was called and Commission counsel were no longer responsible for presenting evidence, they were asked to prepare comprehensive memoranda for me, outlining the area covered in testimony. During the hearings, using these memoranda, I worked with Commission counsel to develop the chapter or chapters that described this evidence. The drafting process became the complete focus of my time once the hearings had concluded, and Commission counsel assisted me greatly in this.

To allow for more than three to four weeks to prepare the draft, the Commission arranged to have editing and translation work done simultaneously. This meant that final, but unedited versions of text were sent for translation at the same time they were provided to the Commission's professional editing team for revision. After editing, the Commission's bilingual staff had to revise the translated text to be consistent with the newly edited English version. While far from ideal, this approach gave the Commission's translators a manageable workflow, which would not have been possible had they received all of the text only after full editing had been done.

10. Concluding observations

Conducting the first public Inquiry held pursuant to the provisions of the *Emergencies Act* was at once challenging and rewarding. I am pleased that, despite the time constraints and other pressures we faced, the Commission produced a fulsome Report conveying the information it uncovered to Canadians. It is my hope that, beyond shedding light on the circumstances under which the *Emergencies Act* was invoked, this review process will contribute to fostering trust and accountability in our democratic institutions.

Appendix 1

Order in Council PC 2022-392

April 25, 2022

April 25, 2022

Whereas on February 14, 2022, in response to blockades mounted in locations across Canada including Ottawa, Windsor, Coutts, Emerson and the Pacific Highway border crossing, and the adverse effects of those blockades, the Government of Canada declared a public order emergency under the *Emergencies Act* that was in effect until revoked on February 23, 2022;

Whereas the public order emergency granted the Government the authority to issue and apply temporary measures set out in the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*;

Whereas, under subsection 63(1) of the *Emergencies Act*, the Governor in Council shall, within 60 days after the expiration or revocation of a declaration of emergency, cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency;

And whereas, under subsection 63(2) of that Act, the report of the inquiry shall be laid before each House of Parliament within 360 days after the expiration or revocation of the declaration of emergency;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Prime Minister,

(a) directs that a Commission do issue, for the period ending on March 31, 2023, under Part I of the *Inquiries Act* and under the Great Seal of Canada, appointing the Honourable Paul S. Rouleau to be a Commissioner, to conduct an inquiry under the name of the Public Inquiry into the 2022 Public Order Emergency (“Public Inquiry”), which Commission must

> (i) direct the Commissioner to examine and report on the circumstances that led to the declaration of a public order emergency being issued by the federal government and the measures taken by the Governor

in Council by means of the *Emergency Measures Regulations* and the *Emergency Economic Measures Order* for dealing with the public order emergency that was in effect from February 14 to 23, 2022;

(ii) direct the Commissioner to examine issues, to the extent relevant to the circumstances of the declaration and measures taken, with respect to

(A) the evolution and goals of the convoy and blockades, their leadership, organization and participants,

(B) the impact of domestic and foreign funding, including crowdsourcing platforms,

(C) the impact, role and sources of misinformation and disinformation, including the use of social media,

(D) the impact of the blockades, including their economic impact, and

(E) the efforts of police and other responders prior to and after the declaration,

(iii) direct the Commissioner to set out findings and lessons learned, including on the use of the *Emergencies Act* and the appropriateness and effectiveness of the measures taken under the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*, and to make recommendations, as pertains to the matters examined in the Public Inquiry, on the use or any necessary modernization of that Act, as well as on areas for further study or review,

(iv) direct the Commissioner to submit to the Governor in Council a final report in both official languages on their findings and recommendations no later than February 6, 2023,

(v) authorize the Commissioner to

(A) adopt any procedures and methods that they may consider expedient for the proper and efficient conduct of the Public Inquiry, to accept submissions in the manner they choose, including electronically, and sit at any times, in any manner and in any place in Canada that they may decide,

(B) at the Commissioner's discretion, grant any person who in the Commissioner's assessment would provide necessary contributions to the Public Inquiry and satisfies the Commissioner that they have a substantial and direct interest in the subject matter an opportunity for appropriate participation in it,

(C) recommend to the Clerk of the Privy Council that funding be provided, in accordance with approved guidelines respecting the remuneration and expenses and the assessment of accounts, to any person described in clause (B) if, in the Commissioner's view, the person would not otherwise be able to participate in the Public Inquiry, and

(D) at the Commissioners' discretion, engage the services of the experts and other persons referred to in section 11 of the *Inquiries Act*, and pay them remuneration and expenses as approved by the Treasury Board,

(vi) direct the Commissioner to

(A) perform their duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization,

(B) perform their duties in such a way as to ensure that the conduct of the Public Inquiry does not jeopardize, any ongoing criminal investigation or proceeding or any other investigation, and provide appropriate notice to the government institution responsible of any potential impact, as identified by the Commissioner, on that ongoing investigation or proceeding,

(C) in conducting the Public Inquiry, take all steps necessary to prevent any disclosure of information to persons or bodies other than the Government of Canada that would be injurious to international relations, national defence or national security,

(D) have the Public Inquiry's primary office in the National Capital Region and use the accommodation provided by the Privy Council Office,

(E) follow established security procedures, including the requirements of the Government of Canada's security policies, directives, standards and guidelines, with respect to persons whose services are engaged under section 11 of the *Inquiries Act* and the handling of information at all stages of the Public Inquiry,

(F) use the information technology systems and devices and other electronic systems, including record management systems, and associated support, services and procedures specified by the Privy Council Office, including for records management and the creation and maintenance of websites,

(G) use the automated litigation support system specified by the Attorney General of Canada,

(H) ensure that, with respect to any public proceedings, members of the public can, simultaneously in both official languages, communicate with and obtain services from the Commissioner,

(I) file the records of the Public Inquiry with the Clerk of the Privy Council as soon as feasible after the conclusion of the Public Inquiry,

(J) provide the Government of Canada with an opportunity for appropriate participation in the Public Inquiry, and

(K) provide provincial, territorial and municipal governments with an opportunity for appropriate participation in the Public Inquiry, if they request it; and

(b) requires that the report of the Public Inquiry into the 2022 Public Order Emergency be laid before each House of Parliament by February 20, 2023.

Appendix 2

Revised Rules of Practice and Procedure

Introduction

On February 14, 2022, the Government of Canada declared a public order emergency under the *Emergencies Act.* The order was in effect until it was revoked on February 23, 2022.

Section 63(1) of the *Emergencies Act* provides that the Government shall, within 60 days after the expiration or revocation of a declaration of emergency, cause a public inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.

On April 25, 2022, by Order in Council 2022 -0392 ("Terms of Reference") the Public Order Emergency Commission (the "Commission" or "Inquiry") was established and directed to, among other things, examine and report on the circumstances that led to the declaration of a public order emergency being issued and the measures taken for dealing with the public order emergency.

The Terms of Reference direct the Commissioner to submit a report on his findings and recommendations no later than February 6, 2023.

Subject to the Terms of Reference and the *Inquiries Act,* R.S.C., 1985, cI-11 (the "Act"), the Commission has the power to control its own processes and make rules governing its practice and procedure as necessary to fulfill its mandate.

The Terms of Reference authorize the Commissioner to adopt any procedures and methods he considers expedient for the proper and efficient conduct of the Inquiry.

The Commission has announced its intention to hold public hearings beginning in September 2022 in Ottawa (the "Public Hearings").

*T*hese Rules of Practice and Procedure (the "Rules") apply to the conduct of the Inquiry and are designed to guide the Commission's public proceedings and the fulfilment of the Commission's mandate.

The Rules will be interpreted, applied or varied in a reasonable manner such that the Commission can complete its mandate in a timely manner, consistent with the statutory deadline and the provisions of the Order in Council.

General

1. These Rules apply to the Public Order Emergency Commission, established under the Act and pursuant to the Terms of Reference.

2. Subject to the Terms of Reference and the Act, the conduct of, and procedure to be followed at, the Inquiry is under the control and at the discretion of the Honourable Paul S. Rouleau (the "Commissioner").

3. The Commissioner may amend, supplement or vary these Rules or dispense with compliance with them as he deems necessary to ensure that the Inquiry is complete, fair and timely.

4. The Commissioner may make such orders or give such directions as he considers proper to maintain order and to prevent the abuse of the Commission's process.

5. In the computation of time under these Rules, except where a contrary intention appears,

   a. where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if the words "at least" are used;

   b. where a period of seven days or less is prescribed, holidays shall not be counted; and

c. where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

6. For the purpose of these Rules, the Commissioner will have discretion to determine what constitutes “reasonable notice” or “at the earliest opportunity” in all of the circumstances.

7. All Parties and their legal representatives are bound by the Rules of Practice and Procedure. They may raise any issues of non-compliance with the Commissioner, if unresolved in consultation with Commission counsel. Witnesses and attendees are bound by the Rules of Practice and Procedure, to the extent applicable.

8. The Commissioner shall deal with a breach of these Rules as he sees fit including, but not restricted to, revoking the standing of a Party, and imposing restrictions on the further participation in or attendance at (including exclusion from) the hearings by any Party, legal representative, individual, or member of the media.

9. In these Rules,

- “holiday” refers to Saturday; Sunday; New Year’s Day; Good Friday; Easter Monday; Christmas Day; the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning Sovereign; Victoria Day; Canada Day; the first Monday in September, designated Labour Day; National Day for Truth and Reconciliation, which is observed on September 30; Remembrance Day; and any day appointed by proclamation to be observed as a day of general prayer or mourning or day of public rejoicing or thanksgiving;
- “persons” refers to individuals, organizations, governments, agencies, institutions, associations or any other entity;
- “Party” refers to a person who has been granted standing to participate in the Commission pursuant to the Rules of Standing and Funding; and
- “documents” is intended to have a broad meaning, and includes all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models,

photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, social media content, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device.

Guiding Principles

10. The Commission conducts its work in accordance with five guiding principles (the "Guiding Principles"). The conduct of the Public Hearings and these Rules are informed by the following Guiding Principles:

- **Proportionality**: The Commission will allocate investigative and hearing time in proportion to the importance and relevance of the issue to the Commission's mandate and the time available to fulfill that mandate so as to ensure that all relevant issues are fully addressed and reported on;
- **Transparency**: The Commission proceedings and processes must be as open and available to the public as is reasonably possible, consistent with the requirements of national security and other applicable confidentialities and privileges;
- **Fairness**: The Commission must balance the interests of the public to be informed with the rights of those involved to be treated fairly;
- **Timeliness**: The Commission must proceed in a timely fashion to engender public confidence and ensure that its work remains relevant; and
- **Expedition**: The Commission is operating under a strict statutory deadline and must conduct its work accordingly.

11. Parties and their legal representatives, as well as those otherwise taking part in the Public Hearings shall conduct themselves, and discharge their responsibilities under the Rules, in accordance with the Guiding Principles.

Investigation

12. The Inquiry will commence with a preliminary investigation by Commission counsel. The goal of the investigation is, in part, to identify the core or background facts that will form the basis of Overview Reports, as described below, and to identify witnesses.

13. The investigation will consist primarily of document review, engagement with interested persons, and interviews by Commission counsel and staff.

Document Production

14. Subject to Rules 15, 16 and 20, within 10 days of receiving a summons or being granted standing, any Party or recipient of a summons by the Commission must produce copies of all documents in their possession or under their control relevant to the subject-matter of the Inquiry.

15. The Commission may request from a Party or require from a recipient of a summons to produce only certain categories or types of documents. In that case, the Party or summons recipient shall only provide the Commission with the categories or types of documents specifically requested, and these shall be organized and provided in batches according to document category or type, as set out in the Commission's request. The Party or recipient of a summons shall comply with the Commission's production request within 10 days.

16. The Commission may require a Party or recipient of a summons to first provide a list of categories or types of documents in that person's possession or control relevant to the subject-matter of the Inquiry prior to producing any documents. The Commission may then request some or all of the categories or types of documents for production. The Party or summons recipient shall only provide the Commission with the categories or types of documents specifically requested, and these shall be organized and provided in batches according to document category or type, as

set out in the Commission's request. Where a Party or a recipient of a summons is required to first provide a list as set out above, it shall be produced within 5 days. The documents themselves outlined in the Commission's subsequent request shall be produced within 5 days of the request.

17. At the earliest opportunity, each Party or summons recipient must certify in writing that its document production obligations, as outlined in these Rules, have been complied with. If the Party or summons recipient is an organization, the person with authority to certify on behalf of the organization must certify in writing that the organization has complied with its document production obligations, as outlined in these Rules. Document production is an ongoing obligation. If additional documents are discovered or obtained subsequent to initial production, they must be disclosed as soon as possible after they are discovered or obtained.

18. Upon the request of Commission counsel, Parties and summons recipients shall provide relevant documents in the format and manner set out in the Document Management Protocol. Parties and summons recipients will preserve originals of relevant documents until such time as the Commissioner has fulfilled his mandate or has ordered otherwise.

19. Production to the Commission will not be treated as a waiver of any claim to privilege that a Party may wish to assert.

20. Privileges and immunities under the *Canada Evidence Act* are subject to provisions addressed later in these Rules. In all other instances in which a Party or summons recipient objects to the production of any document, or part thereof, or to disclosure to Parties of any document, or part thereof, on the grounds of privilege, the following procedures will apply:

a. The Party or summons recipient shall deliver to Commission counsel a list setting out pertinent details of the document(s), or part thereof, over which claims for privilege are being asserted. This shall include the nature of the privilege, the date, author, recipient(s) and a brief

description of the document(s), and may include additional material, such as an affidavit, to support its claims;

b. Commission counsel shall review the list and determine whether they intend to seek access to the information over which privilege is claimed;

c. If Commission counsel are not prepared to recommend to the Commissioner that he accept the claim for privilege, the list and any further material filed by the Party or summons recipient, including submissions, shall, if the Party claiming privilege consents, be submitted forthwith, together with written submissions on behalf of Commission counsel, to the Commissioner or, at the Commissioner's option, to another adjudicator designated by the Commissioner, for determination. If the Commissioner or designated adjudicator is unable to make a determination based on the record before them, they may require a copy of the disputed document(s) for inspection; and

d. If the claim for privilege is dismissed, the document(s) shall be produced to Commission counsel forthwith and, subject to relevance and any conditions imposed by the Commissioner or designated adjudicator, may be used by the Commission and Parties in the inquiry.

21. Except as agreed with Commission counsel, and subject to applicable privileges, documents shall be produced to the Commission in unredacted form. Persons producing documents will be given an opportunity to redact irrelevant personal information before the Commission shares those documents with Parties or the public.

21A. Where a person producing a document has redacted personal information pursuant to Rule 21, and Commission counsel disagree that the information is irrelevant personal information, the following procedures will apply:

a. Commission counsel shall identify for the producing party the redaction or categories of redactions that it does not accept and direct them to produce a version of the document without that redaction or categories

of redactions. Commission counsel may also explain the relevance of the redacted information;

b. Within two days, the person producing the document shall either comply with the direction of Commission counsel by producing a new version of the document with the redactions identified by Commission counsel removed or else inform Commission counsel that they intend to challenge Commission Counsel's direction before the Commissioner

c. A party seeking to challenge a direction of Commission counsel shall, within three days of informing Commission counsel of this, bring an application to the Commissioner for an order under Rule 106(a) to redact irrelevant personal information in the document. The requirement under rules 72 and 73 for Parties to be provided with copies of applications and to have the right to respond do not apply to an application under this rule;

d. The application shall include both a redacted and unredacted version of the document at issue and, where the producing party is aware of it, the contact information of the person whose personal information is implicated by the redactions, or their counsel;

e. The Commissioner may notify a third-party of the application and permit them to file submissions;

f. The application shall be heard in writing unless the Commissioner directs otherwise;

g. With the agreement of the producing party, the application may be heard and determined by another adjudicator designated by the Commissioner.

21B. A Party may bring an application to challenge a redaction to a document that has been made on the basis of irrelevant personal information. Rules 72 and 73 shall not apply to such an application unless the Commissioner directs otherwise. On receipt of an application, the Commissioner may make directions as to how the application shall

be determined. The Commissioner may summarily dismiss an application under this rule if he is satisfied that redacted information is clearly irrelevant personal information.

22. Documents received from a Party or any other organization or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude Commission counsel from producing a document to a proposed witness prior to the witness giving his or her testimony, as part of the investigation being conducted, or pursuant to Rules 65 and 66, all subject to National Security Confidentiality, Specified Public Interest Immunity, Personal Confidentiality and any unresolved privilege claims.

23. Subject to National Security Confidentiality and Specified Public Interest Immunity, legal representatives to the Parties and witnesses will be provided with relevant documents and information, including statements of anticipated evidence, only upon entering into the written Confidentiality Undertaking at Appendix “A” to these Rules.

24. Legal representatives are entitled to provide those documents or information to their clients only on terms consistent with the undertakings given, and after the clients have entered into the written Confidentiality Undertaking at Appendix “B” to the same effect.

25. Subject to National Security Confidentiality and Specified Public Interest Immunity, Parties and witnesses who are unrepresented will be provided with documents and information, including statements of anticipated evidence, only upon entering into the written Confidentiality Undertaking at Appendix “C” to these Rules.

26. Each person who has entered into a written undertaking in the form set out at Appendix “A”, Appendix “B” or Appendix “C” shall comply with its terms. Failure to do so will be a breach of an order of the Commission and of these Rules.

27. These undertakings will be of no force regarding any document or information once it has become an exhibit. The Commissioner may, upon application, release

any Party in whole or in part from the provisions of the undertaking in respect of any particular document or other information.

27A If a party believes that a document that has been shared with them pursuant to these rules contains either privileged information or irrelevant personal information that they believe should be redacted, they shall notify Commission counsel immediately. The Commissioner may make directions on how to address this issue, including but not limited to directing the notifying party to comply with the procedures set out in Rules 20 or 21A. A document that is subject to notice under this rule shall not be made public until the issue respecting privilege or personal information is resolved, unless the Commissioner directs otherwise.

28. The Commissioner may require documents provided to Parties, and all copies made, be returned to the Commission if not tendered in evidence. Alternatively, the Commission may require the destruction of those documents, and all copies made, such destruction to be proven by certificate of destruction. Any confidentiality undertaking or request for deletion provided for in these Rules is limited by any requirement to retain or disclose records and information as may be provided for by law.

29. The Commission may, at any time and at its discretion, request further disclosure from any Party or summons recipient and that request shall be complied with within the time specified by Commission counsel.

Witness Interviews

30. Commission counsel may interview people who have information or documents relevant to the subject-matter of the Inquiry. People who are interviewed are entitled, but not required, to have a legal representative present.

Public Hearings

31. Public Hearings will be convened in Ottawa or elsewhere as the Commissioner may determine to address issues related to the Inquiry. Hearings may proceed virtually or in hybrid form, with details to follow.

32. The Commissioner will set the dates, hours and place of the Public Hearings.

33. The Commissioner may receive any evidence or information that he considers reliable and helpful in fulfilling his mandate whether or not such evidence or information might otherwise be admissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence at the Inquiry.

34. The Commission may rely on representative witnesses on behalf of institutions. A representative witness is typically a senior official of an institution, and/or an expert in the subject area and procedures, designated to appear on behalf of their institution.

35. Commission counsel may call witnesses or experts, who may, among other things, support, challenge, comment upon or supplement the Overview Reports described in Rules 41-45.

36. Parties may also propose witnesses or experts to be called to support, challenge, comment upon or supplement the Overview Reports in ways that are likely to significantly contribute to an understanding of the issues relevant to this Inquiry.

37. Evidence may be received at the Inquiry from one or more panels of expert witnesses.

38. Insofar as he needs to hear evidence, the Commissioner is committed to a process that is public to the greatest extent possible. However, at paragraph (a)(vi)(C), the Terms of Reference direct the Commissioner to take all steps necessary to prevent any disclosure of information to persons or bodies other than the Government of Canada that would be injurious to international relations, national defence or

national security. In addition, at paragraph (a)(vi)(B), the Terms of Reference direct the Commissioner not to jeopardize any ongoing criminal investigation or proceeding or any other investigation. The procedure that will govern where *in camera* hearings may be necessary is addressed in the section on "Privileges and Immunities under the *Canada Evidence Act".*

39. Applications may also be made for a grant of personal confidentiality. The procedure that will govern orders for a grant of personal confidentiality is addressed in the section on "Personal Confidentiality of Witnesses".

40. Public Hearings will be webcast. A webcast of all Public Hearings will be posted to the Commission website and Public Hearings will be transcribed. Public Hearings will be accessible simultaneously in both official languages.

Overview Reports

41. Commission counsel may prepare Overview Reports, which may contain summaries of core or background facts, together with attributed sources. The source documents may be appended to, and form part of, the Overview Reports. Overview Reports allow facts to be placed in evidence without requiring such core or background facts or relevant documents to be presented orally by a witness during a public hearing. Overview Reports may be presented by various methods, including audiovisual presentation. Overview Reports may include summaries or reproductions of a wide range of documents, including relevant statutory or regulatory provisions and frameworks, existing policies, procedures and practices, organizational charts and descriptions, chronologies, and any other information or documents within the definition of these Rules.

42. Commission counsel will provide an opportunity to the Parties, in advance of the filing of Overview Reports as evidence, to comment on the accuracy of the Overview Reports within a time specified by Commission counsel after consultation with the Parties, and Commission counsel may modify the Overview Reports in response.

43. The Overview Reports may be used to assist in identifying the issues that are relevant to this Inquiry, to make findings of fact and to enable recommendations to be made by the Commission.

44. Once final, Overview Reports can be entered into evidence without the necessity of being introduced into evidence through oral testimony of a witness.

45. After being entered into evidence, Overview Reports will be posted on the Commission website.

Witness Evidence

46. Subject to applicable privileges and immunities, all Parties and persons shall cooperate fully with the Commission and shall make available all documents and witnesses relevant to the mandate of the Commission.

47. Witnesses who testify will give their evidence at a hearing under oath or upon affirmation, and may swear or affirm on an eagle feather.

48. Commission counsel may issue and serve a subpoena or summons upon each witness before he or she testifies. Witnesses may be called more than once.

49. Commission counsel and a witness or their legal representative may prepare an affidavit of the witness's evidence. A witness affidavit may include the witness's answers to written questions from Commission counsel. At the Commissioner's discretion, the affidavit can be admitted into evidence in place of part or all of the individual's oral testimony.

50. At the Commissioner's discretion, all or part of a witness's interview transcript, a witness's interview summary or, if adopted by the witness as accurate, the statement of anticipated evidence may be admitted into evidence in lieu of that witness's oral evidence. Parties may request that the witness be called for the purpose of cross-examination, however, the witness may not be cross-examined on the statement of

anticipated evidence or their interview summary except with leave of the Commissioner, as provided in Rule 68. Commission counsel may also call the witness to testify, and may seek to supplement or have the witness comment upon the witness interview transcript, statement of anticipated evidence or interview summary.

51. At the request of Commission counsel, Parties may prepare Institutional Reports, which may be admitted into evidence if adopted by a representative witness as accurate, or earlier, if admitted into evidence in accordance with Commission's procedures for admitting documents.

52. Witnesses who are not represented by the legal representative of a Party are entitled to have their own representative present while they testify, subject to National Security Confidentiality and Specified Public Interest Immunity. The legal representative for a witness will have standing for the purpose of that witness's testimony to make any objections considered appropriate and for other purposes set out in these Rules.

53. Parties are encouraged to advise Commission counsel of the names, addresses and telephone numbers of all witnesses they wish to have called and, if possible, to provide summaries of the information the witnesses may have.

54. If special arrangements are desired by a witness in order to facilitate their testimony, a request for accommodation shall be made to the Commission sufficiently in advance of the witness's scheduled appearance to reasonably facilitate such requests. While the Commission will make reasonable efforts to accommodate such requests, the Commissioner retains the ultimate discretion as to whether, and to what extent, such requests will be accommodated.

Rules of Examination

55. In the ordinary course Commission counsel will call and question witnesses who testify at the Inquiry.

56. The legal representative for a Party may apply to the Commissioner to lead a particular witness's evidence in-chief. If the representative is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner. In addition, prior to that witness's evidence in chief, the witness's legal representative shall provide the Parties and Commission counsel with reasonable notice of the areas to be covered in the witness's anticipated evidence in chief and a list of the documents associated with that evidence.

57. Commission counsel have discretion to refuse to call or present evidence.

58. The order of examination in the ordinary course will be as follows:

a. Commission counsel will lead the evidence from the witness. Except as otherwise directed by the Commissioner, Commission counsel are entitled to ask both leading and non-leading questions;

b. Parties will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination will be determined by the Parties and, if they are unable to reach agreement, by the Commissioner;

c. After cross-examinations, the legal representative for a witness may then examine the witness. Except as otherwise directed by the Commissioner, the legal representative for the witness may only ask non-leading questions;

d. Commission counsel will have the right to re-examine.

59. If a representative for a witness intends to adduce evidence in chief not adduced by Commission counsel, the representative will examine the witness immediately following Commission counsel, and then will have a right to re-examine the witness following questioning by the other Parties.

60. The Commissioner may direct any legal representative whose client shares a commonality of interest with the witness only to adduce evidence through non- leading questions.

61. After a witness has been sworn or affirmed at the commencement of giving evidence, no legal representative other than Commission counsel may speak to a witness about the evidence that he or she has given until the evidence of such witness is complete except with the permission of the Commissioner. Commission counsel may not speak to any witness about his or her evidence while the witness is being cross-examined by others but may speak to the witness after cross- examination and before any re-examination.

62. In keeping with the Commission's strict timeline and the principles of expedition and timeliness, the Commissioner will set time allocations for the conduct of examinations and cross-examinations.

63. When Commission counsel indicate that they have called the witnesses whom they intend to call in relation to a particular issue, a Party may then apply to the Commissioner for leave to call a witness whom the Party believes has evidence relevant to that issue. If the Commissioner is satisfied that the evidence of the witness should be received, Commission counsel shall call the witness, subject to Rules 55 and 56.

64. Subject to the Commissioner's discretion, Commission counsel may choose to call witnesses, whether on factual or policy issues, in panels, if doing so would not detract from the Commissioner's ability to make relevant findings of fact or policy recommendations.

Use of Documents at Hearings

65. In advance of the testimony of a witness, Commission counsel shall provide the Parties, with reasonable notice, a list of the documents associated with the witness's

anticipated evidence in chief. When possible, in advance of a witness's testimony, Commission counsel shall provide the Parties with an anticipated evidence statement, or a witness interview summary or affidavit.

66. Parties shall provide Commission counsel with any documents that they intend to file as exhibits or otherwise refer to during the hearings at the earliest opportunity, and in any event shall provide such documents to Commission counsel no later than two days before the document will be referred to or filed, other than those documents for which notice has previously been provided pursuant to Rule 65.

67. Before using a document for purposes of cross-examination, legal representatives shall provide a copy to the witness and to all Parties having an interest in the subject- matter of the proposed evidence not later than two days prior to the commencement of that witness's testimony.

68. Neither Parties nor Commission counsel will be entitled to cross-examine a witness on any "will-say statement" (anticipated evidence statement or witness interview summary) that may be provided except with leave of the Commissioner.

69. The Commissioner may grant the legal representative for a Party or witness leave to introduce a document to a witness at any point during the hearing upon such terms as are just and fair.

70. Commission counsel may introduce any document to a witness at any point during the hearing without the need for leave to do so.

Applications

71. A person may apply to the Commissioner for an order by:

1. Preparing an application in writing;

2. Attaching to the application any supporting materials; and

3. Delivering the application and supporting materials to the Commission by email at parties@poec-cedu.gc.ca.

72. Unless the Commissioner otherwise directs, and subject to National Security Confidentiality and Specified Public Interest Immunity, the Commission shall promptly deliver the application and supporting materials to each other Party.

73. Parties are entitled to respond to an application if their grant of standing identifies them as having an interest in the subject matter of the application.

74. Commission counsel may provide the Commissioner with any submissions or materials Commission counsel consider relevant and necessary to the proper resolution of the application. Due to time constraints, if there is an oral hearing on the application, Commission counsel need not file responding materials prior to the hearing of the application but should, as much as is practicable, advise the Parties of Commission counsel's position on each application in advance of the hearing of the application.

75. The Commissioner will determine the schedule for the filing of submissions and materials and for the hearing of oral argument, if any. Applications will be dealt with primarily in writing.

76. Commission counsel, and each Party authorized to do so, may make submissions to the Commissioner as permitted by the Commissioner.

77. The Commissioner may make an order or direction based on the written material filed or, at his discretion, after hearing oral argument.

78. Subject to any order from the Commissioner, submissions will be posted to the Commission website.

79. All application materials shall be served by email.

80. If a Party has a legal representative, service on the Party shall be by email to its legal representative. If a Party does not have a legal representative, service on the Party shall be by email to the Party's designated contact person.

81. Application materials to be provided to, or served on, the Commission shall be delivered electronically no later than 8:00 p.m. Eastern Time on the specified date, to parties@poec-cedu.gc.ca.

Privileges and Immunities under the *Canada Evidence Act*

Definitions

In this section, "Government" means the Government of Canada

In this section, "Attorney General" means the Attorney General of Canada

(i) Confidences of the Queen's Privy Council for Canada

82. Where the Government asserts that information or documents (or portions thereof) constitute a confidence of the Queen's Privy Council for Canada, the information or documents (or portions thereof) shall not be produced, or shall be produced with redactions. In the event that the Commission or Commission counsel disputes a redaction or a claim of Cabinet confidence, Commission Counsel shall advise the Government of the disputed claim. The Government shall then, within 10 days, reassess the document(s) or portion(s) of the document(s) listed and either issue a Certificate under section 39 of the Canada Evidence Act in respect of the information or release the information. Following the issuance of a certificate, the process set out in section 39 of the Canada Evidence Act shall apply to the information so certified.

(ii) National Security Confidentiality and Specified Public Interest Immunity

83. This section of the Rules addresses issues relating to the collection and disclosure by the Commission of information, the disclosure of which the Government alleges would be injurious to international relations, national defence or national security within the meaning of section 38 of the Canada Evidence Act ("National Security Confidentiality" or "NSC"), or that the Government alleges should not be disclosed on grounds of a specified public interest under section 37 of the Canada Evidence Act ("Specified Public Interest Immunity" or "SPII").

Production of Documents Raising Issues of NSC or SPII

84. Without prejudice to claims of NSC or SPII, Government Parties or recipients of a summons or request for documents shall provide to the Commission a copy of all relevant documents without deletions or redactions, regardless of any NSC or SPII claims asserted, or to be asserted, by the Government.

85. Except if explicitly agreed with Commission counsel, in producing documents subject to an assertion of NSC or SPII, the Government shall identify the specific documents or portions of documents the Government believes are subject to NSC or SPII and shall provide an explanation for any such assertions.

86. The Commission expects the Government to take a considered, proportionate and reasonable approach in making assertions of NSC and SPII, consistent with the public interest in a transparent and thorough review of the circumstances that led to the declaration of a public order emergency.

87. Commission counsel or a designated counsel with clearance to access Top Secret information will review those documents (or portions thereof) identified as being subject to an assertion of NSC or SPII, and any explanations provided by the Government for the assertions.

88. Commission counsel will identify within the material provided by the Government, the documents and information it anticipates entering into evidence or disclosing to the Parties in advance of the hearings.

89. If appropriate, Commission counsel may provide the Government with proposed reconsideration requests, in respect of the assertions of NSC or SPII, to ensure sufficient information can be made available to the Parties to allow them to prepare and contribute in a meaningful way in the hearings.

90. When and if provided with a proposed reconsideration request, the Government will have 5 days to reassess its assertions of NSC or SPII and provide a redacted version of the documents over which it maintains a claim of NSC or SPII.

91. As an alternative to redaction, or if in the view of the Commissioner redaction fails to provide a sufficient body of publicly available evidence to permit meaningful public hearings, the Commission and the Government may work cooperatively and collaboratively to produce an agreed disclosable summary of the information in respect of which an NSC or SPII claim has been made. Commission counsel may prepare a disclosable summary for the consideration of the Government or request that the Government provide a disclosable summary of specified information. If Commission counsel provides the Government with a proposed disclosable summary for consideration, the Government shall, within 5 days, reply either by concurring in the summary or by identifying and proposing disclosable summary wording for any NSC or SPII information that the Government assesses to be in the proposal. If Commission counsel requests that the Government prepare a disclosable summary of the information in question, the Government shall provide a proposal for the consideration of Commission counsel within 5 days.

92. The Commission will retain copies of the original, unredacted, version of the Government documents. Redacted versions and agreed summaries of the Government documents will be provided to the Parties and used at the public hearings.

In Camera Hearings Regarding NSC or SPII Information

93. *In camera* hearings to address assertions of NSC or SPII may be held, if and only as necessary, where discussion, assessments and reassessments of NSC or SPII claims, along with agreed summaries, do not produce a sufficient body of publicly available evidence to permit meaningful public hearings in relation to any issue relevant to the Commission's mandate.

94. The Commissioner may convene an *in camera* hearing in the absence of the Parties and their legal representatives:

a. To consider the validity of claims of NSC or SPII where the Commissioner is concerned that the unredacted portions of the Government's documents, along with agreed summaries, are insufficient to enable meaningful public hearings to proceed in relation to a particular issue or factual question; or

b. To consider a request by the Government, or any other person, to have specific information received *in camera* and in the absence of the Parties and their legal representatives because of NSC or SPII and, if the request is granted, to receive that information, provided however that if the Commissioner, on receiving information pursuant to this Rule, determines that all or part of the information or a summary thereof should be disclosed to the public, he may so order.

95. The Government or the person seeking an *in camera* hearing in the absence of the Parties and their legal representatives shall bear the burden of establishing that it is necessary to have specific information received *in camera* and in the absence of parties and their legal representative because of NSC or SPII.

96. The Commissioner may appoint counsel with a background in security and intelligence and the requisite security clearance to act as an *amicus curiae* to appear in any Rule 94 hearing to make submissions and examine witnesses with respect

to claims of NSC or SPII, or with respect to the request to have specific information received *in camera* and in the absence of the Parties and their legal representatives because of NSC or SPII.

97. Witnesses who provide evidence taken *in camera* and in the absence of the Parties and their legal representatives shall do so under oath or upon affirmation. Commission counsel or counsel appointed as amicus curiae will test the evidence heard *in camera* and in the absence of Parties and their legal representatives by examination in chief or by cross-examination if deemed appropriate.

98. Prior to attending a hearing in which information will be received *in camera* and in the absence of the Parties and their legal representatives because of an assertion of NSC or SPII, Commission counsel shall advise the Parties in general terms, of the type of the information and evidence that will be elicited at the *in camera* hearing. The Parties shall be invited to raise with Commission counsel specific areas for questioning. Commission counsel shall, following a hearing in which information was received *in camera* and in the absence of the Parties and their legal representative, advise Parties and their legal representatives whether those areas were covered. Commission counsel will consult with Government counsel as to the summary that is provided to the Parties before and after an *in camera* hearing.

99. Following an *in camera* hearing, the Commissioner shall provide his decision on any claims of NSC or SPII and shall provide reasons for that decision.

100. A decision issued pursuant to Rule 99 that rejects a claim of NSC in respect of information, or provides a public summary of information for which there was a claim of NSC, shall be given to the Government and shall constitute notice to the Government of the Commissioner's intention to disclose information in accordance with the terms of the decision, following which the Government shall decide whether or not to give notice to the Attorney General pursuant to section 38.01 of the *Canada Evidence Act* in respect of some or all of the information that would be disclosed as a result of the decision. If the Government objects to a decision issued pursuant to

Rule 99 that rejects a claim of SPII, the Government shall provide certification to the Commission pursuant to section 37(1) of the *Canada Evidence Act*. In the case of decisions pertaining to either NSC or SPII, the Commissioner shall not disclose the information dealt with in the decision until a period of 10 days has elapsed after the decision is given to the Attorney General.

NSC and SPII Information in the Commissioner's Report

101. At the completion of all public hearings and *in camera* hearings, if any, the Commissioner will submit a report to the Governor in Council as directed in the Order in Council made on the basis of all evidence heard, including any evidence received during any *in camera* hearing. If the Final Report includes any information that has been designated as NSC or SPII information by the Government, the report shall not be made public until the Government is provided an opportunity for NSC and SPII information review. The Commissioner will inform the Governor in Council of the Government's position on the appropriateness of the disclosure of NSC and SPII information in the report.

102. If he considers it appropriate, the Commissioner will prepare a second, public version of the report containing only those findings of fact, conclusions and recommendations from the report referred to above in Rule 101 that, in the opinion of the Commissioner, will not disclose information that is subject to NSC or SPII.

103. If the Commissioner prepares a public version of the report, it shall be provided to the Government 10 days in advance of the date on which it is delivered to the Governor in Council, which shall constitute notice to the Government of the Commissioner's intention to advise the Governor in Council that the public version of the report can be laid before Parliament and disclosed to the public without redaction.

104. If the Commissioner prepares a public version of the report and the Government gives the Attorney General notice pursuant to s. 38 of the *Canada Evidence Act,* or certifies pursuant to s. 37(1) of the *Canada Evidence Act,* with respect to any part

thereof, the Government shall so advise the Commissioner and the public version of the report will be delivered to the Governor in Council with the identification of those parts of the report subject to the said s. 38 notice or s. 37 certification.

Personal Confidentiality of Witnesses

105. In exceptional circumstances, a witness's personal private interests may require the Commissioner, in the exercise of his discretion, to deviate from the general principle that all information relating to that witness be disclosed to the public, either through testimony or through documents made available.

106. In the exercise of the Commissioner's discretion, he may, among other measures:

a. Direct or permit the redaction of irrelevant personal information from otherwise public documents;

b. Direct that certain information be subject to a non-publication order, although otherwise contained in public documents;

c. Direct the extent to which such information should be referred to in testimony;

d. Direct that a witness not be identified in the public records and transcripts of the hearing except by non-identifying initials, and that the public transcripts and public documents be redacted to exclude any identifying details;

e. Permit a witness to swear an oath or affirm to tell the truth using non-identifying initials;

f. Use non-identifying initials and exclude any identifying details in his report; and

g. Hold an *in camera hearing,* as a last resort, in circumstances in which the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that hearings should be open to the public.

107. If the Commissioner has exercised his discretion pursuant to Rule 106d, no photographic or other reproduction of the witness that might lead to his or her identification shall be made at any time and there shall be no publication of information that might lead to the identification of the witness.

108. All media representatives shall be deemed to undertake to adhere to the rules respecting personal confidentiality as set out herein. A breach of these rules by a media representative shall be dealt with by the Commissioner as he sees fit.

Access to Evidence

109. All evidence shall be categorized and marked P for public proceedings and C for *in camera* proceedings.

110. Unless the Commissioner otherwise orders, a copy of the P transcript of evidence, a list of P exhibits of the public proceedings and a summary of the C proceedings, subject to National Security Confidentiality, Specified Public Interest Immunity and to any personal confidentiality orders, will be available on the Commission website. Prior to a summary of C proceedings being available on the Commission website, the Party to the *in camera* hearing will be permitted to review the contents of that summary.

111. Only those persons authorized by the Commission, in writing, shall have access to C transcripts and exhibits.

Appendix A - Confidentiality Undertaking for Legal Representatives to Parties, Potential Witnesses and Experts in the Public Order Emergency Commission

For the purpose of this Undertaking, the term "document" is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Public Order Emergency Commission (the "Inquiry" or "Commission"), including without limitation, any and all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, social media content, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device and any other information pertaining to the Inquiry, irrespective of whether such information or documentation has been identified as confidential, and includes all other material prepared containing or based, in whole or in part, on any information included in the foregoing, including any anticipated evidence statements, witness interview summaries statements or Overview Reports prepared by Commission counsel.

I, _____, undertake to the Commission that any and all documents which are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings, with the exception of any documents which are otherwise publicly available. I further undertake that I will not disclose any such documents to anyone for whom I do not act or who has not been retained as an expert for the purposes of the Inquiry. In respect of anyone for whom I act, or any witness, or any expert retained for the purposes of the Inquiry, I further undertake that I will only disclose such documents upon the individual in question giving the written undertaking annexed as Appendix "B" to these Rules.

I understand that this undertaking has no force or effect with respect to any document which has become part of the public proceedings of the Commission, or to the extent that the Commissioner has provided a written release to me from the undertaking with respect to any document. For greater certainty, a document is only part of the Public Hearings once the document is made an exhibit at the Inquiry. In addition, this undertaking and any requests for deletion are limited by any requirement to retain or disclose records and information as may be provided for by law.

With respect to those documents which remain subject to this undertaking at the end of the Inquiry, I undertake to either destroy those documents, and provide a certificate of destruction to the Commission, or to return those documents to the Commission for destruction. I further undertake to collect for destruction such documents from anyone to whom I have disclosed any documents which were produced to me in connection with the Commission's proceedings.

I understand that a breach of any of the provisions of this Undertaking is a breach of an order made by the Commission, and of the Rules of Practice and Procedure.

_____ Signature _____ Witness

_____ Date _____ Date

Submit to Parties@poec-cedu.gc.ca

APPENDIX B - Confidentiality Undertaking for Represented Parties, Potential Witnesses, and Experts in the Public Order Emergency Commission

For the purpose of this Undertaking, the term "document" is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Public Order Emergency Commission (the "Inquiry" or "Commission"), including without limitation, any and all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, social media content, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device and any other information pertaining to the Inquiry, irrespective of whether such information or documentation has been identified as confidential, and includes all other material prepared containing or based, in whole or in part, on any information included in the foregoing, including any anticipated evidence statements, witness interview summaries statements or Overview Reports prepared by Commission counsel.

I, _____, undertake to the Commission that any and all documents which are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings, with the exception of any documents which are otherwise publicly available. I further undertake that I will not disclose any such documents to anyone.

I understand that this undertaking has no force or effect with respect to any document which has become part of the Public Hearings of the Commission, or to the extent that the Commissioner has provided a written release to me from the undertaking with respect to any document. For greater certainty, a document is only part of the

Public Hearings once the document is made an exhibit at the Inquiry. In addition, this undertaking and any requests for deletion are limited by any requirement to retain or disclose records and information as may be provided for by law.

With respect to those documents that remain subject to this undertaking at the end of the Inquiry, I further understand that such documents will be collected from me by the person who disclosed them to me: my legal representative, if applicable, or Commission counsel or a person designated by Commission counsel, as the case may be.

I understand that a breach of any of the provisions of this Undertaking is a breach of an order made by the Commission, and of the Rules of Practice and Procedure.

_____ Signature _____ Witness

_____ Date _____ Date

Submit to Parties@poec-cedu.gc.ca

APPENDIX C - Confidentiality Undertaking for Unrepresented Parties, Potential Witnesses, and Experts in the Public Order Emergency Commission

For the purpose of this Undertaking, the term "document" is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the Public Order Emergency Commission (the "Inquiry" or "Commission"), including without limitation, any and all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, social media content, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device and any other information pertaining to the Inquiry, irrespective of whether such information or documentation has been identified as confidential, and includes all other material prepared containing or based, in whole or in part, on any information included in the foregoing, including any anticipated evidence statements, witness interview summaries statements or Overview Reports prepared by Commission counsel.

I, _____, undertake to the Commission that any and all documents which are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings, with the exception of any documents which are otherwise publicly available. I further undertake that I will not disclose any such documents to anyone.

I understand that this undertaking has no force or effect with respect to any document which has become part of the Public Hearings of the Commission, or to the extent that the Commissioner has provided a written release to me from the undertaking with respect to any document. For greater certainty, a document is only part of the

Public Hearings once the document is made an exhibit at the Inquiry. In addition, this undertaking and any requests for deletion are limited by any requirement to retain or disclose records and information as may be provided for by law.

With respect to those documents that remain subject to this undertaking at the end of the Inquiry, I further understand that such documents will be collected from me by the person who disclosed them to me: Commission counsel or a person designated by Commission counsel, as the case may be.

I understand that a breach of any of the provisions of this Undertaking is a breach of an order made by the Commission and of the Rules of Practice and Procedure.

_____ Signature _____ Witness

_____ Date _____ Date

Submit to Parties@poec-cedu.gc.ca

Appendix 3

Rules of Standing and Funding

Introduction

On February 14, 2022, the Government of Canada declared a public order emergency under the *Emergencies Act* that was in effect until it was revoked on February 23, 2022.

By Order in Council dated April 25, 2022, the Government of Canada established this Commission of Inquiry to examine and report on the circumstances that led to the federal government's declaration of a public order emergency and the measures taken by the Governor in Council by means of the *Emergency Measures Regulations* and the *Emergency Economic Measures Order* for dealing with the public order emergency that was in effect from February 14 to 23, 2022.

The Commission is operating within a very short timeframe mandated by statute. The Commission's final report must be delivered to the Governor in Council in both official languages by February 6, 2023 and to Parliament by February 20, 2023. (See Notice to Interested Parties Regarding the Public Order Emergency Commission at publicorderemergencycommission.ca/documents).

One of the Commission's first important tasks is to identify individuals and groups who may assist by participating in the Commission's various proceedings. The extent of participation can cover a wide spectrum – from a role involving a particular aspect of the Commission's mandate to participation more broadly across all or most of the Commission's proceedings. The form of participation may be required or it may be by invitation. It can include, for example, testifying under oath, partaking in roundtable discussions or providing expert reports and opinion evidence. Groups of Parties will be expected to contribute in coalitions. Parties are encouraged to consider whether they can participate through such coalitions or groups.

Applicants who are granted standing – that is, an opportunity to participate directly in the Commission's proceedings – may have, at the Commissioner's discretion, certain participatory rights such as advance notice of documents which are proposed to be

introduced into evidence, advance provision of will say statements of anticipated witnesses, a seat at counsel table, the right to cross-examine witnesses on matters relevant to the basis upon which standing was granted, or the opportunity to suggest witnesses, among others. Different types of standing and rights of participation may be granted depending on the nature of an Applicant's substantial and direct interest, all in the context of the Commission's timeframe for completing its work.

The Rules outlined below provide a process for Applicants to seek standing. Not everyone who would like to participate in the Commission's mandate will be a suitable candidate for a grant of standing. Standing or participatory rights, are granted to Applicants with "a substantial and direct interest in the subject matter" of the Commission's mandate or to those with unique experience or expertise that will assist the Commission in its work beyond what would be available by calling witnesses. For example, while witnesses have an important role to play in the fact-finding work of the Commission, they do not necessarily have "a substantial and direct interest". Individuals and groups who have a genuine concern about the subject matter of the Commission or have an expertise in an area that will be considered by the Commission may not have a substantial and direct interest in the subject matter of the Inquiry. They may possibly play a role in the Inquiry in other ways, such as contributing to the research and policy work of the Commission.

Some factors that may be considered in determining whether an Applicant meets the criteria set out in the Rules and will be granted standing include: 1) the mandate of the Inquiry; 2) the nature of that aspect of the Inquiry for which standing is sought; 3) the type of interest the Applicant has; the connection of the particular Applicant to the Inquiry's mandate; 5) whether the Applicant has a continued interest and involvement in the subject matter of the Inquiry; 6) whether the Applicant may be significantly affected by the Commission's findings and recommendations; 7) whether the Applicant is uniquely situated to offer information that will assist the Commission with its work; 8) the extent to which the Applicant's participation may duplicate the contribution of others; 9) whether the Applicant is willing to share a single grant of

standing with other Applicants with whom the Applicant has a common interest; and 10) the need to complete the Commission's work in a timely manner.

It is important to note that it is not necessary to be granted standing in order to be involved in the public activities and information gathering by the Commission. For example, members of the public who wish to observe Commission hearings and public activities may do so without seeking standing. Members of the public will be given an opportunity to express their views, suggest avenues of investigation, provide information, and share their experiences with the Commission in other ways, such as through online submissions. Members of the public may also follow the Commission's website which will contain updated information on the Commission's work, and which may include Rules of Practice and Procedure, decisions and rulings, expert or overview reports, and proceeding schedules. The Commission may announce additional ways in which the public can engage with the work of the Commission and contribute to its mandate. Further details for participating in the Commission's work and on the opportunities and the ways to do so will be published on the Commission's website in the near future.

With respect to funding, the Commissioner may make recommendations to the Clerk of the Privy Council regarding funding for a Party, where, in the view of the Commissioner, the person would not otherwise be able to meaningfully participate in the Commission without such funding. Funding recommendations will correlate with the Commissioner's determination of the appropriate degree of participation for each Applicant for funding.

Under the Order in Council, the Commissioner can only recommend funding for Parties. It is up to the Clerk of the Privy Council to approve all funding in accordance with approved Treasury Board guidelines respecting the remuneration and reimbursement and the assessment of accounts. Funding is disbursed based on these guidelines and may not cover all costs of participation.

Rules

General

1. These Rules on standing and funding apply to the Public Order Emergency Commission (the "Commission" or "Inquiry"), established pursuant to the Government of Canada Order in Council 2022-0392 (the "Terms of Reference").

2. Subject to the *Inquiries Act,* RSC 1985, c I-11 (the "Act") and the Terms of Reference, these Rules are issued by The Honourable Paul S. Rouleau (the "Commissioner"), in his discretion to facilitate the efficient disposition of the issues of standing and funding.

3. The Commissioner may amend, vary or depart from any rule or may dispense with compliance with these Rules as deemed necessary to ensure the Inquiry is thorough, fair and timely.

4. These Rules relate to the opportunity for participation in the Commission's proceedings, including the fact-finding and policy aspects of the mandate.

5. All interested persons and their counsel shall be expected to adhere to the Commission's Rules of Practice and Procedure, yet to be published, and may raise any issue of non- compliance with the Commissioner.

6. The Commissioner may deal with a breach of these Rules as he deems appropriate.

7. In these Rules,

   a. "Applicant(s)" refers to individuals, organizations, governments, agencies, institutions, associations or any other entity applying for an opportunity to participate in the Commission's proceedings;
   b. "electronic format" refers to pdf format.

Standing

8. Commission Counsel will assist the Commissioner to ensure the orderly conduct of the Inquiry and have standing at the Inquiry. Commission Counsel have the primary responsibility of representing the public interest throughout the Inquiry, including the responsibility of ensuring that all matters that bear upon the public interest are brought to the Commissioner's attention.

9. Applicants may seek standing at the Inquiry by submitting an application form with any supporting materials, in electronic format, with the Commission on or before June 15, 2022, or at the discretion of the Commission, on any other date.

10. Application forms can be found on the Commission's website at publicorderemergencycommission.ca/documents.

11. Completed application forms for standing must include the following information:

a. The Applicant's name, address, telephone number, and email address;
b. The name(s) of the legal representative(s), if any, representing the Applicant, together with the legal representative(s)'s address, telephone number, and email address;
c. The substantial and direct nature of the Applicant's interest in the subject matter of the Inquiry, why the Applicant wishes standing, and how the Applicant's participation would provide the necessary contributions to the Inquiry, having specific regard to the Terms of Reference; and
d. Whether the Applicant is seeking full standing or standing on one or more specific issues as outlined in the Terms of Reference.

12. The Commissioner will make decisions about participation in the Commission's proceedings based on the completed application forms and supporting documentation. Should oral submissions be required for any Applicant, which will be determined by the Commissioner, the Commissioner will communicate an appropriate time and format.

13. Supporting documentation shall be limited to 10 pages.

14. Standing will be granted in the discretion of the Commissioner, in accordance with section 11 of the Act, the Terms of Reference and the desirability of a transparent, fair and timely proceeding. The Commissioner will consider, among other things, the following criteria:

a. whether an Applicant has a substantial and direct interest in the subject matter of the Inquiry;
b. whether an Applicant's participation would provide necessary contributions to the conduct of the Inquiry; and
c. whether an Applicant's participation would contribute to the openness and fairness of the Inquiry.

15. The Commissioner may determine the manner and scope of the participation of Applicants granted standing, as well as their rights and responsibilities.

16. The Commissioner may direct that a number of applicants share participation with those with whom they have a common interest.

17. Those granted standing will be designated as "Parties" before the Inquiry.

18. The Commissioner may decide, in his discretion, that one or more Applicants for standing will have more limited rights of participation than others. He may also decide that two or more Applicants for standing will be required to participate as a group and be required to exercise their rights of participation jointly.

19. From time to time, the Commissioner may, at his discretion, modify, rescind or grant standing.

20. Any material or information filed in support of an Applicant's standing application may be available to the public on the Commission's website or cited in a publicly available document, such as a decision on standing.

21. Any updated information with respect to standing may be made available on the Commission's website at publicorderemergencycommission.ca.

Funding

22. Further to and in accordance with the Government of Canada Order in Council 2022-0392 (a)(v)(c), the Commissioner may make recommendations to the Clerk of the Privy Council regarding funding for a Party, where in the Commissioner's view, the Party would not otherwise be able to participate in the Inquiry without such funding.

23. Applicants may seek funding by submitting an application form with any supporting materials, in electronic format, with the Commission on or before June 15, 2022, or at the discretion of the Commission, on any other date. Applicants will be expected to seek funding at the same time as they seek standing, and materials in support of funding may be combined with materials in support of standing. The Commissioner will make decisions about recommendations for funding based on the completed application form and supporting documentation.

24. Supporting documentation shall be limited to 10 pages.

25. Application forms can be found on the Commission's website at publicorderemergencycommission.ca/documents.

26. Completed application forms for funding must include the following information:

a. The Applicant's name, address, telephone number, and email address;
b. The name(s) of the legal representative(s), if any, representing the person, together with the lawyer(s)'s address, telephone number, and email address;
c. Evidence that demonstrates that an Applicant does not have adequate financial resources to represent its interest in the Inquiry; and
d. How the Applicant intends to make use of the funds and how it will account for the funds.

27. Should oral submissions be required for any Applicant seeking funding, which will be determined by the Commissioner, the Commissioner will communicate an appropriate time and format.

28. Funding will be recommended at the Commissioner's discretion in accordance with the Government of Canada Order in Council 2022-0392 (a)(v)(c). The Commissioner will also consider, among other things, the following factors in making funding recommendations:

a. whether the Applicant has demonstrated an inability to be a Party in the Inquiry without funding for representation;
b. whether the Applicant has a unique perspective or special experience or expertise that will not be presented to the Inquiry if the Applicant is not granted standing;
c. whether the Applicant has an established record of concern for and demonstrated commitment to the interest the Applicant seeks to represent; and
d. whether the Applicant has provided a proposal as to the use of the funds and how the funds will be accounted for.

29. Where the Commissioner's funding recommendation is accepted, funding shall be in accordance with Treasury Board guidelines respecting rates of remuneration and reimbursement and the assessment of accounts.

30. Any material or information filed in support of an Applicant's application for funding may be available to the public on the Commission's website or cited in a publicly available document, such as a decision on funding.

31. Any updated information with respect to funding may be made available on the Commission's website at publicorderemergencycommission.ca.

Appendix 4

Notice to Interested Parties Regarding the Public Order Emergency Commission

June 1, 2022

Introduction

On April 25, 2022, the Government of Canada established the Public Inquiry into the 2022 Public Order Emergency ["Public Order Emergency Commission"] to inquire into the circumstances that led to the declaration of emergency that was in place from February 14-23, 2022, and the measures taken for dealing with the emergency. Justice Paul Rouleau was appointed Commissioner.

The Commission will examine and assess the basis for the Government's decision to declare a public order emergency, the circumstances that led to the declaration, and the appropriateness and effectiveness of the measures selected by the Government to deal with the then-existing situation. The Commission will also conduct a policy review of the legislative and regulatory framework involved, including whether any amendments to the *Emergencies Act* may be necessary.

The Commission's Final Report must be delivered to the Governor in Council in both official languages by February 6, 2023, and to Parliament by February 20, 2023. The latter is a mandatory statutory deadline that cannot be altered without legislative amendment.

In order to deliver its Report in both official languages by February 6, 2023, the Commission will have to complete its hearings and fact-finding process by the end of October 2022 in order to allow sufficient time for analysis as well as drafting, editing, translating and publishing of the Report.

The Commission has a very broad mandate that must be fulfilled in a very short timeframe. This will be a challenge that can only be accomplished with procedural creativity and, importantly, cooperation from all parties. The Commission is committed to meeting its deadline, to conducting a meaningful inquiry, and to doing so in a fair and transparent manner. The Commission looks forward to working with participants and the public in the fulfillment of its important mandate.

The Commission has set a schedule for the process for determining standing and a tentative schedule for the investigative and public hearing process. The key dates are as follows:

Schedule for the Process of Determining Standing and Funding

- June 1, 2022 – Rules of standing and funding to be posted
- June 15, 2022 – Deadline for applicants to submit standing and any related funding applications
- June 20, 2022 – Virtual hearing of standing applications (if necessary)
- June 27, 2022 (tentative) – Release of the Commission's decisions on standing and funding

Tentative Schedule for Investigation and Hearings

- June 17, 2022 – Draft Rules of Procedure and Practice to be posted by Commission
- June 30, 2022 – Deadline for parties granted standing to comment on Draft Rules of Procedure and Practice
- July 7, 2022 – Final Rules of Procedure and Practice to be posted
- July 18, 2022 – Deadline for documentary production from parties granted standing
- July – October, 2022 – Timeframe for receiving input and submissions from members of the public and organizations who do not have standing
- September - October 2022 – Public Hearings

Background

(i) The Declaration of Emergency

On February 14, 2022, the Government of Canada declared a public order emergency pursuant to the *Emergencies Act.* Following the declaration of the emergency, the Government adopted a number of emergency measures via the *Emergency Measures Regulations* and the *Emergency Economic Measures Order.* The public order emergency was in effect until February 23, 2022, when the Government revoked it.

(ii) The Establishment of the Commission of Inquiry

Section 63(1) of the *Emergencies Act* requires the Government to call an inquiry "into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency". The inquiry must be called within 60 days of the expiration or revocation of the declaration of emergency. Section 63(2) of the *Act* requires that the Report of the inquiry be laid before each House of Parliament within 360 days of the expiration or revocation of the emergency.

On April 25, 2022, the Government of Canada established the Commission by Order in Council P.C. 2022-0392. Justice Paul Rouleau was appointed as Commissioner under Part I of the *Inquiries Act*.

(iii) The Commission's Terms of Reference

The Commission's Terms of Reference are found in the Order in Council, and are appended in full to this Notice as Appendix A.

The Order in Council directs the Commissioner to examine and report on the circumstances that led to the declaration of a public order emergency and the measures that were taken by the Governor in Council to deal with the public order emergency as well as issues, to the extent relevant to the circumstances of the declaration and measures taken, with respect to

(A) the evolution and goals of the convoy and blockades, their leadership, organization and participants,

(B) the impact of domestic and foreign funding, including crowdsourcing platforms,

(C) the impact, role and sources of misinformation and disinformation, including the use of social media,

(D) the impact of the blockades, including their economic impact, and

(E) the efforts of police and other responders prior to and after the declaration

The Order in Council further directs the Commission to set out in a Final Report the "findings and lessons learned, including on the use of the *Emergencies Act* and the appropriateness and effectiveness of the measures taken under the *Emergency Measures Regulations* and the *Emergency Economic Measures Order,* and to make recommendations, as pertains to the matters examined in the Public Inquiry, on the use or any necessary modernization of that Act, as well as on areas for further study or review".

The Commission must submit its Final Report, no later than February 6, 2023. The report must be laid before each House of Parliament by February 20, 2023.

The Commission's mandate

The Terms of Reference entrust the Commission with a broad and far-reaching mandate, which includes both an investigative component and a policy component.

(i) The Commission's Investigative Mandate

The Commission's investigative mandate is to examine and assess the basis for the Government's decision to declare a public order emergency, the circumstances that led to that declaration, and the appropriateness and effectiveness of the measures employed by the Government in furtherance of that decision.

The starting point for the Commission is to inquire into the reasons why the Government declared a public order emergency. It is the Government that deemed it necessary to invoke the *Emergencies Act*; thus it is the Government that must explain its decision to do so.

In light of this, the Commission has asked the Government to disclose to the Commissioner the information, including advice and information that may be protected by Cabinet confidence or any applicable privilege, that led to Cabinet's decision to declare an emergency.

The Commission is also tasked with assessing the appropriateness and effectiveness of the measures that the Government selected to address the situation. Again, the Commissioner has asked the Government to disclose all information pertaining to the choice of measures and the actions taken (or not taken) pursuant to those choices.

The Commission's investigation will consider the issues listed in paragraphs (ii) A-E of the Terms of Reference. The Commission will also consider additional issues that may come to light over the course of its investigation that are relevant to its overarching mandate.

(ii) The Commission's policy mandate

The Commission's policy mandate is to identify the lessons that may be learned from the events of early 2022, to review the legislative and regulatory framework of the *Emergencies Act*, and to recommend whether any amendments to the Act should be made. This is a significant mandate that will require careful study and review and may include the consideration of relevant information about practices and procedure in other jurisdictions.

Timing and process

The February 20, 2023 deadline to deliver the Commission's Report to Parliament is a mandatory statutory deadline. As indicated earlier, it cannot be changed without

legislative amendment. This means that the Commission has a very significant task to accomplish in a very short period of time.

In order to deliver its Report in both official languages to Cabinet by February 6, 2023 as required by the Order in Council and to Parliament by February 20, the Commission will have to finish its fact-finding process, including its hearings by the end of October in order to allow sufficient time for analysis and well as drafting, editing, translating and publishing the Report.

This is an ambitious schedule. The task cannot be accomplished without the full cooperation and assistance of all interested parties. The Commission looks forward to working with all parties to this end.

The Commission is committed to meeting its statutory deadline in a fair and appropriate manner. In order to do so, procedural steps will be streamlined, timelines will be compressed, and creative means of receiving information from interested parties will be employed. This is the only way the Commission will be able to conduct its investigation, obtain meaningful public input, carry out the necessary fact finding, and formulate appropriate recommendations within the legislated timeframe. Again, cooperation and creativity will be the Commission's touchstones.

While the Commission has not yet finalized its process and procedures, it is evident that time will be of the essence. The Commission will therefore set tight timelines for the collection of materials and information. All parties will be expected to meet the deadlines imposed.

The Commission is also committed to receiving public input and comment. Processes will be put in place that allow members of the public to express their views, suggest avenues of investigation, provide information, and share their experiences with the Commission. The Commission will welcome input from experts, researchers, academics and others with specialized knowledge on the topics that fall within its

mandate. The Commission looks forward to hearing from people and organizations across the country on the important issues raised in this Inquiry.

In all of its work, the Commission will be guided by the principles of fairness, transparency, accessibility, timeliness, expedition, and proportionality.

The Commission anticipates holding public hearings in September and October 2022, which will focus primarily on the investigative, fact-finding component of its mandate.

The process for determining standing and participating in the Commission's process

The Commission is, at this time, calling on interested parties who want to request standing to submit Applications for Standing (see Rules of Standing and Funding to be posted on the Commission's website at publicorderemergencycommission.ca). This process allows individuals and groups with a substantial and direct interest in the subject-matter of the inquiry to apply to participate in the Commission's fact-finding and/or policy proceedings. Applicants who have common interests are encouraged and expected to form groups rather than to apply for standing individually. Different types of standing and rights of participation may be granted depending on the nature of an applicant's substantial and direct interest, all in the context of the Commission's timeframe for completing its work.

It is important to understand that standing is not the only way in which to participate in the activities of, and information gathering by, the Commission. Members of the public who wish to observe Commission hearings and public activities may do so without seeking standing. This is encouraged. Members of the public also will be given an opportunity to share their experiences and provide their views to the Commission in a variety of ways, such as through online submissions. Further details on the opportunities for participating in the Commission's work and the ways to do so will be published on the Commission's website in the near future.

Applicants for standing may also apply for funding to participate in the Commission's work. The Commissioner may make recommendations for funding those granted standing to the Clerk of the Privy Council where the person or institution would not otherwise be able to meaningfully participate in the Commission (see Rules of Standing and Funding to be posted on the Commission's website at publicorderemergencycommission.ca/documents/).

The schedule for the Commission's process for determining standing and funding is as follows:

Schedule for the process to determine standing and funding

- June 1, 2022 – Rules of Standing and Funding to be posted
- June 15, 2022 – Deadline for applicants to submit Standing and Funding Applications
- June 20, 2022 – Virtual hearings of Standing and Funding Applications (if necessary)
- June 27, 2022 (tentative) – Release of the Commission's decisions on Standing and Recommendation on Funding

Parties who are granted standing will be required to deliver their materials to the Commission in accordance with the Rules of Practice and Procedure, which are expected to be posted in final form at publicorderemergencycommission.ca/ shortly after the standing decisions have been issued. The draft Rules of Practice and Procedure will be posted earlier, and parties granted standing will be invited to provide their input and comment. Parties seeking standing are strongly encouraged to begin to take steps now to assemble documents in their possession that might be relevant to the Commission's work. They are also encouraged to prepare a list of witnesses they believe may have important information to provide to the Commission and describe, in brief, the nature of that information. This will enable the parties to adhere to strict timelines that will be imposed on the production of such materials.

Commission staff will also work with parties granted standing to facilitate the presentation of evidence in the most efficient manner: for example through evidentiary reports or "dossiers" that summarize existing evidence, or through agreed statements of fact. It will be beneficial for parties granted standing to work collaboratively, to the extent possible, in assembling and producing relevant materials and ultimately in facilitating the presentation of evidence. Parties granted standing will be expected to work cooperatively with the Commission.

The investigation process and public hearings

The Commission's investigation will involve a range of activities to facilitate obtaining the information needed to fulfill its mandate. This will include requests for documentary production, witness interviews, consultation with communities, experts and institutions, and research.

The Commission currently plans to hold public hearings in September and October 2022. The hearings will likely begin by inquiring into the circumstances that led to the Government's decision to declare the public order emergency. The Commission will review the information the Government possessed and acted on when it decided to declare the emergency. Subsequently, the various factors that may or may not have played a part in that decision, including but not limited to the issues outlined in paragraphs (ii)(A)-(E) of the Terms of Reference, as well as the appropriateness and effectiveness of the measures selected, will be canvassed and examined at the hearings.

The Commission will endeavour to eliminate unnecessary steps and avail itself of appropriate and proportional creative procedural approaches to streamline the investigation process. These approaches, many of which have been adopted by other public inquiries, may include the creation of overview or foundation documents, institutional reports, affidavits, policy papers, agreed statements of fact and other forms of written evidence. Further details will be provided when the Commission posts

its draft Rules of Procedure and Practice, which it anticipates will be in mid-June. Suggestions from parties granted standing will be welcomed. As indicated earlier, the Commission will work with parties to facilitate the presentation of evidence in the most efficient manner. The Rules will encourage, and in some cases require, the filing of evidentiary reports or dossiers, or institutional reports, where appropriate. These summaries will be compiled by or with the assistance of Commission staff, or put forward by parties who have been granted standing. The Commission will provide opportunities for parties to comment on the information presented in this manner. The draft Rules will allow the Commission to set reasonable time limits for testimony of witnesses for both direct evidence and cross-examination and to determine which parties will be entitled to cross-examine.

The Commission has already begun the process of requesting and gathering documents from the federal Government, and the Government has indicated its commitment to facilitating the document production process. The volume of documents is expected to be considerable. The Commission acknowledges that it will require significant effort by the Government to deliver its documents in a timely manner. However, in order for the Commission to carry out a meaningful inquiry and meet its very ambitious schedule, the Government's cooperation will be needed by prioritizing this task and delivering its documentation on a timely basis. The Commission again welcomes creative approaches to making documentary production and organizing evidence. Prompt, complete and timely disclosure from the Government is essential to the Commission's ability to carry out its mandate. It is expected that the totality of the Government's documentation will be delivered by the end of June at the latest, with documents delivered on a rolling basis in order to allow appropriate time for review. This will leave the Commission only two months to conduct its documentary review, interview key players and potential witnesses, assemble the statements of evidence it intends to file, and prepare for the public hearings.

Timely production of documents will allow for early identification and resolution of any issues that may arise with the production of classified, privileged, or secret information.

This will facilitate the crafting of creative and fair solutions without delaying the Commission's work.

The Commission will establish a process to allow parties to make representations to the Commissioner on what documents will be made available to them for review, with or without restrictions. This will include the opportunity to make submissions on issues of confidentiality and privilege.

Though the following dates are provisional, and further steps may be added, the Commission anticipates that the schedule for the investigation and public hearings will be as follows:

Tentative schedule for investigation and hearings

- June 17, 2022 – Draft Rules of Procedure and Practice to be posted by Commission at publicorderemergencycommission.ca/documents
- June 30, 2022 – Deadline for parties granted standing to comment on Draft Rules of Procedure and Practice
- July 7, 2022 – Final Rules of Procedure and Practice to be posted at publicorderemergencycommission.ca/documents
- July 18, 2022 – Deadline for documentary production from parties granted standing
- To be determined – Deadline for determination of issues regarding restrictions on document availability, including privilege and confidentiality of documents
- September-October 2022 – Public Hearings

The policy review

The Commission will employ a variety of processes to arrive at its policy recommendations. It will engage academics and others with relevant expertise to prepare research and policy papers on the issues arising from the Commission's mandate. These papers will play a significant role in informing the Commission's

deliberations on the policy aspects of the mandate. The papers will be posted on the Commission's website, and input from interested persons will be invited. The Commission anticipates that the papers will be discussed at a series of meetings or 'roundtables', which the public will be able to observe. The policy component of the Commission's work and the formulation of recommendations will be a significant part of the Commission's work. Issues relevant to the policy review will be addressed when appropriate, during or after the investigatory process and fact-finding hearings.

Conclusion

The Commission is not aware of any precedent for a public inquiry of this breadth being conducted over this short a period of time. The Commission acknowledges this challenge. It is important and in the public interest that the Commission fulfill its mandate in a comprehensive, fair and transparent manner. The Commission welcomes ongoing input as to how to achieve its ambitious mandate.

Canadians want and deserve answers to the myriad questions arising from the events that took place in early 2022 and the decision to declare a public emergency. The Commission is committed to discovering and providing those answers, and to making appropriate policy recommendations for consideration and implementation.

As the process unfolds, the Commission will remain flexible and responsive to issues that arise. The Commission looks forward to the input and cooperation of participants and the public as it works to accomplish its mission.

Appendix A - Terms of Reference of the Commission

The Terms of Reference of the Commission are as follows:

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Prime Minister,

(a) directs that a Commission do issue, for the period ending on March 31, 2023, under Part I of the *Inquiries Act* and under the Great Seal of Canada, appointing the Honourable Paul S. Rouleau to be a Commissioner, to conduct an inquiry under the name of the Public Inquiry into the 2022 Public Order Emergency ("Public Inquiry"), which Commission must

(i) direct the Commissioner to examine and report on the circumstances that led to the declaration of a public order emergency being issued by the federal government and the measures taken by the Governor in Council by means of the *Emergency Measures Regulations* and the *Emergency Economic Measures Order* for dealing with the public order emergency that was in effect from February 14 to 23, 2022;

(ii) direct the Commissioner to examine issues, to the extent relevant to the circumstances of the declaration and measures taken, with respect to

(A) the evolution and goals of the convoy and blockades, their leadership, organization and participants,

(B) the impact of domestic and foreign funding, including crowdsourcing platforms,

(C) the impact, role and sources of misinformation and disinformation, including the use of social media,

(D) the impact of the blockades, including their economic impact, and

(E) the efforts of police and other responders prior to and after the declaration,

(iii) direct the Commissioner to set out findings and lessons learned, including on the use of the *Emergencies Act* and the appropriateness and effectiveness of the measures taken under the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*, and to make recommendations, as pertains to the matters examined in the Public Inquiry, on the use or any necessary modernization of that Act, as well as on areas for further study or review,

(iv) direct the Commissioner to submit to the Governor in Council a final report in both official languages on their findings and recommendations no later than February 6, 2023,

(v) authorize the Commissioner to

(A) adopt any procedures and methods that they may consider expedient for the proper and efficient conduct of the Public Inquiry, to accept submissions in the manner they choose, including electronically, and sit at any times, in any manner and in any place in Canada that they may decide,

(B) at the Commissioner's discretion, grant any person who in the Commissioner's assessment would provide necessary contributions to the Public Inquiry and satisfies the Commissioner that they have a substantial and direct interest in the subject matter an opportunity for appropriate participation in it,

(C) recommend to the Clerk of the Privy Council that funding be provided, in accordance with approved guidelines respecting the remuneration and expenses and the assessment of accounts, to any person described in clause (B) if, in the Commissioner's view, the person would not otherwise be able to participate in the Public Inquiry, and

(D) at the Commissioners' discretion, engage the services of the experts and other persons referred to in section 11 of the *Inquiries Act*, and pay them remuneration and expenses as approved by the Treasury Board,

(vi) direct the Commissioner to

(A) perform their duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization,

(B) perform their duties in such a way as to ensure that the conduct of the Public Inquiry does not jeopardize, any ongoing criminal investigation or proceeding or any other investigation, and provide appropriate notice to the government institution responsible of any potential impact, as identified by the Commissioner, on that ongoing investigation or proceeding,

(C) in conducting the Public Inquiry, take all steps necessary to prevent any disclosure of information to persons or bodies other than the Government of Canada that would be injurious to international relations, national defence or national security,

(D) have the Public Inquiry's primary office in the National Capital Region and use the accommodation provided by the Privy Council Office,

(E) follow established security procedures, including the requirements of the Government of Canada's security policies, directives, standards and guidelines, with respect to persons whose services are engaged under section 11 of the Inquiries Act and the handling of information at all stages of the Public Inquiry,

(F) use the information technology systems and devices and other electronic systems, including record management systems, and associated support, services and procedures specified by the Privy Council Office, including for records management and the creation and maintenance of websites,

(G) use the automated litigation support system specified by the Attorney General of Canada,

(H) ensure that, with respect to any public proceedings, members of the public can, simultaneously in both official languages, communicate with and obtain services from the Commissioner,

(I) file the records of the Public Inquiry with the Clerk of the Privy Council as soon as feasible after the conclusion of the Public Inquiry,

(J) provide the Government of Canada with an opportunity for appropriate participation in the Public Inquiry, and

(K) provide provincial, territorial and municipal governments with an opportunity for appropriate participation in the Public Inquiry, if they request it; and

(b) requires that the report of the Public Inquiry into the 2022 Public Order Emergency be laid before each House of Parliament by February 20, 2023.

Appendix 5

Standing and Funding Application Form

PUBLIC ORDER EMERGENCY COMMISSION

Application to Participate and for a Funding Recommendation

All Applicants seeking standing or standing and funding must use this form and may file supporting materials related to the topics set out below. All applications, along with any supporting materials, must be sent via email to info@poec-cedu.gc.ca no later than 6 PM EDT on Wednesday, June 15, 2022, or on any other date with leave of the Commissioner.

The Rules governing applications for standing and funding for the Public Order Emergency Commission can be accessed here: publicorderemergencycommission.ca/documents.

1. The Applicant

a. Individual (if applicable)

i. Name:

ii. Email address:

iii. Mailing address:

iv. Telephone number:

b. Organization, government, agency, institution, association or other entity (if applicable)

i. Name:

ii. Contact person (name and position)

iii. Email address:

iv. Mailing address:

v. Telephone number:

c. Legal representative (if applicable)

i. Representative's name:

ii. Firm:

iii. Email address:

iv. Mailing address:

v. Telephone number:

2. Standing to Participate

a. Participation is based on the following criteria:

(i) A substantial and direct interest in the subject matter of the Inquiry;

(ii) The Applicant's participation would provide necessary contributions or otherwise further the conduct of the Inquiry; and

(iii) The Applicant's participation would contribute to the openness and fairness of the Inquiry.

In relation to (i) above, please specify the nature of the Applicant's "substantial and direct interest" in the subject matter of the Inquiry, with reference, where applicable, to the Terms of Reference and the Inquiry's Notice dated June 1, 2022.

Also address whether the Applicant seeks standing in relation to the fact-finding and/or policy-related functions of the Inquiry, and identify those factual, legal or policy issues falling within the Inquiry's mandate that the Applicant wishes to address as a Party.

With respect to (ii) and (iii) above, please explain how these criteria are met, to the extent it is not already been addressed in relation to (i).

b. Is the Applicant willing to share a single grant of standing with others with whom the Applicant shares a common interest? Check one box only.

☐ Yes ☐ No

Please explain your answer in the box below and indicate whether the Applicant formed or have attempted to form a group or coalition with others of similar interests.

c. Please indicate if the Applicant is seeking standing only on one or more of the following issues:

1. the basis for the Government of Canada's decision to declare a public order emergency and the circumstances that led to that declaration;

2. the appropriateness and effectiveness of the measures the Government selected in order to address the emergency;

3. the lessons learned from these events and how they inform policy and legislative recommendations;

4. other aspects of the Commission's Terms of Reference (please specify).

Please explain in the box below.

c. If granted standing, how would the Applicant like to contribute to the Inquiry's work, in light of the scope and nature of the Applicant's interest? Please check all that apply:

- ☐ By producing factual documents relevant to the Inquiry's mandate
- ☐ By creating or participating in the creation of factual summaries to be introduced into evidence
- ☐ By identifying, tendering or representing witnesses who may testify on factual issues
- ☐ By examining or cross-examining witnesses
- ☐ By making submissions on factual issues and related evidentiary issues
- ☐ By creating or producing policy papers to the Inquiry relevant to its policy-related function
- ☐ By participating in policy roundtables or discussions
- ☐ By making submissions on policy-related issues
- ☐ Other (Specify):

_____

3. Funding

a. If given the right to participate, are you asking the Commissioner to recommend to the Clerk of the Privy Council that you be given funding? Check one box only.

☐ Yes ☐ No

b. If "yes", why would you not be able to participate in the Inquiry without funding?

c. How much funding is the Applicant seeking and for what purpose?

d. Please check all that apply:

☐ The Applicant has an established record of concerns for and a demonstrated commitment to the interest the Applicant seeks to represent.

☐ The Applicant has special experience or expertise with respect to the Commission's mandate.

If applicable, explain how the statements above apply to the Applicant.

e. Please list and provide any documentation or other evidence you would like the Commissioner to consider below and attach copies of all supporting materials to the application. **Please note there is a 10-page limit for supporting documents**.

I hereby certify and declare that the information set out by me in this document is true and correct to the best of my knowledge and belief.

Date: _____

Signature: _____

Appendix 6

Decision on Standing

June 27, 2022

1. In this ruling, I provide my decision on 39 applications for standing to participate in the Public Order Emergency Commission. My recommendations with respect to funding will follow in the near future.

General principles

2. Before addressing the individual applications, I wish to comment on the considerations that I have used in reaching my decision. I am guided by the Commission's Terms of Reference and the Rules of Standing and Funding issued on June 1, 2022. I have also considered standing decisions that have been issued in other public inquiries.

3. The Commission's Terms of Reference are set out in Order in Council P.C. 2022-0392. Paragraph (a)(v), provides that I may, in my discretion:

> (A) adopt any procedures and methods that they may consider expedient for the proper and efficient conduct of the Public Inquiry, to accept submissions in the manner they choose, including electronically, and sit at any times, in any manner and in any place in Canada that they may decide,
>
> (B) grant any person who in the Commissioner's assessment would provide necessary contributions to the Public Inquiry and satisfies the Commissioner that they have a substantial and direct interest in the subject matter an opportunity for appropriate participation in it,
>
> (C) recommend to the Clerk of the Privy Council that funding be provided, in accordance with approved guidelines respecting the remuneration and expenses and the assessment of accounts, to any person described in clause (B) if, in the Commissioner's view, the person would not otherwise be able to participate in the Public Inquiry…

4. Paragraphs a(vi)(J)-(K) of the Terms of Reference direct me to:

(J) provide the Government of Canada with an opportunity for appropriate participation in the Public Inquiry, and

(K) provide provincial, territorial and municipal governments with an opportunity for appropriate participation in the Public Inquiry, if they request it

5. This Inquiry is mandated under section 63 of the *Emergencies Act.* In enacting this provision, Parliament required that every invocation of the *Emergencies Act* would be followed by an inquiry. A public inquiry was established by Order in Council and I must interpret my Terms of Reference consistent with the requirement of s. 63 of the *Emergencies Act.* I am also mindful of the additional issues identified in paragraphs (a)(ii) and (iii) of the Terms of Reference.

6. I am committed to ensuring that this Inquiry will be fair and open. In order to do so, I must obtain and consider a broad range of information that pertains to the issues identified in the Terms of Reference.[1]

7. I must also bear in mind the importance of completing this Inquiry in a timely manner. Inquiries may suffer from diminished public confidence if they are significantly delayed.[2] The challenge for this Inquiry is more significant than most. The *Emergencies*

[1] Commissioner Dennis O'Connor, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Ruling on Standing and Funding (May 4, 2004), at 4 [*Arar Ruling*]; Commissioner John H. Gomery, Commission of Inquiry into the Sponsorship Program and Advertising Activities, Ruling on Standing (July 5, 2004), under "Guiding Principles on Standing" [*Sponsorship Ruling*]; Commissioner Jeffrey J. Oliphant, Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney, Ruling on Application by Jefford Industries Limited and Arthur Jefford for Standing for Part II (The Policy Review) (February 2009) at para. 12 [*Schreiber Ruling*].

[2] *Arar Ruling, supra*, at 5; *Sponsorship Ruling, supra*, under "Guiding Principles on Standing"; Commissioner Stephen T. Goudge, Inquiry into Pediatric Forensic Pathology in Ontario, Decision on Standing and Funding (August 17, 2007), at 3 [*Pediatric Pathology Ruling*]; Commissioner William Hourigan, Ottawa Light Rail Commission, Order on Applications for Standing and Funding (March 3, 2022), at 2 [*Light Rail Ruling*].

Act establishes a statutory deadline by which the Commission's report must be tabled in Parliament. In assessing the applications that are before me, I must keep in mind the practical realities facing the Commission, including the strict timeline in which to complete the Inquiry.

"Substantial and Direct Interest" and "Necessary Contributions"

8. Paragraph (a)(v)(B) of the Commission's Terms of Reference provides that I may grant standing to persons when I am satisfied that they have a "substantial and direct interest in the subject matter" of the Inquiry. This threshold requirement for standing has been used in numerous previous inquiries. Unlike previous inquires, paragraph (a)(v)(B) also provides that, in order to obtain standing, an Applicant, in my assessment, "would provide necessary contributions to the Public Inquiry".

9. Previous commissioners considering the "substantial and direct interest" criterion have consistently held that there is no singular test that must be satisfied by an Applicant. Instead, a review of previous decisions reveals a number of principles that previous commissioners have found useful in assessing applications for standing.[3] These include the following:

a. Commissioners have a degree of discretion in determining who should have standing, but that discretion must be exercised judicially by reference to the subject matter of the inquiry and all other relevant considerations;

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[3] *Arar Ruling, supra*, at 6-7; *Sponsorship Ruling, supra*, under "Guiding Principles on Standing"; *Schreiber Ruling, supra* at paras. 14-17; *Pediatric Pathology Ruling, supra* at 3; *Light Rail Ruling, supra* at 5; Commissioner John C. Major, Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, Ruling on Standing (August 9, 2006), under "Guiding Principles on Standing"; Commissioner Bruce Cohen, Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, Ruling on Standing (April 14, 2010), at paras. 12-15 [*Salmon Fisheries Ruling*]; Commissioner J. Michael MacDonald, Chair, The Joint Federal/Provincial Commission into the April 2020 Nova Scotia Mass Casualty, Participation Decision (May 13, 2021), at paras. 31-33 ["*Mass Casualty Ruling*"]. See also Ed Ratushny, *The Conduct of Public Inquiries: Law, Policy and Practice* (Toronto: Irwin Law, 2009) at 187.

b. An individual who is integrally involved in the events underlying the mandate of an inquiry may have a substantial and direct interest. On the other hand, simply being a witness to relevant events does not, in itself, constitute a substantial and direct interest;

c. Having a genuine concern about, or expertise in the issues raised in an inquiry does not, in itself, give rise to a substantial and direct interest. Having expertise may, however, be relevant in assessing whether to permit a person to participate in policy-oriented aspects of an inquiry; and

d. In assessing applications for standing, Commissioners ought to consider:

i. The mandate of the Inquiry;

ii. The nature of that aspect of the Inquiry for which standing is sought;

iii. The type of interest the Applicant has;

iv. The connection of the particular Applicant to the Inquiry's mandate;

v. Whether the Applicant has a continued interest and involvement in the subject matter of the Inquiry;

vi. Whether the Applicant may be significantly affected by the Commission's findings and recommendations;

vii. Whether the Applicant is uniquely situated to offer information that will assist the Commission with its work; and

viii. The need to complete the Commission's work in a timely manner.

10. Assessing the "necessary contribution" criterion for participation is more nuanced in that it depends on my assessment of what contributions would assist the Commission in its work. As I indicated above, this appears to be novel language in the Order in Council establishing this Commission. The requirement for an Applicant to demonstrate that their participation "would provide necessary contributions to the Public Inquiry" appears to set a higher standard than phrases such as "the person's participation would further the conduct of the inquiry", which are found in several provincial public inquiries statutes.[4]

11. In my view, the "necessary contribution" requirement is a second, independent threshold requirement for an Applicant to obtain standing. Even where an Applicant may have a substantial and direct interest in this Inquiry, I should not grant them standing unless their participation would in my assessment provide a "necessary contribution" to the Inquiry. Given the fact that the declaration of a public order emergency was national in scope and the powers granted to the Governor in Council were expansive, there are numerous individuals, groups and organizations that were either impacted by the invocation of the *Emergencies Act* or the measures taken under it, or feel that they have a substantial and direct interest in it. It would be practically impossible for all of them to participate in this Inquiry.

12. Given the limited time in which this Inquiry must be completed, and the potentially significant number of people and organizations that might credibly claim to have a substantial and direct interest in its subject matter, I must take a pragmatic approach to standing. By limiting participation to those who both have the requisite interest and who, in my assessment, will provide a necessary contribution, I seek to maintain a balance between the need to be open, and the need to discharge my mandate within the time that has been provided by law.

[4] *Public Inquiry Act*, SBC 2007, c. 9, s. 11(4)(b); *Public Inquiries Act*, 2006, SNL 2006, c. P-38.1, s. 5(1)(b); *Public Inquiries Act*, 2009, SO 2009, c. 33, Sch. 6, s. 15(2)(c); *Public Inquiries Act*, 2013, SS 2013, c. P-38.01, s. 5(1)(b).

The scope of participation

13. The 'interest' and 'contribution' criteria are not only threshold requirements for obtaining standing. They also play a role in determining the scope of a party's right to participate in the proceedings. As the Rules on Standing and Funding made clear, standing is not an all-or-nothing proposition. I retain the discretion to determine the appropriate form and scope of participation for those individuals and groups who are granted standing in order to ensure that the Inquiry is conducted in a fair and proportionate way.

14. Restrictions on party participation may be manifested in at least two ways: limits on the scope of participatory rights, and the requirement for those with similar interests to jointly exercise their participatory rights.

15. With respect to the scope of participatory rights, some past inquiries have distinguished between full parties whose rights would include the right to examine witnesses and "interveners" whose rights are largely limited to making recommendations and submissions.[5] It is also possible to limit a party's participation to some, but not all aspects of a commission's mandate.[6] As noted in rules 15 and 18 of the Rules on Standing and Funding, I reserved the ability to determine the specific scope of participatory rights for different Applicants based on the considerations I have outlined above. As will be seen below, I have done so with respect to particular Applicants to whom I have granted standing. I also note that, as the Commission's work proceeds, I retain the discretion to vary the scope of a party's participatory rights.

16. Ensuring that this Inquiry proceeds in a timely and orderly way, while protecting the rights of those who can make necessary contributions and have a substantial and direct interest to participate can also be achieved by requiring Applicants to

[5] *Arar Ruling, supra* at 4-5; *Sponsorship Ruling, supra*, under "Guiding Principles on Standing".
[6] For example, see *Mass Casualty Ruling, supra* at para. 68 (limiting participation of gun control & gun rights groups to aspect of commission related to firearms).

participate jointly. Like some other commissioners have done,[7] I indicated in the Rules on Standing and Funding that I would consider whether an Applicant's proposed participation would be duplicative of another Applicant and whether they would be willing to share a single grant of standing with other Applicants. This was done to encourage Applicants to voluntarily form coalitions with other similarly interested Applicants.

17. Even where an Applicant has applied for individual standing, commissioners have held that they may require joint participation with other Applicants.[8] Where multiple organizations or individuals with a common set of interests and a compatible perspective each wish to participate, it will often be in the public interest for them to participate jointly, even if their preference would be to participate separately from other parties. Again, as will be seen below, I have done so with respect to particular Applicants to whom I have granted standing. As with participatory rights, I retain the discretion to require joint participation between Applicants as the Commission's work proceeds.

18. If conflicts between grouped parties actually arise during the course of an inquiry, they are free to seek permission from the Commission to act individually.

The applications

19. Keeping these principles in mind, I move to my decisions on the individual applications. A list of all Applicants is appended to this decision as Schedule A.

[7] See, for example, *Salmon Fisheries Ruling* at paras. 16-17.

[8] *Salmon Fisheries Ruling, supra* at para. 25; *Mass Casualty Ruling, supra* at paras. 93, 102; Commissioner J. Michael MacDonald, Chair, The Joint Federal/Provincial Commission into the April 2020 Nova Scotia Mass Casualty, Participation Decision Addendum II (September 16, 2021), at paras. 6-8.

The Government of Canada

20. Paragraph (a)(vi)(J) of the Terms of Reference directs the Commission to provide the Government of Canada with an opportunity for appropriate participation in the Inquiry.

21. Canada seeks full standing with respect to all aspects of the Commission's mandate. Canada states that it meets the criteria for standing as it has a substantial and direct interest in all issues before the Inquiry, it is a primary source for information on all subject areas of the Inquiry and will be directly impacted by the findings and recommendations arising from the Inquiry.

22. I am satisfied that Canada has met the criteria for standing. I therefore grant it full standing in the Inquiry.

Provincial Governments

23. Paragraph (a)(vi)(K) of the Terms of Reference directs the Commission to provide provincial governments with an opportunity for appropriate participation in the Inquiry, if they request it. The Governments of Alberta, Saskatchewan, and Manitoba have each requested standing in the Inquiry.

The Government of Alberta

24. Alberta seeks full standing with respect to all aspects of the Commission's mandate. It states that it meets the criteria for standing as it was one of the provinces impacted by the *Emergency Economic Measures Order* and the *Emergency Measures Regulations*, it experienced a blockade at its international border in Coutts, Alberta, and it can provide an important governmental perspective to the Inquiry's policy mandate.

25. I am satisfied that Alberta meets the criteria for standing. I therefore grant it full standing in the Inquiry.

The Government of Saskatchewan

26. Saskatchewan seeks full standing with respect to all aspects of the Commission's mandate. It states that it meets the criteria for standing as the *Proclamation Declaring a Public Order Emergency* impacted the jurisdiction of the province and the rights of its citizens.

27. I am satisfied that Saskatchewan meets the criteria for standing. I therefore grant it full standing in the Inquiry.

The Government of Manitoba

28. Manitoba seeks standing limited to providing written submissions on two issues: (1) the basis for the Government's decision to declare a public order emergency and the factual circumstances in Manitoba that led to that declaration; and (2) the lessons learned from these events and whether any legislative changes are required. Manitoba states that it meets the criteria for standing as it can provide a brief factual overview of the circumstances regarding the protests at the Manitoba Legislature and the Emerson border and submissions concerning the jurisdictional scope of the federal *Emergencies Act.*

29. I am satisfied that Manitoba meets the criteria for standing. I therefore grant it in the manner it has requested.

Municipal Governments

30. Paragraph (a)(vi)(K) of the Terms of Reference directs the Commission to provide municipal governments with an opportunity for appropriate participation in

the Inquiry, if they request it. The City of Ottawa and the City of Windsor have both requested standing.

The City of Ottawa

31. Ottawa seeks full standing with respect to the following issues: (1) the circumstances leading to the *Proclamation*; (2) the appropriateness and effectiveness of the Government's measures in bringing the blockade to an end; and (3) the lessons learned from the blockade and how they inform policy and legislative recommendations. Ottawa states that it meets the criteria for standing as it was directly impacted by the blockade of Ottawa's downtown core and involved in responding to it and can provide relevant evidence and expertise.

32. I am satisfied that Ottawa meets the criteria for standing. I therefore grant it standing to participate in the Inquiry in the manner it has requested.

The City of Windsor

33. Windsor seeks full standing with respect to all aspects of the Commission's mandate. Windsor states that it meets the criteria for standing as it was impacted by the Ambassador Bridge blockade and involved in responding to it, was impacted by the measures selected to address threats to critical infrastructure hosted in the City and can provide relevant evidence and expertise.

34. I am satisfied that Windsor meets the criteria for standing. I therefore grant it full standing in the Inquiry.

The Conservative Party of Canada

35. The Conservative Party of Canada ("CPC") seeks full standing, other than to produce factual documents, with respect to all aspects of the Commission's mandate. It also seeks funding. In its application, the CPC emphasizes its interest in

the Commission's mandate to inquire into the use of the *Emergencies Act*, and the appropriateness and effectiveness of the measures taken under it. The CPC states that this portion of the Commission's work will have a direct and far-reaching impact on current and future parliamentarians. It claims a direct interest in the use of the Act, and whether it should be amended. The CPC also claims a substantial and direct interest in questions respecting Cabinet confidences and other forms of privilege, as well as issues surrounding "misinformation" and "disinformation" as set out in the Commission's Terms of Reference.

36. The CPC states that it has a substantial and direct reputational interest in the Inquiry. The CPC points to statements by members of another political party, made in the House of Commons, that it claims demonstrate that the reputation of the CPC and its sitting MPs (whether expressly identified or otherwise) will be impacted in the course of this Inquiry.

37. I would dismiss the CPC's application for standing.

38. It is important to recognize that in addition to this Inquiry there is a Special Joint Committee of the Senate and House of Commons on the Declaration of Emergency, which is reviewing the exercise of powers and the performance of duties and functions pursuant to the declaration of emergency. Members of the CPC sit on the Special Joint Committee and have played an active role in its proceedings.

39. Under the *Emergencies Act*, there are two significant accountability and review mechanisms: The Joint Committee established under s. 62, comprised of elected Parliamentarians and Senators, and the Inquiry established under s. 63, which operates independently. There is good reason for a separation between these mechanisms. The political process that involves elected representatives from the various parties has a role to play in how the use of the Emergencies Act is reviewed and assessed. But there is also an important role for an independent non-partisan process. Both ought to operate independently from one another. In this respect, I share the views expressed by Commissioner O'Connor in the Walkerton Inquiry:

> [I]t is, in my view, generally undesirable to use public inquiries to have political parties advance their positions or policies. There are other more appropriate arenas for them to do so. Mr. Jacobs, counsel for the [Ontario New Democratic Party] Group, recognized this concern and assured me that this was not the motivation underlying the application. I accept Mr. Jacobs' assurance without reservation. Nevertheless, I think there is a danger that this applicant's participation could be viewed by the public as politicizing the Inquiry in a partisan way. To the extent possible, that result should be avoided.[9]

40. That is not to say that political parties should never be given standing in public inquiries. Every application must be assessed on its own merits. However, the existence of the Joint Committee, and the concerns about avoiding partisanship in the Inquiry process are, in my view, important factors that weigh against granting standing when assessing the CPC's application.

41. The CPC's application identifies a range of important factual and public policy issues. It is not clear to me how its interest differs from that of the public generally, and I am not satisfied that the CPC has a direct or substantial interest in those matters.

42. In that regard, the CPC points to its particular role as the Official Opposition (or its possible future role in Government). As the *Emergencies Act* requires, the Commissioner's report is made to Parliament. It is then that these sorts of considerations come into play. I do not believe, however, that they have a role to play in this Inquiry.

43. My views are similar to those expressed by Commissioner Gomery when considering applications from political parties who sought party standing in the Sponsorship Inquiry:

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[9] Commissioner Denis O'Connor, The Walkerton Inquiry, Ruling on Standing and Funding, under "J. Ontario New Democratic Party"[*Walkerton Ruling*].

> [I]t is not at all apparent that a political party, in this case one opposed to the party in power, has a direct and substantial interest of its own in these questions, other than its partisan interests. These play an essential role within the political system but should not form part of the Commission's proceedings. Any misconduct which the Commission might find could result in political consequences, whether in Parliament or in an election, and therefore could be of great importance politically to the applicant. However, such political consequences should not be within the Commission's contemplation when drafting its Report and recommendations.
>
> On the other hand, to the extent that the applicant's interests are not purely partisan and are those of the public interest, they are not distinct from those of every citizen concerned to understand the matters which are the object of the Inquiry.[10]

44. The CPC also submits that its own reputational interests are engaged by this Inquiry. It points to statements made in the House of Commons by another political party, which can be characterized as critical of the CPC. Those comments appear to have been made in the context of discussions respecting the events surrounding the invocation of the *Emergencies Act*, the Joint Committee process, and this Inquiry.

45. In my view, these comments do not give rise to the type of risk of reputational harm that would justify standing in a public inquiry. The comments that the CPC relies on were made in the course of partisan debates in the House of Commons. Such debates do not, in my view, give rise to the sort of reputational concern that would justify standing in a public inquiry. I again find myself in agreement with Commissioner O'Connor's views in the Walkerton Inquiry, where a political party sought standing to respond to negative comments made against them by another party:

[10] *Sponsorship Ruling, supra* under "4. Conservative Party of Canada".

> This applicant makes two submissions in arguing that it has an interest that may be affected by findings to be made in Part I. First, it says that the Premier of Ontario has called the policies, practices and procedures of the pre-1995 ONDP government into question. In response to a question from the press, the Premier apparently said that certain changes in water testing and reporting standards had been made by the previous ONDP government. The ONDP Group suggests that this comment carried with it the innuendo that these changes contributed to what happened in Walkerton. The ONDP Group submits that it should be afforded an opportunity to participate in the Inquiry in order to deal with this allegation. I do not think that the Premier's comment gives rise to the type of interest that warrants standing under s.5 of the Act. The comment seems to have been made as part of the political process in which one politician speaks on an issue and on which an opposing politician may respond in the same forum. It is clearly open to the members of this group to respond to this comment in a forum other than this Inquiry.[11]

46. Finally, while the CPC could possibly have some useful contributions to make respecting matters within the Commission's mandate, I do not believe that they would constitute "necessary contributions".

Law Enforcement

47. Six groups and individuals associated with policing and law enforcement have applied for standing: The Ottawa Police Service, the Ontario Provincial Police, the Canadian Association of Chiefs of Police, the National Police Federation, Peter Sloly, and Richard Huggins.

[11] *Walkerton Ruling, supra* under "J. Ontario New Democratic Party"

Ottawa Police Service

48. The Ottawa Police Service ("OPS") seeks full standing with respect to all aspects of the Commission's mandate. The OPS is the municipal police force for the City of Ottawa. It was directly involved in responding to demonstrations in Ottawa from the earliest days of protests through to the ultimate removal of protestors. It liaised with government partners, responded to calls for service throughout the city and coordinated responses with other police services.

49. I conclude that the OPS satisfies the criteria for standing. It has firsthand information about key events within the scope of the Commission's mandate and is likely to have an important perspective on issues related to police powers. The choices and actions of the OPS are likely to be examined by the Inquiry. I therefore grant the OPS full standing.

Ontario Provincial Police

50. The Ontario Provincial Police ("OPP") seeks full standing, other than to cross-examine witnesses or produce policy papers, with respect to all aspects of the Commission's mandate relevant to the policing response to protest activity and blockades in Ottawa and elsewhere. The OPP was active in Ottawa and responded to convoys and demonstrations elsewhere in Ontario. These included the Ambassador Bridge blockade and demonstrations around the Provincial Legislature. The OPP also provided intelligence reports on convoy movement to over 35 Canadian law enforcement and security agencies.

51. I conclude that the OPP satisfies the criteria for standing. Like the OPS, the OPP has firsthand knowledge of key events that the Commission will likely inquire into and has an important perspective on the policy issues related to policing. The conduct of the OPP, like the OPS, is likely to be examined during the Inquiry. I therefore grant the OPP standing in the manner it has requested.

Canadian Association of Chiefs of Police

52. The Canadian Association of Chiefs of Police ("CACP") seeks limited standing to identify, tender or represent witnesses who may testify on factual issues, to participate in policy roundtables or discussions, and to make submissions on policy-related issues. The CACP proposes that its standing extend to the appropriateness and effectiveness of government measures, the lessons learned from the events underlying the Commission's mandate, and the examination of issues regarding the efforts of police and other responders prior to and after the declaration.

53. The CACP states that it is the official voice of the leaders of municipal, regional, provincial, federal and First Nations police services across Canada. It indicates in its application that the federal government solicited its perspective during deliberations on invoking the *Emergencies Act* and that it communicated its support for emergency measures to certain ministers. It also indicates that it assumed a facilitation and coordination role in obtaining support for the OPS from other police agencies around the country.

54. I conclude that the CACP satisfies the criteria for standing. As the voice of police leadership from across the country, the CACP is uniquely situated to provide a national perspective on the needs and abilities of police services. I would therefore grant it standing in the manner it has requested.

National Police Federation

55. The National Police Federation ("NPF") seeks full standing with respect to all aspects of the Commission's mandate. The NPF states that it is the certified bargaining agent for regular members and reservists of the RCMP below the rank of Inspector. Its members played a role in the events taking place in Ottawa, as well as in border blockades across the country. It claims a substantial and direct interest in the policing issues that are the subject of this Inquiry, including the jurisdictional lines that apply to the RCMP in locations such as the National Capital Region. It also

claims a substantial and direct interest because the conduct of its members may be scrutinized during the course of the Inquiry.

56. I am satisfied that the NPF has met the criteria for standing. An important portion of the Commission's work will consider NPF members' actions, and those members stand to be directly affected by any changes to policing that may flow from the Commission's findings and recommendations. I am satisfied that the NPF would make necessary and unique contributions to the Inquiry by providing insight from a national, on-the-ground perspective distinct from the organizational perspective of the RCMP itself. I would therefore grant the NPF full standing.

Peter Sloly

57. Peter Sloly is the former Chief of the OPS. He oversaw the OPS's response to the protests in Ottawa until his resignation on February 15, 2022. As such, he oversaw police efforts in response to the Freedom Convoy. He states that he has firsthand knowledge of decisions made by the OPS, and its interactions with other police services and intelligence agencies.

58. Mr. Sloly seeks standing to produce factual documents, examine witnesses, make submissions on factual, evidentiary and policy-related issues, and to participate in policy roundtables or discussions. He seeks to participate in relation to the basis for the Government of Canada's decision to declare a public order emergency and the circumstances that led to that declaration; the evolution and goals of the convoy and blockades, their leadership, organization and participants; the impact of the blockades, including their economic impact; the efforts of police and other responders prior to and after the declaration; and the lessons learned from these events and how they inform policy and legislative recommendations.

59. In my view, Mr. Sloly satisfies the requirements for standing. Given his firsthand knowledge of how events unfolded in Ottawa and his role in framing the response to these events, I am satisfied that Mr. Sloly is uniquely positioned to make necessary

contributions to the Commission's fact-finding and policy processes. It is also likely that his decisions while serving as Chief of the OPS will be examined by the Inquiry. It appears to me that Mr. Sloly's perspective is distinct from the perspective of the OPS. I therefore would grant him standing in the manner that he has requested.

Richard Huggins

60. Richard Huggins seeks full standing, other than calling witnesses, with respect to all aspects of the Commission's mandate. He indicates the basis for his substantial and direct interest is that he is an RCMP officer in British Columbia and has written a book explaining law enforcement interactions to vulnerable groups. He wishes to address the fact-finding aspect of the Commission, given his background.

61. I find that this Applicant has not made out an interest that is either direct or substantial. While the Applicant clearly wishes to contribute to the work of the Commission, his interest is general. It is not sufficiently substantial and direct with respect to the subject matter of this Commission to warrant a grant of standing. As explained in the notice inviting applications for standing, there will be other ways to be involved and contribute to the public activities and information gathering by the Commission. Members of the public such as Mr. Huggins will be given an opportunity to express their views, suggest areas of investigation and have their experiences conveyed to the Commission in ways other than through being granted standing.

Affected Individuals & Groups

62. The Commission received eleven applications from individuals and three applications from groups of individuals who were present at, supported or otherwise participated in some way in the protests that took place in Ottawa. The Commission also received one application from a coalition of groups representing businesses and individuals who explain that they have been negatively impacted by the protests.

Eleven Individual Applicants

63. Mavis Sutherland is an individual who wanted but was unable to contribute financially to the Convoy because of measures that were put in place to prevent donations to the Convoy.

64. Danielle Height is an individual who participated in the Convoy in Ottawa from February 18 to 20, 2022 and who engaged with police and protestors. She documented some of the events that took place in that time.

65. Ruth Link is an individual who participated in the Convoy in Ottawa and who came into contact with the police. This Applicant expressed feeling physically threatened by law enforcement action.

66. Marie-Joelle LeBlanc is an individual who participated in and donated to the Convoy.

67. Jason Ehrlich is an individual who joined the “Northern BC Freedom Convoy” group and travelled with that convoy from Winnipeg to Ottawa. He participated in the protests in Ottawa from January 28 to February 14, 2022.

68. Marc Udeschini states that he acted as “negotiator” for the truckers located at Rideau and Sussex streets in Ottawa. He explains that he approached OPS officers who accepted his role as negotiator. This Applicant indicates he has a first-person account of the events that took place on February 18, 2022 with respect to law enforcement and the Convoy.

69. Jeremiah Jost is an individual who participated in the Convoy in Ottawa starting on January 29, 2022. He used his bank account to receive and distribute funds to contribute to the Convoy. He states his legal interests, including property interests, have been affected by the invocation of the *Emergencies Act* and subsequent Orders and Regulations.

70. Harold Ristau is a military veteran and pastor who participated in the Convoy in Ottawa by leading participants in prayer, and by issuing benediction and prayer near a war memorial. He states his legal interests, including property interests, have been affected by the invocation of the *Emergencies Act* and subsequent Orders and Regulations.

71. Vincent Gircys is a retired police officer and Convoy supporter who had his bank account and credit card account frozen under the authority of the *Emergencies Act.* He states his legal interests, including property interests, have been affected by the invocation of the *Emergencies Act* and subsequent Orders and Regulations.

72. Edward Cornell is a Convoy supporter whose bank account and credit card account were frozen under the authority of the *Emergencies Act.* He states his legal interests, including property interests, have been affected by the invocation of the *Emergencies Act* and subsequent Orders and Regulations.

73. Rob Stocki is a former police officer and Convoy supporter. Although he is unrepresented and his application lists only his name, he states his application is on behalf of dozens of active and non-active police officers who were subjected to wiretapping relating to the Convoy in Ottawa during the time that the *Emergencies Act* was invoked. His supporting documentation does include a notice of an authorization under s. 188 of the Criminal Code. The notice, however, does not expressly indicate that the interception was related to the protests or the *Emergencies Act.*

74. I have concluded that none of these individual Applicants satisfies the criteria for standing.

75. I carefully considered the criteria for standing I set out earlier in these reasons before determining that I would not grant these Applicants the standing each of them requested. Three considerations are paramount in my determination.

76. First is the requirement that an Applicant must have a “substantial and direct interest” in the subject matter of the Commission. The eleven Applicants in this

group have shown some involvement and personal interest in the subject matter of the Commission, but that interest and involvement is generally limited to their own personal experience as supporters or participants of the Convoy. Their interest is not sufficiently "substantial and direct" in the subject matter of the Commission as is required for standing to be granted. As I noted earlier, there are numerous individuals, groups and organizations that were impacted by either the events leading up to the invocation of the *Emergencies Act* or the measures taken under it. This is not, on its own, sufficient to justify a grant of standing. While some of the individuals listed above are pursuing litigation challenging the invocation of the *Emergencies Act*, I am of the view that this does not give rise to a substantial and direct interest. The requirements for standing to bring a proceeding before the Courts is distinct from the question of whether an individual ought to be granted standing to participate in a public inquiry.

77. Second, I am not satisfied that these Applicants would provide necessary contributions to the Inquiry. By and large, their contribution would be limited to what they saw, heard or experienced from their particular vantage point as a participant or supporter of the Convoy. Such evidence may be relevant to the work of the Commission and, as explained earlier, the Commission will provide opportunities and avenues for individuals such as these Applicants to express their views and relate their experiences. But, as noted in the introductory portion of these reasons, simply being a witness to relevant events does not itself justify a grant of standing.

78. Third, several organizations representing Convoy participants, protestors and other affected individuals have been granted standing. Based on the work performed and perspectives brought by each of these organizations, I am satisfied that the concerns of these Applicants will be raised by the various organizations. Importantly, when the organizations raise such concerns, they are able to do so from a broader, more representative, perspective.

79. Moreover, participation by representative organizations, rather than by way of a multiplicity of individuals, better meets the Commission's guiding principles to

conduct its work effectively, expeditiously, and in accordance with the principle of proportionality.

Convoy organizers

80. Tamara Lich, Chris Barber, Daniel Bulford, Tom Marazzo, Sean Tiessen, Chris Garrah, Miranda Gasinor, Joseph Janzen, Dale Enns, Ryan Mihilewicz and the Freedom 2022 Human Rights and Freedoms not-for-profit corporation jointly apply for full standing with respect to all aspects of the Commission's mandate. These individuals represent Convoy organizers as well as a selection of participants. Several of them had their assets frozen as a result of the measures taken under the *Emergencies Act.*

81. In my view, this group satisfies the criteria for standing. The Convoy organizers had a key role in the events that led to the declaration of the emergency. In addition, the Terms of Reference establishing the Commission at para. (a)(ii)(A) direct me to examine "the evolution and goals of the convoy and blockades, their leadership, organization and participants", to the extent that these issues are relevant to the circumstances of the declaration and the measures taken thereunder. The group of Convoy organizers clearly have a substantial and direct interest in this aspect of my mandate. They can provide a vantage point that goes beyond an individual Convoy participant or observer and encompasses the organization and leadership of the Convoy. Their contributions to the work of the Commission are necessary as they are uniquely situated to offer information to the Commission and give firsthand evidence as to the goals and organization of the Convoy. I would therefore grant them full standing at the Inquiry.

Richard Ocelak, Bruce Matthews, Evan Blackman, and Guy Primeau

82. These four individuals seek full standing on the factual portion of the Inquiry with respect to the appropriateness and effectiveness of measures adopted by the

government, as well as lessons learned from the events and how they can inform policy and legislative recommendations. They also request funding.

83. These four individuals indicate that they had their accounts frozen by a financial institution as a result of measures taken under the *Emergencies Act.* In their application, they indicate that they seek to represent the donors to the Freedom Convoy more generally.

84. I would dismiss their application for standing.

85. This group of Applicants was personally impacted by the events in question. However, as I indicated previously, to have been personally impacted is not a sufficient basis to demonstrate a substantial and direct interest in the work of the Commission. I have already decided to grant standing to the convoy organizer group, which includes many individuals who, like these Applicants, had their personal bank accounts frozen. I am not satisfied that these Applicants would provide a necessary contribution. Others whose financial assets were frozen as a result of the *Emergencies Act* will be participating and representing the perspective of supporters of the Convoy who were financially impacted by measures taken under the *Emergencies Act.*

Dan Bosworth, Richard Musca, Monique Campeau-LeBlanc and Andre Schutten

86. These four Applicants seek full standing for the factual component of the Inquiry with respect to the basis for the Government of Canada to declare an emergency, the circumstances that led to that declaration, and the appropriateness and effectiveness of the measures selected to address the emergency. They also seek funding.

87. This group identifies as Ottawa residents and workers who were supportive of the Convoy. They indicate that, if granted standing, they will enlist other Ottawa residents and business owners to join their group. They seek to provide the perspective of sympathetic Ottawa residents and relate their experiences with the

Convoy by providing firsthand accounts of the behaviour of protesters and the impact of the Convoy on life and mobility in downtown Ottawa.

88. I would not grant standing to this group.

89. My reasons for not granting standing to this group are similar to my reasons respecting the eleven individual Convoy supporters. This group is made up of individuals who have been personally impacted by the events in question and who seek to share their personal perspectives on those events. Like the individual Convoy supporters, this group can only provide the perspectives of its individual members, limited to the experiences from their particular vantage point, without providing a broader view of the events that took place or of the policy considerations at play. The fact that they are supporters that are residents and workers from Ottawa does not give them a substantial and direct interest or place them in a significantly different position as other supporters and participants in the protests. It may be that these individuals have important evidence to provide to the Commission as witnesses and, as noted earlier, the Commission will provide opportunities and avenues for such individuals to express their views and relate their experiences. As a result, I do not believe that they would make a necessary contribution to the work of the Inquiry if granted standing.

Ottawa Business and Community Associations

90. The Commission received applications from nine community and business associations in Ottawa: Lowertown Community Association, Action Sandy Hill, Vanier Community Association, Byward Market Business Improvement Association, Bank Street Business Improvement Association, Sparks Street Business Improvement Association, Downtown Rideau Business Improvement Association, Vanier Business Improvement Area, and Ottawa Coalition of Business Improvement Areas (collectively, the “Ottawa Coalition of Residents and Businesses”). This Coalition seeks full standing, other than to produce policy papers and participate in policy roundtables. It seeks to participate with respect to the circumstances leading to the declaration of emergency, lessons learned from the events and how they inform policy and legislative

recommendations, and the impact of the Convoy on Ottawa and the police response. It also seeks funding.

91. The members of the coalition are each established representative institutions for various business and communities throughout Ottawa. Many of them have been in existence for decades and have hundreds of active members. They claim a substantial and direct interest in the subject matter of the Inquiry due to their broadly representative nature, and the impact that the protests had on the City of Ottawa, its residents, and its businesses.

92. In my view, this group satisfies the criteria for standing. There can be no doubt that the presence of the Convoy affected Ottawa residents and businesses in and around the downtown core. In what way and to what extent are questions yet to be answered. The Ottawa Coalition of Residents and Businesses can provide broad insight into these questions as it represents an extensive number of affected businesses and individuals, encompassing a significant geographical area. I also find it relevant to my decision that each association has long-standing ties to their communities and a historical and institutional perspective that other ad hoc groups, such as the group of sympathetic Ottawa businesses and residents, simply do not have. I would therefore grant this group standing in the manner that they have requested.

Industry & Trade Organizations

93. Three industry and trade organizations have applied for standing: The Insurance Bureau of Canada, the Calgary Chamber of Commerce, and the National Crowdfunding & Fintech Association.

Insurance Bureau of Canada

94. The Insurance Bureau of Canada (“IBC”) seeks standing limited to producing policy papers, participating in roundtables or discussions, and making submissions on policy-related issues. The IBC is the industry association representing Canada’s

property and casualty insurance companies. During the public order emergency, measures enacted by the Government required the IBC's members to cease providing services to designated individuals. The IBC submits that, as the representative of an industry directly involved in the implementation of *Emergencies Act* measures, it has a substantial and direct interest, as well as a necessary perspective on the use of insurance-related measures as a "soft power" tool by the Government.

95. I am satisfied that the IBC satisfies the criteria for standing. I believe that the IBC will provide an important contribution to the Commission with respect to the economic measures taken under the *Emergencies Act.* I therefore grant it standing to participate in the Inquiry in the manner it has requested.

Calgary Chamber of Commerce

96. The Calgary Chamber of Commerce ("CCC") seeks standing limited to producing policy papers, participating in roundtables or discussions, and making submissions on factual, evidentiary and policy-related issues. It also seeks a limited grant of funding. It wishes to make submissions respecting the economic circumstances that contributed to the invocation of the *Emergencies Act*, how the invocation of the Act impacted Canada's business community, and the role of both social media and border blockades in the declaration of emergency and their impact on the economy. The CCC claims a substantial and direct interest in matters that impact the local, regional and national economy. It indicates that its participation will ensure that the Commission receives a necessary perspective from Prairies-based businesses on the impact of the use of the *Emergencies Act.*

97. I am satisfied that the CCC meets the criteria for standing. It will provide an important perspective on the economic impact of border blockades and the subsequent use of the *Emergencies Act* on businesses in Western Canada. I therefore grant it standing to participate in the Inquiry in the manner it has requested.

National Crowdfunding & Fintech Association

98. The National Crowdfunding & Fintech Association ("NCFA") seeks full standing with respect to the appropriateness and effectiveness of the measures selected in order to address the emergency, the impact of foreign funding, including donation crowdfunding platforms, the impact role and sources of misinformation and disinformation, including the use of social media, and the efforts of police and other responders prior to and after the declaration. It also seeks funding. The NCFA claims that it is has a substantial and direct interest in these matters as Canada's largest industry association representing crowdfunding platforms and fintech start-ups and scale-ups. It points to the experience of industry participants who had obligations imposed upon them under the *Emergencies Act*, as well as to post-emergency amendments made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act.*

99. I am satisfied that the NCFA meets the criteria for standing. Its members have a direct interest in the crowdfunding and social media aspects of the Commission's mandate and were directly impacted by measures taken by the Government related to financial reporting obligations. I therefore grant it standing to participate in the Inquiry with respect to crowdfunding, misinformation/disinformation associated with fundraising, and the actions of government and law enforcement related to the funding of protestors. However, I caution that the Commission's mandate does not extend to the fairness or wisdom of regulatory amendments made by the government in April 2022. While those changes may be relevant context to the policy mandate of the Commission, they are not directly the subject of the Commission's work.

Non-Governmental Organizations and Civil Society

100. Seven organizations applying for standing are what I would broadly characterize as non- governmental organizations and/or representatives of civil society: The Canadian Constitution Foundation, the Democracy Fund, Citizens for Freedom, the

Justice Centre for Constitutional Freedoms, the Canadian Civil Liberties Association, Veterans for Freedom, and the Criminal Lawyers' Association (Ontario) jointly with the Canadian Council of Criminal Defence Lawyers. For reasons that I will explain below, I have also included in this category an application by Professor Ryan Alford.

The Canadian Constitution Foundation & Professor Ryan Alford

101. The Canadian Constitution Foundation ("CCF") applies for full standing with respect to all aspects of the Commission's mandate. It also seeks funding. The CCF claims a substantial and direct interest in the subject matter of the Inquiry, pointing to the fact that it is currently pursuing an application for judicial review in the Federal Court challenging the proclamation of an emergency as well as the measures taken under the *Emergencies Act*. It emphasizes the substantial overlap between the legal issues in those proceedings and the mandate of this Commission, and notes that it has developed legal expertise in the *Emergencies Act*, as well as *Charter* issues surrounding the invocation of the Act and the measures taken under it.

102. I am of the view that challenging the legality of the use of the *Emergencies Act* through litigation does not, in and of itself, demonstrate a substantial and direct interest in the subject matter of the Inquiry. Nevertheless, I believe that the CCF satisfies the criteria for standing given its organizational mandate, established interest in the use of the *Emergencies Act* and the circumstances surrounding it, and its ability to represent a broad segment of society. That said, I believe it would be appropriate to place the CCF in a group along with Professor Ryan Alford.

103. Professor Alford seeks standing solely with respect to the Commission's policy mandate. He also seeks modest funding to cover travel and accommodations. Professor Alford is a Full Professor at the Bora Laskin Faculty of Law, Lakehead University. He describes himself as a scholar who has devoted most of his work to the constitutional dimensions of emergency powers. He indicates that his scholarship in this area is more critical than that of other academics who study the *Emergencies Act*

and emergency powers more generally. Professor Alford notes that he has previously worked with the CCF.

104. I am satisfied that Professor Alford satisfies the criteria for standing to participate in the policy-related aspects of the Commission. His scholarship and distinct perspective could assist the Commission in exploring the policy aspects of its mandate.

105. As I have indicated above, I have decided to give the CCF and Professor Alford a single grant of standing. There is, in my view, a general alignment between the CCF's critical perspective on the use of the *Emergencies Act* as expressed through its litigation, and Professor Alford's perspectives. Further, the two entities have worked together in the past, and Professor Alford stated in his application that he would be willing to share a grant of standing with the CCF. The CCF indicated that it was not willing to share a single grant of standing, but its submissions related solely to being grouped with other organizations that were also pursuing litigation against the use of the *Emergencies Act.* Being grouped with Professor Alford does not engage that concern.

106. Professor Alford only sought standing related to the Commission's policy mandate, the CCF sought full standing. In the circumstances, I grant full standing to the CCF and Professor Alford, jointly. As the Inquiry proceeds, it may become apparent that the joint interest and expertise of these Applicants is more limited, and will not necessitate full standing with respect to all aspects of the Commission's mandate.

The Democracy Fund, Citizens for Freedom & The Justice Centre for Constitutional Freedoms

107. Three Applicants have identified having a substantial and direct interest in the subject matter of the Inquiry based in part on having been active in providing legal education, advice and representation to protesters in locations across the Country.

108. The Democracy Fund ("TDF") seeks full standing in the Inquiry with respect to the Government's decision to invoke the *Emergencies Act*, the appropriateness and effectiveness of the measures selected by the Government, and lessons learned from those events. TDF identifies as a civil society organization mandated to protect civil liberties through education and litigation. It states that it has provided significant time and resources to providing legal information to protesters in Ottawa and Windsor. It also acted as a representative of protestors at the Ambassador bridge during injunction proceedings brought by the Automotive Parts and Manufacturing Association and the City of Windsor. It states that it represents 30 individuals who have been criminally charged in connection with protests in Ottawa and Windsor. It has indicated a willingness to share a single grant of standing with others sharing a common interest.

109. 12532239 Canada Centre d/b/a Citizens for Freedom ("C4F") seeks full standing in the Inquiry with respect to the Government's decision to invoke the Emergencies Act, the appropriateness and effectiveness of the measures selected by the Government, and lessons learned from those events, as well as the evolution of the protest movement, its leadership and organization, and the efforts of police prior to and after the declaration of emergency in Windsor. It also seeks funding.

110. C4F identifies itself as a non-profit that is made up of demonstrators against government mandates including vaccination mandates, particularly those who participated in protests in Windsor and Ottawa in February 2022. It also indicates that it provides legal representation for protestors. Like TDF, C4F acted as a representative of protestors during the Windsor injunction hearing. It has indicated a willingness to share a single grant of standing with others sharing a common interest.

111. The Justice Centre for Constitutional Freedoms ("JCCF") seeks full standing in the Inquiry with respect to all aspects of the Commission's mandate. The JCCF identifies itself as an independent, non-partisan charitable organization that acts as a voice for freedom in Canada's courtrooms. It claims a substantial and direct interest in the subject matter of the Inquiry based on its on-the-ground work in Ottawa in support

of protesters. Like TDF and C4F, the JCCF dispatched lawyers to Ottawa to provide pro bono legal advice to protesters. It has also represented individuals identified as forming the leadership of the "Freedom Convoy". The JCCF seeks to provide the Commission with its firsthand perspective on the people and events central to the Inquiry. The JCCF also claims the potential for reputational harm in the event that the Commission makes negative findings respecting the individuals that it represented, as this may reflect negatively of the JCCF itself.

112. Unlike TDF and C4F, the JCCF does not agree to share a single grant of standing. It states that its expertise as lawyers acting in defence of *Charter* rights combined with its on-the- ground presence in Ottawa makes it "clearly unique".

113. I do not agree. In my view, the JCCF shares much in common with TDF and C4F. All three are non-profit, non-governmental organizations whose stated mandates include public education and litigation in defence of constitutional rights and freedoms. All three were directly involved in providing legal support to protesters in Ottawa during the period of time relevant to this Inquiry. All three have connections with protestors and seek to participate in this Inquiry to further the views and perspectives of the protestors that they have worked with and represented.

114. In my view, TDF, C4F and the JCCF satisfy the criteria for standing. However, it is not necessary for each to have separate standing. I do not believe that there is any reason, at this time, to think that the JCCF's own reputation would be impacted by the Inquiry in such a way as to justify individual standing. In light of the common interest these three groups have in the subject matter of this Inquiry, I would give them a single grant of standing. It appears to me that there may be a substantial overlap of interests and perspectives between this group of Applicants and the protest organizer group. At this stage, I am prepared to grant this group of Applicants full standing. If, as the Inquiry proceeds, it becomes apparent that there is a substantial overlap, I retain the discretion to revisit the scope of this group's participatory rights. Indeed, as noted previously in these reasons, I retain this discretion with respect to all Parties with standing.

Canadian Civil Liberties Association

115. The Canadian Civil Liberties Association ("CCLA") seeks full standing – other than producing factual documents or tendering witnesses – on all aspects of the Commission's mandate. It also seeks funding. The CCLA describes itself as a national, non-profit, non-governmental organization that, since 1964, has worked to protect and promote the fundamental rights and freedoms of people in Canada. The CCLA claims a substantial and direct interest in the subject matter of the Inquiry, pointing to its long-standing involvement in matters related to emergency and police powers in Canada. It states that it was actively involved when the former *War Measures Act* was invoked during the FLQ crisis and participated in the Parliamentary process leading to the enactment of the current *Emergencies Act.* It also points to a long history of advocacy and litigation related to the use of police powers, particularly as applied to protest movements. Finally, the CCLA notes that, like the CCF, it is currently engaged in legal proceedings challenging the use of the *Emergencies Act* in February 2022.

116. As I indicated above with respect to the CCF, I do not believe that the fact that the CCLA is challenging the use of the *Emergencies Act* in court itself gives it a substantial and direct interest. However, viewing its mandate, history and expertise as a whole, as well as its apparently unique history related to the *Emergencies Act* and the use of emergency powers, I am satisfied that it has satisfied the criteria for standing. I therefore grant it standing to participate in the Inquiry in the manner requested.

Veterans for Freedom

117. Veterans for Freedom ("V4F") applies for full standing on all aspects of the Commission's mandate. It also seeks funding. It identifies as a non-profit human rights advocacy group that was incorporated after the *Emergencies Act* was invoked. It claims a substantial and direct interest in the subject matter of this Inquiry because members of its steering committee participated in the protests in Ottawa during the time the *Emergencies Act* was invoked. It also states that "some of our members and

veterans who have reached out to us have objectively reasonable fear for their well-being and reputation". It does not explain the nature of these fears or why they are objectively reasonable. It also states that its property interests have been impacted by the declaration of emergency. It does not identify what property of V4F's has been impacted, or the nature of the alleged impact.

118. I would dismiss its application for standing.

119. Unlike other organizations that I am prepared to grant standing to, V4F has no history of advocating with respect to issues within the scope of the Commission's mandate. It was only created after the *Emergencies Act* was invoked. Nor does it state that it has worked on behalf of protestors or other involved individuals such that it can be said to be representing their interests. It only states that some of the members of its steering committee attended protests. In my view, this is not a sufficient basis for obtaining standing. To the extent that individual members of V4F have relevant evidence or perspectives to provide to the Commission, this does not require standing at the Inquiry. As I have emphasized elsewhere, there are other avenues for members of the public and organizations to provide information and views to the Commission.

120. V4F's claims respecting property rights and fears of reputational or (possibly) physical well-being are devoid of any detail, and do not offer a proper basis on which to establish a substantial and direct interest.

Criminal Lawyers' Association & The Canadian Council of Criminal Defence Lawyers

121. The Criminal Lawyers' Association (Ontario) ("CLA") and the Canadian Council of Criminal Defence Lawyers ("CCCDL") apply jointly for full standing, other than to produce factual documents or identifying, tendering or representing witnesses, on all aspects of the Commission's mandate. They also seek funding. The two organizations identify as representatives of the criminal defence bar and point to myriad ways in which they have participated in legal and policy development relevant to the criminal

justice system. They emphasize the role that they and their members play in upholding civil liberties and constitutional rights in Canada. They claim a substantial and direct interest in the subject matter of this Inquiry based on their expertise on the use of police powers, the role of the criminal law in responding to emergencies, and the involvement of them and their members in public discourse when the *Emergencies Act* was first invoked.

122. In my view, the CLA and CCCDL have satisfied the criteria for standing. The use of police and criminal law powers are likely to play an important role in this Inquiry. The two organizations have a history of participating in both legal and policy matters related to these topics. Further, they have joined together to seek a single grant of standing, which I view as appropriate given the similarity in their mandates, experiences, and perspectives. As a result, I would grant them standing to participate in the Inquiry in the manner they have requested.

Conclusion

123. I wish to express my appreciation for the interest that members of the public have taken in the work of this Commission. As I have explained earlier, standing at the Inquiry is not the only way in which members of the public, groups, businesses and organizations can participate in the work of the Commission. Individuals with firsthand experience of relevant matters may be interviewed by Commission Counsel, called as witnesses during public hearings, or asked to produce documents. Further, any member of the public or entity that wishes to make their views known to the Commission will soon be provided with the ability to do so through the Commission's website. The Commission encourages and values all public input respecting the important issues being addressed in this Inquiry.

124. For ease of reference, I have appended to this decision a list of those individuals and groups that have applied for standing as Schedule A, and a summary of those parties who have been granted standing as Schedule B.

125. As the Commission's work continues, if it becomes apparent to me that it would be appropriate to make changes to the decisions I have made here, including with respect to the scope, mode or right of participation for any of the Parties, as well as the requirement for the grouping of participants, I retain the discretion to do so.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

June 27, 2022

Schedule A: Applicants for standing

1. The Government of Canada
2. The Government of Alberta
3. The Government of Saskatchewan
4. The Government of Manitoba
5. The City of Ottawa
6. The City of Windsor
7. The Conservative Party of Canada
8. The Ottawa Police Service
9. The Ontario Provincial Police
10. The Canadian Association of Chiefs of Police
11. The National Police Federation
12. Peter Sloly
13. Richard Huggins
14. Jason Ehrlich
15. Danielle Height
16. Edward Cornell
17. Vincent Gircys
18. Jeremiah Jost
19. Harold Ristau

20. Marie-Joelle LeBlanc

21. Ruth Link

22. Rob Stocki

23. Mavis Sutherland

24. Marc Udeschini

25. Tamara Lich, Chris Barber, Daniel Bulford, Tom Marazzo, Sean Tiessen, Chris Garrah, Miranda Gasinor, Joseph Janzen, Dale Enns, Ryan Mihilewicz & Freedom 2022 Human Rights and Freedoms not-for-profit corporation (Jointly)

26. Richard Ocelak, Bruce Matthews, Evan Blackman & Guy Primeau (Jointly)

27. Dan Bosworth, Richard Musca, Monique Campeau-LeBlanc & Andre Schutten (Jointly)

28. Action Sandy Hill, Byward Market Business Improvement Area, Bank Street Business Improvement Area, Lowertown Community Association, Ottawa Coalition of Business Improvement Areas, Sparks Street Business Improvement Area, Vanier Business Improvement Area, Vanier Community Association (Jointly)

29. The Insurance Bureau of Canada

30. The Calgary Chamber of Commerce

31. The National Crowdfunding & Fintech Association

32. The Canadian Constitution Foundation

33. Professor Ryan Alford

34. The Democracy Fund

35. Citizens for Freedom

36. The Justice Centre for Constitutional Freedoms

37. The Canadian Civil Liberties Association

38. Veterans for Freedom

39. The Criminal Lawyers' Association & The Canadian Council of Criminal Defence Lawyers (Jointly)

Schedule B: Applicants granted standing

Applicant(s)	Scope of Standing
Government of Canada	Full participation on all aspects of mandate.
Government of Alberta	Full participation on all aspects of mandate.
Government of Saskatchewan	Full participation on all aspects of mandate.
Government of Manitoba	Written submissions only, related to the basis for declaring an emergency and the circumstances in Manitoba, and related matters.
City of Ottawa	Full participation related to the circumstances leading to the declaration of emergency, the appropriateness and effectiveness of government measures, and lessons learned and how they inform policy and legislative recommendations.
City of Windsor	Full participation on all aspects of mandate.
Ottawa Police Service	Full participation on all aspects of mandate.
Ontario Provincial Police	Full participation other than cross-examining witnesses or producing policy papers on all aspects of mandate relevant to policing response to protest activity and blockades in Ottawa end elsewhere.

Applicant(s)	Scope of Standing
Canadian Association of Chiefs of Police	Identifying, tendering or representing witnesses, participating in policy roundtables or discussions and making submissions on policy-related matters relating to the appropriateness and effectiveness of government measures, the lessons learned from the events underlying the Commission's mandate, and the examination of issues regarding the efforts of police and other responders prior to and after the declaration.
National Police Federation	Full participation on all aspects of mandate.
Peter Sloly	Production of factual documents, examination of witnesses, and making submissions on factual, evidentiary and policy matters relating to the basis for the Government of Canada's decision to declare a public order emergency and the circumstances that led to that declaration; the evolution and goals of the convoy and blockades, their leadership, organization and participants; the impact of the blockades, including their economic impact; the efforts of police and other responders prior to and after the declaration; and the lessons learned from these events and how they inform policy and legislative recommendations.

Applicant(s)	Scope of Standing
Tamara Lich, Chris Barber, Daniel Bulford, Tom Marazzo, Sean Tiessen, Chris Garrah, Miranda Gasinor, Joseph Janzen, Dale Enns, Ryan Mihilewicz & Freedom 2022 Human Rights and Freedoms not-for-profit corporation (Jointly)	Full participation on all aspects of mandate.
Action Sandy Hill, Byward Market Business Improvement Area, Bank Street Business Improvement Area, Lowertown Community Association, Ottawa Coalition of Business Improvement Areas, Sparks Street Business Improvement Area, Vanier Business Improvement Area & Vanier Community Association (Jointly)	Full participation except producing policy papers and participating in policy roundtables, related to the circumstances leading to the declaration of emergency, lessons learned from the events and how they inform policy and legislative recommendations, and the impact of the Convoy on Ottawa and the police response.
Insurance Bureau of Canada	Production of policy papers, participation in roundtables or discussions and making submissions on policy-related matters related to the use of government measures impacting insurance.

Applicant(s)	Scope of Standing
Calgary Chamber of Commerce	Production of policy papers, participation in roundtables or discussions and making submissions on factual, evidentiary and policy-related matters relating to circumstances that contributed to the invocation of the Emergencies Act, how the invocation of the Act impacted Canada's business community, and the role of both social media and border blockades in the declaration of emergency and their impact on the economy.
The National Crowdfunding & Fintech Association	Full participation with respect to the appropriateness and effectiveness of the measures selected in order to address the emergency, the impact of foreign funding, including donation crowdfunding platforms, the impact role and sources of misinformation and disinformation, including the use of social media, and the efforts of police and other responders prior to and after the declaration.
Canadian Constitution Foundation & Professor Ryan Alford (Jointly)	Full participation on all aspects of mandate.
The Democracy Fund, Citizens for Freedom & Justice Centre for Constitutional Freedoms (Jointly)	Full participation on all aspects of mandate.

Applicant(s)	Scope of Standing
Canadian Civil Liberties Association	Full participation other than the production of factual documents or tendering witnesses, related to all aspects of mandate.
The Criminal Lawyers' Association & The Canadian Council of Criminal Defence Lawyers (Jointly)	Full participation, other than the production of factual documents or tendering witnesses, on all aspects of mandate.

Appendix 7

Decision on Funding

July 5, 2022

1. In this ruling, I set out my funding recommendations for parties who have been granted standing in the Public Order Emergency Commission.[1]

General principles

2. Before addressing the individual applications for funding, I wish to comment on the considerations that I have used in making my recommendations. I am guided by the Commission's Terms of Reference as set out in Order in Council PC 2022-0392 and the Rules of Standing and Funding issued on June 1, 2022. I have also considered funding decisions that have been issued in other public inquiries.

3. Paragraph (a)(v) of the Commission's Terms of Reference provides that I may:

> … (B) grant any person who in the Commissioner's assessment would provide necessary contributions to the Public Inquiry and satisfies the Commissioner that they have a substantial and direct interest in the subject matter an opportunity for appropriate participation in it,
>
> (C) recommend to the Clerk of the Privy Council that funding be provided, in accordance with approved guidelines respecting the remuneration and expenses and the assessment of accounts, to any person described in clause (B) if, in the Commissioner's view, the person would not otherwise be able to participate in the Public Inquiry…

4. The language in Paragraph (a)(v)(C) of "approved guidelines" refers to the Terms and Conditions of the Contribution Program for Commissions of Inquiry approved by the Treasury Board, as well as the Treasury Board Travel Directive (collectively, the "Treasury Board guidelines"). In making funding recommendations, I have taken into account the Treasury Board guidelines.

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[1] See Commissioner Paul S. Rouleau, Public Order Emergency Commission, Decision on Standing (June 27, 2022) [*Standing Decision*].

5. It is important to recognize that I do not have the power to award funding. My role is limited to making recommendations to the Clerk of the Privy Council Office (the "Clerk"). Ultimately, it is up to the Clerk to approve all funding in accordance with Treasury Board guidelines respecting rates of remuneration and reimbursement and the assessment of accounts. It is important to note that since funding is disbursed based on these guidelines, the entire costs of participation may not be covered.

6. In making my recommendations, I considered both the need to ensure that the Parties who have a substantial and direct interest and who would make necessary contributions to the Inquiry are able to do so, as well as the need to respect the public purse. To that end, I am guided by the following considerations: whether the Parties seeking funding would not be able to participate in the Inquiry without funding and whether the Parties that have been grouped together with a single grant of standing can share funding.[2]

7. I also considered the reasonableness of funding requests, including the number of counsel and number of hours for which funding is being requested. What constitutes a reasonable level of funding may differ between Parties.

8. Applicants who requested funding provided varying degrees of detail in terms of the amounts that they requested. Some provided detailed breakdowns of proposed counsel hours and rates based on year of call. Others proposed only total amounts. Still others gave information about their proposed counsel team and requested appropriate or equitable funding. It is likely that few applicants were well versed in the details of the Treasury Board guidelines. While I appreciate the efforts of Applicants to provide me with more detailed proposals, I have not held it against those Applicants who did not do so. In all cases, I have attempted to formulate recommendations that,

[2] Commissioner Dennis O'Connor, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Ruling on Standing and Funding (May 4, 2004), at p. 12-13; Commissioner Stephen T. Goudge, Inquiry into Pediatric Forensic Pathology in Ontario, Decision on Standing and Funding (August 17, 2007), at p. 11-12.

in my view, fairly reflect the principles – discussed above – that ought to govern the provision of funding to participants in this Inquiry.

9. I also note that in recommending funding, I retain the discretion to make supplementary recommendations for funding to the Clerk if, in the course of the Inquiry, it turns out that the initial level of funding provided to the Parties is inadequate.[3]

10. Keeping these principles in mind, I move to my recommendations on the individual applications for funding.

The Funding Applications

11. The Commission has received applications for funding from seven of the Parties who have been granted standing.

National Crowdfunding & Fintech Association

12. The National Crowdfunding & Fintech Association ("NCFA") requested funding on the basis that it does not have sufficient funding for payment of counsel and the costs of any necessary fact finding and analysis to allow full participation in the Inquiry. It submits that it is a volunteer-driven, not-for-profit organization that relies heavily on the support of its industry members. It states that its operating revenues are primarily generated through its offering of industry conferences and events, which have been dramatically impacted by COVID-19. In support of these submissions, it has provided its unaudited statement of financial position for the year ending December 31, 2020.

13. I am not prepared to recommend funding at this time. Notwithstanding that its grant of standing is relatively limited, the NCFA made a substantial request for funding. While the NCFA included financial statements that reflect financial need, it does not appear to have attempted to raise funds from its members specifically for the

[3] Commissioner Dennis O'Connor, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Supplementary Ruling re: Funding(May 26, 2004).

purpose of its participation. While I would not expect or require every Applicant to first resort to fundraising before seeking funding, I note that as an industry organization, the NCFA is different than charitable or civil society entities.

14. In the event that good faith efforts by the NCFA fail to generate the funds necessary to permit the NCFA's participation in this Inquiry, it may re-apply for funding on a better record.

12532239 Canada Centre d/b/a Citizens for Freedom

15. In the *Standing Decision*, I gave 12532239 Canada Centre d/b/a Citizens for Freedom ("C4F"), The Democracy Fund ("TDF"), and the Justice Centre for Constitutional Freedom ("JCCF") a single grant of standing on the basis that all three organizations had a common interest.

16. C4F is the only organization of the three that requested funding. TDF and JCCF have indicated that they are able to participate in the Inquiry without funding. Given their joint grant of standing, I am satisfied that C4F will be able to participate as part of the TDF/C4F/JCCF coalition without funding.

Criminal Lawyers' Association (Ontario) and the Canadian Council of Criminal Defence Lawyers

17. The Criminal Lawyers' Association (Ontario) ("CLA") and the Canadian Council of Criminal Defence Lawyers ("CCCDL") jointly requested funding as a group. They indicate that they are both not-for-profit organizations that do not receive external funding outside of membership dues. They note that their members act *pro bono* when representing them in legal proceedings, such as Supreme Court of Canada interventions. They submit that the requirements of a public inquiry are significantly different than an intervention, and that it would be impossible for them to obtain *pro bono* representation.

18. Based on the evidence that the CLA and CCCDL provided about their current financial circumstances, I am satisfied that they would not otherwise be able to participate in the Commission without funding. I accept, given their grant of standing, that it would not be realistic to expect one or more lawyers to represent them pro bono for the duration of the Inquiry. I therefore recommended to the Clerk that funding be provided to the CLA and CCCDL in accordance with the Treasury Board guidelines respecting rates of remuneration and reimbursement and the assessment of accounts.

Canadian Civil Liberties Association

19. The Canadian Civil Liberties Association ("CCLA") requested funding. It states that it is a non-profit organization that receives no government funding for its advocacy purposes. It indicates that its day-to-day operations are funded though project-based grants (which presumably could not be re-allocated to allow for participation in this Inquiry) and individual donations. Like the CLA and CCCDL, the CCLA states that it relies on *pro bono* counsel to represent it in legal proceedings, but that this is not realistic for a public inquiry. The CCLA provided a funding proposal designed to minimize expenses associated with its participation.

20. Based on the evidence that the CCLA provided about its financial circumstances, I am satisfied that it would not be able to participate in the Inquiry process absent funding. I therefore recommended to the Clerk that funding be provided to the CCLA in accordance with the Treasury Board guidelines respecting rates of remuneration and reimbursement and the assessment of accounts.

Calgary Chamber of Commerce

21. The Calgary Chamber of Commerce ("CCC") has sought a limited grant of funding. It states that it is a not-for-profit, member-funded organization. It states that, due to the impact of COVID-19 on its members' businesses, it has reduced its membership dues by a substantial amount, which has a corresponding impact on its operating budget.

22. Based on the evidence that the CCC has provided about its current financial circumstances, I am satisfied that it would not be able to participate in the Inquiry process absent funding. While the CCC is an industry organization, I note that it has made a very modest request for funding. Its request is much lower than requests made by several other Applicants who sought funding. I therefore recommended to the Clerk that funding be provided to the CCC in accordance with the Treasury Board guidelines respecting rates of remuneration and reimbursement and the assessment of accounts.

Ottawa Coalition of Residents and Businesses

23. The Lowertown Community Association, Action Sandy Hill, Vanier Community Association, Byward Market Business Improvement Association, Bank Street Business Improvement Association, Sparks Street Business Improvement Association, Downtown Rideau Business Improvement Association, Vanier Business Improvement Area, and Ottawa Coalition of Business Improvement Areas (collectively, the "Ottawa Coalition of Residents and Businesses") jointly requested funding as a coalition. Collectively, these organizations state that they lack the necessary funding to participate in a public inquiry. Most of the organizations have at most 1 paid staff person, and some have none at all. Generally, their operational funding comes in the form of project-based grants or individual dues/donations from their members. Two of the organizations state that they have no assets at all. The coalition provided a relatively detailed funding request that substantially complied with the Treasury Board guidelines.

24. Based on the evidence that the Ottawa Coalition of Residents and Businesses has provided about their current financial circumstances, I am satisfied that they would not be able to participate in the Inquiry process absent funding. I therefore recommended to the Clerk that a single grant of funding be provided to the Ottawa Coalition of Residents and Businesses in accordance with the Treasury Board

guidelines respecting rates of remuneration and reimbursement and the assessment of accounts.

Canadian Constitution Foundation and Professor Ryan Alford

25. In the *Standing Decision*, I gave the CCF and Professor Alford a single grant of standing on the basis that their views generally align and they have worked together in the past.

26. Both the Canadian Constitution Foundation ("CCF") and Professor Alford requested funding. Professor Alford's request was limited solely to travel-related expenses, while the CCF sought funding for counsel as well. The CCF states that it is a registered charity that relies almost exclusively on private donations and foundation funding. It states that, given its other commitments, there is no space within its current budget to fund the participation of counsel in a public inquiry.

27. Based on the evidence that the CCF provided about its financial circumstances, I am satisfied that it would not be able to participate in the Inquiry process absent funding. For that reason, and bearing in mind the modest funding request that Professor Alford has submitted and the fact that CCF and Professor Alford are acting together, I recommended to the Clerk that funding be provided to the CCF and Professor Alford in accordance with the Treasury Board guidelines respecting rates of remuneration and reimbursement and the assessment of accounts. This would be a single grant of funding. It will be up to the CCF and Professor Alford to determine how any funding that they receive will be apportioned between them.

Conclusion

28. Commission counsel will communicate with the Parties for whom I made a funding recommendation to provide further information and details.

29. For ease of reference, I have appended to this decision a list of the Parties for whom I recommended funding as Schedule A.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

July 5, 2022

Schedule A: Funding Recommendations

Applicant(s)	Funding
The National Crowdfunding & Fintech Association	Not recommended
Citizens for Freedom	Not recommende
The Criminal Lawyers' Association & The Canadian Council of Criminal Defence Lawyers (Jointly)	Recommended
Canadian Civil Liberties Association	Recommended
Calgary Chamber of Commerce	Recommended
Action Sandy Hill, Byward Market Business Improvement Area, Bank Street Business Improvement Area, Lowertown Community Association, Ottawa Coalition of Business Improvement Areas, Sparks Street Business Improvement Area, Vanier Business Improvement Area & Vanier Community Association (Jointly)	Recommended
Canadian Constitution Foundation & Professor Ryan Alford (Jointly)	Recommended
Government of Canada	Did not apply for funding
Government of Alberta	Did not apply for funding
Government of Saskatchewan	Did not apply for funding
Government of Manitoba	Did not apply for funding
City of Ottawa	Did not apply for funding
City of Windsor	Did not apply for funding
Ottawa Police Service	Did not apply for funding
Ontario Provincial Police	Did not apply for funding
Canadian Association of Chiefs of Police	Did not apply for funding

National Police Federation	Did not apply for funding
Peter Sloly	Did not apply for funding
Tamara Lich, Chris Barber, Daniel Bulford, Tom Marazzo, Sean Tiessen, Chris Garrah, Miranda Gasinor, Joseph Janzen, Dale Enns, Ryan Mihilewicz & Freedom 2022 Human Rights and Freedoms not-for-profit corporation (Jointly)	Did not apply for funding
Insurance Bureau of Canada	Did not apply for funding

Appendix 8

Supplementary Decision on Standing

July 14, 2022

Introduction

1. On July 5, 2022, the Commission received two late-filed applications for standing: one from the Windsor Police Service ("WPS") and one from the Union of British Columbia Indian Chiefs ("UBCIC"). This decision explains why I would exercise my discretion to consider these applications, and to grant the Applicants standing. I also grant requests by the Ontario Provincial Police ("OPP") and the Ottawa Coalition of Residents and Businesses ("the Coalition") to vary the grants of standing that were previously given to them.

General Considerations

2. These reasons should be read along with my Decision on Standing, dated June 27, 2022.[1] That decision set out the general considerations I believe inform my decisions respecting standing.

3. Rules 9 and 19 of the Commission's Rules on Standing and Funding provide:

> 9. Applicants may seek standing at the Inquiry by submitting an application form with any supporting materials, in electronic format, with the Commission on or before June 15, 2022, or at the discretion of the Commission, on any other date.
>
> …
>
> 19. From time to time, the Commissioner may, at his discretion, modify, rescind or grant standing.

4. Read together, these rules give me the discretion to consider applications for standing that are filed after June 15, 2022. However, this discretion should be

[1] Commissioner Paul S. Rouleau, Public Order Emergency Commission, Decision on Standing (June 27, 2022).

exercised carefully. As this Commission has previously stated,[2] it is operating under a very compressed timeline. The Commission expects that those who wish to participate in its work will move quickly and with diligence. At the same time, I should not be inflexible. The Commission's rules grant me flexibility to consider late-filed applications, and I ought to do so in appropriate circumstances.

5. I do not believe that there is any single criterion that should dictate how I exercise my discretion. Rather, in my view, I ought to consider the overall justice of the situation, informed by the ultimate goals of the Commission. Some of the factors that I believe are relevant to this assessment are:

a. The length of the delay in applying for standing;

b. The reason for the delay;

c. Whether the delay will cause prejudice to the Commission or to any other party; and

d. An assessment of the significance of the Applicant's interest, the potential contribution of the Applicant, and how its participation may advance the Commission's mandate.

The Windsor Police Service

6. The WPS applies for full standing, other than to produce policy papers, with respect to all aspects of the Commission's mandate. In its application, it qualifies the scope of its request to those matters "relevant to the policing response to the protest activity and blockade of the Ambassador Bridge."

[2] See, for example, Public Order Emergency Commission, Notice to Interested Parties Regarding the Public Order Emergency Commission (June 1, 2022) at 5.

7. The WPS states that it has a substantial and direct interest in the Commission's mandate given its role in responding to protests that occurred at the Ambassador Bridge in Windsor. It states that in the course of responding to the blockade, the WPS gained relevant information about the evolution of the protestors' goals, the role that information and disinformation played in the protest movement, and the impact of the protests on the local community. Further, the WPS states that it has direct information and insight into the actions contemplated and taken to respond to the protests, including under a variety of provincial and federal statutes. In support of its claims of having relevant information and insight, the WPS provide a preliminary list of documents in its possession relevant to the Commission's mandate.

8. I would exercise my discretion to extend the time for the WPS to apply for standing, and to grant it standing.

9. The delay in the WPS's application was not extensive, and in my view has not caused any significant prejudice to the Commission or any of the parties. In particular, I note that WPS has proactively begun to prepare relevant documents for production to the Commission, which reduces the impact of its late application on the Commission's work. I am also of the view that, given its role in the protests that occurred at the Ambassador bridge, the participation of the WPS would further the mandate of the Commission. This weighs in favor of considering its late application for standing.

10. In my view, the position of the WPS is similar to that of the Ottawa Police Service, who have already been granted standing. The WPS was the police force of jurisdiction in the area of one of the protests that was referred to in the Proclamation Declaring a Public Order Emergency. It appears to have information that is relevant to the Commission's mandate. It is likely that the conduct of the WPS in response to the Ambassador Bridge protests will be the subject of examination by the Commission. I am satisfied that it has a substantial and direct interest, and that it would make a necessary contribution to the Commission's work. I would therefore grant it standing in the manner that it has proposed.

Union of British Columbia Indian Chiefs

11. The UBCIC seeks full standing on all aspects of the Commission's mandate. It also seeks funding.

12. The UBCIC describes itself as a representative organization of First Nations in British Columbia. Its purpose is to promote and support the efforts of First Nations in British Columbia to affirm and defend their Aboriginal Rights and Title. It does so through a combination of providing support to communities, public education and research, direct engagement with government, international engagement, and litigation. Currently 108 of 203 BC First Nations are members in good standing of the UBCIC.

13. The UBCIC states that it has a substantial and direct interest in the Commission's mandate based largely on its role as an umbrella organization representing Indigenous governments. It submits that like the federal, provincial, territorial, and municipal governments, Indigenous governments are responsible for responding to emergency situations for, and on behalf of, the people within their jurisdiction. It submits that Indigenous governments play a critical role in governance in Canada in terms of ensuring that other governments are held accountable for their actions. The UBCIC states it will be important for the Commission to understand Indigenous perspectives about the events leading up to the proclamation of an emergency, as well as the use of the *Emergencies Act* itself. As a representative for Indigenous governments in BC, the UBCIC submits that it would make a necessary contribution to the Commission as no other Indigenous government or group has sought standing in the Inquiry.

14. The UBCIC explains that it was unable to apply for standing by the original deadline established by the Commission. It states that it has an internal deliberative process that it was required to undertake before deciding to seek standing, which delayed its application. It also indicates that it was not aware that no other representative Indigenous group or organization was seeking standing until the Commission's initial standing decision was released on June 27, 2022.

15. I would exercise my discretion to extend the time for the UBCIC to apply for standing, and to grant it standing.

16. I accept that the UBCIC was required to go through an extensive internal deliberative process before it was able to bring its application for standing, and that the delay in this case is relatively minor. It has not, in my view, caused any significant prejudice to either the Commission or any party.

17. I also accept that it will be important for the Commission to receive the perspective of Indigenous governments on the matters within the Commission's mandate. While the UBCIC cannot speak on behalf of all Indigenous governments, I note that there are currently no parties representing this perspective. As an organization representing a significant number of Indigenous governments, I am satisfied that the UBCIC has the requisite interest and is able to make a necessary contribution to the work of the Commission. I would therefore grant the UBCIC standing in the manner it has requested.

18. I will address the UBCIC's request for funding in a sperate decision, which I hope to release in the near future.

Request by the Ontario Provincial Police to Vary their Grant of Standing

19. In my June 27, 2022 Decision on Standing, I granted the OPP standing with respect to all aspects of the Commission's mandate relevant to the policing response to protest activity and blockades in Ottawa and elsewhere. I also granted it full participatory rights other than examining or cross-examining witnesses or producing policy papers.[3] The OPP did not request those rights in their application for standing.

[3] *Decision on Standing, supra* at paras. 50-51.

20. On July 11, 2022, the Commission received a request from the OPP to vary its grant of standing to permit it to examine and cross-examine witnesses. The OPP indicates that it did not request this right due to an error in filling out the Commission's application form for standing. It submits that, given the likelihood of differing views related to the policing response to protests, it requires the right to examine and cross-examine witnesses in order to contribute to the Commission's fact-finding process.

21. I am prepared to vary the OPP's grant of standing in the manner it has requested. I accept that it did not request the right to examine or cross-examine witnesses due to a mistake in filling out the Commission's application form. In my view, varying the OPP's grant of standing at this point will not cause significant prejudice to the Commission or to any party. Given the nature of the OPP's interest, in my view it is appropriate that they have the ability to examine or cross-examine witnesses in appropriate circumstances.

22. This does not mean, however, that the OPP will have the right to examine and cross- examine witnesses without restriction. The Commission intends to actively manage the hearing process. This may include setting limits on which witnesses parties may examine, or for how long them may do so. These case management powers will be exercised with respect to all parties with the right to examine and cross-examine witnesses, including the OPP.

23. I grant the OPP's request to amend its grant of standing in the manner it has requested.

Request by the Ottawa Coalition of Residents and Businesses to Vary their Grant of Standing

24. On June 15, 2022, the nine members of the Coalition filed separate applications for standing, along with a covering email from their Counsel indicating that they were seeking a joint grant of standing. Counsel's email noted that the application form

for the Downtown Rideau Business Improvement Area ("Rideau BIA") had yet to be signed, but indicated that they would "forward that form as soon as possible." In my Decision on Standing, I granted the Coalition – including the Rideau BIA – a joint grant of standing.

25. On July 12, 2022, Counsel to the Coalition wrote to the Commission, indicating that the Rideau BIA "did not complete an application for standing and therefore is not a formal part of the Ottawa Coalition, and should not be referred to as part of the group in future Commission documentation."

26. I treat this letter as a request to revoke the grant of standing given to the Rideau BIA. The Commission granted the Rideau BIA standing based on the representation that they were a member of the Coalition and that a signed form would be forthcoming. Unless I make an order under Rule 19 of the *Rules of Standing and Funding* to revoke the Rideau BIA's grant of standing, it continues to be a Party at the Inquiry jointly with the other members of the Coalition.

27. In light of the information provided by Counsel for the Coalition, I accept that it would be appropriate to revoke the Rideau's BIA's grant of standing. The grant of standing given to the other members of the Coalition remains unchanged.

Signed

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The Honourable Paul S. Rouleau
Commissioner

July 14, 2022

Appendix 9

Supplementary Decision on Funding

July 29, 2022

1. On July 14, 2022 I granted standing to the Union of British Columbia Indian Chiefs ("UBCIC"). I deferred a decision on their request for a recommendation of funding to a later date.

2. I have now had an opportunity to consider their request. In assessing the UBCIC's request for a recommendation of funding, I have been guided by the considerations I set out in my July 5, 2022 *Decision on Funding*.

3. The UBCIC submits that it is a non-profit, non-governmental organization whose core funding is required for its core work and operations. It states that it relies on third-party funding to participate in court interventions and public inquiries. It indicates that it has no alternative funding that it could use in order to participate in this Inquiry.

4. Based on the information provided to me by the UBCIC in their application, I am satisfied that they would not otherwise be able to participate in the Inquiry without funding. I therefore recommend to the Clerk of the Privy Council that funding be provided, as per their request, to the UBCIC in accordance with the Treasury Board guidelines respecting rates of remuneration and reimbursement and the assessment of accounts.

Signed

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The Honourable Paul S. Rouleau
Commissioner

July 29, 2022

Appendix 10

Supplementary Decision on Standing and Funding (No. 2)

August 16, 2022

1. In my Decision on Standing, dated June 27, 2022, I granted standing to several Applicants including the Calgary Chamber of Commerce ("CCC"). I subsequently recommended to the Clerk of the Privy Council that the CCC receive funding.

2. The Commission has been advised by the CCC that due to a change in its staffing, it is no longer in a position to continue with its proposed submissions and wishes to withdraw as a Party in the Inquiry.

3. Having considered the CCC's request, I revoke the grant of standing given to the CCC. I also withdraw my recommendation to the Clerk of the Privy Council that funding be provided to the CCC.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

August 16, 2022

Appendix 11

Supplementary Decision on Standing (No. 3)

September 9, 2022

1. This decision addresses two applications for standing involving three individuals: Chad Eros, Benjamin Dichter and Chris Garrah. Below, I explain why I would dismiss the applications.

Background to the Applications

2. Each of the applications before me is somewhat unusual. I will first give some background about them in order to provide a context for the rest of these reasons.

3. On August 19, 2022, the Commission received an application for standing and funding filed by Benjamin J. Dichter. Mr. Dichter was at one point a director of the Freedom 2022 Human Rights and Freedom Not for Profit Corporation ("the Convoy Corporation"). The Convoy Corporation, along with some of its directors and other persons ("the Convoy Group"), were jointly granted standing in my *Decision on Standing* dated June 27, 2022. Mr. Dichter was not one of the individuals listed in that application.

4. Chad Eros, like Mr. Dichter, was at one point a director the Convoy Corporation, but was not included in the Convoy Group's standing application. On August 29, 2022, in the course of an email exchange between Mr. Eros and Commission Counsel, Mr. Eros forwarded a copy of an application for standing, dated June 15, 2022. Commission counsel had not previously seen an application from Mr. Eros. An extensive search through the Commission's records and email system did not locate a copy of this application.

5. Also on August 29th, the Commission received a revised application for standing from counsel for Mr. Dichter. This revised application sought standing for Mr. Dichter along with Chris Garrah. Like Mr. Dichter and Mr. Eros, Mr. Garrah was at one point a director of the Convoy Corporation. However, unlike Mr. Eros and Mr. Dichter, Mr. Garrah was included in the joint application for standing filed by the Convoy Group. He therefore already has standing before the Commission.

Chad Eros

6. Mr. Eros describes himself as a CPA in good standing, who was asked to help with financial and accounting matters related to the fundraising associated with the Convoy Corporation. He states that he was the individual who incorporated the Convoy Corporation and was the person responsible for administering the main crowdfunding campaign on GiveSendGo. Mr. Eros notes the role he has played in a number of legal proceedings related to the Ottawa protests. He states that he would assist the Commission to know the truth about the financing of the Freedom Convoy.

7. Mr. Eros seeks full standing on all aspects of the Commission's mandate. He does not seek funding.

8. In assessing Mr. Eros's application, I first must decide what to do about the date on which it was filed. The date on Mr. Eros's standing application is June 15, 2022, which was the deadline to file an application for standing. On the other hand, this application does not appear to have been received until August 29, 2022. While I conclude that the Commission does not appear to have received the application in June, I am not in any position to assess whether it was sent on time or why it did not come to the Commission's attention until August 29th.

9. Ultimately, I believe the prudent approach is to assess Mr. Eros's application as if it was received by the Commission on time. This avoids the possibility of prejudicing Mr. Eros in the event that he did attempt to send it in, and was simply unaware that it did not reach the Commission or that it was in fact received by the Commission but for some unexplained reason has not been found.

10. I would dismiss Mr. Eros's application.

11. In reaching this decision, I rely on the same general considerations that I outlined in my prior decisions on standing.

12. The application filed by Mr. Eros clearly discloses that he was involved in the Convoy Corporation and has relevant information about its financing and fundraising. The Commission would benefit from obtaining the information that he has.

13. However, participation in and knowledge of the events under examination in the Inquiry do not give rise to a sufficient interest to ground standing. Important knowledge about matters within the Commission's mandate may make a person a relevant witness, but it does not in and of itself justify a grant of standing.

14. I am also not satisfied that Mr. Eros would make a necessary contribution to the inquiry as a party with standing. A person with key information can make an important contribution by testifying as a witness. To be a party, more is needed. For example, Mr. Eros has indicated in his application that he wishes to have the right to cross-examine witnesses. However, there is nothing in his application that explains why his doing so constitutes a necessary contribution to the inquiry.

15. I do not say any of this to minimize Mr. Eros's importance in the underlying events at issue in this Inquiry. There are many important ways to contribute to a public inquiry. Being a Party is one. Being a witness is another.

Benjamin Dichter

16. Mr. Dichter describes himself as a truck driver, podcast producer, former political candidate for the House of Commons, and one of the first individuals involved in the events leading up to the invocation of the *Emergencies Act.* He states that he has first-hand knowledge and experience that is not shared by any other individual, entity or group who have been granted standing so far in the Inquiry.

17. Mr. Dichter states that he was in Ottawa prior to the start of the protests and was interacting – in some cases on a daily basis – with organizers of the Freedom Convoy. Mr. Dichter notes the following in his application:

a. He has been described as a “spokesperson”, “vice-president” and “key-figure” in the Freedom Convoy by major media outlets;

b. He was one of the first seven directors of the Freedom 2022 Human Rights and Freedoms not for profit Corporation;

c. He was personally involved in fundraising campaigns on GoFunMe and GiveSendGo, as well as efforts to raise funds through cryptocurrencies to support the Freedom Convoy;

d. He was named as a defendant in the *Li v. Barber et al*. class action lawsuit and participated in the injunction proceedings in the Ontario Superior Court of Justice;

e. He managed social media accounts related to the Freedom Convoy, hosted news conferences, and acted as a spokesperson on several media outlets.

18. In Mr. Dichter’s August 19th application for standing, he indicated that he was not prepared to share a grant of standing with other Parties. His application materials describe what could be described as a parting of ways with other protest organizers. He describes events such as being removed as a director of the Freedom 2022 Human Rights and Freedoms Corporation, and the termination of his legal retainer with the Justice Centre for Constitutional Freedoms by that organization, which continues to represent certain other protest organizers. He expresses concerns regarding these steps and the conduct of some Parties that he believes may be in breach of confidentiality and solicitor-client privilege.

19. However, in his revised August 29, 2022 application, Mr. Dichter indicated that he was now prepared to share a grant of standing with Mr. Garrah.

20. Mr. Dichter recognizes that his application for standing and funding is late. He provides a number of reasons for this delay:

a. He did not understand the difference between possibly being called as a witness at the Inquiry and being a party with full standing;

b. He was not aware "until a few days" before filing his application that applications for standing and funding were open to the public, or that a person with his experience could apply for standing;

c. He was not aware that there was a deadline to apply for standing and funding, and had not seen the Commission's *Notice to Interested Parties Regarding the Public Order Emergency Commission*;

d. He only recently learned that his name was not included in the list of Convoy members who were jointly granted standing by the Commission.

21. Mr. Dichter seeks full standing with respect to all aspects of the Commission's mandate. His application form also indicates that he is seeking to participate as a witness.

22. Mr. Dichter also seeks funding. He submits that as a truck driver and podcast producer, he is not able to adequately participate in the inquiry without legal representation, and that he cannot afford such representation on his own.

23. I would dismiss Mr. Dichter's application, whether as framed in his August 19th or August 29th applications.

24. As I indicated at paragraph 5 of my *Supplementary Decision on Standing,* dated July 14, 2022, there is no single criterion to use when deciding whether to accept a late application for standing. However, it is relevant to consider, amongst other things, the length of the delay, the reasons for the delay, whether the delay will cause prejudice, and an assessment of an applicant's interest, potential contribution, and how the applicant's participation may advance the Commission's mandate.

25. The delay in bringing this application is significant. The Commission gave notice to interested persons on June 1, 2022 about the process for seeking standing. Applications were due on June 15, 2022. Mr. Dichter's application is therefore slightly more than two months late. This can be contrasted with the delay in the applications brought by the Windsor Police Service and the Union of British Columbia Indian Chiefs, which was slightly less than three weeks.

26. The reasons for the delay in bringing this application are, in some respects, not entirely satisfactory. Mr. Dichter was aware that a public inquiry had been called, though he did not, until recently, appear to have consulted the Commission's website where information on standing applications and lists of those having been granted standing were publicly available.

27. I am, more importantly, concerned about the issue of prejudice. As I have repeatedly indicated, this Commission is labouring under significant time pressures. Commission staff have been working at an accelerated pace in order to prepare for the start of public hearings. Much has occurred behind the scenes since I issued my *Supplementary Decision on Standing*. The risk of prejudice from a late grant of standing has increased since that time.

28. This is not to say that adding a new party, even at this late stage, would present the Commission with an insurmountable obstacle. It is, however, a relevant consideration that I take into consideration in assessing this Application.

29. Perhaps the most significant consideration for me, however, is the fact that I am not convinced that Mr. Dichter has a necessary contribution to make to the Commission's work beyond being a witness. In this sense, Mr. Dichter is in a similar position as Mr. Eros.

30. Mr. Dichter's application clearly discloses that he played a role in the protests that occurred in Ottawa, and likely has information that is relevant to the Commission's

mandate. It may well be that he would be an important witness at the Inquiry. In fact, Mr. Dichter's application form itself notes that he is seeking to participate as a witness.

31. It is not clear to me, however, why Mr. Dichter requires full participatory rights for the Commission to benefit from his first-hand knowledge and insight into the events in question. For example, Mr. Dichter has not explained why he would make a necessary contribution to the Commission's process by producing policy papers or cross- examining witnesses through counsel.

32. In light of all of these considerations, I am not prepared to grant Mr. Dichter standing. It follows that I do not need to consider his request for funding.

Chris Garrah

33. Mr. Garrah's involvement in Mr. Dichter's August 29, 2022 application raises some interesting questions given that Mr. Garrah already has standing as part of the Convoy Group.

34. This unusual situation is made more complex due to certain statements made in the August 29, 2022 application. Mr. Garrah refers to recent steps that he says were taken to remove him as a director of the Convoy Corporation and provides information that – at a minimum – suggests some breakdown in communication between him and counsel representing the group with whom he shares his grant of standing.

35. The August 29th application did not include a specific request to revoke Mr. Garrah's grant of standing as it currently exists. That request was implicit, but only in the context of him being granted standing jointly with Mr. Dichter. The application did not make any submissions on what ought to happen to Mr. Garrah's grant of standing in the event that I did not grant Mr. Dichter standing.

36. I do not think that it follows from my decision with respect to Mr. Dichter that Mr. Garrah ought to lose his existing grant of standing. Nor do I believe that it follows that,

having granted Mr. Garrah standing as part of the Convoy Group, I should now permit him to have individual standing. His original application for standing was inextricably linked with that of the Convoy Corporation – a legal entity that appears to have been at the centre of the protests in Ottawa – and the other members of the Convoy Group. I therefore deny the application he has made jointly with Mr. Dichter.

37. I believe the most appropriate disposition is to leave Mr. Garrah's current status unchanged. He remains a party with standing as part of the Convoy Group. If this is, for some reason, no longer appropriate, I trust that the proper application will be brought before me.

Closing Observation

38. I note that each of the applications for standing that the Commission received arose in the course of Commission Counsel inquiring whether the Applicants would agree to be interviewed as possible witnesses.

39. All three of these individuals appear to have relevant information for the Commission to consider as part of its mandate. I do not want any of them to think that, in denying them standing, I am suggesting that their evidence is unimportant.

40. I would encourage all of them to consider Commission Counsel's request to speak with them, so that the Commission can benefit from their knowledge and insight.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

September 9, 2022

Appendix 12

Supplementary Decision on Funding (No. 3)

October 7, 2022

1. On September 15, 2022 the Commission received an application for funding from the Freedom 2022 Human Rights and Freedoms non-profit corporation and related individuals ("the Convoy Organizer Group"). This decision explains why I have decided to recommend to the Clerk of the Privy Council that funding be provided to them, albeit on different terms than they requested.

Background to the Applications

2. On June 27, 2022, I released my *Decision on Standing*. In that decision, I granted full standing to the Convoy Organizer group. The Convoy Organizer Group did not seek any funding at that time. Mr. Keith Wilson, K.C. was listed as "senior" counsel for the group. Ms. Eva Chipiuk was "junior" counsel assisting Mr. Wilson.

3. On September 2, 2022, the Commission received correspondence from Mr. Wilson indicating that, due to the involvement of Ms. Chipiuk and himself in events that may be examined as part of the Inquiry, he and Ms. Chipiuk could no longer act as counsel for the Convoy Organizer group during the public hearings. He indicated, however, that he and Ms. Chipiuk intended to continue to provide assistance in a "solicitor" capacity, such as by continuing to obtain, review and produce relevant documents to the Commission.

4. On September 15, 2022, Mr. Wilson wrote to the Commission and confirmed that he and Ms. Chipiuk would no longer act as Counsel to the Freedom Convoy group at the public hearings but would continue to provide support to the Freedom Convoy Group prior to, and outside of the hearings. He also informed the Commission that the Convoy Organizer group had obtained new counsel to represent it during the public hearings. Mr. Wilson also indicated that the Convoy Organizer Group was now seeking funding. He explained that while funding had not been required for himself or Ms. Chipiuk, new counsel did require funding, and the Convoy Organizer group lacked the resources necessary to cover their fees.

5. The Convoy Organizer group's request for funding proposed a four-lawyer counsel team: a main senior and junior counsel pair, as well as a separate counsel pair specifically retained to deal with issues related to financial matters such as the freezing of bank accounts. The Convoy Organizer Group submitted that a distinct set of counsel for this topic was justified due to the complexity of the matter and the special expertise of the counsel identified to provide this representation.

6. In its application, the group provided a breakdown of rates and hours for its counsel team. The total amount of funding requested exceeded the amounts recommended for other parties and approved by the Clerk of the Privy Council.

Delay in Bringing this Application

7. As a preliminary matter, I would exercise my discretion to consider this application on its merits. In doing so, I rely on the same general considerations I have used in previous decisions related to late-filed applications.

8. In this case, I make particular note of the fact that the late filing of this application is unlikely to cause prejudice to either the Commission or any party. Unlike a late grant of standing, a late recommendation of funding does not directly impact the Commission's process.

Decision on Funding

9. I am satisfied based on the materials before me that the Convoy Organizer Group would no longer be able to participate at the public hearings without funding. As a result, I would recommend that funding be provided to them.

10. However, I do not agree that they ought to receive funding to the extent that they requested in their application. In my view, some reductions ought to be made. There are four bases on which I would reduce their requested funding.

11. The first relates to the continued involvement of Mr. Wilson and Ms. Chipiuk. As noted above, Mr. Wilson has indicated that, while he and Ms. Chipiuk are no longer able to act in the public hearings themselves, they are continuing to provide legal assistance to the group outside of the hearings. Mr. Wilson has also indicated in his materials that neither he nor Ms. Chipiuk require funding in order to perform these functions.

12. Where I have recommended funding for other parties, I have done so based on an assessment both of the number of hearing days the Inquiry is expected to last, as well as an estimate of the amount of time a party will require prior to the start of the hearing in order to prepare for it. Given that the Convoy Organizer Group continues to have Mr. Wilson and Ms. Chipiuk working for it in preparation for the hearing, it does not require additional funded counsel hours in order to participate in the Inquiry.

13. Second, I do not agree that it would be appropriate to fund four counsel for the hearing, even if there is an intention to divide the work of each counsel pair by issue area and to avoid duplication of work.

14. As discussed in my *Decision on Funding*, dated July 5, 2022, funding is provided to parties in accordance with a set of "Treasury Board Guidelines", and my Order in Council requires me to make my funding recommendations in line with those Guidelines. The Guidelines do not provide for the funding of more than two counsel, except in extraordinary circumstances. In my view, the reasons identified by the Convoy Organizer Group to fund two additional counsel do not constitute extraordinary circumstances.

15. The Convoy Organizer Group submits in its application that it is "the only group with the standing that can put [evidence related to the freezing of bank accounts] before the Commission." I do not agree. It is the role of Commission Counsel to take the lead in placing relevant evidence before me. In my view, Commission Counsel are adequately equipped to adduce the relevant evidence. I am also of the view that

the proposed "main" lawyers for the group are adequately equipped to represent their clients' perspective on this topic.

16. Third, the Convoy Organizer Group has sought an equal number of hours for each of its senior and junior counsel, effectively requesting that both counsel be funded to attend and participate at every day of the hearing. Under the Treasury Board Guidelines, funding is only to be provided for one counsel to appear each hearing day. The Convoy Organizer Group's funding ought to be calculated on this basis.

17. Fourth, the Convoy Organizer Group has requested funding to cover the time required to review the Commission's "Interim Report". As the Commission has not proposed issuing an interim report, there is no basis to provide this funding.

Conclusion

18. I am satisfied that, given Mr. Wilson and Ms. Chipiuk's withdrawal from representing the Convoy Organizer Group during the public hearing phase of the Inquiry, the group is no longer able to participate without funding. I would therefore recommend to the Clerk of the Privy Council that funding be provided in accordance with the Treasury Board Guidelines to cover legal fees for the new counsel,

Mr. Brendan Miller and Ms. Bath-Sheba van den Berg, for their work during hearing days of the Inquiry, plus the ordinary incidentals granted to all funded parties.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

October 7, 2022

Appendix 13

Supplementary Decision on Standing (No. 4)

October 19, 2022

1. On October 17, 2022, I received a joint request by the Canadian Constitution Foundation (CCF) and Professor Ryan Alford to modify their grant of standing. This decision explains why I would grant their request.

2. The CCF and Professor Alford originally applied separately for standing. In my original *Decision on Standing*, dated June 27, 2022, I decided to make a single grant of standing to the CCF and Professor Alford with respect to all aspects of my mandate. My reasons for my doing so are set out in paragraphs 101-106 of that decision.

3. The CCF and Professor Alford jointly request permission for Professor Alford to withdraw from the factual phase of the inquiry, but to maintain his joint standing with the CCF for the policy phase of the proceedings. The reasons outlined in the joint request deal primarily with Professor Alford's professional obligations at the Bora Laskin Faculty of Law and his primary interest in the policy matters at issue in this Inquiry.

4. In effect, all that the parties are requesting is to grant Professor Alford leave to not participate further in the factual hearings. The CCF is not seeking any greater rights than it currently has, nor does Professor Alford seek to participate in the policy phase of the Inquiry separately from the CCF. I do not see how granting their request could prejudice the Commission, other parties or the public.

5. I would therefore grant the request.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

October 19, 2022

Appendix 14

Supplementary Decision on Standing (No. 5)

November 9, 2022

1. On October 31, 2022 the Commission received an application for standing and funding from Arthur L. Jefford. This decision explains why I have decided to dismiss it.

The Application

2. Mr. Jefford describes himself as “Sr Elder Hereditary Grand Chief Art” associated with the “Anishinabec Soultrean Metis Indigenous Nation ASMIN”.

3. In the application, Mr. Jefford asks me to “appoint an Anishinabek co-commissioner” to preside over this Inquiry, among other things. He also seeks standing.

Decision

4. I would dismiss this application.

5. I do not have the jurisdiction to appoint a co-Commissioner. The appointment of Commissioners under the *Inquiries Act* rests with the Governor in Council.

6. As for seeking party status, the submissions provided by Mr. Jefford do not demonstrate that he has a substantial and direct interest in the subject matter of the inquiry, nor that he would make a necessary contribution.

7. The Application also does not provide an explanation for why it was filed late. Given that the proceedings are now well underway, this is another basis on which I would dismiss this Application.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

November 9, 2022

Appendix 15

Policy Phase Rules of Practice and Procedure

Research Council

1. The Commissioner may appoint individuals to the Commission's Research Council ("the Council").

2. The purpose of the Council is to assist the Commissioner fulfill his mandate.

3. The Council shall be headed by a Chair, who is responsible for coordinating the work of the Council.

4. The Council may

   a. make recommendations to the Commissioner respecting the commissioning of expert reports, including recommending topics and authors;
   b. provide the Commissioner with general background or technical information on topics relevant to the policy phase of the Inquiry; and
   c. perform other work as directed by the Commissioner.

Commissioned Papers

5. The Commissioner may, in his discretion, engage external experts to produce discussion, research or policy papers ("Commissioned Papers").

6. The Commissioner may engage a member of the Council to produce a Commissioned Paper. If the Commissioner chooses to do so, the Commissioned Paper shall be written in the author's personal capacity, and not in their capacity as a member of the Council.

7. Any views expressed in a Commissioned Paper are those of the author(s) and do not necessarily reflect the views of the Commissioner.

8. The Commissioner may, in his discretion, publish a Commissioned Paper on the Commission's website.

9. Every Party and any member of the public may provide written comments in response to a Commissioned Paper that is published on the Commission's website.

10. The Commissioner may provide for the form and deadline for Parties and members of the public to provide comments on Commissioned Papers.

Party Papers

11. Parties may submit discussion, research or policy papers ("Party Papers").

12. A Party Paper shall be provided to the Commissioner along with a copy of the *curriculum vitae* of its author(s).

13. The Commissioner may set a deadline for Parties to produce Party Papers to the Commission.

14. The Commissioner may, in his discretion, publish a Party Paper on the Commission's website or distribute a Party Paper to other Parties.

Policy Hearings

15. The Commissioner may hold hearings during the policy phase of the Inquiry. These hearings may take a variety of forms, including, but not limited to:

a. Expert testimony from the authors of Commissioned Papers or Party Papers;
b. Testimony from one or more other experts; and
c. Policy roundtables.

16. Expert testimony during the policy phase will follow the Commission's *Rules of Practice and Procedure*, subject to such modifications as the circumstances require.

17. Prior to an expert testifying, Commission Counsel shall ensure that the Parties have either a copy of the expert's report or, alternatively, a will-say statement or

statement of anticipated evidence for the expert, along with the expert's *curriculum vitae*.

18. The Commissioner may convene policy roundtables to hear the perspectives and opinions from experts, policy makers, or other interested individuals on a topic or set of topics relevant to the Commission's mandate.

19. The Commissioner will determine how each roundtable will be carried out, and how Parties may participate in them.

20. If a roundtable occurs in the absence of the public, a report on the roundtable will be published on the Commission's website and provided to the Parties.

Appendix 16

Notice to Parties re: Policy Phase of the Commission

August 25, 2022

Introduction

Paragraph (a)(iii) of the Public Order Emergency Commission's mandate directs the Commission to "make recommendations, as pertains to the matters examined in the Public Inquiry, on the use or any necessary modernization of that Act, as well as on areas for further study or review." The Commission intends to conduct a "policy phase" of the Inquiry in order to assist the Commissioner in fulfilling this aspect of his mandate.

Today, the Commission has released its *Policy Phase Rules of Practice and Procedure* ("Policy Phase Rules"), which set out the rules that the Commission intends to follow in conducting the policy phase of the Inquiry. The purpose of this Notice is to provide the Parties and members of the public with additional information about the policy phase of the Inquiry.

Commissioned Papers

Pursuant to Rule 5 of the *Policy Phase Rules*, the Commission, in consultation with the Research Council, has commissioned a series of papers on topics that appear to be relevant to the Commission's mandate. The papers that have been Commissioned so far are:

1. "Canadian Police Powers in the Context of Public Protest." [Pouvoirs de la police canadienne dans le contexte d'une manifestation publique.] Authors: Steven Penny & Colton Fehr.

2. "The Role of Intelligence in Public Order Emergencies." [Le rôle du renseignement dans les urgences d'ordre public.] Author: Wesley Wark.

3. "The Developing Role of Private Security in Public Order Protest Policing in Canada." [Le rôle de plus en plus important de la sécurité privée dans la

surveillance policière lors de manifestations liées à l'ordre public au Canada]. Author: George Rigakos.

4. "Cryptocurrency: Challenges to Conventional Governance of Financial Transactions." [Cryptomonnaie : défis de la gouvernance conventionnelle des transactions financières.] Author: Ryan Clements.

5. "Plateformes de financement participatif : politique et réglementation des mécanismes modernes de dons." [Crowdfunding Platforms: Policy and Regulation in Modern Donation Mechanisms.] Author: Michelle Cumyn.

6. "The 'Necessity' Threshold for Emergency Declarations and Emergency Measures." [Le seuil de « nécessité » pour les déclarations et mesures d'urgence.] Author: Nomi Claire Lazar.

7. "Le seuil des « motifs raisonnables de croire » pour les déclarations et mesures d'urgence." [The 'Reasonable Grounds for Belief' Threshold for Emergency Declarations and Emergency Measures]. Author: Anne-Marie Boisvert.

8. "Shifting Canadian Cleavages and the Convoy Movement." [Les clivages changeants des Canadiens et le mouvement des convois.] Symposium of mini-papers. Authors include: Frédéric Boily, Frank Graves, Jared Wesley and Stephanie Carvin.

9. "Emergency Law in Interjurisdictional Context." [Loi sur les mesures d'urgence dans un contexte intergouvernemental.] Author: Jocelyn Stacey.

10. "Survey Paper: Freedom of Expression in Canada." [Rapport de recherche : la liberté d'expression au Canada.] Author: Richard Moon.

11. “Survey Paper: Freedom of Assembly and Freedom of Association in Canada.” [Rapport de recherche : liberté de réunion et liberté d’association au Canada.] Author: Jamie Cameron.

12. “Misinformation/disinformation and the use of Social Media.” [Mésinformation/désinformation et utilisation des médias sociaux.] Author: Emily Laidlaw.

13. “The Policing of Large-Scale Protests in Canada.” [Surveillance policière lors de vastes manifestations au Canada.] Author: Robert Diab.

14. “L’impact économique des manifestations sur l’économie canadienne.” [The Economic Impact of Protests in the Canadian Economy.] Author: François Delorme.

These papers are being produced by their respective authors in their personal capacities. They do not necessarily reflect the views of the Commissioner. They are being produced for discussion purposes in support of the Commission’s policy mandate.

The Commission contemplates making the full set of Commissioned Papers available to the public by posting them on the Commission’s website. Papers that are posted to the Commission’s website will also be sent directly to the Parties.

The Commission anticipates that Commissioned Papers will initially be available in the language in which they are written by their authors. The Commission will also translate Commissioned Papers so that they are available in both official languages. The Commission is following this approach due to the short timelines in which it is required to operate, to ensure that the Parties and members of the public are able to read Commissioned Papers at the earliest opportunity.

Comments on Commissioned Papers

Rule 9 of the *Policy Phase Rules* permits both Parties and members of the public to provide written comments in response to any Commissioned Paper that is posted to the Commission's website.

The deadline for providing comments is 30 days from the day on which the paper is posted on the Commission's website/sent to the Parties. Members of the public are encouraged to monitor the Commission's website, as well as its social media feeds to ensure that they are aware of when a paper is published.

Parties shall file their written comments though the Commission's "parties" email address. Members of the public shall file their written comments through the Commission's online system for receiving public submissions.

Party Papers

Rule 11 of the *Policy Phase Rules* permits Parties with standing in the policy phase of the Inquiry to submit discussion, research or policy papers for the Commission's consideration.

The deadline for Parties to submit Party Papers to the Commission is September 26, 2022.

Party Papers shall be filed with the Commission's "Parties" email address. Parties are reminded of the requirement in Rule 12 of the *Policy Phase Rules of Procedure and Practice* to include a copy of the *curriculum vitae* of the author(s) of a Party Paper.

Policy Proceedings

The Commission anticipates that the policy phase of the Inquiry will take place immediately following the factual phase hearings. Further information about the format of these proceedings will be announced at a later date.

August 25, 2022

Appendix 17

Example Summons for Documents

PUBLIC ORDER EMERGENCY COMMISSION | COMMISSION SUR L'ÉTAT D'URGENCE

SUMMONS TO PRODUCE DOCUMENTS

Pursuant to section 4(b), *Inquiries Act*, RSC 1985, c I-11

TO:

You are hereby required to produce the following "documents", which word is intended to have a broad meaning and includes all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, social media content, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device, for the time period commencing _____, and continuing through the present and concluding at the conclusion of the public hearings of this Commission, in the possession, custody or control of you personally, your office, including all predecessors, agents, outlets, servants or contractors, and present and former employees:

a. All documents relating to _____;
b. All policies, procedures, guidelines and protocols considered, adopted or used by _____ relating to _____; and
c. All documents relevant to _____.

All documents and information are to be delivered by _____ in the manner prescribed in the Document Management Protocol for the Public Order Emergency Commission issued July 2022 to the following address:

Public Order Emergency Commission
c/o Main Floor Security Desk
90 Sparks Street
Ottawa, ON K1A 0A3

This summons is enforceable in the same manner as a summons issued by a civil court of competent jurisdiction, including by contempt of court proceedings.

ISSUED at Toronto, Ontario, this _____ day of _____, 2022.

_____

The Honourable Paul S. Rouleau
Commissioner

Appendix 18

Example Summons for Testimony

PUBLIC ORDER EMERGENCY COMMISSION | COMMISSION SUR L'ÉTAT D'URGENCE

SUMMONS

Pursuant to section 4 of the *Inquiries Act*, RSC 1985, c I-11

SUMMONS TO APPEAR BEFORE: The Commissioner, the Honourable Paul S. Rouleau, of the Public Order Emergency Commission.

TO:

ADDRESS:

(*For Evidence on Oath or Affirmation, or on Swearing or Affirming on an Eagle Feather)*

YOU ARE REQUIRED TO ATTEND to give evidence on oath or affirmation, or on swearing or affirming on an Eagle Feather, on _____, at _____.

This summons is enforceable in the same manner as a summons issued by a civil court of competent jurisdiction, including by contempt of court proceedings.

ISSUED at Ottawa, Ontario, this _____ day of _____, 2022.

_____

The Honourable Paul S. Rouleau
Commissioner

Appendix 19

Document Management Protocol

1. Context

The mandate of the Public Order Emergency Commission (the "Commission") is to examine and assess the basis for the federal government's decision to declare a public order emergency, the circumstances that led to the declaration, and the appropriateness and effectiveness of the measures selected by the federal government to deal with the then-existing situation.

In order to meet this mandate, the Commission will be reviewing submissions from multiple parties, including federal, provincial and municipal governments, and private sector entities/individuals. A standardized approach to file formatting and descriptive data (metadata) will assist the Commission in its activities and will facilitate decisions related to the sharing and disclosure of e-submissions.

A party who is, or anticipates being, unable to comply with this Document Management Protocol ("DMP") should contact the Commission Counsel who requested the production of that party's documents as soon as reasonably practicable to discuss and resolve any such issues. Any other individuals who wish to submit documents to the Commission but are, or anticipate being, unable to comply with the DMP should email the Commission at: parties@poec-cedu.gc.ca.

2. Purpose of the DMP

a. This document outlines the technical specifications for digital submissions to the Commission, and is intended as guidance for individuals involved in compiling and transmitting records to the Commission.

b. The DMP should be read in conjunction with the Commission's Rules of Practice and Procedure.

c. The Commission reserves the right to vary, amend or replace the DMP at any time.

d. The DMP applies specifically to pre-existing information (i.e. documents and content that were created during the course of events under consideration by the Commission). These materials will be uploaded into a secure repository (Ringtail) for review by the Commission.

e. Additional guidance materials are available for individuals preparing new submissions for the POEC hearing process. For guidance on the preparation of hearing-related materials, see the Commission's Rules of Practice and Procedure and the Commission's website.

f. The protocols set out in this Protocol address the following issues:

(i) Production Regime

(ii) Party Codes

(iii) Record Numbering

(iv) Original Digital File Standards

(v) Deduplication

(vi) Imaging Standards

(vii) Extracted Text/OCR Standards

(viii) Redacted Records

(ix) Updating or Adding Additional Data or Documents

(x) Load Files & Fields to be Produced; and

(xi) General Provision of Data

g. As additional information becomes available about non-traditional records or data that will not process or display well in common eDiscovery platforms, or potentially relevant data is not easily accessible due to its format, the parties will discuss in good faith such amendments as are required to provide for submissions in a timely and cost-effective manner.

h. Parties who will be producing websites, social media, text messages or SMS data (such as WhatsApp, BBM Enterprise, etc.) should speak with Commission Counsel as soon as possible, and prior to producing their documents, to discuss the format of this data.

3. Production regime

a. If the same record exists in both electronic format and paper format, without marginalia/highlighting/post-it notes, then only the electronic version will be produced.

b. Paper Records. Subject to the exceptions described herein, all paper records will be scanned and objectively coded, and the records will be produced only in electronic form and in accordance with this Protocol.

c. Archived Records. Where emails or attachments have been archived and replaced with stubs, the complete email or attachment must be produced. The parties will discuss with the Commission any potentially relevant records that are no longer easily accessible due to format, such as legacy data and backup tapes.

d. All records produced shall adhere to the standards specified in Schedule “A”.

e. Where, in accordance with the Commission’s Rules of Practice and Procedure, a party is permitted to redact that part of a document that is subject to a claim of privilege, the party must still ensure that the document is included in its production load file, and must ensure that it identifies the basis for the redaction.

f. For clarity, except as otherwise agreed with Commission Counsel, only documents over which solicitor-client privilege, litigation privilege, or Cabinet privilege under s. 39 of the *Canada Evidence Act* is claimed may be withheld or redacted in accordance with the Commission’s Rules of Practice and Procedure. A party claiming any other type of privilege over a document or part thereof shall produce the document in its entirety but

should highlight those portions of the document over which privilege is claimed (or flag the document as a whole) and identify the nature of the privilege claimed, in accordance with Schedule "A". Claims of privilege will be adjudicated according to the Commission's Rules of Practice and Procedure.

4. Record numbering

a. The following record numbering regime will be used as the unique Record ID for all records. The numbering regime will appear on any generated images. This regime has three levels, AAA00000000.PPPP, where:

(i) AAA is the "Party" code, which identifies the party in the proceedings;

(ii) 00000000 is the unique "record" identifier, padded with 8 zeros, to a maximum value of 99,999,999 (e.g. 00000099); and

(iii) PPPPP is the page reference of a particular record. Only documents imaged for redaction will have page numbers.

b. The list of party prefixes assigned by the Commission are set out at Schedule "B"

5. Original digital file standards

a. All records shall be produced in original digital format; that is, files will be produced in the format in which they were initially created and maintained. For example, MS Word documents are to be produced as .doc or .docx files, MS Excel files are to be produced as .xls or .xlsx files, and Adobe files are to be produced as .pdf files.

b. The parties will discuss with the Commission the proposed handling of any special or unusual items within its electronic document collection, such as databases.

c. The parties will discuss with the Commission the proposed production of maps and engineering drawings or records typically unreadable by common eDiscovery software packages.

d. The parties will discuss with the Commission the proposed production of multimedia files (audio/video files) if a party determines there are relevant multimedia files.

e. Where records are unreadable, the parties will provide a slip sheet with a unique Record ID identifying the record instead of an original digital version of the record. The parties will discuss with the Commission the proposed production of an original digital version of the record outside of the litigation database.

f. Despite the above, attachments will not be separated from emails.

6. Paper records

a. All paper records that do not exist electronically will be scanned by the submitting party except when the record is larger than 11”x 17” size.

b. Where the paper record is greater than 11”x17”, only identifying information on these larger records will be scanned (e.g., title block on a drawing, legend on a plan) and the entire record will be available for hardcopy inspection upon request.

c. All paper records will be scanned in black and white in the specifications set out in this protocol. Colour records will be scanned as black and white except where colour is required and relevant to understand the record.

d. If an email had been printed, and the original digital version is not being produced, the email and the attachment need to be scanned and objectively coded. To be clear, if an original digital email contains a scanned attachment, the attachment does not need to be objectively coded.

e. Paper records that are scanned will be objectively coded with the following fields of information:

(i) Date

(ii) Title

Non-emails

(iii) Author

(iv) Recipient

Emails

(v) Email From

(vi) Email To

(vii) Email cc

(viii) Custodian (where available)

(ix) Document Type (i.e. email, spreadsheet, presentation, document)

(x) Source (where available)

f. Paper document delimiting

(i) Appendices and schedules which form part of a document will not be coded as separate records, but will be considered part of the document, unless they exist as separate documents.

(ii) Attachments and enclosures will be entered and coded as separate records, apart from the parent document with the corresponding family relationship fields to be coded (ParentID/ AttachID)

(iii) The reverse of pages with any text or markings will not be delimited as separate documents.

(iv) Post-it notes will not be delimited as separate records. They will be scanned on the same page if the post-it note does not obliterate any text or scanned onto a separate page, remaining part of the record.

g. Scanned records image file formats and productions should be as set out in Schedule "A".

7. Extracted text/OCR standards

a. The parties shall produce extracted text/OCR for all documents with extractable text. All scanned records will be provided with OCR text.

b. In the event that a document has been redacted, redactions will be applied to the document electronically. Parties shall withhold text for the redacted portion of the document and searchable text will be produced for the un-redacted portions.

8. Redacted records

a. The fact that a document has been redacted must be noted in the designated metadata field.

b. Redactions in white must include an outlined black box to denote the area that has been redacted.

c. The Parties shall use original digital redaction tools for spreadsheets and shall discuss methods for applying electronic redactions to other original digital files if required.

9. Deduplication

a. For the purposes of this protocol, "true deduplication" means deduplication based on MD5 hash codes (unique identifiers) for electronic documents. For example, a PDF version of an original Word document will not have the same hash value and is not a true duplicate.

b. Parties will make every effort to identify and deduplicate duplicate records **globally by family group across their collection**. Deduplication will be applied across all records regardless of the original custodian, but one instance of a document in each family will be retained in the database.

c. The Commission recognizes that while deduplication by family group will lead to the production of duplicate attachments, that is preferable to the disappearance of potentially meaningful duplicate attachments.

d. The parties will maintain the ability to revert back to their original collection for re-processing if deduplication at the item level is required at a later date, and an "All Custodians" field will be provided if requested.

10. Use of analytics and email threading

a. Parties are encouraged to use the full range of analytical tools available to them and not rely solely upon keyword search terms.

b. In the event a party proposes to utilize a form of supervised machine learning for the production of relevant records, that party will provide information about the proposed process, including validation methods, to the Commission for its review and approval.

c. If a party has the technical ability to organize email into threads or conversations, the party must only produce the most inclusive thread. While threading may have an impact on searching and sorting by sender and recipient, the Commission prefers a more streamlined production set.

11. Updating or adding additional data/images

a. After the producible records schedules and associated load files and images have been produced to the Commission, if errors are found in the data or images, then the responsible party will promptly re-issue any necessary replacement load files, in a format in accordance with this Protocol.

b. Any updates should be accompanied with a letter or email outlining the updated information that has been changed.

c. If additional records are produced after an initial production set, the additional records will be identified as a supplemental production and provided in accordance with the format outlined in this Protocol as soon as practicable.

12. General provision of data

a. Parties should take all reasonable precautions to ensure that their data is free of malicious code.

b. Production sets should be delivered to the following address on encrypted USB or hard drive by tracked courier, receipt to be acknowledged by signature:

Public Order Emergency Commission
c/o Main Floor Security Desk
90 Sparks Street
Ottawa, ON K1A 0A3

Schedule "A" – Document production load file requirements

1. Document and Load Files Required

Original digital files to be provided for all documents, except for redacted documents and family members of redacted documents. All redacted documents to be provided in single page, Group IV TIF (1 bit, black and white) or single page JPG (colour images) where redactions are required. A single text file for each document UTF 8 encoded. Data load file to contain relative path to .txt files. OCR text to be provided for all redacted documents that excludes the redacted portions.

All original digital files to be provided in a separate folder entitled ORIGINAL. All Image files to be provided in a separate folder entitled IMAGES. All text files to be provided in a separate folder entitled TEXT.

2. Data

DAT file. A single text file UTF 8 encoded, to contain all metadata and relative path fields identified in the **Metadata Field Table** (see details below), with standard Concordance delimiters:

Value	Character	ASCII Number
Column	¶	020
Quote	þ	254
Newline	®	174
Multi-Value	;	059
Nested Value	\	092

3. Image

OPT file. Opticon load file is a page level load file, with each line representing one image. Below is a sample:

ABC00001, ABC01,\IMAGES\001\ ABC00001.TIF,Y,,,3
ABC00002, ABC 01,\IMAGES\001\ABC00002.TIF,,,,
ABC00003, ABC 01,\IMAGES\001\ABC00003.TIF,,,,
ABC00004, ABC 01,\IMAGES\001\ABC00004.TIF,Y,,,2
ABC00005, ABC 01,\IMAGES\001\ABC00005.TIF,,,,

The fields are, from left to right:

- Field One – (ABC00001) – the page identifier
- Field Two – (ABC01) – the volume identifier is not required.

  ABC00001,,\IMAGES\001\ABC00001.TIF,Y,,,3
  ABC00002,,\IMAGES\001\ABC00002.TIF,,,,
- Field Three – (\IMAGES\001\ABC00001.TIF) – Path to the image. The path must be either the relative path from the location of the Opticon file or the fully qualified path
- Field Four – (Y) – Document marker – a “Y” indicates the start of a unique document.
- Field Five – (blank) – can be used to indicate box
- Field Six – (blank) – can be used to indicate folder
- Field Seven – (3) – often used to store page count, but not required

Scanned paper records – Image format

Item	Description
Composition of Files	Single page TIFF files for b&w Only records required to produced in colour will be produced in colour as 300 dpi saved as JPG
Resolution of Image	Black and White, 300 dpi with CCITT group 4 compression.
Image Directory Structure	Images must reside in folders and sub-folders.

Metadata fields to be produced with load file for electronic records

Please note that not all metadata fields may be available for every record. Parties are to produce contents where available. The Commission is not requiring manual coding for electronic records except, if necessary, where indicated with an *asterisk.

Field	Description
Control Number	Unique identifying document number.
Family Group	DocID or Production number of the parent document in a family, assigned to the parent document and all attachments.
Parent Document ID	DocID or Production Number of the parent document.
Attachment Document IDs	DocID(s) or Production Number(s) of all attachments to parent document.
Custodian	Name of the person having administrative control of a document or electronic file.
Unified Title	The title of the file. For emails, this is the subject line. For non-emails, this is any available title. This is a concatenated field.
Primary Date/Time	Document date and time in mm/dd/yyyy hh:mm:ss format.
Sort Date/Time	Date and time of the parent document in mm/dd/yyyy hh:mm:ss format.

Field	Description
Author	Original composer of document or sender of email message.
Email Subject	The subject of the email message.
Email From	The name (when available) and email address of the sender of an email message.
Email To	The name(s) (when available) and email address(es) of the recipient(s) of an email message.
Email CC	The name(s) (when available) and email address(es) of the Carbon Copy recipient(s) of an email message.
Email BCC	The name(s) (when available) and email address(es) of the Blind Carbon Copy recipient(s) of an email message.
Email Sent Date/ Time	The date and time at which an email message was sent in mm/dd/yyyy hh:mm:ss format.
Email Received Date/Time	The date and time at which an email message was received in mm/dd/yyyy hh:mm:ss format.
Created Date	Date of the creation of the electronic document in mm/dd/yyyy format.
Last Modified Date	Date the electronic document was last modified in mm/dd/yyyy format.
Last Saved Date	Date the electronic document was last saved in mm/dd/yyyy format.
Last Accessed Date	Date the electronic document was last accessed in mm/dd/yyyy format.
Meeting Start Date/ Time	Date the meeting started in mm/dd/yyyy hh:mm:ss format
Meeting End Date/ Time	Date the meeting ended in mm/dd/yyyy hh:mm:ss format
File Name	Name of the electronic original digital file including file extension
File Extension	Extension of the electronic file.
File Type	Description that represents the file type to the Windows Operating System. Examples are Adobe Portable Document Format, Microsoft Word 97 - 2003 Document, or Microsoft Office Word Open XML Format.

Field	Description
Source Path	Complete original file path where original digital document was collected from.
Message ID	The message number created by an email application and extracted from the email's metadata.
*Password Protected	Whether or not the document is password protected/ encrypted (Yes/No).
MD5 Hash	Identifying value of an electronic record that can be used for deduplication and authentication generated using the MD5 hash algorithm.
Time Zone Offset	Identification in numeric value of the relevant time zone the document was collected from (ex -7.00).
Extracted Text	Extracted text obtained from processing of original digital files. Where no extracted text is available, OCR text to be provided, when possible. A single text file per document UTF 8 encoded. See Text Path for relative path field to be included in DAT file. **Do not include full text in DAT file.**
Original Digital Path	Relative file path of the original digital document.
Text Path	Relative file path of the extracted text .txt file.
*Privilege Type	If a document is withheld entirely a field indicating the reason for withholding . For example, "Solicitor Client Privilege".
*Redaction Reason	If a document is redacted a field indicating the reason for redactions. For example, "Solicitor Client Privilege"
*Highlight Reason	If a document is highlighted a field indicating the reason for highlighting. For example, National Security or Security
Language (optional)	Tag documents, for example with E (English), F (French), or EF (both). This is optional for parties who may have the ability to populate this field automatically and without delaying production.

Schedule "B" – Assigned prefixes for parties with standing

1. **ALB** Government of Alberta
2. **CAN** Government of Canada
3. **CCC** Calgary Chamber of Commerce
4. **CCF** Canadian Constitution Foundation & Professor Ryan Alford (Jointly)
5. **CIV** Canadian Civil Liberties Association
6. **CHF** Canadian Association of Chiefs of Police
7. **CLA** The Criminal Lawyers' Association & The Canadian Council of Criminal Defence Lawyers (Jointly)
8. **HRF** Tamara Lich, Chris Barber, Daniel Bulford, Tom Marazzo, Sean Tiessen, Chris Garrah, Miranda Gasinor, Joseph Janzen, Dale Enns, Ryan Mihilewicz & Freedom 2022 Human Rights and Freedoms not for-profit corporation (Jointly)
9. **BUR** Insurance Bureau of Canada
10. **MAN** Government of Manitoba
11. **NCF** The National Crowdfunding & Fintech Association
12. **NAT** National Police Federation
13. **COA** Action Sandy Hill, Byward Market Business Improvement Area, Bank Street Business Improvement Area, Lowertown Community Association, Ottawa Coalition of Business Improvement Areas, Sparks Street Business Improvement Area, Vanier Business Improvement Area & Vanier Community Association (Jointly)

14. **OPP** Ontario Provincial Police

15. **OPS** Ottawa Police Service

16. **OTT** City of Ottawa

17. **SAS** Government of Saskatchewan

18. **PSL** Peter Sloly

19. **TDF** The Democracy Fund, Citizens for Freedom & Justice Centre for Constitutional Freedoms (Jointly)

20. **WIN** City of Windsor

Appendix 20

Commissioner's Opening Statement

Introduction

Today marks the opening of the public hearings of the Public Order Emergency Commission. My name is Paul Rouleau, the Commissioner appointed to conduct this inquiry.

We are gathered today on the traditional territory of the Algonquin Anishinaabeg People, at the National Archives of Canada, steps away from where many of the events that we are inquiring into took place. I would like to welcome everyone who is here with us in person, as well as those who are watching the proceedings online and through the media.

I am joined today by several members of the Commission's staff, including Hélène Laurendeau, the Commission's Executive Director, and Shantona Chaudhury and Jeff Leon, the Commission's co-lead counsel. They and their teams have been working incredibly hard for months in preparation to start these hearings today. I want to thank them for their excellent work.

In these opening remarks, I want to address the following:

- The role of public inquiries
- The mandate of this commission
- The challenges facing the Commission
- How the commission has carried out its work to date
- What to expect from these hearings
- The participants in the Inquiry
- The importance of openness and transparency; and
- The policy phase of the Commission

The role of public inquiries

For many, this will be the first public inquiry that they attend, view, or follow. As such, I want to say a few words about what commissions of inquiry are, and what they do.

A commission of inquiry is an independent body appointed by government with a mission to investigate matters of public importance. Commissions are headed by one or more commissioners, who have the overall responsibility for the work of the commission and the ultimate duty to report on the subject matter of the inquiry. Commissioners are assisted by lawyers, administrative and technical support staff, frequently supplemented by subject matter experts, researchers, investigators, and other specialized roles.

Commissions of Inquiry are often called “Public Inquiries”. That is because commissions work to be transparent and open. Hearings are normally conducted in public, and anyone is entitled to observe.

Commissions of inquiry perform two important functions: they make findings of fact, and they make recommendations for the future.

The fact-finding role of commissions of inquiry serves an important social purpose. To borrow the words of Peter Cory, then a judge of the Supreme Court of Canada: “One of the primary functions of public inquiries is fact-finding. They are often convened, in the wake of public shock, horror, disillusionment, or skepticism, in order to uncover ‘the truth’.”[1]

Uncovering the truth is an important goal. When difficult events occur that impact the lives of Canadians, the public has a right know what has happened. But Inquires are also forward-looking. They seek not only to understand what has occurred in the past, but also to learn from those experiences, and to make recommendations for the

[1] *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 and para 62. and para 62.

future. A commission's recommendations may be modest, or wide-ranging. They may be directed at a range of audiences, including governments, public bodies and the private sector.

It is also important to understand what commissions of inquiry do not do. They do not make findings of legal liability. They do not adjudge individuals to have committed crimes. While inquiries seek to uncover the truth, they are not trials. Questions of civil and criminal liability are decided by courts, not commissions.

Mandate of the Commission

Like other commissions of inquiry, the Public Order Emergency Commission has been given the mandate to seek out the truth about an important event. However, unlike other commissions of inquiry, we have two mandates: one given to us by Parliament, and one given to us by Cabinet.

The mandate given to the Commission by Parliament is found in the *Emergencies Act* itself. When Parliament passed that law in 1988, it chose to include in it an important rule: if the government proclaims an emergency, it must also create a public inquiry to examine "the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency."

The mandate from Parliament, therefore, is one of public accountability: The public's legitimate right to know why the Government proclaimed an emergency, and whether the actions it took were appropriate.

When Cabinet took the step of establishing this Commission, as it was required to do, it set out an additional mandate. Our Order in Council directs the Commission to examine:

- the evolution and goals of the convoy movement and border protests, and their leadership, organization and participants;

- the impact of domestic and foreign funding, including crowdsourcing platforms;
- the impact, role and sources of misinformation and disinformation, including social media;
- the economic and other impact of blockades; and
- the efforts of police and other responders prior to and after the declaration.

There is, however, an important caveat to this mandate from Cabinet. The Commission is asked to examine these issues "to the extent relevant to the circumstances of the declaration and measures taken." In other words, while these topics are important and worthy of attention, it is the mandate that has been given to us by Parliament that drives the Commission's work. While this Inquiry will deal with a wide range of issues, its focus will remain squarely on the decision of the federal government: why did it declare an emergency, how did it use its powers, and were those actions appropriate?

This Commission exists to promote transparency, accountability, and public confidence. I hope that this Inquiry, and the transparency we strive to provide, will bolster the public's trust in our systems of accountability.

The challenges facing the Commission

Discharging my mandate is not an easy task. The Commission has faced many challenges in reaching this point and will face further challenges as the Inquiry proceeds.

The biggest challenge has been time. This Commission of Inquiry is unique, to the best of our knowledge, in that its deadline is set out in statute. Other inquiries have worked under deadlines set by Cabinet. That sort of deadline is set based on an assessment of the time needed and can, and frequently is, extended as circumstances require. This is not a possibility for our Commission. Our deadline is established by the *Emergencies Act* itself. It is a short one, and it allows for no extensions.

Just how tight are our timelines? Let me try to put it in context:

- The Air India inquiry was established on May 1, 2006. It took just over four years to issue its report, on June 17, 2010.
- The Commission on the Decline of Sockeye Salmon was established on November 5, 2009. It issued its report three years later on October 31, 2012.
- The Inquiry into Missing and Murdered Indigenous Women and Girls was established in September 2016 and issued its report almost three years later on June 3, 2019.

This Commission, on the other hand, was established in April, and must table its report in Parliament on February 20, 2023. It has only 300 days to complete its work.

These extraordinary time pressures are not the only challenge that the Commission has faced. Access to relevant documents has also been a challenge. The federal government has expended significant effort to produce to the Commission materials from a dozen departments and agencies. Yet the process has been slow and complex. Documents continued to be produced to the Commission into October. Many of the documents given to the Commission are classified, subject to national security or other privilege claims. This limits how the Commission can handle these materials, and how they can be used and shared.

Beyond the federal government, the Commission received more than 50,000 documents from provincial governments, police services, municipalities, non-governmental organizations, industry groups, and private entities.

All of the materials received had to be carefully assessed for relevance and privilege, analyzed by Commission counsel, and where appropriate disclosed to the parties for their own review.

The process of getting to this point has been challenging. These public hearings will no doubt present all parties with new challenges. Commission staff and parties alike have had to be flexible, innovative, and creative in their approach to their work. These

hearings will need to be conducted in a manner that will allow the Commission to fulfill its mandate within the timelines that it has been given. They also need to be fair and meaningful. Guided by the principles of openness, timeliness, and proportionality, I intend to ensure that they are.

How the Commission has carried out its work

I want to give the public a little more detail about the work that Commission staff have done over the last four months to conduct their investigation and prepare for these hearings.

Shortly after being appointed I set about selecting and retaining a senior staff and retained services of Commission counsel. I then, in consultation with counsel, guided the work of the Commission. Several investigative dossiers were identified and each was headed by a senior Commission counsel. Additional counsel were hired in the weeks and months that followed to assist in these investigations. In order to ensure that the various parallel investigations did not exist in silos, junior counsel were cross-appointed to multiple dossiers, and all Commission counsel met weekly to keep each other apprised of the status of their work. This requirement to pursue the investigation in a number of parallel streams explains why you will see several different commission counsel leading evidence in the coming hearings.

Counsel worked to identify, request, and obtain relevant documents that were in the possession of parties to this Inquiry, as well as non-parties. In the case of the federal Government, this process involved challenging the Government's assertion of Cabinet confidence, which resulted in the Government agreeing to a significant disclosure of information covered by Cabinet confidence. In the 371 federal Commissions of inquiry held since Confederation, this is only the 4th time that access to Cabinet confidences has been provided.

As documents were obtained and analyzed, Senior counsel began to conduct interviews with key witnesses. These interviews took a variety of forms, from short

telephone calls, to full-day meetings with panels of senior governmental officials. Protestors and Cabinet ministers alike were interviewed by the Commission.

Recognizing that hearing time would be limited, Commission staff also requested and obtained institutional reports from a variety of entities, including federal departments and agencies, provincial governments, municipal governments, police services, and private entities. These reports summarize the information available to these entities and describe their involvement in the events surrounding the declaration of a public order emergency. They will, where appropriate, be filed at the hearing as part of the evidentiary record.

In order to ensure that key questions are addressed during these public hearings, Commission counsel have analyzed the information available to them and prepared evidence to be presented in a number of different ways. They have prepared summaries of the interviews that they conducted and to ensure fairness, these summaries have been reviewed and approved as accurate by the interviewees. The interview summaries have been shared with the parties to ensure that they are aware of the information obtained by the Commission. In some cases, these summaries may be entered into evidence in their own right.

Commission counsel have also prepared a series of overview reports, summarizing large amounts of evidence related to a particular issue. They have also worked to prepare lists of witnesses who will provide more traditional testimony in these hearings.

Finally, Commission counsel have reviewed the vast number of documents received in order to identify those pertinent to the issues before the Commission, which have been shared with the parties. In the case of documents received from the federal government, this process involved assessing the Government's assertions of national security and public interest privilege, and working to make as much information as possible open to the public.

Throughout all of this work, Commission staff have undertaken countless additional duties, from locating hearing space for the Inquiry to drafting the rules of procedure to working with translators and editors to ensure the final report can be produced on time.

It is important to emphasize that the investigative work that I have just described has been that of the Commission's staff. During these hearings, I will be hearing the bulk of this evidence for the first time, just like members of the public. To that end, I have made no findings, and reached no conclusions about the issues that I have been entrusted to deal with.

While I am not sitting as a judge in these hearings, my 20 years of experience as a judge have informed my approach to the Inquiry. I intend to take a judicial attitude to my job. By that I mean that independence, impartiality and fairness are my touchstones as a Commissioner just as they are in my role as a judge. Like a judge, my findings and conclusions will be based on the evidence that is presented to me. I will keep an open mind throughout, and will only reach a final conclusion once the evidence is all in and final submissions have been made.

What to expect in the hearings

We have scheduled approximately 30 days of factual hearings. At first glance, that may seem like a great deal of time. In reality, our time is very limited, given the breadth of issues to be covered.

This Commission will need to hear from dozens of witnesses and examine thousands of documents. Our timelines are tight, and there will be little room for error.

In order for these hearings to be successful, I am relying not only on my Commission counsel, but on the efforts of all counsel appearing before me and the parties they represent. This is not a trial. It is an inquiry, and I expect everyone will work cooperatively to ensure the facts and information necessary for the public to

understand what happened and why it happened will be elicited. I appreciate the spirit of cooperation that the parties and their counsel have demonstrated thus far, and I expect it to continue.

While this is not an adversarial proceeding I recognize that different points of view will be forcefully advanced. This is to be expected and will help ensure that a clear picture of the events is presented and the decisions made or not made by key actors are fully analyzed. It is important, however that at all times disagreement be respectful.

Parties and the public should also expect me to actively control the proceedings. Deadlines and time limits will be established and enforced. Parties will be required to focus on central issues. Not every witness who might be called will be called. Relevant evidence may be adduced in writing. Objections and procedural wrangling must and will be kept to an absolute minimum.

Throughout this process, I will be relying on Commission counsel to take the lead in presenting the evidence. For members of the public who have not seen a public inquiry before, the role of Commission counsel may appear unusual. They do not represent a party. They are, in effect, and extension of the Commissioner. They do not advance any particular point of view, but rather lead evidence in an impartial and balanced manner. Their only goal in these proceedings is to elicit the evidence necessary to help establish the truth, whatever that evidence may be.

Other participants

Commission counsel are not the only persons who will play a role in these hearings. There are also some 20 additional parties to whom I have granted permission to participate in these hearings in a variety of ways. This includes the Government of Canada as well as provincial and municipal governments, police forces, protestor representatives, community organizations, non-governmental organizations, trade associations and individuals. Each has their own interest in the issues that will be

addressed in this Inquiry, and each brings their own important perspective. They too will play an important role in this process.

In order to permit individuals and groups who might otherwise not have been able to participate in these proceedings, I made recommendations to the Clerk of the Privy Council to provide funding to certain Parties with standing. I outlined my reasons for doing so in a series of decisions that are available on the Commission's website. While I did not have the authority to award funding, the Clerk of the Privy Council accepted my recommendations.

Aside from the Parties, this Commission has also benefitted from the participation of the public. From the outset of my appointment, it was clear to me that that I needed to obtain input from Canadians from all walks of life on their views and experiences related to all aspects of my mandate. It was for this reason that the Commission established an accessible online method for members of the public to share with us their views, observations and ideas on the circumstances that led to the declaration of an emergency, and the measures taken by the government in response.

We have received a number of submissions from individuals expressing a range of views, opinions, beliefs and ideas, and we look forward to continuing to receive submission as these hearings unfold. Commission staff will carefully review all submissions and will prepare a report on the public input received, which will be shared with you.

To the members of the public who took the time and effort to share your insights with the Commission, I thank you. The inquiry has benefited from your contributions, and I will be mindful of the views expressed as I continue my work.

Openness and transparency

The role of a public inquiry under the *Emergencies Act* is very much about serving the public. Maintaining public confidence in our public institutions and holding government

to account can only be achieved through a process that is committed to openness and transparency.

To that end, the Commission has worked hard to make these proceedings as accessible as possible. The hearings themselves are open to the public to come and observe. The media has been invited to broadcast our proceeding. And anyone around the world is able to watch or listen to these hearings on the Commission's website. Transcripts of proceedings will be produced and made available for download.

I have already said that much of the evidence in this proceeding will be adduced in writing. The Commission also intends to post all documents that are made exhibits to the Commission's website so that the media and the public will be able to read and understand all of the evidence before me. We expect that thousands of pages of materials will ultimately be posted.

Finally, as a national inquiry, we are committed to ensuring that our proceedings are accessible to the public in both official languages. Witnesses may testify in either English or French, and all proceedings will be simultaneously translated. Documents prepared by or on behalf of the Commission will be translated and made available in both official languages on the Commission's website. Where possible, both language versions are released simultaneously.

There may occasionally be limits on the Commission's ability to be fully open to the public. Much of the material reviewed by Commission counsel during their investigation is classified or subject to public interest immunity or national security privilege. As a result, there may be short portions of the hearing where classified evidence will be presented to me, which cannot be open to the public or the parties. We will strive to keep such hearings to an absolute minimum.

The policy phase

I have already spoken about how this Commission will not only look to the past, but also to the future. The Commission's mandate includes a direction to make recommendations for potential changes to laws or practices relevant to the subject matter of this Commission.

To support this branch of the Commission's work, we have also had an ambitious research and policy program in place for the last several months. To assist the Commission, a Research Council comprised of academics from across Canada was assembled. Chaired by Professor Geneviève Cartier, the Research Council has worked tirelessly to commission research papers, brief Commission staff on technical matters, and shape the overall policy direction of the Commission.

Much of the Research Council's work is already available to the public for viewing. A series of 17 research papers on topics relevant to the Commission have been posted in both official languages to the Commission's website.

After the factual phase of the inquiry is complete, the Commission will be holding a series of policy hearings to further explore the broader issues relevant to the Commission's mandate. This will include a number of policy round tables involving experts and stake holders, who will present their views to the Commission so that I may be better equipped to make recommendations about the future.

Conclusion

Before concluding these remarks, I want to thank the National Archives for allowing the Commission to hold its hearings in this beautiful building and also thank the Commission staff and staff of Public Services and Procurement Canada for all of the work that went into the preparation of the facilities for these hearings.

This Commission is about to begin the process of finding answers to the questions assigned to it by Parliament: what led the federal government to declare an emergency; how did it exercise the powers that it obtained; and were its actions appropriate? These are matters of fundamental importance. The exercise by government of the exceptional powers given to them by the *Emergencies Act* affects, directly or indirectly, all Canadians. How and why these powers are invoked are matters of great public interest.

They are also complex questions. To answer them I will need to hear a great deal of evidence in a short period of time. It will be a challenge, but I am confident that with the cooperation of all parties the hearings will provide a fair and through process for the presentation of the evidence required for this Commission to be able to give the public the answers to which it is entitled.

Appendix 21

Witness List

Factual Hearings

October 14

- Victoria De La Ronde
- Zexi Li
- Nathalie Carrier
- Kevin McHale
- Catherine McKenney
- Mathieu Fleury

October 17

- Steve Kanellakos
- Serge Arpin

October 18

- Jim Watson
- Kim Ayotte

October 19

- Diane Deans
- Pat Morris

October 20

- Patricia Ferguson
- Craig Abrams

October 21

- Craig Abrams (Continued)
- Carson Pardy

October 24

- Steve Bell

October 25

- Russell Lucas
- Marcel Beaudin
- Robert Bernier

October 26

- Robert Bernier (Continued)
- Robert Drummond

October 27

- Thomas Carrique

October 28

- Peter Sloly

October 31

- Peter Sloly (Continued)

November 1

- Christopher Barber
- Steeve Charland
- Brigitte Belton

November 2

- Keith Wilson
- Tom Marazzo
- Patrick King

November 3

- Benjamin Dichter
- James Bauder
- Tamara Lich

November 4

- Tamara Lich (Continued)
- Chris Deering
- Maggie Hope Braun
- Jeremy MacKenzie
- Daniel Bulford

November 7

- Drew Dilkens
- Jason Crowley

November 8

- Dana Earley
- Paul Leschied
- Marco Van Huigenbos

November 9

- Jim Willett
- Mario Di Tommaso
- Ian Freeman

November 10

- Marlin Degrand
- Mario Di Tommaso (Continued)

November 14

- Rob Stewart
- Dominic Rochon
- Cindy Termorhuizen
- Joe Comartin

November 15

- Brenda Lucki
- Michael Duheme
- Curtis Zablocki

November 16

- John Ossowski
- Michael Keenan
- Christian Dea

November 17

- Michael Sabia
- Rhys Mendes
- Isabelle Jacques
- Jody Thomas

November 18

- Jacquie Bogden
- Jeff Hutchinson
- Janice Charette
- Nathalie Drouin

November 21

- David Vigneault
- Michelle Tessier

- Marie-Hélène Chayer
- Bill Blair

November 22

- Marco Mendicino
- Dominic LeBlanc

November 23

- David Lametti
- Anita Anand
- Omar Alghabra

November 24

- Chrystia Freeland
- Katie Telford
- Brian Clow
- John Brodhead
- Kenneth Weatherill

November 25

- Justin Trudeau

Policy Hearings

November 28

- Robert Leckey
- Jamie Cameron
- Richard Moon
- Vanessa MacDonnell
- Jean-Francois Gaudreault-Desbiens
- Brian Bird

- Carissima Mathen
- Patrick Leblond
- Michelle Cumyn
- Christian Leuprecht
- Michelle Gallant
- Jessica Davis
- Gerard Kennedy

November 29

- Wayne MacKay
- Emily Laidlaw
- David Morin
- Dax D'Orazio
- Jonathon Penny
- Vivek Venkatesh
- Vanessa MacDonnell
- Ambarish Chandra
- Kevin Quigley
- François Delorme
- Phil Boyle
- Florence Ouellet

November 30

- Kent Roach
- Richard Fadden
- Leah West
- Wesley Wark
- Ward Elcock
- Michael Williams
- Michael Kempa
- Robert Diab

- Cal Corley
- Colton Fehr
- Bonnie Emerson

December 1

- Dennis Baker
- Christian Leuprecht
- Ryan Teschner
- Malcolm Thorburn
- Kate Puddister
- Michael Kempa
- Jim Ramer
- Jocelyn Stacey
- Dwight Newman
- Jack Lindsay
- Judith Sayers
- Cal Corley

December 2

- Nomi Claire Lazar
- Victor V. Ramraj
- Hoi Kong
- Karin Loevy
- Kim Lane Scheppele
- Morris Rosenberg
- Ward Elcock

Appendix 22

Ruling on a Request for an *in camera, ex parte* Hearing

1. This is a ruling on a request by the Government of Canada for leave to have part of the evidence that will be called by Commission counsel received in the absence of the public, on the grounds that the disclosure of this evidence would be injurious to national security.

Background

2. One of the Institutional Reports (IRs) submitted to the Commission by the Government of Canada pertained to the role of the Canadian Security Intelligence Service (CSIS) in the matters under consideration by the Commission. This IR was made available to the Parties on the Party Database on October 6, 2022. Shortly after the Government submitted the CSIS IR, it submitted a classified version of that report. The classified version of the IR augments the public version with information that, in the Government's view, would be injurious to national security if disclosed to the public.

3. Commission counsel then advised the Government that, in addition to a public examination of the CSIS witnesses and a witness from the Integrated Terrorism Assessment Centre (ITAC) on the public version of the IR, they intend to examine the CSIS witnesses on the classified version of the IR. In response to this notice, the Government applied to me in writing, pursuant to the Commission's Rules, for leave to have the examination of the CSIS and ITAC witnesses on the classified version of the IR heard *in camera* and *ex parte*; that is to say, in the absence of the public and the Parties. The Government's request was supported by representations on the injury to national security that would arise if the examination on the classified version of the CSIS IR was to take place in public.

4. In summary, the Government described the following categories of injury that could be expected from the disclosure of information and intelligence:

a. CSIS's interest in individuals, groups or issues, including the existence or non-existence of past or present files or investigations, the intensity of investigations, or the degree or lack of success of investigations;

b. Methods of operation and investigative techniques utilized by CSIS;

c. Relationships that CSIS maintains with other police, security and intelligence agencies and the information exchanged in confidence with such agencies;

d. Employees, internal procedures and administrative methodologies, and telecommunications systems used by CSIS;

e. Persons who provided information to CSIS.

Ruling

5. Having considered the Government's representations, I am satisfied that the burden has been met for this evidence to be heard in the absence of the public. It is my expectation that the hearing will take approximately three hours. The evidence will be called by Commission counsel who are experienced in national security matters.

6. It should be noted that this ruling pertains only to the manner in which the evidence will initially be called. When I have heard the evidence, I will decide whether the evidence must remain confidential. I may decide that some or all of the evidence can be made public, for example in a summary that describes the evidence without disclosing information that must remain confidential.

Input from Parties

7. Parties are invited to provide input on this part of the Commission's work. If a Party has a question or a topic that they would like to see addressed during the *in camera* session, they should advise Commission counsel of same by the close of business on November 3, 2022.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

October 26, 2022

Appendix 23

Decision on Application under Rule 56 (Benjamin Dichter)

November 23, 2022

1. On October 31, 2022, Benjamin Dichter served an application under Rule 56 of the Commission's Rules of Practice and Procedure ("Rules") seeking leave to have his evidence-in-chief led by his counsel, Jim Karahalios. This decision explains why I would dismiss the application.

Background to the Application and Applicable Rule

2. Mr. Dichter has been served with a summons under Rule 48 of the Commission's Rules. He is expected to testify on November 3, 2022.

3. On October 31, 2022, Mr. Dichter served an application under Rule 56 of the Commission's Rules. Rule 56 provides as follows:

> The legal representative for a Party may apply to the Commissioner to lead a particular witness's evidence in-chief. If the representative is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner. In addition, prior to that witness's evidence in chief, the witness's legal representative shall provide the Parties and Commission counsel with reasonable notice of the areas to be covered in the witness's anticipated evidence in chief and a list of the documents associated with that evidence.

4. Mr. Dichter's counsel relied on three "specific factors related to the Commission's guiding principles" in support of his application to lead Mr. Dichter's evidence:

a. First, Mr. Dichter's position as a non-party who has been in a prior working relationship with more than one party is "unique" and creates "an increased risk of legal and reputational exposure." In particular, the application points to the fact that Mr. Dichter is a defendant in the ongoing

Li et al. v. Barber et al. class action, as well as the presence of parties to that proceeding as parties with standing before the Commission.

b. Second, given the time allocated to Mr. Dichter's evidence in chief (two hours), he seeks to have his own counsel lead his evidence "[t]o ensure that all the evidence from Mr. Dichter is presented within this period," which would be accomplished "by providing for a more focused testimony in evidence in-chief." Mr. Dichter also states that "re-examination would not be required by Commission Counsel and Mr. Dichter's legal representative separately after his evidence in-chief is provided."

c. Third, Mr. Dichter notes that his counsel would work with Commission Counsel to ensure that Mr. Karahalios leads evidence in-chief in "alignment with the Commission's mandate."

Analysis

5. I would dismiss the application.

6. Commission Counsel are impartial and lead evidence relevant to the Commission's mandate. Mr. Dichter and his counsel can coordinate with Commission Counsel to ensure that they canvass relevant issues and documents in their examination of Mr. Dichter.

7. Mr. Dichter faces similar reputational and legal exposure as other witnesses who will testify. With respect to his reputational interest, I note that there have been many witnesses called whose conduct has been the subject of critical examination. However, the focus of this Commission is not allegations of wrongdoing against a specific individual, but rather a broad and systemic inquiry into the conduct of a Government, designed to maintain public accountability and to make recommendations for the future.

8. With respect to legal exposure, Mr. Dichter is also not in a unique position. Several witnesses who are scheduled to testify are the subject of civil or criminal proceedings. Mr. Dichter has been summonsed under the Inquiries Act and, as such, enjoys the protections afforded to him under the Charter of Rights and Freedoms and the Canada Evidence Act. The fact that he is a defendant to a class action is not, in and of itself, sufficient to displace the presumption that Commission Counsel lead the evidence of the witnesses called to testify before the Commission.

9. I do not agree that it would be more efficient for Mr. Dichter's counsel to examine his client. I am of the view that, if anything, the opposite is true. Commission Counsel are also entitled to pose leading questions of Mr. Dichter, while his counsel would ordinarily be limited to non-leading questions. It may be more efficient to permit Commission Counsel to lead Mr. Dichter's evidence than to have Mr. Karahalios elicit it through non-leading questions.

10. Moreover, under Rule 58(c), Mr. Dichter's counsel will have an opportunity to examine Mr. Dichter at the conclusion of the parties' cross-examinations. Any evidence which he believes has not been sufficiently brought out can be elicited at that time.

11. Finally, Mr. Dichter can apply under Rule 59 if, at the end of Commission Counsel's examination in chief, Mr. Dichter still believes there are relevant issues upon which he ought to be examined by his own counsel.

12. In reaching these conclusions, I have considered the ruling by Commissioner Goudge on a similar request that arose in the Inquiry into Pediatric Forensic Pathology in Ontario.[1] There, Dr. Charles Smith sought leave to be examined in chief by his own counsel. Dr. Smith was alleged to have been personally responsible for several miscarriages of justice through his work as a pediatric forensic pathologist, including a number of wrongful convictions for homicide. Commissioner Goudge, while noting the reputational risk Dr. Smith faced, dismissed the application. In doing

[1] Commissioner Stephen T. Goudge, *Ruling on the Application by Dr. Charles Smith to be Examined by his Own Counsel*, November 20, 2007.

so, Commissioner Goudge relied on the fact that the inquiry he led was a systemic one designed to make recommendations to government, and that given the role of Commission Counsel, their examination of Dr. Smith would be both fair and thorough. I believe that Commissioner Goudge's decision was well reasoned and reflects many of the same considerations that I have relied upon.

Disposition

13. I therefore dismiss the application, without prejudice to Mr. Dichter's counsel's right to seek leave under Rule 59 following Commission Counsel's examination.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

November 2, 2022

Appendix 24

Decision on Applications Under Rules 56 and 105 to 108 (Jeremy MacKenzie)

November 3, 2022

1. Jeremy MacKenzie is currently scheduled to testify before me on November 4, 2022. He has filed two application related to his testimony. The first is for an order that his evidence be taken *ex parte* and *in camera*, or in the alternative, an order for a publication ban and related orders. The second is for an order that his evidence be led by his own counsel rather than Commission Counsel.

2. This decision explains why I would dismiss both applications.

Background to the Application and Applicable Rule

3. Mr. MacKenzie has been served with a summons under Rule 48 of the Commission's Rules of Practice and Procedure ("Rules"). He is expected to testify on November 4, 2022 at 2 p.m.

4. On October 31, 2022, Mr. MacKenzie served an application under Rules 105 to 108. These rules provide:

> 105. In exceptional circumstances, a witness's personal private interests may require the Commissioner, in the exercise of his discretion, to deviate from the general principle that all information relating to that witness be disclosed to the public, either through testimony or through documents made available.
>
> 106. In the exercise of the Commissioner's discretion, he may, among other measures:
>
> a. Direct or permit the redaction of irrelevant personal information from otherwise public documents;
>
> b. Direct that certain information be subject to a non-publication order, although otherwise contained in public documents;
>
> c. Direct the extent to which such information should be referred to in testimony;

d. Direct that a witness not be identified in the public records and transcripts of the hearing except by non-identifying initials, and that the public transcripts and public documents be redacted to exclude any identifying details;

e. Permit a witness to swear an oath or affirm to tell the truth using non-identifying initials;

f. Use non-identifying initials and exclude any identifying details in his report; and

g. Hold an *in camera* hearing, as a last resort, in circumstances in which the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that hearings should be open to the public.

107. If the Commissioner has exercised his discretion pursuant to Rule 106d, no photographic or other reproduction of the witness that might lead to his or her identification shall be made at any time and there shall be no publication of information that might lead to the identification of the witness.

108. All media representatives shall be deemed to undertake to adhere to the rules respecting personal confidentiality as set out herein. A breach of these rules by a media representative shall be dealt with by the Commissioner as he sees fit.

5. Mr. MacKenzie sought an order that his evidence be taken *ex parte* and *in camera.* This would mean that his evidence would be taken in the absence of either the parties or the public. In the alternative, Mr. MacKenzie orders that his evidence not be published, and that the Commission not release records that would identify him.

6. Mr. MacKenzie relies on ss. 7 and 11 of the *Charter of Rights and Freedoms ("Charter")*. Mr. MacKenzie is currently facing criminal charges. He expresses several

concerns about the potential impact of publicity surrounding his testimony before the Commission on his criminal proceedings. He maintains that the anticipated evidence to be led at the inquiry is irrelevant to his trials, but consists of prejudicial, inflammatory, and incendiary assertions that will paint him in an unfavourable light. He submits that fairness "means that the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that hearings should be open to the public".

7. Mr. MacKenzie draws an analogy between his circumstances and those of an accused person during a bail hearing, who has a statutory right to a publication ban under s. 517 of the *Criminal Code*. The Supreme Court, in *Toronto Star Newspapers Ltd.*[1] described the important interests that s. 517 protects. Mr. MacKenzie submits that his situation is similar, and the same considerations discussed in *Toronto Star* apply to him.

8. In accordance with the Commission's Rules, Mr. MacKenzie's application was circulated to the parties, who were given an opportunity to respond. The Commission received responses from the Ottawa Coalition of Businesses and Community Associations ("Ottawa Coalition"); the Criminal Lawyers' Association & the Canadian Council of Criminal Defence Lawyers ("CLA/CCCDL"); and the Government of Canada. The Ottawa Coalition opposed the application. Both the CLA/CCCDL and Canada opposed the request for an *ex parte* hearing.

9. In accordance with *Dagenais v. Canadian Broadcasting Corporation*,[2] the Commission also gave notice of this application to the media. The Commission received submissions from a consortium of media outlets that opposed the application.

10. On November 2, 2022, Mr. MacKenzie served a second application. This application was for an order under Rule 56. Rule 56 provides:

[1] *Toronto Star Newspapers Ltd. v. Canada*, [2010] 1 SCR 721.
[2] *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835 ["*Dagenais*"].

> The legal representative for a Party may apply to the Commissioner to lead a particular witness's evidence in-chief. If the representative is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner. In addition, prior to that witness's evidence in chief, the witness's legal representative shall provide the Parties and Commission counsel with reasonable notice of the areas to be covered in the witness's anticipated evidence in chief and a list of the documents associated with that evidence.

11. In his application, Mr. MacKenzie's counsel relied on the "trusting and positive relationship" between his client and him, which he submits would "foster full, frank, and fair testimony" by Mr. MacKenzie.

12. None of the parties filed a response to this application.

Analysis

13. For the reasons that follow, I would dismiss both applications.

Application under Rules 105 to 108

14. In *Sherman Estate v. Donovan*, Supreme Court of Canada has described the open court principle as follows:

> [1] This Court has been resolute in recognizing that the open court principle is protected by the constitutionally-entrenched right of freedom of expression and, as such, it represents a central feature of a liberal democracy. As a general rule, the public can attend hearings and consult court files and the press — the eyes and ears of the public — is left free to inquire and comment on the workings of the courts, all of which helps make the justice system fair and accountable.

> [2] Accordingly, there is a strong presumption in favour of open courts.[3]

15. In *Dagenais*,[4] the Supreme Court of Canada established that a publication ban should only be ordered when two criteria are met:

a. Such a ban is necessary in order to prevent a real and substantial risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risk; and

b. The salutary effects of the publication ban outweigh the deleterious effects to the free expression of those affected by the ban.[5]

16. In *Sherman Estate*, the Supreme Court reformulated this into a three-part test:

1. court openness poses a serious risk to an important public interest;
2. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
3. as a matter of proportionality, the benefits of the order outweigh its negative effects.[6]

17. A publication ban – or another limit on court openness – can only be imposed where all three prerequisites have been met.

18. As a preliminary matter, I find that the *Dagenais/Sherman Estate* framework applies to proceedings before me. Although this Commission is not a court, the concerns about openness and transparency discussed in those cases apply to an inquiry as well.[7] To the extent that an Inquiry is different than a trial, those differences can be considered within the *Dagenais/Sherman Estate* framework itself.

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[3] *Sherman Estate v. Donovan*, 2021 SCC 25, at paras. 1-2 ["*Sherman Estate*"].
[4] *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835 ["*Dagenais*"].
[5] *Dagenais*, at p. 878.
[6] *Sherman Estate*, at para. 38.
[7] See *Toronto Star v AG Ontario*, 2018 ONSC 2586.

19. I pause to note that an *in camera* hearing has a more deleterious effect on the open court principle than a publication ban. An *in camera* hearing constitutes the greatest possible infringement to the open court principle. Therefore, if Mr. MacKenzie is not entitled to a publication ban, he is not entitled to an *in camera* hearing either.

20. Because Mr. MacKenzie has not established a basis to have a publication ban, I do not need to separately consider his request for an *in camera* hearing.

21. Mr. MacKenzie's request for a publication ban is rooted in trial fairness. Trial fairness is an important public interest that may satisfy the first requirement of the *Dagenais/Sherman Estate* framework. However, there are several reasons why I conclude that he has not in fact satisfied the elements of the framework.

22. First, I note that the evidentiary record that Mr. MacKenzie has put before me is limited. A party seeking to limit the open courts principle has an onus to adduce concrete evidence demonstrating a real risk of harm to their fair trial rights or some other interest.[8] I recognize that in some circumstances a decision-maker can rely on reason and logic in considering whether the whole of the evidence discloses a serious risk of harm exists.[9] I am also sensitive to the compressed timelines that this Commission is operating under, and the impact that it has on counsel's ability to adduce evidence. However, I do believe that I should take into account the fact that the evidence put forward on this application is scant.

23. Second, Mr. MacKenzie acknowledges that he has already been the subject of widespread public allegations and condemnation. As a result, any alleged prejudice resulting from his testimony at the Commission is attenuated.

24. Third, there are reasonably available and effective alternative measures to protect Mr. MacKenzie's interests short of a publication ban. These include limiting

[8] For example, see *MEH v. Williams*, 2012 ONCA 35; *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41.
[9] *AB v. Bragg Communications Inc.*, [2012] 2 SCR 567.

instructions to the juries, as well as challenge for cause if the evidence supports such a challenge based on pre-trial publicity.

25. Fourth, the evidence does not support the likelihood that any pre-trial publicity resulting from his testimony at the inquiry will have an impact at Mr. MacKenzie's trials. Trial dates have not yet been set for his trials and there is reason to believe they will not occur for some time. The passage of time between Mr. MacKenzie's testimony before me and his trials is a relevant consideration.

26. Fifth, a public inquiry is designed to fully explore relevant issues, to the extent possible, in a public setting. In the case of this Commission, transparency and openness are of particular importance. One of my functions is to promote and maintain public confidence, which is best pursued though an open process. I find that the limited speculative risk of harm to Mr. Mackenzie's interests does not outweigh the serious and certain harm that a restriction on public access to these proceedings would entail.

27. Finally, during Mr. MacKenzie's testimony, I retain discretion to limit the scope of questions posed to him. This is reinforced by the Order-in-Council that requires me to "perform [my] duties in such a way as to ensure that the conduct of the Public Inquiry does not jeopardize any ongoing criminal investigation".[10] If any unanticipated situations arise that presents a risk to Mr. MacKenzie's fair trial rights, I have the procedural tools necessary to address them.

28. I do not agree that Mr. MacKenzie's analogy to bail hearings is apt. There are many differences between bail proceedings and the present Commission, and the concerns raised by Mr. MacKenzie have been fully addressed by the analysis above.

29. For these reasons, I find that there is no serious risk to trial fairness, that the remedy of a publication ban (or anonymizing Mr. MacKenzie's initials) is not necessary, and that the benefits of a publication ban would not outweigh its negative effects.

[10] Order in Council PC 2022-0392, clause (a)(vi)(B).

Application under Rule 56

30. I would also dismiss Mr. MacKenzie's application to have his counsel lead his evidence in chief. In reaching this conclusion, I rely on the same considerations as I did in a similar application made by Benjamin Dichter.[11]

31. In this case, I have also considered the following factors:

a. The fact that Mr. MacKenzie is in custody and that he will testify via video from a correctional facility is not, in and of itself, sufficient to displace the presumption that Commission Counsel lead the evidence of the witnesses.

b. Mr. MacKenzie's counsel states that he has a "trusting relationship" with Mr. MacKenzie. This, too, is insufficient to displace the presumption that Commission Counsel will lead the evidence. Mr. MacKenzie and his counsel may speak or meet with Commission Counsel prior to Mr. MacKenzie's testimony, to discuss the topics on which Commission Counsel intend to examine Mr. Mackenzie and to ensure that Commission Counsel canvass all relevant issues and documents in their examination.

32. I remind Mr. MacKenzie that under Rule 58(c), his counsel will have an opportunity to examine him at the conclusion of the parties' cross-examinations.

33. Mr. MacKenzie can also apply under Rule 59 if, at the end of Commission Counsel's examination, Mr. MacKenzie still believes there are relevant issues upon which he ought to be examined by his own counsel.

[11] Commissioner Paul S. Rouleau, *Decision on Application Under Rule 56 (Benjamin Dichter)*, November 2, 2022. See also Commissioner Stephen T. Goudge, *Ruling on the Application by Dr. Charles Smith to be Examined by his Own Counsel*, November 20, 2007.

Disposition

34. I dismiss these applications, without prejudice to Mr. Mackenzie's counsel's right to seek leave under Rule 59 following Commission Counsel's examination.

Signed

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The Honourable Paul S. Rouleau
Commissioner

November 3, 2022

Appendix 25

Decision on Application to Compel Production of Unredacted Government of Canada Records

November 22, 2022

1. Freedom 2022 Human Rights and Freedoms not-for-profit corporation ("Freedom Corp."), brings an application seeking access to unredacted versions of nine documents that have been produced to the Commission by the Government of Canada ("Canada"). The redactions contained in these documents have been made by Canada on the basis of (a) solicitor-client privilege; (b) Cabinet confidence, including s. 39 of the *Canada Evidence Act ("CEA")*; (c) the fact that the redacted information is "irrelevant"; and (d) Parliamentary privilege.

2. This decision explains why I would dismiss Freedom Corp.'s application, except with respect to redactions for Parliamentary privilege.

Background to the Application and Applicable Rules and Statutes

3. Freedom Corp. served its Notice of Motion ("Notice") on November 15, 2022. Accompanying Freedom Corp.'s Notice were copies of the documents at issue, as well as copies of the LinkedIn profiles of individuals whose records are the subject of Freedom Corp.'s application. As the documents at issue are not yet exhibits, I will refrain from discussing their content in detail.

4. The Commission's Revised Rules of Practice and Procedure ("Rules") provide:

> 82. Where the Government asserts that information or documents (or portions thereof) constitute a confidence of the Queen's Privy Council for Canada, the information or documents (or portions thereof) shall not be produced, or shall be produced with redactions. In the event that the Commission or Commission counsel disputes a redaction or a claim of Cabinet confidence, Commission Counsel shall advise the Government of the disputed claim. The Government shall then, within 10 days, reassess the document(s) or portion(s) of the document(s) listed and either issue a Certificate under section 39 of the *Canada Evidence Act*

in respect of the information or release the information. Following the issuance of a certificate, the process set out in section 39 of the *Canada Evidence Act* shall apply to the information so certified.

5. The Commission's Rules do not expressly permit parties to redact information on the basis that it is "irrelevant," other than irrelevant personal information (see Rule 21).

6. The Government's redactions for Cabinet confidence are marked "s. 39" overtop of redactions outlined in black. Section 39 of the CEA provides in relevant part:

> **Objection relating to a confidence of the Queen's Privy Council**
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> 39 (1) Where a minister of the Crown or the Clerk of the Privy Council objects to the disclosure of information before a court, person or body with jurisdiction to compel the production of information by certifying in writing that the information constitutes a confidence of the Queen's Privy Council for Canada, disclosure of the information shall be refused without examination or hearing of the information by the court, person or body.
>
> **Definition**
>
> (2) For the purpose of subsection (1), a confidence of the Queen's Privy Council for Canada includes, without restricting the generality thereof, information contained in
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> (a) a memorandum the purpose of which is to present proposals or recommendations to Council;
> (b) a discussion paper the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;

(c) an agendum of Council or a record recording deliberations or decisions of Council;

(d) a record used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

(e) a record the purpose of which is to brief Ministers of the Crown in relation to matters that are brought before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d); and

(f) draft legislation.

Definition of Council

(3) For the purposes of subsection (2), Council means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

7. In accordance with the Commission's Rules, Freedom Corp.'s application was circulated to the parties, who were given an opportunity to respond. The Commission received responses from:

a. the Justice Centre for Constitutional Freedoms, who supported the relief sought;

b. the Canadian Constitution Foundation, who also supported the relief sought and, referring to Rule 82, requested confirmation as to whether Commission Counsel had disputed the s. 39 redactions at issue;

c. the Government of Saskatchewan, whose position was that "in the absence of any s. 39 certificates having been filed, Canada's agreement to provide the Commission "with all the inputs that were before Cabinet when it decided to declare the public order emergency" should be interpreted broadly"; and

d. the Canadian Civil Liberties Association, who supported Freedom Corp.'s motion "to the extent it relates to redactions on the basis of Cabinet confidence / s. 39 and, in particular, its application to political staff." The CCLA agreed with the Government of Saskatchewan's submissions, and took the position that "[s]ection 39 should be limited to the deliberations of members of Cabinet and the Government of Canada should be consistent in its application of this cabinet confidence." The CCLA noted "that there are inconsistencies in the way in which s. 39 redactions have been made to documents" in the Party Database which, the CCLA submitted, "suggests that some documents may have been overzealously redacted."

8. Canada provided responding submissions. Freedom Corp. provided reply submissions to Canada's responses to the various parties.

9. Rule 20 sets out a process for resolving disputes over the existence or scope of privileges. This mechanism, where the dispute is referred to an independent adjudicator, is not mandatory. Commission Counsel asked Canada if it would consent to having the independent adjudicator address its claims of solicitor-client privilege. Canada declined.

10. I note that Freedom Corp. sought additional relief in its reply. It asked that it, the CCF, and the CCLA be given an extra hour, collectively, to cross-examine the Clerk of the Privy Council when she testified on November 18, in order to ask her a series of questions about Canada's s. 39 claims. Given the timing, on November 17, Commission Counsel informed the parties that I had dismissed the request for additional time.

Analysis

11. Below, I set out the law relevant to Freedom Corp.'s application. I then turn to an analysis on a document-by-document basis.

Law and Analysis Relating to the Relief Sought

12. The redactions at issue in this application fall into four categories:

a. solicitor-client privilege;
b. Parliamentary privilege;
c. Cabinet confidence; and
d. relevance.

Relevant Decision in Related Litigation

13. I note that the Federal Court released a decision in August in *Canadian Constitution Foundation v. Canada (Attorney General)* which addresses many of these issues.[1] In that case, the applicant, Canadian Constitution Foundation, brought a motion challenging redactions that Canada had applied to the records it produced in the context of the application. The Court held as follows in response to CCF's motion:

a. the Court declined to question redactions made on the basis of relevance, as there were no allegations of bad faith or bias against the Clerk of the Privy Council;
b. the Court agreed to review materials redacted on the basis of s. 37 of the CEA to determine the validity of those claims, possibly to be done in a closed hearing;
c. the Court directed the Attorney General to file a s. 38 application and make representations as to the injury that would arise from disclosure of the redacted information; and

[1] 2022 FC 1233 ("*CCF v. AGC*").

d. the Court found that while there was no evidence that the claims of solicitor-client privilege were unfounded, it would be preferable to have the fact that solicitor-client privilege exists be confirmed in writing by a government lawyer, with the ethical responsibilities that entails, with personal knowledge of the circumstances in which the communication of legal advice took place.

14. Redactions for ss. 37 and 38 are addressed in the Commission's Rules, but the Court's comments on redactions for relevance and solicitor-client privilege are instructive.

Solicitor-client privilege

15. The Supreme Court has repeatedly affirmed that solicitor-client privilege must be "as close to absolute as possible."[2] Solicitor-client privilege can attach not only to direct communications between a lawyer and their client but applies to a continuum of communications between solicitor and client,[3] and officials or employees acting on behalf of the client or solicitor are also covered by the privilege.[4]

16. A preliminary issue that was raised by Freedom Corp. was the process that I ought to follow for determining whether Canada had properly redacted records for solicitor-client privilege. Freedom Corp. urged me to order Canada to produce unredacted versions of the records 'for my eyes only' so that I could assess the claim in light of the full record before me.

17. Canada relies on *Blood Tribe* for the proposition that I do not have the authority to compel Canada to produce unredacted versions of the records to confirm if the privilege is properly claimed. Freedom Corp. argued that *Blood Tribe* is distinguishable

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[2] *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 at para. 9 (and references therein) ("*Blood Tribe*").
[3] *Canada (Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104 at paras. 25-33.
[4] *Descôteaux v. Mierzwinski*, [1982] 1 S.C.R. 860 at 875.

and not binding on me. He urged me to require the Government to produce unredacted versions of the documents to the Commission for my review.

18. In my view, paragraph 17 of the *Blood Tribe* decision is instructive:

> [17] The only reason the Privacy Commissioner gave for compelling the production and inspection of the documents in this case is that the employer indicated that such documents existed. She does not claim any necessity arising from the circumstances of this particular inquiry. The Privacy Commissioner is therefore demanding routine access to such documents in any case she investigates where solicitor-client privilege is invoked. **Even courts will decline to review solicitor-client documents to adjudicate the existence of privilege unless evidence or argument establishes the necessity of doing so to fairly decide the issue.** In the Privacy Commissioner's view, however, piercing the privilege would become the norm rather than the exception in the course of her everyday work. (citations omitted, emphasis added)

19. In this case, based on the record and argument, I do not see any necessity to review the documents over which the Government claims solicitor-client privilege in order to decide the issues. A simple challenge as to the propriety of the redaction is insufficient in the context. I have no reason to question counsel's assertion that the privilege applies.

20. Finally, Canada's submissions in response to Freedom Corp.'s motion respond to the concerns raised in *CCF v. AGC*. Counsel for Canada re-reviewed all documents at issue and made submissions in writing and signed by a lawyer for Canada. Based on this, I am satisfied that the claim of solicitor-client privilege is made in good faith.

Parliamentary privilege

21. Parliamentary privilege is the "sum of the privileges, immunities and powers enjoyed by the Senate, the House of Commons and provincial legislative assemblies, and by each member individually, without which they could not discharge their functions."[5] It "creates a sphere of decision-making immune from judicial oversight for compliance with the *Charter*."[6]

22. The scope of Parliamentary privilege is delimited by the purposes it serves and extends only so far as is necessary to protect legislators in the discharge of their legislative and deliberative functions, and the legislative assembly's work in holding the government to account for the conduct of the country's business.[7] The established categories of Parliamentary privilege are as follows:

a. freedom of speech;
b. control over debates and proceedings, i.e. "parliamentary proceedings" (includes control over "internal affairs");
c. power to exclude strangers from proceedings; and
d. authority to discipline members and non-members.[8]

23. In order to fall within the scope of parliamentary privilege, the matter at issue must meet the test for necessity set out in *Canada (House of Commons) v. Vaid*: it must be "so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body…that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency."[9]

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[5] *Chagnon v. Syndicate de la fonction publique et parapublique du Québec,* 2018 SCC 39 at para. 19 ("*Chagnon*").
[6] *Chagnon*¸ at para. 25.
[7] *Chagnon*¸, at para. 27.
[8] *Chagnon*¸, at para. 31.
[9] 2005 SCC 30, at para. 46 ("*Vaid*"); *Chagnon*¸, at para. 29.

24. The necessity test demands the sphere of activity over which Parliamentary privilege is claimed be more than merely connected to the legislative assembly's functions.[10] In other words, the immunity that is sought must also be necessary to the assembly's constitutional role. The party seeking to rely on immunity from external review bears the burden of establishing its necessity, that is, to demonstrate that the scope of the protection it claims is necessary in light of the purposes of Parliamentary privilege.[11]

25. Parliamentary privilege, once invoked, operates to shield the conduct that is the subject of the privilege from judicial review by the Courts. No party provided me with precedents in which Parliamentary privilege was invoked to prevent the disclosure of information or to redact documents produced in the context of proceedings. Canada's reliance upon the privilege as a basis upon which to do so therefore appears novel. Based on the case law above, and the historical scope and established categories of Parliamentary privilege, it is not an application that I am prepared to accept has the broad application suggested by Canada.

26. At Commission Counsel's request, counsel for Canada provided copies of the documents over which Parliamentary privilege is claimed with those redactions lifted. These were for 'my eyes only.' I have reviewed the unredacted versions of these documents and comment on them below. However, even if I were to accept that Parliamentary privilege could be invoked as a basis for redactions, I am not satisfied that Canada has met the test for necessity as set out in *Vaid* in respect of the three documents at issue over which it claims Parliamentary privilege.

Cabinet confidence

27. At the outset, I note that Freedom Corp. correctly noted that no certificate under s. 39 of the *CEA* has been issued in respect of any of the challenged documents.

[10] *Chagnon*, at para. 30.
[11] *Vaid*, at para. 75; *Chagnon*, at para. 32.

28. That, however, is not the end of the inquiry. Cabinet confidence exists at common law, independent from s. 39 of the *CEA*.[12] Cabinet confidentiality extends to documents that reflect on the content of Cabinet deliberations (but are not records arising out of a Cabinet meeting), and deliberations among Ministers, regardless of whether these occur in Cabinet.[13]

29. Where the Government asserts Cabinet confidentiality as the basis for redaction, whether under s. 39 of the *CEA* or at common law, a reviewing Court does not stand in the same position as it does in the case of solicitor-client privilege and cannot compel the production of an unredacted version of the document to confirm the existence or propriety of the privilege once the Clerk of the Privy Council issues a certificate.

30. While there is no certificate in this case, as a practical matter, Canada has re-reviewed the records and has confirmed that the remaining redactions are subject to Cabinet confidentiality. In other words, I am satisfied that the process in Rule 82 of the Rules has played out in substance, if not in form. Requiring the Government to produce a s. 39 certificate would serve no practical purpose in the circumstances.

Relevance

31. Canada cites *Eli Lilly Canada Inc. v. Sandoz Canada Incorporated* for the proposition that portions of a relevant document may be redacted where the redacted portion is clearly irrelevant to the issues in dispute and would clearly not assist in properly understanding those parts of the document which are relevant.[14]

32. Freedom Corp. asked that the Government provide copies of the documents that had been redacted for relevance to Commission Counsel with those redactions lifted, so that I could review the information and satisfy myself as to the relevance or

[12] *British Columbia (Attorney General) v. Provincial Court Judges' Association of British Columbia*, 2020 SCC 20 ("*BC Judges*"), at para. 98.
[13] *BC Judges* at paras. 67 and 97.
[14] 2009 FC 345 at para. 14.

irrelevance of the information. The Government did so for two of three documents which contain redactions for irrelevance: SSM.CAN.00007719 and SSM.CAN.0000730. It did not do so for SSM.CAN.00007720 because, as explained by Canada, the redacted information is both irrelevant and also subject to Cabinet confidence.

Analysis of Relief Sought on a Document-By-Document Basis

33. Freedom Corp. seeks relief relating to nine documents produced by Canada. In response to Freedom Corp.'s motion, Canada re-reviewed all of the documents. Following to that review, Canada agreed to lift certain redactions (as summarized below), and reaffirmed the propriety of the balance of the redactions.

SSM.CAN.00007719: Sarah Jackson – Handwritten Notes

34. The Government redacted this document for solicitor-client privilege, Cabinet confidence, and relevance.

35. Freedom Corp. challenges all three bases for the redactions:

a. **Solicitor-client privilege:** Freedom Corp. submits that the redactions on this basis, found on pages 3 and 7 of the record, are improper because there is no indication of (a) a lawyer being present, (b) who that lawyer was, or (c) if there was actual legal advice. Freedom Corp. submits that if the Government intends to maintain this assertion of solicitor-client privilege, it must provide evidence of all of the foregoing.

b. **Cabinet confidence:** Freedom Corp. submits that redactions to this document on the basis of s. 39 of the *CEA are* improper for three reasons. First, because the Government has not issued a certificate under s. 39 of the *CEA.* Second*,* the document must be a "cabinet record" to be afforded the protection of s. 39 of the *CEA,* and Freedom Corp. submits that since neither Sarah Jackson nor Katie Telford are in Cabinet, the notes are not cabinet records. Third, based on other

documents produced by the Government, it does not appear that Sarah Jackson was present at the Incident Response Group meeting on February 10, and so her notes in relation to that meeting cannot be due to Cabinet confidence.

c. **Irrelevance:** Freedom Corp. submits that, based on circumstantial evidence, redactions to pages 1, 3, and 5 of the notes appear to relate to "highly relevant information." Freedom Corp. submits that redaction on the basis of irrelevance in the entirety of these notes is unjustified.

36. Canada responded to each of these submissions:

a. **Solicitor-client privilege:** Canada agreed to lift the second redaction for solicitor-client privilege (on page 7). On the first redaction for solicitor-client privilege (on page 3), it submits that the information "falls within the continuum of communication between solicitor and client for the purposes of giving or receiving legal advice." In any event, the Government further submits that the redacted information is "irrelevant being unrelated to the Convoy or the *Emergencies Act.*"

b. **Cabinet confidence:** the Government agreed to lift certain redactions to page 6 of the notes, but maintained that other redactions on that same page and on page 5 are "properly withheld as a Confidence of the King's Privy Council of Canada."

c. **Irrelevance:** the Government submitted that "[a]ll of the information redacted for irrelevance is appropriate as it is unrelated to the Convoy or the *Emergencies Act.*"

37. Freedom Corp. requested that Canada produce an unredacted version of this document to the Commission and, if Canada refused to do so, asked that I draw an adverse inference against them. The Government did not produce a fully unredacted version to Commission Counsel. However, it produced a version to Commission

Counsel disclosing the "irrelevant" information. Having reviewed those redactions, and adopting the most generous interpretation of my mandate, I am satisfied that the redacted information is entirely irrelevant. I do not order those redactions to be lifted.

38. As set out above, I am not prepared to order the Government to produce a version of the document to Commission Counsel on which the redactions for Cabinet confidence or solicitor-client privilege are lifted. Based on the submissions of the government related to solicitor-client privilege, I would accept their claim of privilege and, as noted earlier, I see no basis for ordering disclosure of the s. 39 redactions.

SSM.CAN.00007720 and SSM.CAN.00007721: Alex Jagric – Notes

39. The Government redacted this document for Cabinet confidence and "parliamentary privilege."

40. Freedom Corp. submits that these notes do not "have any date or nexus to cabinet," and that parliamentary privilege is not a legal basis upon which to object to produce evidence or to redact evidence.

41. Regarding SSM.CAN.00007720, Canada submits that the redactions on the basis of parliamentary privilege are proper. It further submits that the "information redacted for irrelevance is properly withheld as it does not relate to the circumstances that led to the declaration of the public order emergency or special temporary measures for dealing with the emergency." In any event, Canada explains that the irrelevant information is also properly withheld as a Cabinet confidence.

42. Regarding SSM.CAN.00007721, Canada confirmed that the information redacted for Cabinet confidence is relevant but is properly redacted on that basis. It submits that the redactions for parliamentary privilege are also proper.

43. For the reasons previously expressed, I am not prepared to order the Government to produce an unredacted version of the document on which Cabinet confidence is asserted.

44. As set out above, I have reviewed the portions of these documents over which Canada claims Parliamentary privilege. Even if that were a basis upon which a party could redact a document, I am not persuaded by Canada's argument or the documents themselves that the redactions are necessary to protect the legislative's constitutional role, as required under *Vaid*. I therefore order Canada to produce unredacted versions of these two documents to counsel for the parties in a reasonably timely manner.

SSM.CAN.00000275: REDACTED

45. Canada redacted this document for Cabinet confidence.

46. Freedom Corp. submits that this is an email between political staffers and, as such, is not subject to Cabinet confidence and should be disclosed in full.

47. Canada lifted the claims of Cabinet confidence on page 1 and the top of page 2 and agreed to provide an updated version to the parties. Canada confirmed that the information redacted for Cabinet confidence on page 3 is relevant but is properly redacted on that basis.

48. I am not prepared to order Canada to produce an unredacted version of the document on which Cabinet confidence is asserted.

SSM.CAN.00000151: RE: Emergencies Act?

49. Canada redacted this document for solicitor-client privilege.

50. Freedom Corp. submits that this is an email between numerous Deputy Ministers, Assistant Deputy Ministers, and civil servants which has been redacted for solicitor-client privilege although "no recipients or senders are lawyers."

51. Canada submits that the information redacted for solicitor-client privilege "refers to the giving or seeking of legal advice and, therefore, falls within the continuum of

communication between solicitor and client for the purposes of giving or receiving legal advice."

52. I am not prepared to order Canada to produce an unredacted version of the document on which solicitor-client privilege is asserted, as I accept their claim of privilege.

SSM.NSC.CAN.00003164: Fwd: AB Letter

53. Canada redacted this document for Cabinet confidence.

54. Freedom Corp. notes that this is an email dated February 17, 2022, between Minister Blair and his Chief of Staff, Zita Astavas, regarding using a February 5 letter from Alberta Minister Ric McIvor as a justification for the *Emergencies Act*. It submits that an email between a Minister and their staffer is not a Cabinet confidence, and that the email should be disclosed in full.

55. The Government confirmed that the information redacted for Cabinet confidence is relevant but is properly redacted on that basis. However, it agreed to remove a redaction over the name "Dom," and to produce an updated version to the parties.

56. I am not prepared to order the Government to produce an unredacted version of the document on which Cabinet confidence is asserted.

SSM.CAN.00007129: RE: Emergencies Act – Parliamentary Update

57. The Government redacted this document for "Parliamentary Privilege."

58. Freedom Corp. submits that these emails dated February 14-15, 2022, cannot be redacted for "Parliamentary Privilege" as this privilege is not a basis upon which to refuse to produce or to redact documents.

59. In response to Freedom Corp.'s motion, Canada agreed to lift the claim of parliamentary privilege on page 1, within the email dated February 16, 2022, at

15:56, and to produce an updated version to the parties. Canada confirmed that the information redacted for parliamentary privilege within the email of February 15 at 9:29 p.m. is relevant but is properly redacted on that basis.

60. Although Canada's claim of Parliamentary privilege over this email is stronger than its claim over the notes referred to above, Canada has provided little information in its submissions as to how this email meets the test for Parliamentary privilege I have discussed above. While the redacted material is of marginal relevance and would be of little assistance to the parties, I will nonetheless order its disclosure.

SSM.CAN.00007730: Text – Katie Telford-PM-Phil Proulx

61. Canada redacted this document to omit irrelevant information.

62. Freedom Corp. submits that the portion of the document immediately prior to and following the redacted portion has to do with the issue of blockades, and that the record should be disclosed in full as the redacted information is likely to be relevant.

63. Canada submits that the "redacted information does not relate to the circumstances that led to the declaration of the public order emergency or special temporary measures for dealing with the emergency," and is therefore properly withheld as irrelevant.

64. I have been provided with an unredacted version of the document and am satisfied that the redacted information is irrelevant. As a result, I do not order that the redactions be lifted.

SSM.NSC.CAN.00003113: Text – Zita-Bill Blair

65. Canada redacted this document for Cabinet confidence.

66. Freedom Corp. submits that a text message between a Minister and their staffer is not a Cabinet confidence, and the text message should therefore be disclosed in full.

67. Canada confirmed that the information redacted for Cabinet confidence is relevant but is properly redacted on that basis.

68. I am not prepared to order the Government to produce an unredacted version of the document for which Cabinet confidence is asserted.

Disposition

69. I wish to comment on the timing of this decision in relation to Freedom Corp.'s application. As set out above, Freedom Corp. served its Notice at 10:20 p.m. on November 15. I gave parties an opportunity to make submissions in response to or supportive of Freedom Corp.'s application. Freedom Corp. then replied. Subsequent to that, and as sought by Freedom Corp. in its application, Commission Counsel asked for and received copies of the documents at issue with relevance and Parliamentary privilege redactions lifted. These were produced for my eyes only. The latter of these sets of unredacted documents was only produced in the afternoon on November 21.

70. The above, coupled with the fact that the assertion of Parliamentary privilege in this case appears to be a novel one, contributed to the timing of the issuance of this decision.

71. For the reasons set out above, I would therefore dismiss this application except insofar as it relates to the redactions applied on the basis of Parliamentary privilege.

Signed

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The Honourable Paul S. Rouleau

Commissioner

November 22, 2022

Appendix 26

Decision on Application to Compel the Production of Documents, Summons Witnesses and Other Relief

November 22, 2022

1. Freedom 2022 Human Rights and Freedoms not-for-profit corporation ("Freedom Corp."), an organization that was granted joint standing with a group of convoy organizers in this Commission, brings an application for, among other relief, an order that a third party produce documents and four further witnesses testify at the factual hearings, which are in their final week.

2. This decision explains why I would dismiss Freedom Corp's application.

Background to the Application and Applicable Rules and Statutes

3. On November 20, 2022, Freedom Corp served an application record seeking the following relief under s. 4 of the *Inquiries Act:*

a. an order that the Ottawa Police Services (the "OPS") and/or the Ontario Provincial Police (the "OPP") produce the results of a license plate search of a truck (the "Truck") that was photographed in Ottawa at the time of the protests. In the photograph, the back of the Truck is displaying a Confederate flag and an upside-down Canadian flag;

b. an order requiring the Government of Canada to produce unredacted copies of the following records: SSM.CAN.NSC.00002838_REL.0001, SSM.CAN.00006131_REL.0001 and SSM.CAN.NSC.00002872_ REL.0001. The Government of Canada has redacted these documents citing s. 39 of the *Canada Evidence Act;*

c. an order that the strategic communications firm, Enterprise Canada, produce documents to the Commission; and

d. an order that two individuals associated with Enterprise Canada, including Brian Fox, be compelled to testify at the Commission.

4. As described below, Freedom Corp. has amended its application to seek that two further individuals be compelled to testify.

5. The initial application record was not supported by an affidavit. It did include references to certain documents from the Party Database, as well as news articles and other open-source information.

6. In essence, Freedom Corp. alleges that, before the convoy arrived in Ottawa, certain members of the "political executive" and their staff decided to paint the protesters as racists and extremists, notwithstanding the intelligence from law enforcement saying otherwise. Freedom Corp. continues that, once the protests in Ottawa began, the political executive and their staff furthered this labelling by pointing to photographs of Nazi and Confederate flags that had been circulating online.

7. Freedom Corp. alleges that there is "evidence and grounds to suspect that the flags and purported protestors using them, were not protestors with the convoy at all, but provocateurs". Among other allegations, Freedom Corp. suggests that the Truck did not belong to a protester, as it was parked away from other protest vehicles and photographed by a person that did not support the protests and who Freedom Corp. says is a politician.

8. More troubling, Freedom Corp. asserts that Brian Fox and another person from Enterprise Canada arranged to have Confederate and Nazi flags appear at the protest. In particular, they allege:

a. that Mr. Fox was pictured taking a photograph of an *agent provocateur* carrying Confederate flag with an image of a truck in the centre (the "Truck Flag"); and

a. on a separate occasion, Mr. Fox himself was photographed holding a Nazi flag.

9. Freedom Corp. originally made these assertions by comparing photos from the protests to photos of Mr. Fox that Freedom Corp. obtained online. In both instances, the face of the person Freedom Corp. says is Mr. Fox is obscured.

10. Finally, Freedom Corp. asserts that, based on the material it has reviewed, "it is possible" that Enterprise Canada "carried out such conduct at the direction of the Prime Minister, his staff or both".

11. On November 21, 2022, counsel for Freedom Corp. repeated these allegations during his cross-examination of representatives from the Canadian Security Intelligence Services ("CSIS") and the Integrated Threat Assessment Centre ("ITAC"), including the allegation that Mr. Fox had been holding a Nazi flag. Freedom Corp.'s counsel also asked Minister Bill Blair about Enterprise Canada and Mr. Fox. The examinations produced no evidence in support of Freedom Corp.'s allegations.

12. Shortly after that examination, Enterprise Canada released the following denial in a press release:

> TORONTO, ON – Today, in the scope of the Emergencies Act Inquiry, Brendan Miller, the lawyer representing "Freedom Corp" made an entirely unsubstantiated and deeply offensive accusation against Enterprise Canada principal Brian Fox.
>
> For the record, there is no truth to this absurd and despicable accusation. Neither Brian Fox, nor anyone from Enterprise Canada was in attendance at the "Freedom Convoy" protests in any capacity. Mr. Fox was in Toronto for the duration of these protests and had no involvement in them.
>
> Mr. Fox and everyone at Enterprise Canada stands firmly against the hatred represented by the symbol Mr. Miller referenced, and strives for our workplace to be an inclusive and accepting environment for everyone.

> Both Mr. Fox and Enterprise Canada plan to review all legal options and take swift action to defend against this unsubstantiated attack on the personal and professional reputation of Mr. Fox.

13. On November 22, 2022, Freedom Corp.'s counsel cross examined Minister of Public Safety Marco Mendocino and pursued the theory that is the subject of this application. Again, no supportive evidence was adduced.

14. On the same day, November 22, 2022, Enterprise Canada published a letter that its lawyer had sent to Mr. Miller regarding the allegations Freedom Corp. had raised with the CSIS and ITAC witnesses. The letter stated, among other things, that:

a. Mr. Fox was not in Ottawa in January or February 2022. He last visited Ottawa in 2019;
b. Neither Enterprise Canada nor Mr. Fox had any involvement in the convoy protests that are the subject of the Commission;
c. Mr. Fox is not a Liberal Party member, supporter or collaborator. He is a longstanding member of and contributor to the Conservative Party of Canada, and participated in the recent leadership process to support Pierre Poilievre; and
d. The allegation that Mr. Fox colluded with the incumbent government to discredit protesters has absolutely no basis in fact, and is reckless.

15. In accordance with the Commission's Rules, Freedom Corp.'s application was circulated to the parties, who were given an opportunity to respond. The Commission received responses from the following parties:

a. The OPS advised that, while the OPS has access to license plate information for law enforcement purposes, the Ministry of Transportation is the record holder. OPS' position is that the information must come from the Ministry of Transportation, which as the authority to release the information.

b. The OPP took no position on the relief sought, but has also advised that the database of license plate numbers is a Ministry of Transportation database, and that the inquiry should be directed to that ministry. The OPP further stated that, if any police service is ordered to do a search, it should be the OPS as the truck was photographed in Ottawa. The OPP also asserted that the owner of the license plate may wish to assert a privacy interest. Finally, the OPP stated that if an order is made to have the search conducted and directs it to the OPP, the service would arrange for a search.

c. The Ottawa Coalition of Residents and Businesses stated that, given the nature of the theory being raised, Freedom Corp.'s assertions should be either confirmed or disproved and, for this reason, "most if not all of the requests should be granted".

d. The Criminal Lawyers' Association and the Canadian Council of Criminal Defence Lawyers stated that, if counsel uses an assertion so that it might form the basis of a negative finding against a person or group, that assertion should be proven by admissible evidence and the person or group at risk of a negative finding should have a full opportunity to respond to the assertion. If the assertion is not proven, it has no evidentiary value.

e. Windsor Police Service advised that it took no position.

16. The Government of Canada filed submissions respecting only Freedom Corp.'s request for the production of unredacted documents. It did not make submissions on other aspects of the application. Canada indicated that it had undertaken a further review of the three documents identified by Freedom Corp. Following this review, it agreed to lift certain redactions, and in other instances provided a brief explanation as to why it was maintaining other redactions.

17. The partially unredacted documents were delivered to Commission counsel and the parties while Minister Bill Blair was testifying on November 21, 2022. At the

request of counsel for the Freedom Convoy, who had completed his examination of Minister Blair before reviewing the documents, I exercised my discretion to allow him additional time to examine on the unredacted records.

Additional Submissions and Materials

18. At 1:31 a.m. on November 22, 2022, after the deadline for parties to respond to the application, Mr. Miller submitted an amended application record.

19. In the amended application record, Freedom Corp.:

a. Advised that it planned to deliver an affidavit from an individual named Shawn Folkes and asked that Mr. Folkes be called to testify. In October 2022, Freedom Corp. had provided the Commission with a will-say statement from Mr. Folkes stating that Mr. Folkes had an interaction with a man carrying a Nazi flag at the protests. Mr. Folkes' October statement made no reference to Brian Fox or Enterprise Canada; and

b. Sought the production of records from a freelance photographer named David Chan and requested that the Mr. Chan either testify under oath or be interviewed by Commission Counsel.

20. With respect to Mr. Chan, Freedom Corp. alleges that he was the photographer who took photos of the alleged *agent provocateur* holding the Truck Flag. Freedom Corp. states that Mr. Chan's photo was then used by the Toronto Star to accompany an opinion piece in the Toronto Star. The opinion piece was authored by a second Enterprise Canada representative Freedom Corp. seeks to compel.

21. I pause to note that, in the initial application record, Freedom Corp. suggested that it was Mr. Fox who had taken the photo that appeared in the Star article. It is not clear whether Freedom Corp. has discarded that suggestion in favour of a new theory that it was Mr. Chan.

22. Although the amended application record identifies Mr. Chan as a freelance photographer, Freedom Corp. also describes him as a "photographer for the Prime Minister". The statement appears to be based on the fact that the Mr. Chan's online portfolios include several pictures of the Prime Minister at different events. Freedom Corp. says these portfolios are "telling". In his examination of Minister Mendicino, Mr. Miller sought to establish connections between Mr. Chan and the Prime Minister. He did not.

23. At 12:49 p.m. on November 22, 2022, Freedom Corp. delivered an affidavit from Mr. Folkes. In the affidavit, Mr. Folkes states that, on January 29, 2022, he saw a man holding a Nazi flag at the Ottawa protests, approached him and "attempted to speak with him". Mr. Folkes continues that, having watched the livestream of Mr. Miller's examinations on November 21, 2022, he went to Enterprise Canada's website on the same day and identified Mr. Fox as the man he attempted to speak with 10 months earlier. Mr. Folkes also states that he has now reviewed two other photos provided by Freedom Corp.'s counsel and can further confirm that the man he spoke with was Mr. Fox.

Applicable Statutes

24. Section 4 of the *Inquiries Act states:*

> **Powers of commissioners concerning evidence**
>
> 4 The commissioners have the power of summoning before them any witnesses, and of requiring them to
>
> (a) give evidence, orally or in writing, and on oath or, if they are persons entitled to affirm in civil matters on solemn affirmation; and

(b) produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine.

Analysis

25. Below I deal with the four requests for relief. Before doing so, however, I think it is worth recalling the guiding principles that the Commission has adopted for the conduct of this inquiry. These principles, contained in Rule 10 of the Commission's Rules, are proportionality, transparency, fairness, timelines, and expedition. As we near the end of the public proceedings, I believe that it is important for all participants involved to remind themselves of these foundational principles on which all of these proceedings have been based.

License Plate Searches

26. In its application record, Freedom Corp. notes that the license plate information it seeks is publicly available through the Ontario Ministry of Transportation, but there is a 15-day waiting period. The public hearings on the factual phase end this week.

27. The OPS and OPP have advised that they are not the record keeper of the license plate information that the Freedom Corp. seeks in respect of the Truck.

28. It is an interesting question whether section 4 of the *Inquiries Act* empowers me to compel a person or entity to obtain records that it is not in fact in possession of for the purpose of producing it to the Commission. I do not need to express a view on this issue. Even if the OPS or the OPP had the information within its possession, I would decline to order its production at this stage of the hearings.

29. The basis for seeking this information is purely speculative. There is no proper foundation in the evidence to believe that the registration information for this vehicle would disclose the existence of an *agent provocateur.* Having carefully reviewed the

information provided by Freedom Corp., I conclude that this is, in essence, a fishing expedition. Taking into account my mandate, the key issues that I must determine to fulfill that mandate, the current stage of the proceedings, and the overall principles set out in Rule 10, I would refuse to make the order requested.

Further Document Redactions

30. Following its re-examination of the three documents at issue in this Application, Canada provided the following submissions:

a. **SSM.CAN.NSC.00002838_REL:** Canada has agreed to lift a redaction over the words "Please find…". In all other respects Canada maintains that the redacted information, while relevant, constitutes a confidence of the King's Privy Council for Canada.

b. **SSM.CAN.00006131_REL:** Canada maintains all redacted information, while relevant, constitutes a Confidence of the King's Privy Council for Canada.

c. **SSM.CAN.NSC.00002872_REL:** Canada has agreed to lift a redaction over the text "1pm Ministerial update readout. Please let me know if there are any questions." As well as portions of page 1 – 3. With respect to the remaining redacted information, Canada maintains that, while it is relevant, it constitutes a Confidence of the King's Privy Council for Canada.

31. Canada provided partially unredacted versions of these documents to the parties by email and is in the process of making them available in the Party Database. In the meantime, as noted above, the Commission arranged for the partially unredacted documents to be used in examination by Freedom Corp. on November 21.

32. For the reasons described in my *Decision on Application to Compel Production of Unredacted Government of Canada Records*, I would dismiss this aspect of the

Application. Canada has reviewed the documents in question and re-assessed whether they constitute Cabinet Confidences. I have no reason to question the good faith of their review. Having completed that review, I see no useful purpose in ordering that the redactions be lifted. Requiring Canada to produce a s. 39 certificate at this stage under the process set out in Rule 82 would not be an appropriate use of time or resources.

33. I do note that, where I have been able to see behind the Government of Canada's redactions for irrelevance and parliamentary privilege in the other application, none of the redacted material relates in any way to the allegations raised by Freedom Corp. in this application.

Enterprise Canada, David Chan and Shawn Folkes

34. I would dismiss Freedom Corp.'s requests to compel evidence from Enterprise Canada, David Chan and Shawn Folkes for the following four reasons.

35. First, Freedom Corp. has raised serious allegations regarding Enterprise Canada with little foundation in evidence.

36. The claim was initially supported by a side-by-side comparison of unclear photographs and a man that Freedom Corp. has asserted is Mr. Fox. The photos provide no useful information about who was holding or photographing the flags in issue. It is not even clear from Freedom Corp.'s own materials who they now assert took the photo of the protester holding the Truck Flag.

37. Freedom Corp. has also now had the opportunity to pursue the various components of its theory with representatives from CSIS and ITAC, as well as two members of Cabinet. Those examinations elicited no evidence to support the theory.

38. Second, the late disclosure of Mr. Folkes' affidavit does not resolve the absence of the foundation. The affidavit is untested and is contradicted by Enterprise Canada's public statements. For it to be relied upon by the Commission, it would have to be

subjected to cross examination to assess the credibility and reliability of the statements in the affidavit. It is fair to say that the strength of that identification evidence is not high. Given the seriousness of the allegations, the Commission would likely have to receive evidence from Enterprise Canada and those individuals targeted by Freedom Corp.'s allegations. This would constitute a very significant distraction from the Commission's core mandate. In light of the absence of any other factual support, it is not a prudent use of the Commission's remaining time to pursue Freedom Corp.'s theory.

39. Third, the allegations have been made very late in the factual hearings and no explanation has been provided as to why they were not raised earlier.

40. Fourth and finally, as troublesome as Freedom Corp.'s allegations might be, even if they had been supported by compelling evidence the fact is that they would have little, if any, relevance to the key issues that the Commission must determine.

41. For these reasons the application, as amended, is dismissed.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

November 22, 2022

Appendix 27

Second Decision on Application to Compel Production of Unredacted Government of Canada Records

December 1, 2022

1. Freedom 2022 Human Rights and Freedoms not-for-profit corporation ("Freedom Corp.") brought an application seeking access to unredacted versions of documents that have been produced to the Commission by the Government of Canada ("Canada"). Specifically, Freedom Corp. sought an order that Canada remove all redactions applied based on Parliamentary privilege and all redactions based on irrelevance, subject to a proposed *in camera* hearing mechanism to consider the issue of irrelevance.

2. Freedom Corp.'s application was sent by email on November 24. Given the timing, I made two interim orders in relation to that application – an interim order at 10:26 p.m. that evening ("First Order"), and a further order at 9:22 a.m. on November 25 ("Second Order").

3. This decision elaborates on the reasons for the First and Second Orders and addresses the balance of the application.

Background to the Application and Applicable Rules and Statutes

4. Freedom Corp. made an application by email at 10:14 a.m. on November 24, 2022. Freedom Corp.'s application was sent while the Deputy Prime Minister was testifying on the second to last day of the evidentiary phase of the Commission's hearings. Freedom Corp. requested that I make an order "at the break," scheduled to occur approximately an hour from the time the email application was sent. It sought the following relief:

a. All redactions on the basis of Parliamentary Privilege in any record of the Government of Canada in Relativity are ordered removed immediately.
b. All redactions in any record of the Government of Canada on the basis of irrelevance are ordered removed, subject to (3).

c. In respect of any record the Government of Canada seeks to be redacted as irrelevant, Canada can apply for same *in camera* with counsel present, and the implied undertaking rule applies to that *in camera* proceeding.

5. I did not order any relief at the break. As I will explain, even if such an order had been made, it could not have been complied with in a timely manner. Further, procedural fairness required that the Commission seek the parties' positions, including Canada's, on Freedom Corp.'s application. I therefore requested that submissions be provided by 1:30 p.m. that day, November 24.

6. The CCLA supported Freedom Corp.'s request for an order requiring the removal of redactions based on Parliamentary privilege. The JCCF supported the CCLA's position and requested that any further documents ordered produced or unredacted be produced in a legible format. JCCF also requested a further "bulk entry" list such that the parties could request that recently-produced documents be marked as exhibits prior to the deadline for closing submissions. The CCCDL/CLA supported undoing any redactions that are not supported by law or are inconsistent with any Commission ruling. The Ottawa Coalition supported the removal of redactions, but noted that the principle of proportionality demanded the identification of specific documents.

7. The Government of Canada did not provide any responding submissions.

8. I had addressed both issues – redactions based on Parliamentary privilege and irrelevance – in my *Decision on Application to Compel Production of Unredacted Government of Canada Records* dated November 22, 2022 ("Redaction Decision"). This decision refers to and should be read in conjunction with the Redaction Decision.

Analysis

9. By way of background, I will briefly refer to the basis for my Redaction Decision and will also expand on why I made the First and Second Orders, as well as the scope of those orders.

The Redaction Decision

10. In the Redaction Decision, I explained that reliance upon Parliamentary privilege as a basis upon which to prevent disclosure of information or to redact documents appeared to be novel. As a result, I was not prepared to accept Canada's position that the doctrine of Parliamentary privilege had the broad application suggested. I explained that, having reviewed an unredacted version of the documents that were provided to the Commission, it was clear to me that, assuming Parliamentary privilege included a right of redaction, a basis for redaction had not been made out for those documents. In essence I left for another day whether a right to redact for Parliamentary Privilege exists and how it would apply. If that day comes, full submissions can be made and the underlying basis for the exercise of such a privilege can be fully explored in that context.

First Order

11. On this application, neither Canada nor any other party provided authority or basis upon which to permit redactions based on Parliamentary privilege beyond what was provided in the context of the Redaction Decision. Given the urgency, I decided to order that Canada lift redactions for Parliamentary privilege (provided there was no other basis to maintain the redaction) on documents that the parties had identified as possibly relevant to their cross-examination of the witnesses from the Prime Minister's Office ("PMO") who were scheduled to testify in the afternoon of November 24, or to their cross-examination of the Prime Minister. Although the documents were not available in time for use in the cross-examination of the PMO witnesses, they were

available to be put to the Prime Minister if the parties so chose. The email conveying the First Order stated as follows:

> The Commission received no responding submissions from the Government of Canada by the set deadline. Pending a decision on the full application, the Commissioner has determined that, to assist the parties who are to cross-examine the witness tomorrow, the following interim order should issue:
>
> > The Government of Canada shall lift redactions for Parliamentary privilege on all documents that the parties have identified as relevant to (a) the Prime Minister's Office panel that testified today (listed on the PMO Panel Summary sheet of the attached Excel entitled Witness List summaries – Day 30 – Nov 24) and (b) the Prime Minister (identified on the Justin Trudeau Summary sheet of the attached Excel entitled Witness List summaries – Day 31 – Nov 25), provided there is no other basis to maintain the redaction.
> >
> > The Government of Canada shall produce versions of the documents without such redactions by email directly to counsel for all parties **by 11:30 p.m. tonight,** and shall take steps to make them available in the Party Database by 9:00 a.m. tomorrow.

12. Eight documents were within the scope of the First Order. Canada produced unredacted versions of five of them to all parties at 2:36 a.m. on November 25. Canada sent the Commission copies of the three others (PB.CAN.00001844, SSM.CAN.00007982, and SSM.NSC.CAN.00002941) with see-through redactions applied, as well as a letter asking that I reconsider my order in respect of those documents. I address this request later in these reasons.

13. The First Order was an interim one because I was not prepared at that stage to order Canada to unredact all documents over which Parliamentary privilege had been claimed. No party had confirmed the number of documents over which this basis of redaction had been applied. Moreover, a blanket order including redaction for irrelevance had the potential to be disproportionate and unachievable in time to assist counsel with their cross-examination of the remaining witnesses. Such an order, even if warranted, would be of little practical assistance to the parties. On the other hand, an order requiring Canada to unredact documents that the parties had already identified as relevant to the Prime Minister's testimony and that of his senior staff appeared to be more appropriately tailored to the circumstances.

14. Further, it may well have been that Canada made the redactions based on Parliamentary privilege but could rely on other bases for the redactions, such as Cabinet confidence. As such, I ordered the redactions for Parliamentary privilege lifted *provided there is no other basis to maintain the redaction.*

15. The First Order did not address redactions based on irrelevance. I had addressed that issue in the Redaction Decision, and Freedom Corp.'s application was in effect an attempt to relitigate that decision. In any event, Freedom Corp.'s request for a blanket order was not proportionate considering the time constraints under which the Commission and all parties were operating. It was incumbent on Freedom Corp. to identify specific documents for which it sought a ruling on the appropriateness of Canada's redactions. Finally, the *in camera* mechanism that Freedom Corp. proposed would not have been workable given the number of parties, the timing, and the nature of this public inquiry.

Second Order

16. The morning of November 25, I reviewed the three documents in respect of which Canada asked that I reconsider the First Order. Canada's letter described the nature of the redacted text, but did not make additional substantive submissions.

17. I was not satisfied that, even if Parliamentary privilege could be a basis for the redactions, any of the redactions in the three documents met the necessity test set out in *Canada (House of Commons) v. Vaid*; that is, that the redactions were necessary in light of the purposes of Parliamentary privilege, and that ordering their removal would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency.[1]

18. At 9:22 a.m. on November 25, Commission Counsel circulated my decision:

> The Commissioner has reviewed the three documents in respect of which the Government of Canada asked that he reconsider his decision. For the reasons set out in the Commissioner's prior decision regarding the issue of Parliamentary privilege, the Commissioner is not satisfied that the Government of Canada has met its onus to show that the redactions for Parliamentary privilege in these three documents are appropriate.
>
> The Commissioner directs the Government of Canada to send copies of those three documents with the redactions lifted **by 10:30 a.m. today,** failing which the Commission will circulate the copies that it has received to the parties.

19. Counsel for Canada sent unredacted versions of the three documents to the parties at 10:27 a.m. As a result, they were available to the parties for use in their cross-examination of the Prime Minister.

The merits of the Application

20. I turn now to the merits of the application. As noted earlier, Freedom Corp. served the application while testimony was underway on the second last day of the

[1] 2005 SCC 30, at para. 46; *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39, at para. 29.

Commission's evidentiary hearings. It asked for the issuance of an order in less than an hour. That order, if granted, would have affected an unknown number of documents.

21. In my view, the preferable, proportionate way to proceed would have been for Freedom Corp. to identify the documents for which it disputed the redactions applied by the Government of Canada. This would have permitted counsel for Canada to make submissions on each document, and potentially produce versions with redactions lifted for my eyes only. This is how Freedom Corp.'s first application was structured, and all parties benefitted from that structure.

22. Moreover, many Government of Canada documents containing redactions for Parliamentary privilege or irrelevance were available to the parties prior to the start of the hearings. If Freedom Corp. disputed Canada's right to make such redactions, or the application of those categories to specific documents, it could have brought this application sooner. Had this happened, it would not only have resolved the issue in a more timely way for all parties, a decision from me could have informed Canada's redaction practices as it continued to populate the Party Database. Seeking a blanket order directed at both redactions for Parliamentary privilege and irrelevance, on the second last day of the factual hearings, after virtually all the witnesses had testified, was of little practical assistance to the parties. Nor would such an order substantially assist the Commission with its fact-finding function. As a result, I have concluded that the application with respect to the redactions for irrelevance ought to be dismissed. Making such a broad generic challenge and creating an unwieldy process for addressing those redactions at this late stage of the proceedings is neither proportionate nor fair.

23. Following the close of the factual hearings, Commission counsel communicated with counsel for the Government of Canada regarding the issue of redactions for Parliamentary privilege. It was determined that the number of documents affected, beyond those already dealt with in my interim orders, was relatively limited. Having now had an opportunity to consider my rulings respecting Parliamentary Privilege contained in the November 22 Redaction Decision and the two interim orders, Canada

agreed to remove redactions for Parliamentary privilege from all 20 documents in the Party Database to which that redaction had been applied. These unredacted documents will be entered in the Party Database shortly and available to be used and referred to in final submissions if the Parties so choose.

24. For the benefit of the parties, the 20 documents on which the Government of Canada has agreed to lift redactions for Parliamentary privilege are as follows:

SSM.CAN.00001529_REL

SSM.CAN.00002004_REL

SSM.CAN.00007537_REL

SSM.CAN.00007870_REL

SSM.CAN.00006180_REL

SSM.CAN.NSC.00002814_REL

SSM.CAN.NSC.00002890_REL

SSM.NSC.CAN.00002938

SSM.CAN.00007769

SSM.CAN.00007781

SSM.NSC.CAN.00002407_REL

SSM.NSC.CAN.00003045_REL

SSM.NSC.CAN.00003039_REL

SSM.CAN.00008125_REL

SSM.CAN.00008186_REL

SSM.CAN.00008628_REL

SSM.NSC.CAN.00003151_REL

SSM.NSC.CAN.00003178_REL

SSM.NSC.CAN.00003081_REL

SSM.NSC.CAN.00003082_REL

Disposition

25. The portion of the application pertaining to Parliamentary privilege is moot. For the reasons set out above, I dismiss the balance of Freedom Corp.'s application.

Signed

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The Honourable Paul S. Rouleau
Commissioner

December 1, 2022

Appendix 28

Third Decision on Application to Compel Production of Unredacted Government of Canada Records

December 7, 2022

1. Freedom 2022 Human Rights and Freedoms not-for-profit corporation ("Freedom Corp."), an organization that was granted joint standing with a group of convoy organizers in this Commission, brought an application on December 2, for relief under s. 4 of the *Inquiries Act.* Freedom Corp. requests orders that:

a. all Government of Canada ("Canada") records that are redacted on the basis of irrelevance be unredacted, and the unredacted records be produced to the parties;

b. that all of Canada's documents redacted on the basis of s. 39 of the *Canada Evidence Act* be produced unredacted where there is not a certificate from the Clerk of the Privy Council, and in particular, that the notes of Sarah Jackson be produced;

c. that all of Canada's documents redacted on the basis of solicitor-client privilege be produced unredacted, where there is no evidence "a lawyer was present," and in particular, that the notes of Sarah Jackson be produced; and

d. that the parties be permitted to rely on those unredacted records at (a), (b), and (c) in submissions, subject to Canada "successfully arguing that only redacted versions of same should be put into the public record on the basis of satisfying their onus at law."

2. Commission Counsel circulated Freedom Corp.'s application to all parties and requested responding submissions by 5 p.m. on December 6.

3. The only submissions received were from Canada. Canada submits that the application should be denied for the following reasons:

a. the request for relief is out of time, as it comes after the close of the Commission's evidentiary phase;

b. the application seeks the production of an undefined number of Canada's documents, which Canada submits is contrary to the principle of proportionality; and

c. the legal basis for and propriety of the redactions to Sarah Jackson's notes (SSM.CAN.00007719) is *res judicata*, having been determined in the Commissioner's prior decisions dated November 22 ("First Redaction Decision") and December 1 ("Second Redaction Decision").

4. Freedom Corp. replied to Canada's submissions, and submits as follows:

a. that its application is not out of time because it was made during the evidentiary phase of the hearings and it has simply "renewed" its application for "reconsideration." Freedom Corp. also submits that the Commission retains jurisdiction under the *Inquiries Act*, even after the close of the evidentiary phase;

b. that on the issue of proportionality, it is the scope of Canada's redactions to its documents that is contrary to the principle of proportionality, and also contrary to the rule of law; and

c. that *res judicata* does not apply to Ms. Jackson's notes because (i) it does not apply to interlocutory procedural motions or orders, (ii) the prior decisions were made without jurisdiction, and (iii) *res judicata* does not apply in circumstances where it would work an injustice, as here.

Background to the Application and Analysis

5. December 2 was the last day of the policy phase of the Commission's hearings, the factual phase having ended a week prior, on November 25.

6. As noted by Canada in its submissions, I previously ruled on certain redactions made by Canada in the First Redaction Decision, released on November 22, and the Second Redaction Decision, released on December 1. In the First Redaction Decision, I reviewed certain documents where redactions had been applied based on Cabinet confidence, irrelevance, and solicitor-client privilege. These documents included Sarah Jackson's notes. There is no basis for Freedom Corp. to again apply for the same relief in respect of the same document. I adopt the reasoning as expressed in

the First Redaction Decision, in which I reviewed the redacted "irrelevant" information in Ms. Jackson's notes and concluded that this information was "entirely irrelevant" (para. 37).

7. More broadly, this application is Freedom Corp.'s third dealing with issues of irrelevance, and its second touching on issues of Cabinet confidence and solicitor-client privilege. It repeats the same or similar arguments as in prior applications, and seeks the same blanket relief that I declined to grant in the Second Redaction Decision.

8. I am not prepared to grant the blanket order requested, for the reasons set out in the First and Second Redaction Decisions, to which I add the following.

9. There is no basis to suggest that all redactions that Canada made are improper or were not made in good faith. In the absence of evidence to the contrary, this is a classic "fishing expedition" that is inconsistent with the Guiding Principles of the Commission's Rules of Practice and Procedure, as set out in s. 10 of those Rules: proportionality, transparency, fairness, timeliness, and expedition. The order sought is neither proportionate nor fair.

10. Moreover, with respect to Ms. Jackson's notes, the order sought is also inconsistent with the First Redaction Decision, in which I ruled on all three bases for redaction in respect of that very document. I would dismiss this aspect of this application for that reason alone.

11. Freedom Corp.'s application states that the "oral sworn evidence" supports the relief sought in 1(b) and (c), above. However, this submission is made without reference to the transcripts or any specification of the evidence that is supposedly relevant to the relief sought. I cannot accept it.

The timing of the Application

12. I note once again that all parties were aware, prior to the hearings, that Canada had redacted documents. They were also aware of the basis for those redactions. Challenges to such redactions should have been made on a timely basis. Even then, it would be necessary for a party to specify the document(s) in issue and the basis for the challenge, so that parties could make appropriately tailored submissions and I could review the documents (with see-through redactions applied, if produced in that way to Commission Counsel) and determine the validity of the redaction.

13. The applicant has not tried to facilitate such a review on a timely basis. Other than identifying the notes of Sarah Jackson that have already been ruled on, the applicant has not identified any particular document or documents that are of concern. The applicant's blanket request is not reasonable, proportionate, or fair.

14. To be clear, I am satisfied that the production of all redacted documents in unredacted form is not required to fully investigate the matters relevant to the Commission's mandate. I have no doubt that based on the evidence adduced at the hearings, I will be able to provide the public with full and complete answers to the questions relevant to this Commission's mandate.

Disposition

15. For the reasons set out above, I would therefore dismiss Freedom Corp.'s application.

Signed

_____

The Honourable Paul S. Rouleau
Commissioner

December 7, 2022

Appendix 29

Report on the Public Consultation Process

PUBLIC ORDER EMERGENCY COMMISSION

Report - What we heard from Canadians: Public consultation on the protests and the declaration of a Public Order Emergency

Table of Contents

Introduction

The Public Order Emergency Commission (Commission) has a broad mandate, to examine and report on the circumstances that led to the declaration of an emergency by the federal government and the measures taken in response to the emergency from February 14 to 23, 2022.

As part of this mandate, the Commission invited members of the public to provide comments on their experiences, observations, views, and ideas. The purpose of the public consultation was to help the Commission fully appreciate the impact of events surrounding the declared emergency and the measures taken on Canadians. The comments and submissions received through the public consultation will also assist the Commission in formulating its recommendations.

During its 75-day public consultation, the Commission received over **8,800 submissions**. Input was received from a broad cross-section of Canadians, including people who participated in the protests, members of communities that were affected by the protests, the general Canadian public, people in public or government service roles (public safety, law enforcement), representatives of non-profit or advocacy organizations, as well as some people who live outside of Canada.

We thank those who participated in this important public consultation process.

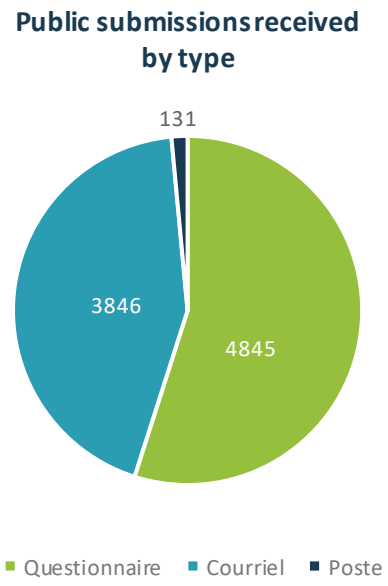
About the consultation and its participants

The Commission conducted its public consultation between August 18 and October 31. As part of this process, members of the public were invited to provide us with written comments and observations:

- through a questionnaire[1] (55%),
- by email (44%),
- or by mail (1%).

To guide members of the public through the written submission process, we posted general guidelines, instructions, and questions on our website.

The questions asked were:



[1] Based on the same questions contained in the guidelines, on September 30, 2022, the Commission posted an online questionnaire to provide Canadians with another method to share their views with the Commission and to help the Commission deal more effectively with the large number of submissions received daily.

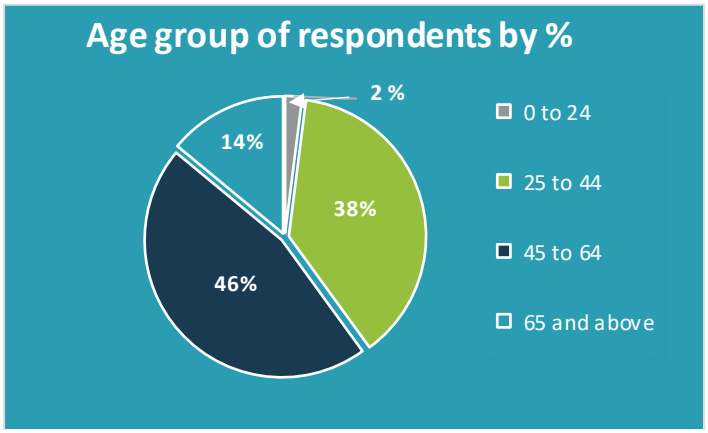
Question 1 (choose all those that apply to you)

- If you were involved in protest activities anywhere in Canada in January and February 2022, please tell the Commission about your experiences. For example, what was your involvement, why were you involved, what did you experience, how were you impacted, and how do you feel about your involvement in these activities?
- If you were personally affected by the protest activities anywhere in Canada, please tell the Commission about your experiences. For example, what affected you, how were you affected (positively or negatively) in your routines and well-being, and how did you feel as a result?
- If you were personally affected by the use of the *Emergencies Act*, please tell the Commission about your experiences. For example, what affected you, how were you affected (positively or negatively) in your routines and well-being, and how did you feel as a result?
- If you were neither involved in nor personally affected by the protest activities anywhere in Canada, or the use of the *Emergencies Act*, what are your views and observations on the protest activities that occurred and the police and government response to these, what impact, if any, did these activities have on you, and how did you feel as a result?

Question 2

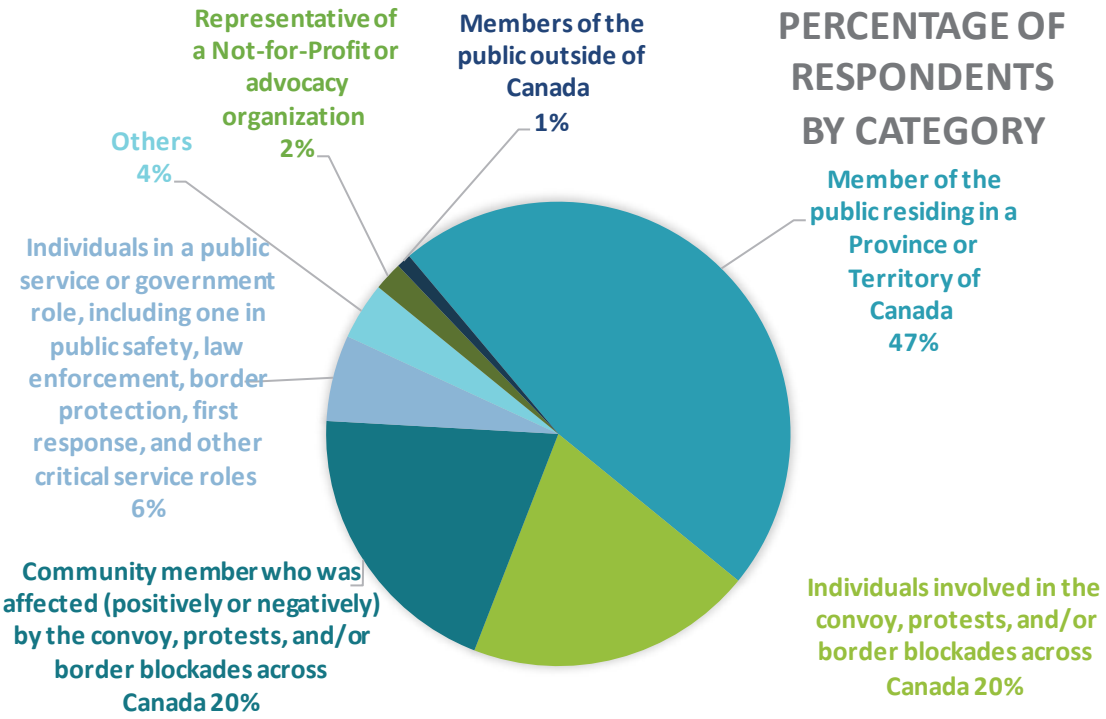
You are also welcome to tell the Commission about your views on the *Emergencies Act*, the appropriateness or effectiveness of the measures taken and any changes that you think the Commission should recommend in terms of the *Emergencies Act* or further areas for study or review. The Commission also welcomes your views on what impact, if any, the protests and/or use of the *Emergencies Act* had on how Canada is viewed internationally.

The age of respondents varied but the majority was between the age of 25 and 64.[2]

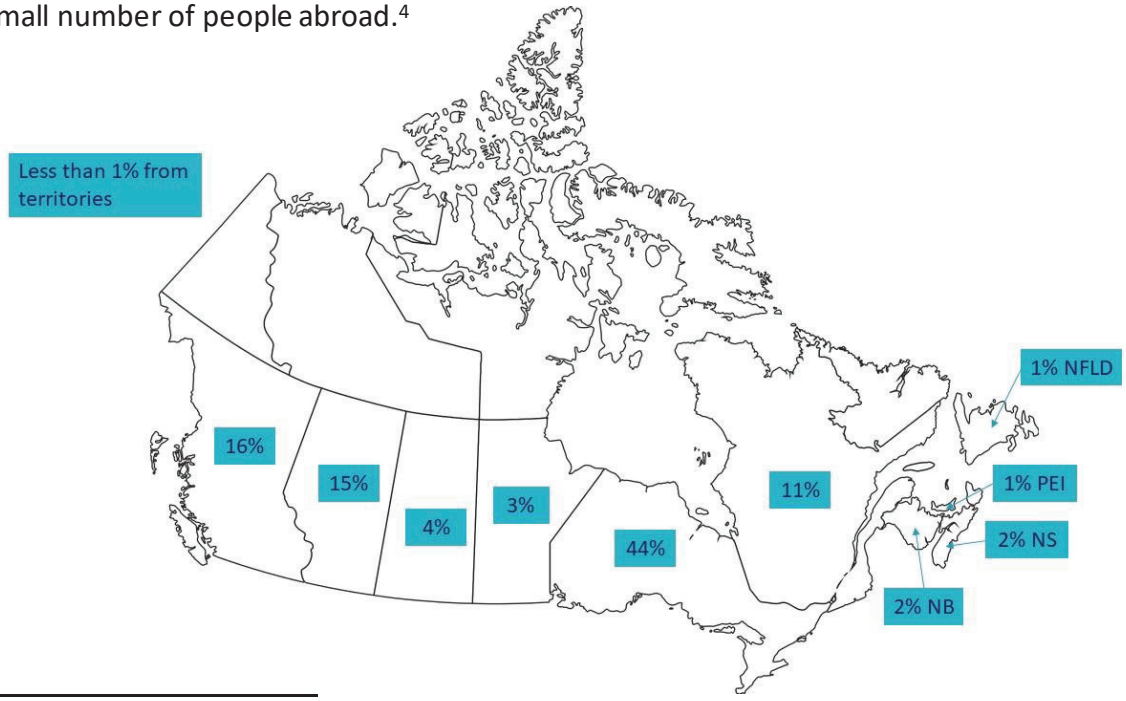


[2] Note that this information was provided on a voluntary basis by respondents of the questionnaire only.

The following is a breakdown of participants by categories of respondents.[3]



The Commission received comments and observations from people across Canada and a very small number of people abroad.[4]



[3] Note that this information was provided on a voluntary basis by respondents of the questionnaire only.
[4] Note that this information was provided on a voluntary basis by respondents of the questionnaire only.

What we heard: the key themes

The public input process improved our understanding of the events of January and February 2022.

Respondents had diverse and contrary views. However, several common and shared points of view did emerge, regardless of the respondents' views on the use of the *Emergencies Act*. That being said, some key themes represent only the perspective of certain categories of respondents, while others contain opposing views.

Although most respondents felt that all levels of government (municipal, provincial, and federal) had a role to play in the response to the protests, respondents were largely divided on the legitimacy of the protests, their impacts on communities and on the Canadian society, the appropriateness of the invocation of the *Emergencies Act*, and the consequences of its use.

1. COVID-19 pandemic context: feelings of exclusion and isolation

Over the course of the pandemic, many respondents felt excluded from society due to their vaccine status (i.e., non-vaccinated) and/or their views against the health measures imposed by various levels of government.

A common concern regarding vaccination was the fear of the loss of bodily autonomy. Many felt that issues relating to medical decisions should be made on an individual basis and should not be a matter of public debate. Some also stated that their concerns related to risks associated with vaccination were either not taken into consideration or simply invalidated.

Respondents experienced intimidation, ostracism, and discrimination by members of their community and loved ones because of their choices and beliefs in relation to the COVID-19 pandemic. Some specified that this discrimination was, in part, the result of the politicization of questions surrounding vaccination status, which led some to feel hopeless and isolated from the rest of society.

These feelings of isolation were exacerbated by traditional, mainstream media coverage that gave very little space for alternative viewpoints related to the COVID-19 pandemic.

Many also believed that health measures imposed by governments were in place for far too long. This aggravated the difficulties experienced in several spheres of society, such as work, social events, and travel.

> "[…] I made the informed decision to not obtain a covid vaccine. Due to that choice, I endured months of persecution, intimidation, and segregation. It seemed like there was no end to how far the government would go to force vaccines upon people, and I worried about our future. We even considered fleeing the country. Finally, there was a glimmer of hope that came with the rise of the Freedom Convoy."
>
> - Member of the public

2. The Freedom Convoy: sense of belonging, hope and pride

The Freedom Convoy raised hopes. It created a sense of belonging among protesters who shared similar views on the COVID-19 pandemic. They wanted to put an end to COVID-19-related public health measures. They wanted to hold the government accountable for the mismanagement of the pandemic.

Many stated that for the first time in two years, they felt a sense of community. They could share the difficulties they endured during the pandemic, such as challenges visiting family members, travelling, and finding employment, with other like-minded people. Many protesters noted that they were warmly greeted at the Ottawa protest by Canadians from across the country of all backgrounds, ages, and walks of life.

Some said they were proud to have been part of an important grassroots movement in Canadian history. They maintained that it was not a marginal or fringe movement. They were proud to have raised hope in other Canadians who shared similar views. For them, the demonstrations brought a sense of patriotism. They saw Canadians from across the country gathered in unity to defend an important cause.

"I have never felt so proud to be a Canadian in my life!"

- Protester

Others indicated they felt compelled out of a sense of obligation to participate in the protests to defend the rights and freedoms of Canadians, who have been compromised due to the government COVID-19 measures. Many reported that they felt supported through social media, which motivated them to continue protesting.

There were members of the public who supported the protests and considered that the protesters were brave in standing up for their views on the pandemic and for their rights and freedoms. For them, Freedom Convoy participants showed selflessness by making the long journey to Ottawa and demonstrating in freezing temperatures.

On the one hand, some either acknowledged or felt bad that the protests disturbed residents of downtown Ottawa. But, on the other hand, others said that the nation's capital belongs to all Canadians and that the voice of the protesters had to be heard.

3. Peaceful vision of the protests

There were those who regarded the Ottawa protests as generally peaceful and respectful. Exceptions, such as signs with profanities directed at the Prime Minister, were however common. It was repeatedly noted that the three weeks of protests in Ottawa were free of violence, vandalism, misogyny, racism, and hate. These respondents did not feel in danger or unsafe. Some reported that the police were mostly friendly and helpful.

Some people were motivated to visit the Ottawa protest after reading social media posts describing the protests as peaceful. Others were encouraged by friends and family.

Respondents suggested that what happened in Ottawa was less like a protest and more like a festive gathering. Dancing, bouncy castles for children, and participants embracing one another

exemplified this friendly atmosphere. Ordinary citizens were celebrating life, democracy, and their country. There were good deeds on the part of the protesters, including handing out free food to other participants, showing kindness to homeless people, cleaning the streets, and shovelling snow.

> "My experience with fellow citizens during that time was unlike anything I have ever experienced. Our bond was the love we had [for] Canada and true democracy. We simply asked to have a conversation with our Prime Minister. No violence or malicious intent to anyone […]. I was moved by the kindness and respect displayed by these fellow Canadians."
>
> - Protester

Some commented that businesses that remained open were supported by protesters. These businesses financially benefitted from the large crowds. Protesters engaged with business owners and did not hear any complaints about violence or damage to property.

According to some, the streets of downtown Ottawa were not blocked. Everyone was free to go to and from their apartments and offices, including government buildings. There was always a lane open on all streets to allow emergency vehicles to pass. The only roadblocks that existed were set up by the police to prevent vehicles from entering the downtown area.

As for the protesters located at the Coventry Road location, it was reported that things went smoothly. Trucks and cars were parked in designated parking lots, as instructed by the police.

Overall, protesters' vision of the protest was one of peace and unity aimed at protecting the rights and freedoms of Canadians. This peaceful vision ended when the *Emergencies Act* was invoked, and the police used force to end the protests. Some said that they encouraged each other to remain peaceful toward police.

4. Health of community members affected by the protests

Respondents from across the country shared their experiences on the impact that the Freedom Convoy had on their lives. The rallies in support of the Freedom Convoy that took place in their communities caused them anxiety and fear. Others felt the same way when seeing the convoy pass through their cities and towns.

Many residents of downtown Ottawa said that their mental health was significantly impacted by the protests. Their mental health continued to be negatively affected for several months after the protests. Others experienced symptoms of trauma, insomnia, brain fog, and increased general stress.

Many respondents felt trapped in their own homes. Others had to leave their homes due to high levels of anxiety and stress. For some, stress and anxiety continued even after they left the downtown area for temporary housing. One respondent compared the situation of residents who live and work in downtown Ottawa to the protesters', who were free to find accommodations outside of the downtown area or to return to their homes. Residents did not have the latter option.

<u>Auditory impacts</u>

Ottawa residents experienced the constant loud honking of horns and other noises, such as shouting, yelling, singing, and the use of fireworks and megaphones, which caused them significant mental distress. Some compared the honking of horns to a form of torture. Others experienced prolonged episodes of tinnitus and auditory hallucinations (e.g., phantom horns) for weeks following the events.

> "There was a truck parked at Bank and Laurier Street [...]. I was roughly 6-feet from the side of the truck, and wearing a mask, when he activated the train horn. I clearly remember the pain I felt inside of my skull. I temporarily lost my vision. This may be the precise blast which caused the severe tinnitus."
>
> - Community member

Respiratory impacts

Ottawa residents also reported experiencing difficult breathing and headaches due to diesel exhaust from stationary truck engines. Opening windows or going outside did not help since emissions were everywhere in the downtown area. Some respondents had pre-existing respiratory problems that were exacerbated by these emissions. Some had to leave their homes for alternate accommodations, away from the polluted air. Overall, there were concerns expressed about the respiratory risks and impacts created for downtown Ottawa residents as well as concerns about general environmental impacts.

Access to health services

Road closures and limited public transportation affected residents' access to various health services. Several had to reschedule important medical appointments and procedures because both patients and healthcare workers had difficulty accessing transportation to healthcare facilities. Similarly, others had their appointments rescheduled for the safety of healthcare workers, who did not want to come into downtown Ottawa. Some were frustrated that they could not easily access medical help while dealing with mental health issues caused by the protests.

Ottawa residents also experienced shortages of some medication in downtown pharmacies. They had to travel outside of the downtown area to fill their prescriptions, which caused difficulties and sometimes delays.

There were concerns expressed about the overall impact of events on vulnerable populations in Ottawa, including young children, people with disabilities, and seniors, as well as pets.

5. Fear for the safety of community members affected by the protests

Many community members affected by the protests, primarily from downtown Ottawa, reported feeling unsafe and regularly experienced anxiety, stress, anger, and fear regarding the events that were occurring close to their homes. The demonstrations became increasingly aggressive over time. They experienced harassment and were subjected to aggressive behaviour while walking downtown streets. Many felt like they were hostages in their own homes, unable to visit loved ones or patronize businesses, because they feared for their safety.

"I have participated in many protests. I have also lived through dozens of Ottawa protests that I was not involved in. Some I support, some I oppose. I accept that at times there is mischief and public disobedience, but never have I seen or experienced so many people commit crimes and endanger others for their political opinions."

- Community member

Some residents either experienced or witnessed harassment as well as unsafe and aggressive behaviour by protesters in trucks. It was difficult to go anywhere without being harassed, honked at, and delayed by vehicles draped in flags.

Harassment related to mask wearing

Several respondents indicated they were targeted, followed, and yelled at for wearing masks in public spaces, such as on public transit and in grocery stores. Some felt that the protesters were on a personal mission to ridicule, bully, and unmask residents. This was particularly difficult for business employees, who were required to wear masks at the time. Others witnessed horns honking and demonstrations outside of schools to protest children wearing masks.

Fear of being targeted for belonging to a minority group

There were residents who were afraid to leave their homes after hearing reports of hateful rhetoric directed at people from minority groups. For example, one gay resident said that he constantly felt unsafe, even inside his home, because of horns being honked and obscenities being shouted by protesters. He said that many of the obscenities were racist, homophobic, and misogynistic in nature, and that he himself had been the victim of homophobic comments by protesters.

Additionally, some federal employees expressed concern that they were being targeted because of their work in government.

There were respondents who characterized the events surrounding the Freedom Convoy as a hostile occupation. The police did not protect residents, enforce laws against hostile protesters, or investigate incidents. Some felt that the police colluded with the protesters by, for example, taking selfies with protesters. One counter-protester claimed to have had a hostile interaction with the police.

6. Disruption to daily life activities of Ottawa residents

Downtown Ottawa residents said they were deprived of peace, quiet, and sleep. The protests caused significant disruptions to many areas of their lives, including work. The protests affected their productivity and efficiency. Some were unable to work. There were also reports of loss of income.

Downtown Ottawa business owners had to close their businesses during the protests, resulting in significant unnecessary losses of revenue for both them and their employees. These losses added to the losses suffered because of previous closures required by COVID-19 health measures.

Business owners in other parts of Canada were also affected by local demonstrations inspired by the Freedom Convoy. These business owners explained that they had to close during protests due to a lack of customers, excessive noise, and threatening behaviour from protesters.

Additionally, volunteers and members of non-governmental organizations and charities reported interruptions to services and to their ability to serve their communities during the protest period. Some were negatively impacted by their inability to get to the locations where they normally volunteered.

> "I am a 65-year-old retired high school […] teacher who relies on my [volunteering] shifts at the Museum to remain active, both physically and mentally. The prolonged COVID shutdown of the Museum was difficult for me, and the ensuing Protest exacerbated the personal impact."
>
> - Community member

The protests in Ottawa put a strain on local businesses and services. Residents had difficulties in obtaining groceries and financial or health services due to closures, insufficient inventory, and lack of accessible transportation. They also feared interaction with protesters.

Respondents were stressed by road closures and traffic slowdowns (due to the unpredictability of protesters) and felt intimidated to drive near protesters. They had to make major changes to their schedules to avoid traffic problems. They also had to cancel various activities, or had their activities cancelled.

> "[…] On both the Saturday and the Sunday of the last weekend in January, I tried to get across the bridge from Wakefield to Orleans to see my mom. I was not successful either day; the police had closed the route. […] So, these people have taken something from me that I can never get back. I have contacted at least one of the organizers to inform them of their impact. One organizer who proclaimed on Twitter that Ottawa would be "shut down tight" and that no one would be "getting in or out of the downtown core" responded to me by saying that I could have gotten across if I really really wanted to. I cannot express how deeply this response has impacted me. My mom, […], was a dedicated educator. She was my role model. The illegal occupation of Ottawa stole from me the last moments of my mother's life. I am grateful that the Federal Government stepped in to end it when local and provincial authorities could not."
>
> - Community member

7. Views of the protests by members of the public opposed to the protests

Respondents opposed to the Freedom Convoy tended to support freedom of expression. In their view, the right of Canadians to express their opinions and protest is one of the cornerstones of a free and democratic society. However, they also recognized that there are limits to freedom of expression. These limits were crossed when one person's expression significantly infringed on another person's rights to freedom of movement and safety.

For these respondents, the events in downtown Ottawa specifically and at various border crossings in general, went from protest to occupation. Ottawa residents suffered distress, there was harm to the Canadian economy, and Canada's democracy was undermined.

The positions expressed by these respondents fall within three categories:

A different illegal protest

Although some respondents were not directly affected by the protests, they were still appalled and distressed. They felt fear and anxiety because of the actions of the protesters and their blatant disregard for the rights of others.

The fact that downtown Ottawa residents were harassed and terrorized made the event unusual, illegal, and dangerous. The threats, violence, and hate speech toward elected officials (specifically the Prime Minister), as well as the desecration of the flag and monuments in Ottawa, reinforced this feeling. These actions by protesters showed a significant lack of respect and tolerance toward their fellow citizens.

Some respondents felt that the disorganization and chaotic and festive nature of the protests, the lack of a permit to protest, the damage caused by the protests (littering the street, deafening horns, vandalism, fireworks, desecration of monuments) confirmed that these protests were different. Further, the presence of hateful signs and flags delegitimized the demonstration.

It was felt that the Freedom Convoy held the City of Ottawa hostage to get their way. The protesters' demands were unrealistic, unconstitutional, and illegal.

A lack of understanding of the right to protest and diverse views on the notion of freedom

For some, the protesters had a selfish view of rights and freedoms. The measures that were put in place with respect to the COVID-19 pandemic were meant to protect the Canadian population. Canadians had the right to be safe and secure by limiting the chances of becoming infected with COVID-19 in a public place. These respondents criticized derogatory language used against immuno-suppressed people and the public harassment of people wearing masks.

Others were angered by the suggestion that the protesters spoke on behalf of all Canadians. They pointed out that the majority of Canadians have been vaccinated and have generally supported the various measures put in place by governments in response to the COVID-19 pandemic.

Some also expressed the view that protesters used the notions of “patriotism” and “freedom” to justify abusive, harassing, and illegal behaviour. There was a glaring contradiction between the protesters’ claim to be “fighting for freedom” while at the same time preventing movement and intimidating residents of downtown Ottawa. One respondent lamented the fact that Canada does not have a “Charter of responsibility”.

> “The protesters talked of freedom but not of the responsibilities they have as citizens.”
>
> - Member of the public

Another view put forward was that increasingly polarized disagreements about what constitutes freedom, for example, represents a growing division in society. This type of disagreement was attributed to misinformation or disinformation that also led to a loss of trust in science and institutions. Some expressed anger that citizens were giving opinions on

scientific health issues without being qualified to do so. They felt that this discourse has affected Canada's reputation in the fight against the COVID-19 pandemic.

Due to the stress of the pandemic and this misinformation and disinformation, people who normally live peacefully had been drawn into a fight for everything against everyone.

For others, the protests were simply an opportunity for frustrated individuals to participate in a unique event and burn off excess energy in the name of freedom.

The real motivation for the protest

Some respondents felt that the protesters' intentions were clear from the beginning. They wanted to block the borders and occupy downtown Ottawa until the government ended health measures, notably vaccination mandates. However, respondents also said that the message of the protesters was vague and that many of the groups organizing the Freedom Convoy used the event to promote extremist ideas, hate speech, and anti-democratic rhetoric. The protesters' actions and messages were more anti-government than anti-health measures.

Respondents also mentioned the serious consequences and costs that the protests had on the City of Ottawa, on the Canadian economy, and on international relations related to Canada's trade agreements with the United States. They expressed a sense of shame and anger toward the actions of the protesters. There was also anxiety that such demonstrations may happen again. The protests have aggravated the debate on health measures and have further polarized Canadian society.

8. Media coverage of the protests: misrepresentation and excessive media coverage

Some respondents expressed a low level of trust in mainstream media compared to "new media" such as Instagram and YouTube. For them, the facts surrounding the protests have been misrepresented by traditional mainstream media. Mainstream media, like the federal government, portrayed the protesters as a fringe group out to wreak havoc and as racist and misogynist.

There was excessive media coverage of a few deviant individuals in Ottawa who, for example, displayed flags and signs with profanity directed at the Prime Minister, or historical symbols associated with hatred (i.e., the Nazi flag and symbols and the Confederate flag). Reference was also made to a misinformation campaign against a peaceful demonstration meant to protect individual freedoms.

Some indicated that the excessive media coverage and misrepresentation of the protesters caused them emotional distress. As a result of being labelled so harshly by the media, they experienced intimidation, prejudice, sadness, and rejection by society. Also, such media coverage fuelled misinformation among politicians, particularly parliamentarians. This directly affected the livelihoods of many Canadians following the invocation of the *Emergencies Act*. Some wanted the mainstream media to be held accountable for their dissemination of false information.

> "Media lied about all of it. They wanted people not in Ottawa, to think the protesters were a bunch of redneck hooligans causing mayhem. One reporter made up a story of […], another tried to link an unrelated arson attempt to the truckers and these lies are what our gov't

based the invocation of the *Emergencies Act* on."

- Protester

Respondents also reported that mainstream media refused to provide a platform for dissenting opinions regarding COVID-19 health measures.

Many did not believe the mainstream, traditional media because they receive state subsidies and are de facto government mouthpieces for state propaganda.

There was a clear distinction in the media treatment of the protests by the traditional media compared to new media content found on video hosting websites and social media, such as Instagram, Twitter, and YouTube.

9. Federal government statements on the protesters that divided the population

Beyond the treatment by the media, respondents claimed that the unfair statements of federal government representatives regarding supporters of the Freedom Convoy, people opposed to the COVID-19 mandates, and the demonstrators' demands were alienating, divisive, and discriminatory.

The dominant statements by federal political representatives sought to discredit the Freedom Convoy movement, sow discord within the Canadian population, delegitimize opposition to government's decisions, and feed a narrative that the protesters represent only a minority of the population.

The rhetoric used toward protesters negatively affected the public's opinion of protesters, making them feel ostracized, isolated, and discriminated against by their fellow citizens. This exacerbated feelings of loneliness and alienation felt during the pandemic and contributed to restricting the diversity of opinion during public debates.

Some believed that statements by federal elected officials regarding vaccinations and public health measures, as well as comments made publicly about the Freedom Convoy, could amount to the incitement of hatred. These types of remarks sought to delegitimize any position taken against government decisions. The derogatory comments made by certain elected officials during the demonstrations exacerbated the protesters' sense of being persecuted. These comments were based on exaggerations and lies.

"Many who disagreed with the protesters resorted to vilifying them, presenting a handful of extremists as representative of the group who, in the words of the prime minister, hold [unacceptable views.] It is this sort of speechifying that sparks anger and division in this country."

- Member of the public

Both elected officials and mainstream media, falsely portrayed the protesters as having the same objectionable motivations. The type of language used justified the protesters' actions aimed at protecting individual freedoms and the democratic values of Canada. The protests were a legitimate response to divisive comments made by the government. Protesters were justified in

promoting their views, attempting to unify Canadians, and making their grievances heard by the public.

In the same vein, because of this negative language, many respondents alluded to the profound erosion of their sense of belonging to Canadian society, as well as a marked loss of confidence in government.

10. Double standard of the government in dealing with the protests

Many protesters perceived a double standard on the part of the federal government in handling protests, often characterized by bureaucrats as left-wing versus right-wing movements. These respondents claimed that in recent years, there have been numerous protests of a violent nature in Canada led by various groups with different interests, mostly left-wing. During these protests, some groups have burned churches and blocked roads, bridges, and gas pipelines for long periods, but the *Emergencies Act* was never invoked to deal with these situations.

There was dissatisfaction because the Prime Minister has met with most of these groups and that he has taken their anger into account and showed sensitivity to their causes, notwithstanding the economic costs to Canada. These were perceived to be different standards of treatment for those whose values align with the government's values as opposed to demonstrators who have different values.

> "The point which I found most egregious was the Canadian government never did communicate directly with the protesters. Every other protest group of any scale has had some form of direct communication publicly displayed attempt to show good faith on behalf of the Canadian Government. These groups such as indigenous encampment, women's rights and BLM then dispersed having been heard. This opportunity for a peaceful resolution was never presented by the government. As a bystander it was as if the Canadian Government was provoking a fight for self-serving reasons."
>
> - Member of the public

The refusal of the government to speak with the Freedom Convoy protesters, the negative response of the police to demonstrations (despite the peaceful nature of the protests), and the invocation of the *Emergencies Act*, all contributed to the ultimate conflict with and the demonization of the protesters. The invocation of the *Emergencies Act* was both disproportionate and vindictive toward protesters who held values that the government did not share.

The government failed in its obligations to citizens by refusing to meet with protesters. The refusal to participate in a dialogue is proof of the differential treatment of the Freedom Convoy protesters.

11. Possible peaceful resolution of the protests through dialogue

According to many respondents, the blockades and demonstrations could have been resolved peacefully without the invocation of the *Emergencies Act*. From the outset, participants were looking for some form of dialogue, a conversation with federal government officials, and the recognition that their views were considered and taken into account.

Again, from the outset, there was a lack of willingness on the part of the federal government to listen to differing points of view and to resolve matters peacefully, despite numerous requests from Freedom Convoy organizers for a meeting. The Prime Minister refused to consider the views of other members of Parliament who had met with the protesters.

"All he had to do was talk to the truckers and resolve the problem but instead he chose to call these people, and everyone there who supported them names, and his famous words [small fringe minority with unacceptable views]."

- Protester

Some respondents felt that they were stereotyped and demonized before they had a chance to express their concerns to the federal government. The Prime Minister's use of divisive language toward the protesters, and his refusal to talk to them, showed a lack of leadership.

Many pointed to the willingness of the protesters to engage in dialogue or negotiation with the government. For example, protesters claimed to have complied with the court order banning honking between certain hours and agreed to move some trucks to other parts of the city, following a meeting with City of Ottawa officials.

The perceived unwillingness of federal government representatives to meet with and listen to the Freedom Convoy organizers, and the Prime Minister's subsequent invocation of the *Emergencies Act* to clear the protesters and their vehicles, was seen as an extreme response and an abuse of power.

12. Incomprehension and frustration toward politicians who supported for the protesters

Some respondents could not comprehend and felt frustrated with the public support that some politicians gave to the Freedom Convoy participants. This was seen as conduct by politicians for political gain. Some deplored the notion that politicians would have chosen to do nothing, or very little, to avoid displeasing a minority of the population.

"Seeing elected officials use this disgrace as a means to build political credit was atrocious."

- Community member

For some respondents, the invocation of the *Emergencies Act* was the only solution to clear and end the occupation and blockades. The political debates surrounding the *Emergencies Act*'s implementation created a sense of frustration among some members of the public. Political parties should have worked together to end the protests and limit the duration of the state of emergency.

Certain respondents questioned their ongoing support for their political party or elected officials because of the positive stance taken in support of the protests. For others, it solidified their support.

"Watching them yelling and attacking each other, blaming and finger pointing, not listening to each other and not consulting respectfully and rationally to work together to find solutions, I felt ashamed to be Canadian."

- Member of the public

Some respondents felt that the political stances taken by elected officials had contributed to reinforcing existing conflicts in society over the management of the COVID-19 pandemic. They also felt that the political debates surrounding the Freedom Convoy exacerbated their own distress about the situation. They expressed displeasure with the overall politicization of the protests.

13. Sense of abandonment and loss of trust in authorities

For many Ottawa residents, the mishandling of the protests in the downtown core led to a loss of confidence in authorities. Among other things, residents felt abandoned by, and lost trust in, the various police forces in the Ottawa area due to their inaction and failure to enforce laws. This contributed to the already-high level of anxiety among these downtown residents.

> "I felt abandoned by all levels of government and by the police and have not regained that trust."
>
> - Community member

Many residents questioned how the three different police forces assigned to the Ottawa area could not adequately anticipate, contain, and manage the protests. The *Emergencies Act* may not have been necessary if police had been more prepared and acted sooner.

For some respondents, the authorities only decided to act when the protests threatened major import and export routes. This feeling contributed to their sense of dissatisfaction and loss of confidence in authorities.

Others said they were angry that some police officers had taken a stand in favour of the demonstrators.

> "They had their backs to the protesters and faced the counter-protesters with clear antipathy and hostility. We could see whose side they were on because they made an effort to let us know. They were not on the side of the people of Ottawa. Their actions and political positions during the convoy cemented my feelings about their incapacity, uselessness, apathy, and I do not trust the Ottawa Police."
>
> - Community member

As a result of perceived police inaction by the Ottawa Police Service, some respondents reported taking part in counter-protests. Residents of a downtown Ottawa neighbourhood organized themselves to prevent more trucks from entering the downtown core. These were private citizens who wanted to protect the City from a perceived illegal occupation that they felt went beyond the right to protest protected by the *Charter*. The police were not handling the situation in an appropriate manner.

Some respondents did not feel supported by police when filing formal complaints concerning the protests, which also contributed to their loss of confidence in authorities.

Some noted that the most vulnerable residents, such as homeless citizens or those living in the most disadvantaged sections of the city, were left to fend for themselves during the protests because of a lack of police presence.

14. The use of the *Emergencies Act* may not have been necessary if law enforcement had acted earlier

Some respondents indicated that the law enforcement response was inadequate, leading to the transformation of the protest into an occupation. These failures led to the ultimate invocation of the *Emergencies Act*.

Many questioned why the police did not make any or better use of municipal by-laws or other regulatory tools at their disposal to prevent the Freedom Convoy from getting out of control. There was a lack of preparation.

> "I fully support the constrained use of the *Emergencies Act* since it seemed to be the only measure that could effectively dismantle this illegal and treasonous "protest". It should not have needed to come to that if the police had been less concerned about their image and/or their territorial authorities and used the tools at their disposal to act against unlawful activities and occupation."
>
> - Member of the public

The invocation of the *Emergencies Act* would not have been necessary had the police taken preventive measures from the beginning of the protests. For example, allowing protesters to park their trucks downtown was a major mistake on the part of the police.

The impact of the Freedom Convoy in Ottawa could have been less severe and shorter if the city had been more prepared, including by limiting truck access to designated areas from the outset to avoid the possibility of blockades.

The information available prior to the arrival of the Freedom Convoy should have alerted the police to the possibility of an occupation.

Some also believe that the police could have ended the protests much earlier and question why this was not done, despite sufficient police presence. Others believe that the Ontario government only acted when the economic impact of the border blockade in Windsor became apparent. They point out that Ontario was equipped to deal with this crisis, but instead passed the responsibility on to the federal government.

> "The premier [of Ontario…] only took action when Toyota and GM raised concerns about the blockade at the U.S. border. I work in automotive manufacturing and my plant was directly affected by this blockade. Delays in delivery of auto parts or even empty bins came very close to shutting us down. At least the border blockade was eventually lifted before that became a reality. What was more serious was the total failure of the provincial government to deal with the blockade in Ottawa. This should have been handled entirely by the province, but instead was cravenly handed off to the federal government which should not have been responsible for it."
>
> - Community member

Other respondents questioned why the Ottawa Police Service remained inactive despite complaints of harassment and intimidation from downtown residents. Some felt that police inaction stemmed from a desire not to upset protesters. The lack of police initiative reflected either complacency or an unspoken agreement with the Freedom Convoy.

Some expressed relief that the protests did not result in anyone's death despite the dangerousness of the situation.

15. The invocation of the *Emergencies Act* was necessary

Many respondents agreed with, and were relieved by, the invocation of the *Emergencies Act*. They explained that within days of the declaration of an emergency, police forces were finally able to put an end to the protests. They said that the use of the *Emergencies Act* allowed downtown residents to regain to a semblance of normal life and a sense of security, and for others to return to their downtown homes.

Some wished that the *Emergencies Act* had been invoked earlier. While many understood and respected the right of Canadians to protest, they also believed this right should not displace the right of others to live safely and in peace. Rights and freedoms are for all Canadians.

A justification for invoking the *Emergencies Act* was that police were ineffective or ill-equipped to deal with the occupation. Confusion over the responsibilities of various police forces responding to the protests was also a significant factor.

Some thought that the potential collusion of the police with the demonstrators and the laissez-faire attitude toward the excessiveness of the protest made the invocation of the *Emergencies Act* necessary.

Another justification for use of the *Emergencies Act* was the concern about the presence of radical, extremist, violent, and anti-democratic elements in the Freedom Convoy. These individuals posed a danger to Canadians and to democracy. Some perceived the event as posing a clear threat to national security given the incidents of intimidation, threats to elected officials and the public, the reported conspiratorial, hateful, and xenophobic rhetoric, the lack of co-operation of protesters with police forces, and the potential funding of the Freedom Convoy by foreign donations.

The invocation of the *Emergencies Act* was also seen as necessary to prevent the situation from becoming more violent and uncontrollable. Reference was also made to recent global events with anti-democratic tendencies, such as the January 6, 2021, assault on the U.S. capital. A concern was expressed that an event of a similar nature could occur in Canada.

For these respondents, the unpeaceful aspects of the protest, the anti-democratic actions associated with it, the lack of co-operation on the part of the Freedom Convoy's organizers, the demonstrators' defiance of government and police directives, and the security issues surrounding the protests crossed the line and justified the use of the *Emergencies Act*.

The invocation of the *Emergencies Act* was an appropriate, measured, and targeted response to the border blockades and demonstrations in many Canadian cities, and in particular Ottawa.

The use of the *Emergencies Act* could also decrease the likelihood that similar demonstrations would take place in the future, or that disruptive or dissident elements would resurface and be able to organize events.

A further expressed justification for using the *Emergencies Act* was the severe impacts on and irreparable harm caused to the people of Ottawa. The protests were described as a war zone-like occupation. This justification included conduct such as the harassment experienced by residents in

certain public places not designated for demonstrations, concern for the protection of vulnerable populations in the downtown core (e.g., the elderly and disabled), financial losses to businesses in the area, the inability for some people to move around and go about their business, and the perceived suspension of activities in Parliament.

While Ottawa residents are accustomed to protests in the capital and downtown, a distinction needed to be made between this protest and others, particularly in terms of the insecurity felt by citizens.

Some expressed the view that the invocation of the *Emergencies Act* allowed for the peaceful resolution of the situation. Its use was legal, and it was a measured last resort after all other options had been exhausted. The government had the responsibility to protect the public by all possible means and end the disruptive behaviour.

The use of the *Emergencies Act* was targeted, specific, and did not inappropriately infringe on or override the rights of the protesters. The laws available prior to the invocation of the *Emergencies Act* did not provide the necessary resources to dismantle the Freedom Convoy.

Some respondents were also grateful that a commission of inquiry was created to assess the use of the *Emergencies Act*. If other legal provisions had been available, it would have been preferable to use those rather than freezing funds of the Freedom Convoy participants. The creation of a commission to review the invocation of the *Emergencies Act* should avoid its further politicization in the future.

16. The invocation of the *Emergencies Act* was unjustified and inappropriate

For many respondents, the context and events leading up to the declaration of the state of emergency on February 14, 2022, did not meet the legal requirements set out in the *Emergencies Act*. The demonstrations in Ottawa were largely peaceful and there was no serious or imminent danger to the life, health, or safety of Canadians.

> "I believe a true emergency that would warrant martial law is when a violent threat is at hand by a group that is not interested in dialog but rather in invasion. The Freedom Convoy was not remotely violent and the key thing being sought by the participants from the start was dialogue. Bad apples were few and far between and had no following among the crowds."
>
> - Protester

The *Emergencies Act* was invoked without exhausting all other possible options. This led to unnecessary violent confrontations between police and protesters in downtown Ottawa. Existing laws should have been enforced by local and provincial authorities. The *Criminal Code* and other laws, regulations, and by-laws were sufficient to deal with the illegal behaviour that took place during the protests. There should have been greater motivation and willpower to enforce those existing laws.

> "Being a former police officer and now retired, I myself attended over one hundred large demonstrations […] where violence was used by protesters against property and authorities. The War Measure Act was never considered then and certainly the present laws of the criminal code

were and are now more than sufficient to deal with situations like what transpired in Ottawa recently."

- Member of the public

Some were shocked at the use of the *Emergencies Act* and feel its invocation was primarily a political decision made by frustrated federal officials who had no sympathy for the concerns of the protesters. Some point to the complete inappropriateness of invoking the *Emergencies Act*, when compared to other times in Canadian history where similar legislation was invoked, including the *War Measures Act* being invoked during both world wars and the 1970 October Crisis.

"Emergency powers are, by definition, extraordinary. Resort to emergency statutes should not be normalized. In this instance, the use of the *Emergencies Act* to limit freedom of peaceful assembly and privacy across the country was unnecessary, unjustifiable and unconstitutional. It is increasingly clear that invoking the *Emergencies Act* during the freedom convoy protests and border blockades were done arbitrarily."

- Member of the public

The impact of the invocation of the *Emergencies Act* on the freedom of Canadians to express themselves and assemble peacefully could not be justified. The military-style response of the police further contributed to a sense of victimization on the part of demonstrators, who did not expect such a show of force from their own government.

17. Fear at the time of the declaration of a public order emergency

When the emergency was declared, protesters expressed fear of physical violence by the police instructed to clear those assembled. There was a clear change in police behaviour.

Some expressed fear at the sight of tear gas being used and the use of force to move and tow trucks. They also witnessed the use of cayenne pepper, horses, batons, and anti-riot gear, which led to physical injury to some protesters.

"I was not afraid of the convoy, but afraid of the police brutality and what could have happened to my children by the militarized police."

- Protester

Some were afraid of being investigated and arrested for their activities prior to the invocation of the *Emergencies Act*. Others feared repercussions for supporting protesters online.

The announcement of the seizure of donations and the freezing of bank accounts by the Deputy Prime Minister reportedly caused panic among some respondents. Those who donated through various online donation platforms said they were afraid of losing their livelihoods if their bank accounts were frozen. Some said they withdrew large sums of money from their accounts at the time of the announcement out of fear of government retaliation. The announcement had the effect of ostracizing and vilifying those who supported the protesters.

Additionally, some respondents said they had left or considered leaving the country out of fear and shock at the invocation of the *Emergencies Act*. The powers used to end the protests and freeze bank accounts solidified their belief that Canadians had lost their rights.

> "When the emergency act was evoked and passed into the House of Commons, I was overwhelmed with fear. Would my bank account be frozen because I had shared videos of the convoy on my social media? I went to the bank and emptied my account. Would I be arrested for attending the convoy in Ottawa? I decided not to wait and see, I fled Canada […]. What happened at the convoy and the emergency act being evoked has changed forever the way I see Canada, this country does not feel like home anymore. I am always living in fear of the retribution of my not supporting the Trudeau government. When they evoked the *Emergencies Act* they showed me that no law, constitution or charters is above them, the law offers me no protection."
>
> - Protester

18. Direct impacts of the *Emergencies Act* on the lives of protesters and on individuals who supported them

Financial impacts

In terms of financial impacts, individuals who supported the Freedom Convoy found themselves in a precarious financial situation due to the inability to access funds from their bank accounts, some for a few days, others for longer periods.

Some claimed that they were targeted by the government for their support of the Freedom Convoy and their political affiliations. The measures violated their fundamental rights and freedoms. In some cases, accounts were frozen for longer than necessary. Others believed that people who provided financial assistance to those supporting the Freedom Convoy had their funds frozen.

> "My business account got frozen for almost a week and I had to borrow money from my business partner in order to pay some invoices that were due."
>
> - Protester

Those who made donations through online donation platforms, such as GoFundMe or GiveSendGo, also said they were affected by the restrictions imposed on donations. They were taken aback by the inability to financially support the protesters. Overall, they experienced deep frustration at not being allowed to support and encourage the Freedom Convoy, given the freezing of donations on online donation platforms.

> "I had to ask for a refund for GoFundMe and be in fear that the government could likely freeze and seize my assets for what I support and believe in."
>
> - Protester

Some respondents have lost confidence and trust in banking institutions. They decided to withdraw their entire financial assets from banks, or seriously considered doing so. Some encouraged close friends and family members to withdraw funds.

Respondents who donated money no longer want to donate to organizations, causes, or political movements for fear that they will lose access to their assets. Others were worried about the possibility of being traced, identified, and targeted by the government. For this reason, requests for reimbursement of donations were made to online donation platforms.

Physical and psychological impacts

There were also physical and psychological impacts of police interaction on protesters. Some demonstrators reported being injured by the police or witnessing police violence directly or indirectly. Some had to seek medical attention.

Demonstrators considered the use of force to be excessive, disproportionate, and unacceptable given the nature of the protests. They expressed a loss of confidence in the police. In their view, the police could have acted in a less violent manner toward them.

> "There were so many disappointing moments, a few were: One of the individuals around me on Feb. 17th was pushed by the cops and they broke his leg, which was traumatic to see. […] On the 18th of Feb. 2022, I showed up by the parliament in the morning, there was a line of humans (maybe officers […]) in greenish uniform and in front of them were unarmed Canadian citizens protesting. I was standing next to a lady, who formed a chain with me. Then the line of […] was told to push us, they started to shove their batons into us, the lady next to me was hurt by these […]."
>
> - Protester

Some respondents believed that the police only resorted to violence because of the declaration of emergency.

Some demonstrators also reported psychological harm from their interactions with police. They reported ongoing feelings of anxiety and stress when interacting with police, feelings that they did not have in the past. They no longer felt safe in the presence of police.

19. Loss of trust in government and institutions

COVID-19 context

Some respondents reported that their loss of confidence in provincial and federal governments began in 2020 with the governmental response to the pandemic. The closure of businesses and the almost exclusive focus of healthcare on COVID-19 issues were early indicators that governments were ignoring other challenges faced by citizens, such as deteriorating mental health, inaccessibility of health services, and financial hardship from job losses.

Trust in government was further eroded by perceived differential treatment of individuals with different views. Those with negative opinions about government responses to the COVID-19 pandemic felt rejected by the government, which further eroded their trust.

Context of the protests and the *Emergencies Act*

Since the invocation of the *Emergencies Act*, many of those who participated in or supported the protests reported lost trust, or further loss of trust, in government and other institutions, such as police and banks, and to a lesser extent the courts.

"The *Emergencies Act* brought forth by the Government of Canada was not needed. The government wrongly implemented the *Emergencies Act*. I and many others around me no longer trust federal government in anything they say or do. It has changed my thinking toward government. They have lost my trust in them, and it may take many years to re-establish that trust."

- Member of the public

The declaration of emergency was seen as an extreme response with the potential to set a risky precedent. The *Emergencies Act* could be used as a dangerous tool in the future against any group opposing government views.

Some also reported being wary of financial institutions after the government was able to seize personal assets. Others reported that they no longer want to donate to charities out of fear of action in relation to their bank accounts if that charity is later found to oppose current government policies.

There was also an expressed loss of trust and confidence in the police given the excessive use of force and other tactics to break up protests. For example, police on horseback were seen as intimidating and excessive.

Some respondents also questioned the independence of the courts, as some Freedom Convoy organizers were denied bail. They raised the possibility that the judicial system is politicized and wondered whether organizers of future demonstrations would be treated in the same manner.

There also was a perception that the right to free speech and the right to protest had been destroyed.

20. Persistent fear of government and institutions

Some respondents reported a persistent fear of governments and institutions, similar to the fear that foreign nationals have of totalitarian governments in their home countries. Some said that they had been reluctant to submit their comments to the Commission for fear of government retaliation and censorship.

"My Canada no longer exists. This nation I live in now is a nation that arbitrarily and unilaterally suspends human rights, coerces medical treatments, stigmatizes, and excoriates minorities, oppresses sincerely held religious beliefs, seizes property without due process, brutally suppresses peaceful protests and uses the justice system to persecute political enemies. […] it is very hard for me to make this submission. I am deeply fearful that doing so will lead to me being persecuted, to being put on a list of dangerous extremists holding unacceptable views who must be silenced […]."

- Member of the public

Many respondents expressed a feeling of anxiety about participating in a general manner in political discourse given possible consequences such as the freezing of bank accounts.

Respondents also expressed a lingering fear of being monitored for their political views. They had a perception that they could potentially be flagged as supporters of the protests through the monitoring of their communication devices and social media.

Others expressed a sense of fear in the presence of the police and a fear of being apprehended for their political views. The excessive use of force they saw against protesters sent a message that protesters were criminals and deserved to be punished.

In addition, some respondents expressed a fear for the future of Canada as a democracy. Emotions reported included loss of hope, despair, and anxiety. The use of the *Emergencies Act* set a dangerous precedent for the arbitrary and unilateral suspension of the rights and freedoms of Canadians.

There was fear for the future of political protests in Canada, including protests that the majority of Canadians support (e.g., anti-racism protests and First Nations reconciliation movements).

21. Feeling of fear and the perception of undermining democracy

Respondents expressed anxiety about threats, attacks, and the potential downfall of Canada's democratic system. Cynicism was expressed toward the continued display of aggressive anti-government rhetoric by protesters. This is both a new and troubling phenomenon in Canada.

> "I felt like I was watching the death of democracy. It affected me deeply. I'm not sure I've recovered yet, as tears are pouring down my face and I'm reliving the anxiety as I write this."
>
> - Member of the public

The actions of some protesters and Freedom Convoy leaders who called for the removal of democratically elected leaders, including the Prime Minister of Canada, created anxiety. This conduct affected how people viewed their fellow Canadians.

The nature of the protests changed over time, while also increasing in size. The protests became anti-government protests that no longer just called for the end of COVID-related health measures. The motivations of some demonstrators, such as wanting to overthrow the government, should be considered acts of sedition and treason.

> "As the protests continued, I began to realize that they were more anti-government than the anti-vaccine. This is when I began to feel frightened. To be unhappy with the government is an individual's right but that is best rectified by voting for another party/ leader when an election is called. These people were demanding the government be overthrown […] As the weeks went by, nobody was stopping them. […] I began to be afraid for our country."
>
> - Member of the public

Some respondents expressed a loss of trust in politicians and police officers because of the support some displayed for the Freedom Convoy, as if they were colluding to undermine democracy.

Respondents expressed support for the use of the *Emergencies Act* to stop what they believed to be a protest holding democracy hostage, a fear that worsened with the passage of time and the failure of police to act.

Some also urged our government and other authorities to take threats and attacks on the country's democratic systems seriously. The protests were the result of a distorted reality fed by

intense disinformation, found mainly on social media, and by rage. This type of movement could re-emerge at any time.

22. Damage to and change in perception of Canadian symbols

Since the protests, and particularly for Ottawa residents, a Canadian flag being flown on a truck or in front of a house has become a reminder of the protests. Seeing people undermine Canadian symbols, such as the National War Memorial, the Terry Fox statue, and the Tomb of the Unknown Soldier, was extremely difficult.

> "I want my [Canadian] flag back!"
>
> - Community member

The use of Canadian symbols by Freedom Convoy members to support their rhetoric was deeply upsetting. The positive feelings previously associated with these symbols and the nationalistic pride they inspired is no longer the same. These symbols, and in particular the Canadian flag, have become associated with the protests, hate speech, and intolerance.

Many expressed a strong attachment to the Canadian flag and have a sense of pride associated with the flag. The flag was important to a sense of belonging to Canadian society. Since the protests, some are no longer able to see the Canadian flag in the same way. The symbol of the Canadian flag was taken over by the Freedom Convoy and has been significantly tainted. The use of the flag for political purposes and the symbolic gesture of flying it upside down have profoundly altered the sense of belonging to Canadian society and pride in being Canadian.

> "I came to Canada as an immigrant and am now a Canadian citizen, always very proud to see the Canadian flag flying anywhere in the country or the world. Now, when I see it on the backs of trucks, I shudder. Quite frankly it reminds me of the black flags flying on Taliban trucks. Even when the flag is simply flying over an official office, it gives me an unpleasant feeling. It has ruined my enjoyment of such a simple symbol of Canada."
>
> - Member of the public

Some now have a sense of suspicion and distrust when they see cars flying a Canadian flag. They question the intentions of those who fly the flag.

Other respondents reported their incomprehension at the casual behaviour and "laisser-faire" attitude of authorities regarding the desecration of the flag and its association with other extremist or derogatory symbols.

23. Damage to Canada's international reputation

Some believe that the use of the *Emergencies Act* damaged Canada's reputation as a democratic society governed by the rule of law. They were ashamed of the way authorities handled the demonstrations. This caught media attention. By using the *Emergencies Act* against protesters, Canada will be seen internationally as a country that no longer respects democratic values and defends human rights. This will discourage future tourism and business in Canada.

"The government lost a great deal of respect, not only in Canada, but also around the free world."

- Member of the public

Some respondents said they no longer feel as secure about their individual rights and their ability to do business in Canada, particularly after the freezing of bank accounts. They wanted to leave the country, or have already left, because they believe Canada has lost its democratic values. They feel that they have lost confidence in Canada's ability to repair its image internationally, in the aftermath of the pandemic and in the way the *Emergencies Act* has been justified and used.

Yet, some respondents also indicated that they lost their sense of pride in relation to their Canadian identity because of the Freedom Convoy's association with extremist elements.

The duration and festive and disorganized nature of the protests tarnished Canada's image. The inaction of authorities in the face of a prolonged occupation by an extremist group in our capital city has seriously damaged Canada's reputation as a country governed by the rule of law. The use of the *Emergencies Act* was the quickest and most effective way to regain control over the excessive disruption associated with the protests.

The festive nature of the protests (e.g., the installation of inflatable structures and hot tubs in public spaces), was regarded as evidence of the invalidity of the demonstrators' demands. The law enforcement authorities' laissez-faire attitude in this regard made a mockery of Canada's reputation and the democratic right to peaceful assembly.

"[…] there is now a stain on the reputation of Canada as a peaceful, welcoming, law-abiding nation."

- Member of the public

The Freedom Convoy protests had a major impact not only on the Canadian economy, but also on the economy of the United States due to the prolonged blockage of cross-border routes. Canada's relations with the United States, our main trading partner, were affected. Our image internationally as a reliable partner has also been tarnished.

Concerns were expressed about the lasting impact of the protests on Canada's global reputation symbolically, economically, and diplomatically. Some emphasized the importance of reassuring our international allies and partners that we can effectively manage this type of crisis. We need to ensure that these radicalized elements do not easily collaborate with other extremist groups abroad.

24. Concerns over foreign influence

Respondents urged that threats and challenges to Canada's democratic system be taken seriously.

There was a perception that online fundraising platforms have allowed foreign donors to interfere with domestic issues. Funding of the Freedom Convoy by international donors, primarily from the United States, should be considered as foreign influence and interference with Canada's democratic system.

"The commission should look at measures to keep our democracy strong in the face of the dangers from radical fringe groups, who are currently mostly on the far right. It should also look at the financing of these groups to determine if they are funded and promoted by people who want to undermine our democracy."

- Member of the public

Some also believed that the Freedom Convoy was inspired by the events of January 6, 2021, in the United States capital. They believe that far-right ideologies and anti-government rhetoric are growing and spreading in Canada and are reinforced by factors in the United States.

25. Recommendations regarding the *Emergencies Act*

"The Commission has the ability, and the responsibility to ensure that the "bar" for using the *Emergencies Act* remains high now and into the future."

- Member of the public

Recommendations made by respondents include:

- The bar to invoke the *Emergencies Act* must remain high, to ensure the government's use of the *Emergencies Act* is not disproportionate to the gravity of the situation.
- It should not be possible to invoke the provisions of the *Emergencies Act* by a simple majority in Parliament. The threshold for invoking the *Emergencies Act* should be more restrictive, such as having broader support from all parties within Parliament; having the approval of at least two thirds of provinces; and having the approval of the Supreme Court of Canada.
- Cabinet authority to invoke the *Emergencies Act* without greater oversight from other government institutions should be limited.
- All Orders-in-Council issued under the *Emergencies Act* should require passage through both chambers of Parliament. There should be penalties for improper use of the *Emergencies Act.*
- Invoking the *Emergencies Act* should not allow the government to infringe on privacy or property rights without first obtaining a judicial warrant.
- There should be a mandatory debate in the House of Commons within the first 24 hours of invoking the *Emergencies Act*. Failure to do so should automatically invalidate the declaration of an emergency.
- The conditions for invoking the *Emergencies Act* are too vague and should be reworded with greater precision. Clearer definitions of terms and language are needed.

- The *Emergencies Act* should be reworked to provide different levels of escalation depending on the severity of the situation.

- The *Emergencies Act* should account for the unique jurisdictional issues facing the National Capital Region, which will always be a focal point for protests. Greater clarity is needed regarding the role of different police forces in Ottawa. The use of the *Emergencies Act* had the effect of removing jurisdictional boundaries and allowing a unified force to confront the situation in Ottawa.

- Existing laws, such as the *Criminal Code*, should be considered and enforced before resorting to the *Emergencies Act*.

"[The Act] should be reviewed in step with the jurisdictions in the Ottawa area. Ottawa will always be a hot spot for protests and government resources need to be nimble and responsive to maintain public order. Police can't maintain order if the question is "Who is in charge?"

- Member of the public

26. General recommendations

Respondents also provided broader recommendations on how the events of January and February 2022 could have been better managed.

- In times of crisis, various legal entities and government bodies must effectively coordinate with one another to resolve jurisdictional disputes.

- Future protests should require a permit and the prolonged use of motorized vehicles should be prohibited.

- By-laws prohibiting excessive engine idling in Ottawa should have been better enforced or a new by-law should be adopted as poor air quality and noise pollution were substantial issues that affected the community and environment.

- There should be better support for the press and journalists, who have an essential function in countering misinformation.

- Laws should be enacted that impose consequences on those who deliberately spread lies, misinformation, and hate. These laws should also hold social media platforms accountable for hosting misinformation and disinformation.

- There should be a firmer application of standards of behaviour in police forces and a better understanding of the screening practices for hiring law enforcement officers and military personnel is necessary.

- Laws that curtail foreign funding of anti-democratic groups and movements within Canada should be enacted.

- Governments must do better to educate and prevent the radicalization of Canadians.
- The use of the Confederate flag and other hate symbols in Canada should be banned.
- Though the right to protest is fundamental, protests should not interfere with the health and wellness of Canadians.

Conclusion

The Public Order Emergency Commission collected a wide variety of disparate views, observations, and experiences from Canadians on all aspects of the Commission's mandate, including the circumstances that led to the declaration of a public order emergency and the measures taken for dealing with the declared emergency in February 2022.

Throughout this consultation, Canadians spoke honestly about their experiences and were enthusiastic about the opportunity to participate in the work of the Commission. As noted, we heard from nearly 8,800 Canadians, whose ages and demographics reflected the Canadian population.

Respondents informed the Commission about the impacts of events on their lives and communities and made recommendations they felt would be useful in the future.

It is clear that Canadians have disparate views and are deeply divided on the many issues that fall under or are related to the Commission's mandate. The significance of this division to Canadian society cannot be underestimated. The submissions received, while they are not evidence, have given the Commission an important perspective on the issues within its mandate. They also provide an important perspective for legislators, the police, and other Canadian authorities and institutions going forward.

The Commission wishes to acknowledge those involved in reading the submissions received and compiling themes to prepare this report and the presentation made during the public hearings on November 23, 2022.

Thank you to Patrick Pilon for leading the drafting of this report and to Marie-Claude Gagné for the editorial review. Thank you also to Anvesh Jain, Ariane Taschereau-Otis, Chems Aouididi, and Kimia Mirzaei for their review and input, and to Imelda Basudde and Stephanie Skipp for their contributions to the review of all submissions.

The Commission appreciates the contributions of all those who voiced their opinions and took the time to participate in the public consultation process. Thank you once again.

Appendix 30

List of Commission Staff

Commissioner	The Honourable Paul S. Rouleau

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	Stephanie Skipp
Contract Officer	Jane Mils

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	Maia Tsurumi (British Columbia)

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	Mark Pritchard
	Mark Sandler

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Communications Advisor	Marie-Claude Gagné

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Senior Analyst	Patrick M. Pilon
Analysts	Chems Aouididi
	Anyesh Jain
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	Ariane Taschereau-Otis

Hearings

Clerks	Stacey Huber
	Pam Delage St-Jean

Appendix 31

List of Parties and Representatives

Parties	Representatives
Government of Canada	Robert MacKinnon Donnaree Nygard Brian Gover Andrew Gibbs Philippe Dupuis Brendan van Niejenhuis Sharon Johnston Elizabeth Kikuchi Cynthia Lau Andrea Gonsalves Caroline Laverdière Ted Marrocco Sanam Goudarzi David Shiroky Stephen Aylward Ryann Atkins Victor Ryan Geneviève Tremblay-Tardif Yusuf Khan Jessica Karam Kathleen Tanner Alexandra Pullano Christian Halt

Parties	Representatives
Government of Saskatchewan	P. Mitch McAdam, KC Michael Morris, KC
Government of Manitoba	Denis Guénette Coral Lang
Government of Alberta	Mandy England Stephanie Bowes Hana Laura Yamamoto Peter Buijs Shaheer Meenai
City of Ottawa	Anne Tardif Alyssa Tomkins Daniel Chomski
City of Windsor	Jennifer King Michael Finley Bevin Shores Graham Reeder
Mr. Peter Sloly	J. Thomas Curry Rebecca Jones Nikolas De Stefano
Ottawa Police Service	David Migicovsky Jessica Barrow
Ontario Provincial Police	Christopher Diana Jinan Kubursi

Parties	Representatives
Windsor Police Service	Thomas McRae Heather Paterson Bryce Chandler
National Police Federation	Caroline V. (Nini) Jones Lauren Pearce Jen Del Riccio
Canadian Association of Chiefs of Police	Aviva Rotenberg
Criminal Lawyers Association & Canadian Council of Criminal Defense Lawyers	Greg DelBigio, KC Colleen McKeown
Union of British Columbia Indian Chiefs	Mary Ellen Turpel-Lafond Cheyenne Arnold-Cunningham Meagan Berlin
National Crowdfunding and Fintech Association	Jason Beitchman
Canadian Constitution Foundation	Sujit Choudhry Janani Shanmuganathan
Professor Ryan Alford	Ryan Alford
Action Sandy Hill, Byward Market Business Improvement Area, Bank Street Business Improvement Area, Lowertown Community Association, Ottawa Coalition of Business Improvement Areas, Sparks Street Business Improvement Area, Vanier Business Improvement Area & Vanier Community Association	Paul Champ Emilie Taman Christine Johnson

Parties	Representatives
The Democracy Fund, Citizens for Freedom & the Justice Centre for Constitutional Freedoms	Rob Kittredge Hatim Kheir Alan Honner Antoine d'Ailly
Canadian Civil Liberties Association	Cara Zwibel Ewa Krajewska
Tamara Lich, Chris Barber, Daniel Bulford, Tom Marazzo, Sean Tiessen, Chris Garrah, Miranda Gasinor, Joseph Janzen, Dale Enns, Ryan Mihilewicz & the Freedom 2022 Human Rights and Freedoms not-for-profit corporation	Brendan M. Miller Bath-Sheba van den Berg Keith Wilson, KC Eva Chipiuk
Insurance Bureau of Canada	Mario Fiorino Varshni Skantharajah

Appendix 32

Proclamation Declaring a Public Order Emergency

CANADA

CONSOLIDATION

CODIFICATION

Proclamation Declaring a Public Order Emergency

Proclamation déclarant une urgence d’ordre public

SOR/2022-20

DORS/2022-20

Current to January 11, 2023

À jour au 11 janvier 2023

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Incompatibilité — règlements

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

MISE EN PAGE

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NOTE

This consolidation is current to January 11, 2023. Any amendments that were not in force as of January 11, 2023 are set out at the end of this document under the heading "Amendments Not in Force".

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TABLE OF PROVISIONS

TABLE ANALYTIQUE

Registration
SOR/2022-20 February 15, 2022

EMERGENCIES ACT

Proclamation Declaring a Public Order Emergency

Mary May Simon

[L.S.]

Canada

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith.

François Daigle
Deputy Attorney General of Canada

Great Seal of Canada

TO ALL WHOM these presents shall come or whom the same may in any way concern,

GREETING:

A Proclamation

Whereas the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency;

Whereas the Governor in Council has, before declaring a public order emergency and in accordance with subsection 25(1) of the *Emergencies Act*, consulted the Lieutenant Governor in Council of each province, the Commissioners of Yukon and the Northwest Territories, acting with consent of their respective Executive Councils, and the Commissioner of Nunavut;

Now Know You that We, by and with the advice of Our Privy Council for Canada, pursuant to subsection 17(1) of the *Emergencies Act*, do by this Our Proclamation declare that a public order emergency exists throughout Canada and necessitates the taking of special temporary measures for dealing with the emergency;

And We do specify the emergency as constituted of

Enregistrement
DORS/2022-20 Le 15 février 2022

LOI SUR LES MESURES D'URGENCE

Proclamation déclarant une urgence d'ordre public

Mary May Simon

[S.L.]

Canada

ELIZABETH DEUX, par la Grâce de Dieu, REINE du Royaume-Uni, du Canada et de ses autres royaumes et territoires, Chef du Commonwealth, Défenseur de la Foi.

Le sous-procureur général du Canada,
François Daigle

Grand sceau du Canada

À TOUS CEUX à qui les présentes parviennent ou qu'elles peuvent de quelque manière concerner,

SALUT :

Proclamation

Attendu que la gouverneure en conseil croit, pour des motifs raisonnables, qu'il se produit un état d'urgence justifiant en l'occurrence des mesures extraordinaires à titre temporaire;

Attendu que la gouverneure en conseil a, conformément au paragraphe 25(1) de la *Loi sur les mesures d'urgence*, consulté le lieutenant-gouverneur en conseil de chaque province, les commissaires du Yukon et des Territoires du Nord-Ouest agissant avec l'agrément de leur conseil exécutif respectif et le commissaire du Nunavut avant de faire la déclaration de l'état d'urgence,

Sachez que, sur et avec l'avis de Notre Conseil privé pour le Canada, Nous, en vertu du paragraphe 17(1) de la *Loi sur les mesures d'urgence*, par Notre présente proclamation, déclarons qu'il se produit dans tout le pays un état d'urgence justifiant en l'occurrence des mesures extraordinaires à titre temporaire;

Sachez que Nous décrivons l'état d'urgence comme prenant la forme suivante :

(a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

(b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,

(c) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,

(d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians;

And We do further specify that the special temporary measures that may be necessary for dealing with the emergency, as anticipated by the Governor in Council, are

(a) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure,

(b) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to

a) les blocages continus mis en place par des personnes et véhicules à différents endroits au Canada et les menaces continues proférées en opposition aux mesures visant à mettre fin aux blocages, notamment par l'utilisation de la force, lesquels blocages ont un lien avec des activités qui visent à favoriser l'usage de la violence grave ou de menaces de violence contre des personnes ou des biens, notamment les infrastructures essentielles, dans le but d'atteindre un objectif politique ou idéologique au Canada,

b) les effets néfastes sur l'économie canadienne — qui se relève des effets de la pandémie de la maladie à coronavirus 2019 (COVID-19) — et les menaces envers la sécurité économique du Canada découlant des blocages d'infrastructures essentielles, notamment les axes commerciaux et les postes frontaliers internationaux,

c) les effets néfastes découlant des blocages sur les relations qu'entretient le Canada avec ses partenaires commerciaux, notamment les États-Unis, lesquels effets sont préjudiciables aux intérêts du Canada,

d) la rupture des chaînes de distribution et de la mise à disposition de ressources, de services et de denrées essentiels causée par les blocages existants et le risque que cette rupture se perpétue si les blocages continuent et augmentent en nombre,

e) le potentiel d'augmentation du niveau d'agitation et de violence qui menaceraient davantage la sécurité des Canadiens;

Sachez que Nous jugeons les mesures d'intervention ci-après nécessaires pour faire face à l'état d'urgence :

a) des mesures pour réglementer ou interdire les assemblées publiques — autre que les activités licites de défense d'une cause, de protestation ou de manifestation d'un désaccord — dont il est raisonnable de penser qu'elles auraient pour effet de troubler la paix, ou les déplacements à destination, en provenance ou à l'intérieur d'une zone désignée, pour réglementer ou interdire l'utilisation de biens désignés, notamment les biens utilisés dans le cadre d'un blocage, et pour désigner et aménager des lieux protégés, notamment les infrastructures essentielles,

b) des mesures pour habiliter toute personne compétente à fournir des services essentiels ou lui ordonner de fournir de tels services, notamment l'enlèvement, le remorquage et l'entreposage de véhicules, d'équipement, de structures ou de tout autre objet qui font partie d'un blocage n'importe où au Canada, afin de pallier les effets des

render them and the provision of reasonable compensation in respect of services so rendered,

(c) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade,

(d) measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference,

(e) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and

(f) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

blocages sur la sécurité publique et économique du Canada, notamment des mesures pour cerner ces services essentiels et les personnes compétentes à les fournir, ainsi que le versement d'une indemnité raisonnable pour ces services,

c) des mesures pour habiliter toute personne à fournir des services essentiels ou lui ordonner de fournir de tels services afin de pallier les effets des blocages, notamment des mesures pour réglementer ou interdire l'usage de biens en vue de financer ou d'appuyer les blocages, pour exiger de toute plateforme de sociofinancement et de tout fournisseur de traitement de paiement qu'il déclare certaines opérations au Centre d'analyse des opérations et déclarations financières du Canada et pour exiger de tout fournisseur de services financiers qu'il vérifie si des biens qui sont en sa possession ou sous son contrôle appartiennent à une personne qui participe à un blocage,

d) des mesures pour habiliter la Gendarmerie royale du Canada à appliquer les lois municipales et provinciales au moyen de l'incorporation par renvoi,

e) en cas de contravention aux décrets ou règlements pris au titre de l'article 19 de la *Loi sur les mesures d'urgence*, l'imposition d'amendes ou de peines d'emprisonnement,

f) toute autre mesure d'intervention autorisée par l'article 19 de la *Loi sur les mesures d'urgence* qui est encore inconnue.

In testimony whereof, We have caused this Our Proclamation to be published and the Great Seal of Canada to be affixed to it.

En foi de quoi, Nous avons pris et fait publier Notre présente Proclamation et y avons fait apposer le grand sceau du Canada.

WITNESS:

TÉMOIN :

Our Right Trusty and Well-beloved Mary May Simon, Chancellor and Principal Companion of Our Order of Canada, Chancellor and Commander of Our Order of Military Merit, Chancellor and Commander of Our Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.

Notre très fidèle et bien-aimée Mary May Simon, chancelière et compagnon principal de Notre Ordre du Canada, chancelière et commandeure de Notre Ordre du mérite militaire, chancelière et commandeure de Notre Ordre du mérite des corps policiers, gouverneure générale et commandante en chef du Canada.

At Our Government House, in Our City of Ottawa, this fourteenth day of February in the year of Our Lord two thousand and twenty-two and in the seventy-first year of Our Reign.

À Notre hôtel du gouvernement, en Notre ville d'Ottawa, ce quatorzième jour de février de l'an de grâce deux mille vingt-deux, soixante et onzième de Notre règne.

BY COMMAND,

PAR ORDRE,

Simon Kennedy
Deputy Registrar General of Canada

Le sous-registraire général du Canada,
Simon Kennedy

Appendix 33

Emergency Measures Regulations

CANADA

CONSOLIDATION

CODIFICATION

Emergency Measures Regulations

Règlement sur les mesures d'urgences

SOR/2022-21

DORS/2022-21

Current to January 11, 2023

À jour au 11 janvier 2023

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l'adresse suivante :
http://lois-laws.justice.gc.ca

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[...]

Incompatibilité — règlements

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Emergency Measures Regulations

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Règlement sur les mesures d'urgences

Registration
SOR/2022-21 February 15, 2022

EMERGENCIES ACT

Emergency Measures Regulations

P.C. 2022-107 February 15, 2022

Whereas the Governor in Council has, by a proclamation made pursuant to subsection 17(1) of the *Emergencies Act*[a], declared that a public order emergency exists;

And whereas the Governor in Council believes on reasonable grounds, that the regulation or prohibition of public assemblies in the areas referred to in these Regulations are necessary;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, pursuant to subsection 19(1) of the *Emergencies Act*[a], makes the annexed *Emergency Measures Regulations*.

[a] R.S., c. 22 (4th Supp.)

Enregistrement
DORS/2022-21 Le 15 février 2022

LOI SUR LES MESURES D'URGENCE

Règlement sur les mesures d'urgences

C.P. 2022-107 Le 15 février 2022

Attendu que la gouverneure en conseil a, par proclamation prise en vertu du paragraphe 17(1) de la *Loi sur les mesures d'urgence*[a], déclaré qu'il se produit un état d'urgence;

Attendu que la gouverneure en conseil croit, pour des motifs raisonnables, qu'il est fondé de réglementer ou d'interdire des assemblées publiques dans les endroits visés,

À ces causes, sur recommandation du ministre de la Sécurité publique et de la Protection civile et en vertu du paragraphe 19(1) de la *Loi sur les mesures d'urgence*[a], Son Excellence la Gouverneure générale en conseil prend le *Règlement sur les mesures d'urgences*, ci-après.

[a] L.R., ch. 22 (4e suppl.)

Emergency Measures Regulations

Interpretation

1 The following definitions apply to these Regulations

Act means the *Emergencies Act* (*Loi*)

critical infrastructure means the following places, including any land on which they are located:

(a) airports, aerodromes, heliports, harbours, ports, piers, lighthouses, canals, railway stations, railways, tramway lines, bus stations, bus depots and truck depots;

(b) infrastructure for the supply of utilities such as water, gas, sanitation and telecommunications;

(c) international and interprovincial bridges and crossings;

(d) power generation and transmission facilities;

(e) hospitals and locations where COVID-19 vaccines are administered;

(f) trade corridors and international border crossings, including ports of entry, ferry terminals, customs offices, bonded warehouses, and sufferance warehouses. (*infrastructures essentielles*)

foreign national has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act* (*étranger*)

peace officer means a police officer, police constable, constable, or other person employed for the preservation and maintenance of the public peace (*agent de la paix*)

protected person has the same meaning as in subsection 95(2) of the *Immigration and Refugee Protection Act* (*personne protégée*)

Prohibition — public assembly

2 (1) A person must not participate in a public assembly that may reasonably be expected to lead to a breach of the peace by:

(a) the serious disruption of the movement of persons or goods or the serious interference with trade;

Règlement sur les mesures d'urgences

Définitions

1 Les définitions qui suivent s'appliquent au présent règlement.

agent de la paix Tout officier de police ou agent de police employé à la préservation et au maintien de la paix publique. (*peace officer*)

étranger S'entend au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*. (*foreign national*)

infrastructures essentielles Les lieux ci-après, y compris le terrain sur lequel ils sont situés :

a) les aéroports, aérodromes, héliports, havres, ports, gares maritimes, jetées, phares, canaux, gares ferroviaires et chemins de fer, terminus d'autobus et garages d'autobus ou de camions;

b) les infrastructures servant à la fourniture de services publics tels que l'eau, le gaz, l'assainissement et les télécommunications;

c) les ponts et les ouvrages de franchissement internationaux et interprovinciaux;

d) les installations de production et de transmission d'énergie;

e) les hôpitaux et les endroits où sont administrés les vaccins contre la COVID-19;

f) les axes commerciaux et les postes frontaliers internationaux, y compris les points d'entrée, les bureaux de douanes, les entrepôts de stockage et les entrepôts d'attente. (*critical infrastructure*)

Loi La *Loi sur les mesures d'urgence*. (*Act*)

personne protégée S'entend au sens du paragraphe 95(2) de la *Loi sur l'immigration et la protection des réfugiés*. (*protected person*)

Interdiction – assemblée publique

2 (1) Il est interdit de participer à une assemblée publique dont il est raisonnable de penser qu'elle aurait pour effet de troubler la paix par l'un des moyens suivants :

(b) the interference with the functioning of critical infrastructure; or

(c) the support of the threat or use of acts of serious violence against persons or property.

a) en entravant gravement le commerce ou la circulation des personnes et des biens;

b) en entravant le fonctionnement d'infrastructures essentielles;

c) en favorisant l'usage de la violence grave ou de menaces de violence contre des personnes ou des biens.

Minor

(2) A person must not cause a person under the age of eighteen years to participate in an assembly referred to in subsection (1).

Mineur

(2) Il est interdit de faire participer une personne âgée de moins de dix-huit ans à une assemblée visée au paragraphe (1).

Prohibition — entry to Canada — foreign national

3 (1) A foreign national must not enter Canada with the intent to participate in or facilitate an assembly referred to in subsection 2(1).

Interdiction – entrée au Canada – étranger

3 (1) Il est interdit à l'étranger d'entrer au Canada avec l'intention de participer à une assemblée visée au paragraphe 2(1) ou de faciliter une telle assemblée.

Exemption

(2) Subsection (1) does not apply to

(a) a person registered as an Indian under the *Indian Act*;

(b) a person who has been recognized as a Convention refugee or a person in similar circumstances to those of a Convention refugee within the meaning of subsection 146(1) of the *Immigration and Refugee Protection Regulations* who is issued a permanent resident visa under subsection 139(1) of those regulations;

(c) a person who has been issued a temporary resident permit within the meaning of subsection 24(1) of the *Immigration and Refugee Protection Act* and who seeks to enter Canada as a protected temporary resident under subsection 151.1(2) of the *Immigration and Refugee Protection Regulations*;

(d) a person who seeks to enter Canada for the purpose of making a claim for refugee protection;

(e) a protected person;

(f) a person or any person in a class of persons whose presence in Canada, as determined by the Minister of Citizenship and Immigration or the Minister of Public Safety and Emergency Preparedness, is in the national interest.

Exemption

(2) Le paragraphe (1) ne s'applique pas aux personnes suivantes :

a) une personne inscrite à titre d'Indien sous le régime de la *Loi sur les Indiens*;

b) la personne reconnue comme réfugié au sens de la Convention, ou la personne dans une situation semblable à celui-ci au sens du paragraphe 146(1) du *Règlement sur l'immigration et la protection des réfugiés*, qui est titulaire d'un visa de résident permanent délivré aux termes du paragraphe 139(1) de ce règlement;

c) la personne qui est titulaire d'un permis de séjour temporaire au sens du paragraphe 24(1) de la *Loi sur l'immigration et la protection des réfugiés* et qui cherche à entrer au Canada à titre de résident temporaire protégé aux termes du paragraphe 151.1(2) du *Règlement sur l'immigration et la protection des réfugiés*;

d) la personne qui cherche à entrer au Canada afin de faire une demande d'asile;

e) la personne protégée;

f) sa présence au Canada est, individuellement ou au titre de son appartenance à une catégorie de personnes, selon ce que conclut le ministre de la Citoyenneté et de l'Immigration ou le ministre de la Sécurité publique et de la Protection civile, dans l'intérêt national.

Travel

4 (1) A person must not travel to or within an area where an assembly referred to in subsection 2(1) is taking place.

Minor — travel near public assembly

(2) A person must not cause a person under the age of eighteen years to travel to or within 500 metres of an area where an assembly referred to in subsection 2(1) is taking place.

Exemptions

(3) A person is not in contravention of subsections (1) and (2) if they are

(a) a person who, within of the assembly area, resides, works or is moving through that area for reasons other than to participate in or facilitate the assembly;

(b) a person who, within the assembly area, is acting with the permission of a peace officer or the Minister of Public Safety and Emergency Preparedness;

(c) a peace officer; or

(d) an employee or agent of the government of Canada or a province who is acting in the execution of their duties.

Use of property — prohibited assembly

5 A person must not, directly or indirectly, use, collect, provide make available or invite a person to provide property to facilitate or participate in any assembly referred to in subsection 2(1) or for the purpose of benefiting any person who is facilitating or participating in such an activity.

Designation of protected places

6 The following places are designated as protected and may be secured:

(a) critical infrastructures;

(b) *Parliament Hill* and the *parliamentary precinct* as they are defined in section 79.51 of the *Parliament of Canada Act*;

(c) official residences;

(d) government buildings and defence buildings

(e) any property that is a building, structure or part thereof that primarily serves as a monument to honour persons who were killed or died as a consequence

Déplacements

4 (1) Il est interdit de se déplacer à destination ou à l'intérieur d'une zone où se tient une assemblée visée au paragraphe 2(1).

Déplacements à proximité d'une assemblée publique – mineur

(2) Il est interdit de faire déplacer une personne âgée de moins de dix-huit ans, à destination ou à moins de 500 mètres de la zone où se tient une assemblée visée au paragraphe 2(1).

Exemptions

(3) Ne contrevient pas aux paragraphes (1) et (2) :

a) la personne qui réside, travaille ou circule dans la zone de l'assemblée, pour des motifs autres que de prendre part à l'assemblée ou la faciliter;

b) la personne qui, relativement à la zone d'assemblée, agit avec la permission d'un agent de la paix ou du ministre de la Sécurité publique et de la Protection civile;

c) l'agent de la paix;

d) l'employé ou le mandataire du gouvernement du Canada ou d'une province qui agit dans l'exercice de ses fonctions.

Utilisation de biens – assemblée interdite

5 Il est interdit, directement ou non, d'utiliser, de réunir, de rendre disponibles ou de fournir des biens — ou d'inviter une autre personne à le faire — pour participer à toute assemblée visée au paragraphe 2(1) ou faciliter une telle assemblée ou pour en faire bénéficier une personne qui participe à une telle assemblée ou la facilite.

Désignation de lieux protégés

6 Les lieux suivants sont protégés et peuvent être aménagés :

a) les infrastructures essentielles;

b) la *cité parlementaire* et la *Colline parlementaire* au sens de l'article 79.51 de la *Loi sur le Parlement du Canada*;

c) les résidences officielles;

d) les immeubles gouvernementaux et les immeubles de la défense;

e) tout ou partie d'un bâtiment ou d'une structure servant principalement de monument érigé en l'honneur

of a war, including a war memorial or cenotaph, or an object associated with honouring or remembering those persons that is located in or on the grounds of such a building or structure, or a cemetery;

(f) any other place as designated by the Minister of Public Safety and Emergency Preparedness.

des personnes tuées ou décédées en raison d'une guerre — notamment un monument commémoratif de guerre ou un cénotaphe —, d'un objet servant à honorer ces personnes ou à en rappeler le souvenir et se trouvant dans un tel bâtiment ou une telle structure ou sur le terrain où ceux-ci sont situés, ou d'un cimetière;

f) tout autre lieu désigné par le ministre de la Sécurité publique et de la Protection civile.

Direction to render essential goods and services

7 (1) Any person must make available and render the essential goods and services requested by the Minister of Public Safety and Emergency Preparedness, the Commissioner of the Royal Canadian Mounted Police or a person acting on their behalf for the removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade.

Ordre de fournir des biens et services essentiels

7 (1) Toute personne doit rendre disponibles et fournir les biens et services essentiels demandés par le ministre de la Sécurité publique et de la Protection civile, du commissaire de la Gendarmerie royale du Canada, ou la personne agissant en leur nom pour l'enlèvement, le remorquage et l'entreposage de véhicules, d'équipement, des structures ou de tout autre objet qui composent un blocage.

Method of request

(2) Any request made under subsection (1) may be made in writing or given verbally by a person acting on their behalf.

Modalités

(2) La demande faite au titre du paragraphe (1) peut être faite par écrit ou communiquée verbalement ou la personne agissant en son nom.

Verbal request

(3) Any verbal request must be confirmed in writing as soon as possible.

Demande verbale

(3) La demande verbale est confirmée par écrit dès que possible.

Period of request

8 A person who, in accordance with these Regulations, is subject to a request under section 7 to render essential goods and services must comply immediately with that request until the earlier of any of the following:

(a) the day referred to in the request;

(b) the day on which the declaration of the public order emergency expires or is revoked; or

(c) the day on which these Regulations are repealed.

Période de validité

8 Quiconque fait l'objet d'une demande au titre de l'article 7 pour la fourniture de biens et de services essentiels est tenu de s'y conformer dans les plus brefs délais jusqu'à la première des dates suivantes :

a) la date indiqué à la demande;

b) la date de l'abrogation ou la cessation d'effet de la déclaration d'état d'urgence;

c) la date de l'abrogation du présent règlement.

Compensation for essential goods and services

9 (1) Her Majesty in right of Canada is to provide reasonable compensation to a person for any goods or services that they have rendered at their request under section 7, which amount must be equal to the current market price for those goods or services of that same type, in the area in which the goods or services are rendered.

Indemnisation pour les biens et services essentiels

9 (1) Sa Majesté du chef du Canada accorde une indemnité raisonnable à la personne pour les biens fournis et les services rendus à sa demande aux termes de l'article 7 dont le montant équivaut au taux courant du marché pour les biens et services de même type, dans la région où les biens ont été fournis ou où les services ont été rendus.

Compensation

(2) Any person who suffers loss, injury or damage as a result of anything done or purported to be done under these Regulations may make an application for compensation in accordance with Part V of the *Emergencies Act* and any regulations made under that Part, as the case may be.

Compliance — peace officer

10 (1) In the case of a failure to comply with these Regulations, any peace officer may take the necessary measures to ensure the compliance with these Regulations and with any provincial or municipal laws and allow for the prosecution for that failure to comply.

Contravention of Regulations

(2) In the case of a failure to comply with these Regulations, any peace officer may take the necessary measures to ensure the compliance and allow for the prosecution for that failure to comply

(a) on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or

(b) on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years or to both.

Coming into force

11 This Order comes into force on the day on which it is registered.

Indemnisation

(2) Toute personne qui subit des dommages corporels ou matériels entraînés par des actes accomplis, ou censés l'avoir été, en application du présent règlement peut, à cet égard, présenter une demande d'indemnisation conformément à la partie V de la *Loi sur les mesures d'urgence* et à ses règlements d'application, le cas échéant.

Application des lois

10 (1) En cas de contravention au présent règlement, tout agent de la paix peut prendre les mesures nécessaires pour faire observer le présent règlement ou toutes lois provinciales ou municipales et permettre l'engagement de poursuites pour cette contravention.

Pénalités

(2) Quiconque contrevient au présent règlement est coupable d'une infraction passible, sur déclaration de culpabilité :

a) par procédure sommaire, d'une amende maximale de 500 $ et d'un d'emprisonnement maximal de six mois, ou de l'une de ces peines;

b) par mise en accusation, d'une amende maximale de 5 000 $ et d'un emprisonnement maximal de cinq ans, ou de l'une de ces peines.

Entrée en vigueur

11 Le présent règlement entre en vigueur à la date de son enregistrement.

Appendix 34

Emergency Economic Measures Order

CANADA

CONSOLIDATION

CODIFICATION

Emergency Economic Measures Order

Décret sur les mesures économiques d'urgence

SOR/2022-22

DORS/2022-22

Current to January 11, 2023

À jour au 11 janvier 2023

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http://lois-laws.justice.gc.ca

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Incompatibilité — règlements

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

This consolidation is current to January 11, 2023. Any amendments that were not in force as of January 11, 2023 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 11 janvier 2023. Toutes modifications qui n'étaient pas en vigueur au 11 janvier 2023 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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EMERGENCIES ACT

Emergency Economic Measures Order

P.C. 2022-108 February 15, 2022

Whereas the Governor in Council has, by a proclamation made pursuant to subsection 17(1) of the *Emergencies Act*, declared that a public order emergency exists;

And whereas the Governor in Council has reasonable grounds to believe that the measures with respect to property referred to in this Order are necessary;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, pursuant to subsection 19(1) of the *Emergencies Act*, makes the annexed *Emergency Economic Measures Order*.

Enregistrement
DORS/2022-22 Le 15 février 2022

LOI SUR LES MESURES D'URGENCE

Décret sur les mesures économiques d'urgence

C.P. 2022-108 Le 15 février 2022

Attendu que la gouverneure en conseil a, par proclamation prise en vertu du paragraphe 17(1) de la *Loi sur les mesures d'urgence*, déclaré qu'il existe un état d'urgence;

Attendu que la gouverneure en conseil a des motifs raisonnables de croire que les mesures relatives aux biens prévues dans le présent décret sont fondées,

À ces causes, sur recommandation du ministre de la Sécurité publique et de la Protection civile et en vertu du paragraphe 19(1) de la *Loi sur les mesures d'urgence*, Son Excellence la Gouverneure générale en conseil prend le *Décret sur les mesures économiques d'urgence*, ci-après.

Emergency Economic Measures Order

Definitions

1 The following definitions apply to this Order:

designated person means any individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*. (*personne désignée*)

entity includes a corporation, trust, partnership, fund, unincorporated association or organization or foreign state. (*entité*)

Duty to cease dealings

2 (1) Any entity set out in section 3 must, upon the coming into force of this Order, cease

(a) dealing in any property, wherever situated, that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of that designated person;

(b) facilitating any transaction related to a dealing referred to in paragraph (a);

(c) making available any property, including funds or virtual currency, to or for the benefit of a designated person or to a person acting on behalf of or at the direction of a designated person; or

(d) providing any financial or related services to or for the benefit of any designated person or acquire any such services from or for the benefit of any such person or entity.

Insurance policy

(2) Paragraph 2(1)(d) does not apply in respect of any insurance policy which was valid prior to the coming in force of this Order other than an insurance policy for any vehicle being used in a public assembly referred to in subsection 2(1) of the *Emergency Measures Regulations*.

Duty to determine

3 The following entities must determine on a continuing basis whether they are in possession or control of property that is owned, held or controlled by or on behalf of a designated person:

Décret sur les mesures économiques d'urgence

Définitions

1 Les définitions qui suivent s'appliquent au présent décret :

entité S'entend notamment d'une personne morale, d'une fiducie, d'une société de personne, d'un fonds, d'une organisation ou d'une association dotée de la personnalité morale ou d'un État étranger. (*entity*)

personne désignée Toute personne physique ou entité qui participe, même indirectement, à l'une ou l'autre des activités interdites au titre des articles 2 à 5 du *Règlement sur les mesures d'urgence*. (*designated person*)

Obligations de cesser les opérations

2 (1) Dès l'entrée en vigueur du présent décret, les entités visées à l'article 3 doivent cesser :

a) toute opération portant sur un bien, où qu'il se trouve, appartenant à une personne désignée ou détenu ou contrôlé par elle ou pour son compte ou suivant ses instructions;

b) toute transaction liée à une opération visée à l'alinéa a) ou d'en faciliter la conclusion;

c) de rendre disponible des biens — notamment des fonds ou de la monnaie virtuelle — à une personne désignée ou à une personne agissant pour son compte ou suivant ses instructions, ou au profit de l'une ou l'autre de ces personnes;

d) de fournir des services financiers ou connexes à une personne désignée ou à son profit ou acquérir de tels services auprès d'elle ou à son profit.

Police d'assurance

(2) Toutefois, l'alinéa 2(1)d) ne s'applique pas à l'égard d'une police d'assurance effective — au moment de l'entrée en vigueur du présent décret — portant sur un véhicule autre que celui utilisé lors d'une assemblée publique visée au paragraphe 2(1) du *Règlement sur les mesures d'urgence*.

Vérification

3 Il incombe aux entités mentionnées ci-après de vérifier de façon continue si des biens qui sont en leur possession

(a) *authorized foreign banks*, as defined in section 2 of the *Bank Act*, in respect of their business in Canada, and banks regulated by that Act;

(b) cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*;

(c) *foreign companies*, as defined in subsection 2(1) of the *Insurance Companies Act*, in respect of their insurance business in Canada;

(d) *companies*, *provincial companies* and *societies*, as those terms are defined in subsection 2(1) of the *Insurance Companies Act*;

(e) fraternal benefit societies regulated by a provincial Act in respect of their insurance activities and insurance companies and other entities regulated by a provincial Act that are engaged in the business of insuring risks;

(f) companies regulated by the *Trust and Loan Companies Act*;

(g) trust companies regulated by a provincial Act;

(h) loan companies regulated by a provincial Act;

(i) entities that engage in any activity described in paragraphs 5(h) and (h.1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;

(j) entities authorized under provincial legislation to engage in the business of dealing in securities or to provide portfolio management or investment counselling services;

(k) entities that provide a platform to raise funds or virtual currency through donations; and

(l) entities that perform any of the following payment functions:

(i) the provision or maintenance of an account that, in relation to an electronic funds transfer, is held on behalf of one or more end users,

(ii) the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity,

(iii) the initiation of an electronic funds transfer at the request of an end user,

ou sous leur contrôle appartiennent à une personne désignée ou sont détenus ou contrôlés par elle ou pour son compte :

a) les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*, dans le cadre de leurs activités au Canada, et les banques régies par cette loi;

b) les coopératives de crédit, caisses d'épargne et de crédit et caisses populaires régies par une loi provinciale et les associations régies par la *Loi sur les associations coopératives de crédit*;

c) les sociétés étrangères, au sens du paragraphe 2(1) de la *Loi sur les sociétés d'assurances*, dans le cadre de leurs activités d'assurance au Canada;

d) les sociétés, les sociétés de secours et les sociétés provinciales, au sens du paragraphe 2(1) de la *Loi sur les sociétés d'assurances*;

e) les sociétés de secours mutuel régies par une loi provinciale, dans le cadre de leurs activités d'assurance, et les sociétés d'assurances et autres entités régies par une loi provinciale qui exercent le commerce de l'assurance;

f) les sociétés régies par la *Loi sur les sociétés de fiducie et de prêt*;

g) les sociétés de fiducie régies par une loi provinciale;

h) les sociétés de prêt régies par une loi provinciale;

i) les entités qui se livrent à une activité visée aux alinéas 5h) et h.1) de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes*;

j) les entités autorisées en vertu de la législation provinciale à se livrer au commerce des valeurs mobilières ou à fournir des services de gestion de portefeuille ou des conseils en placement;

k) les plateformes collaboratives et celles de monnaie virtuelle qui sollicitent des dons;

l) toute entité qui exécute l'une ou l'autre de fonctions suivantes :

(i) la fourniture ou la tenue d'un compte détenu au nom d'un ou de plusieurs utilisateurs finaux en vue d'un transfert électronique de fonds,

(iv) the authorization of an electronic funds transfer or the transmission, reception or facilitation of an instruction in relation to an electronic funds transfer, or

(v) the provision of clearing or settlement services.

(ii) la détention de fonds au nom d'un utilisateur final jusqu'à ce qu'ils soient retirés par celui-ci ou transférés à une personne physique ou à une entité,

(iii) l'initiation d'un transfert électronique de fonds à la demande d'un utilisateur final,

(iv) l'autorisation de transfert électronique de fonds ou la transmission, la réception ou la facilitation d'une instruction en vue d'un transfert électronique de fonds,

(v) la prestation de services de compensation ou de règlement.

Registration requirement — FINTRAC

4 (1) The entities referred to in paragraphs 3(k) and (l) must register with the Financial Transactions and Reports Analysis Centre of Canada established by section 41 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* if they are in possession or control of property that is owned, held or controlled by or on behalf of a designated person.

Inscription obligatoire — Centre

4 (1) Les entités visées aux alinéas 3k) et l) doivent s'inscrire auprès du Centre d'analyse des opérations et déclarations financières du Canada constitué par l'article 41 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* s'ils ont en leur possession un bien appartenant à une personne désignée ou détenu ou contrôlé par elle ou pour son compte ou suivant ses instructions.

Reporting obligation — suspicious transactions

(2) Those entities must also report to the Centre every financial transaction that occurs or that is attempted in the course of their activities and in respect of which there are reasonable grounds to suspect that

(a) the transaction is related to the commission or the attempted commission of a money laundering offence by a designated person; or

(b) the transaction is related to the commission or the attempted commission of a terrorist activity financing offence by a designated person.

Opérations douteuses

(2) Elles doivent également déclarer au Centre toute opération financière effectuée ou tentée dans le cours de ses activités et à l'égard de laquelle il y a des motifs raisonnables de soupçonner qu'elle est liée à la perpétration — réelle ou tentée — par à une personne désignée :

a) soit d'une infraction de recyclage des produits de la criminalité;

b) soit d'une infraction de financement des activités terroristes.

Reporting obligation — other transactions

(3) Those entities must also report to the Centre the transactions and information set out in subsections 30(1) and 33(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

Autres opérations

(3) Elles doivent également déclarer au Centre les opérations visées aux paragraphes 30(1) ou 33(1) du *Règlement sur le recyclage des produits de la criminalité et le financement des activités terroristes*.

Duty to disclose — RCMP or CSIS

5 Every entity set out in section 3 must disclose without delay to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service

(a) the existence of property in their possession or control that they have reason to believe is owned, held or controlled by or on behalf of a designated person; and

Obligation de communication à la GRC et au SCRC

5 Toute entité visée à l'article 3 est tenue de communiquer, sans délai, au commissaire de la Gendarmerie royale du Canada ou au directeur du Service canadien du renseignement de sécurité :

a) le fait qu'elle croit que des biens qui sont en sa possession ou sous son contrôle appartiennent à une personne désignée ou sont détenus ou contrôlés par elle ou pour son compte;

(b) any information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

b) tout renseignement portant sur une transaction, réelle ou projetée, mettant en cause des biens visés à l'alinéa a).

Disclosure of information

6 A Government of Canada, provincial or territorial institution may disclose information to any entity set out in section 3, if the disclosing institution is satisfied that the disclosure will contribute to the application of this Order.

Communication

6 Toute institution fédérale, provinciale ou territoriale peut communiquer des renseignements au responsable d'une entité visée à l'article 3, si elle est convaincue que les renseignements aideront à l'application du présent décret.

Immunity

7 No proceedings under the *Emergencies Act* and no civil proceedings lie against an entity for complying with this Order.

Immunité

7 Aucune poursuite en vertu de la *Loi sur les mesures d'urgence* ni aucune procédure civile ne peuvent être intentées contre une entité qui se conforme au présent décret.

Coming into force

8 This Order comes into force on the day on which it is registered.

Entrée en vigueur

8 Le présent décret entre en vigueur à la date de son enregistrement.

Appendix 35

Report to the Houses of Parliament: *Emergencies Act* Consultations

Minister of Public Safety | Ministre de la Sécurité publique

Report to the Houses of Parliament: *Emergencies Act* Consultations

February 16, 2022

Canada

Report to the Houses of Parliament: *Emergencies Act* Consultations

Background and the Requirement to Consult

On February 14, 2022, the Governor in Council declared a public order emergency under the *Emergencies Act*. Section 25 of the Act requires the Governor in Council to consult the Lieutenant Governor in Council of each province with respect to a proposal to declare a public order emergency. A report of these consultations must be laid before each House of Parliament within seven sitting days after the declaration is issued, in accordance with section 58 of the Act.

Engagement

Since the crisis began in late January, federal ministers and officials have continuously engaged provinces and territories, municipalities, and law enforcement agencies to assess the situation and to offer the support and assistance of the Government of Canada. Staff in the Prime Minister's Office and in various Minister's offices had ongoing communications with Premiers' offices and related ministers' offices throughout this period. Examples of engagement with provincial, municipal, and international partners include the following:

- There has been regular engagement with the City of Ottawa in relation to requests for federal support. This includes the request from the City of Ottawa for policing services (February 7, 2022 letter to the Prime Minister from the Ottawa Mayor and the Chair of the Ottawa Police Services Board).
    - The Prime Minister spoke to the Mayor of Ottawa on January 31 and February 8, 2022 about the illegal occupation in Ottawa.
    - Trilateral meetings took place on February 7, 8, and 10, 2022 with the President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness, the Minister of Public Safety, the Mayor of Ottawa, the City Manager of Ottawa, and the Chief of Ottawa Police Services. The Minister also spoke with the Solicitor General of Ontario on February 7, 2022 to discuss the work of the tripartite table.
    - Staff from the Office of the President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness have been in regular contact with the Office of the Premier of Ontario, as well as the Deputy Mayor of Ottawa.
    - The President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness also spoke with the President of the Canadian Association of Chiefs of Police on February 3 and 13, 2022 on support for the Ottawa Police Service.

- The President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness also spoke with the President of the Federation of Canadian Municipalities on February 3, 2022 about the situation in Ottawa.

- There has also been regular engagement with municipal and provincial officials concerning the Ambassador Bridge, including on a request for assistance received from the City of Windsor on February 9, 2022.

    - The Prime Minister spoke with the Premier of Ontario on February 9, 2022, and the Minister of Intergovernmental Affairs, Infrastructure and Communities spoke with the Premier of Ontario (February 10 and 11, 2022) regarding measures being taken by the Province in relation to the Ambassador Bridge.

    - The Prime Minister spoke to the Mayor of Windsor on February 10, 2022 about the blockade at the Ambassador Bridge.

    - The Prime Minister spoke with the President of the United States on February 11, 2022. The leaders discussed the critical importance of resolving access to the Ambassador Bridge and other ports of entry as quickly as possible.

    - The Minister of Transport spoke with Ontario's Minister of Transportation on February 9, 2022 about the blockades at border crossings. The Minister also spoke with the Mayor of Windsor on February 11, 2022 concerning the Ambassador Bridge.

    - Staff from the Office of the President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness and the Office of the Minister of Intergovernmental Affairs, Infrastructure and Communities have also been in regular contact with the City of Windsor.

- The Minister of Public Safety engaged the Premier of Ontario on February 9, 2022. The Minister has also been in regular contact with the Mayor of Ottawa and the Mayor of Windsor, including through the tripartite discussions. His staff have also engaged with both Mayors' offices. The Office of the Minister of Intergovernmental Affairs, Infrastructure and Communities engaged the Office of the Minister of Transportation of Ontario on February 7, 2022, and was in regular contact with the Office of the Premier of Ontario.

- The Office of the Prime Minister has also had ongoing discussions with the Office of the Premier of Ontario regarding the Ottawa, Windsor, and Sarnia blockades in the weeks leading up to the declaration. These conversations made it clear that more federal support was needed.

- There has been regular engagement with provincial officials concerning the Coutts port of entry, including the Province's request for assistance in relation to tow truck capacity (February 5, 2022 letter to Ministers of Public Safety and Emergency Preparedness from the Alberta Minister of Municipal Affairs).
    - The Minister of Public Safety engaged with the Premier of Alberta on February 2 and 9, 2022, and with the Premier and the Acting Minister of Justice and Solicitor General of Alberta on February 7, 2022. The Minister also engaged the Acting Minister of Justice and Solicitor General of Alberta on February 1, 5, and 9, 2022.
    - The Minister of Transport spoke with Alberta's Minister of Transportation on February 5 and 9, 2022.
    - The Minister of Intergovernmental Affairs, Infrastructure and Communities communicated with the Premier of Alberta on February 10 and 11, 2022.
- Ministers also engaged counterparts in other provinces:
    - The Minister of Transport spoke with Manitoba's Minister of Transportation and Infrastructure on February 12, 2022 concerning the Emerson port of entry.
    - The President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness spoke with the Minister of Public Safety and Solicitor General and Deputy Premier of British Columbia on February 5 and 13, 2022 to discuss protests in Victoria and how the federal government could assist if circumstances required, including mutual emergency legislation.
    - In support of his Cabinet colleagues and on behalf of the Prime Minister, the Minister of Intergovernmental Affairs, Infrastructure and Communities also communicated with the premiers of Nova Scotia (February 12, 2022), New Brunswick (February 12, 2022), Newfoundland and Labrador (February 12, 2022), and British Columbia (February 13, 2022) to ask about the current status and to offer federal support to help the provinces respond to the disruption and blockades.

Federal, provincial, and territorial (FPT) officials have also met on a multilateral and bilateral basis, including the following:

- Public Safety Canada officials shared information on the ongoing situation and the use of authorities. This included:

- The FPT Crime Prevention and Policing Committee (CPPC) held an ad hoc meeting on February 7, 2022 at the deputy minister level.
- The FPT CPPC Committee met at the assistant deputy minister level on February 1 and 11, 2022.
- Discussions took place with assistant deputy ministers from Ontario, Manitoba, and Alberta on February 13, 2022, and with Ontario and Manitoba on February 14, 2022.

- Transport Canada officials gathered and shared information with PT transport ministries on PT tools/actions being considered to manage the convoys, including potential infraction and enforcement regimes under the respective jurisdictions' motor vehicle safety legislation. This included:
  - The ADM-level table of the Council of Minsters Responsible for Transportation and Highway Safety met twice, on February 4 and 8, 2022.
  - Calls took place with Alberta and Ontario on February 5, 2022, with Ontario on February 6 and 7, 2022, and with Alberta on February 7, 2022.

The Government of Canada also engaged Indigenous leaders regarding the blockades. For example, the Minister of Crown-Indigenous Relations spoke with the National Chief of the Assembly of First Nations, the President of the Inuit Tapiriit Kanatami, the President of the Métis National Council, the Grand Chief of Akwesasne, and the Grand Chief of the Manitoba Southern Chief's Organization.

The decisions on next steps and to consult premiers on the *Emergencies Act* was informed by all of the federal ministerial and senior official engagement with provinces since the onset of the crisis.

Consultations on the Emergencies Act with First Ministers

The Prime Minister convened a First Ministers' Meeting on February 14, 2022, to consult premiers on whether to declare a public order emergency under the *Emergencies Act*. The Prime Minister was joined by the Minister of Intergovernmental Affairs, Infrastructure and Communities, the Minister of Justice and Attorney General of Canada, and the Minister of Public Safety. All premiers participated.

The Prime Minister explained why the declaration of a public order emergency might be necessary and formally consulted premiers. The Minister of Justice outlined potential measures the Government of Canada was contemplating to take under the *Emergencies Act* to supplement the measures in the provinces' jurisdiction and respond to the urgent and

unprecedented situation. The Prime Minister asked what measures could be supplemented through the *Emergencies Act* by using proportional, time-limited authorities.

Each premier was given the opportunity to provide his/her perspectives on the current situation – both nationally and in their own jurisdiction – and whether a declaration of public order emergency should be issued. A variety of views and perspectives were shared at the meeting. Some premiers indicated support for the proposed measures as necessary to resolve the current situation, noting they would be focused on targeted areas, time-limited, and would be subject to ongoing engagement. Other premiers did not feel the *Emergencies Act* was needed at this time, arguing that provincial and municipal governments have sufficient authority to address the situation in their respective jurisdictions. Some premiers expressed caution that invoking the *Emergencies Act* could escalate the situation.

While the views expressed at the First Ministers' Meeting were shared in confidence, premiers provided their perspectives in public statements following the First Ministers' Meeting.

- The Premier of Ontario said he supports the federal government's decision to provide additional tools to help police resolve the situation in the nation's capital. He said he expressed to the Prime Minister that these measures should be targeted and time-limited.

- The Premier of Newfoundland and Labrador said that he supports invoking the *Emergencies Act* on a time limited basis to bolster the response to deal with unacceptable behaviour within blockades, infringing on the rights of law-abiding Canadians.

- British Columbia's Minister of Public Safety and Solicitor General and Deputy Premier also said that the Province supported the use of the *Emergencies Act*, according to media reports.

- The Premier of Quebec said that he opposed the application of the *Emergencies Act* in Quebec, stating that municipal police and the Sûreté du Québec have control of the situation, and arguing that the use of the Act would be divisive.

- The Premier of Alberta tweeted that Alberta's Government is opposed to the invocation of the *Emergencies Act*, arguing that Alberta has all the legal tools and operational resources required to maintain order. He also expressed concern that invocation of the *Emergencies Act* could escalate a tense situation.

- The Premier of Saskatchewan issued the following tweet: "The illegal blockades must end, but police already have sufficient tools to enforce the law and clear the blockades, as they did over the weekend in Windsor. Therefore, Saskatchewan does not support the Trudeau government invoking the *Emergencies Act*. If the federal government does proceed with

this measure, I would hope it would only be invoked in provinces that request it, as the legislation allows."

- The Premier of Manitoba issued a statement in which she noted that the situation in each province and territory is very different and she is not currently satisfied the *Emergencies Act* should be applied in Manitoba. She said that in her view, the sweeping effects and signals associated with the never-before-used *Emergencies Act* are not constructive in Manitoba, where caution must be taken against overreach and unintended negative consequences.

- The Premier of New Brunswick, the Premier of Nova Scotia, and the Premier of Prince Edward Island have also commented that they do not believe the *Emergencies Act* is necessary in their respective provinces, stating that policing services have sufficient authority to enforce the law.

- The premiers of Yukon, the Northwest Territories, and Nunavut provided feedback during the First Ministers' Meeting, although have not issued public statements.

During the First Ministers' Meeting, the Prime Minister emphasized that a final decision had not yet been made, and that the discussion amongst First Ministers would inform the Government of Canada's decision.

There was further engagement with provinces following the First Ministers' Meeting and prior to the Government of Canada's decision to declare a public order emergency on February 14, 2022:

- The Office of the Prime Minister spoke with the Office of the Premier of British Columbia, as Chair of the Council of the Federation, before the Government of Canada's decision was made on February 14, 2022 to offer briefings to premiers' offices, and to explain the role of provinces and territories under the *Emergencies Act*.

- The Minister of Intergovernmental Affairs, Infrastructure and Communities communicated with his Quebec counterpart on the *Emergencies Act.* The Minister of Canadian Heritage and Quebec Lieutenant also connected with Quebec's Deputy Premier and Minister of Public Safety and Quebec's Minister of Finance, and officials from the Prime Minister's Office engaged with the Office of the Premier of Quebec.

- The Minister of Intergovernmental Affairs, Infrastructure and Communities also engaged the Premier of Ontario and received feedback from the Premier of Saskatchewan.

- The Office of the Prime Minister spoke with the Office of the Premier of Ontario and the Office of the Premier of Newfoundland and Labrador on February 14, 2022 to explain the rationale and implementation of the *Emergencies Act*.

The Prime Minister considered all of the comments shared at the First Ministers' Meeting, as well as the many other sources of information and intelligence. He announced his intention to invoke the *Emergencies Act* with targeted, time-limited measures that would complement provincial and municipal authorities late in the day on February 14, 2022.

On February 15, 2022 the Prime Minister wrote to all premiers, outlining the reasons why the Government of Canada decided to declare a public order emergency and described the types of measures that would be available under the Act. The letter responded to issues raised during the discussion, particularly on whether the declaration of a public order emergency should apply nationally. For example, the letter emphasized that the measures would be applied to targeted areas; that measures would supplement, rather than replace, provincial and municipal authorities; that these are tools that could be employed by police of local jurisdiction, at their discretion; and that the Royal Canadian Mounted Police would be engaged only when requested by local authorities. The letter also emphasized the Government of Canada's strong interest in further engagement and collaboration with provinces and territories on these issues.

Next Steps

Consistent with the *Emergencies Act's* requirements, the Government of Canada is committed to ongoing consultation and collaboration with the provinces and territories to ensure that the federal response complements the efforts of their governments. Ongoing consultation will also be necessary should there be a need to modify or extend existing orders under the *Emergencies Act*.

Supported by their officials, Ministers engaged with their counterparts following the First Ministers' Meeting, and will continue to engage provinces and territories on an ongoing basis. They will be available to quickly respond to specific issues or situations, as they arise. More recent engagement includes:

- The Minister of Justice and Attorney General of Canada spoke with his Quebec counterpart on February 14, 2022 about the *Emergencies Act.*

- The Minister of Transport spoke with British Columbia's Minister of Transportation and Infrastructure on February 14, 2022 about blockades at border crossings. The Ministers discussed how the *Emergencies Act* can assist law enforcement.

- The Minister of Transport spoke with Nova Scotia's Minister of Public Works on February 15, 2022 and provided an overview of the emergency measures being taken under the *Emergencies Act*.

- On February 15, 2022, representatives from the Justice Minister's Office spoke with the Mayor of Winnipeg about the *Emergencies Act*. In a statement on February 15, 2022, the Mayor said he is grateful the federal government is "taking action to make additional tools available to assist with the quick and peaceful end to the unlawful occupations."

- A briefing for PT Deputy Ministers of Intergovernmental Affairs took place on February 15, 2022. A follow-up meeting is scheduled for February 17, 2022. FPT Deputy Ministers of Intergovernmental Affairs will continue to engage on these issues through regular and ongoing communications.

- A briefing is planned for February 16, 2022 for Assistant Deputy Ministers in provincial and territorial ministries of Public Safety, Transportation, the Solicitor General, and Intergovernmental Affairs.

- Collaboration through policing services will also continue. On February 15, 2022, the Interim Chief of the Ottawa Police Service stated that with new resources from policing partners and tools from both the provincial and federal governments, the Ottawa Police Service believe they now have the resources and power to bring a safe end to this occupation. Ottawa's Deputy Police Chief further commented that there is collaboration on the application of the *Emergencies Act* in Ottawa.

- There will be weekly engagement by the Minister of Public Safety with his provincial and territorial counterparts.

The Government of Canada will continue to gather and assess feedback through these ongoing engagements to assess the orders and regulations under the *Emergencies Act* and to ensure a coordinated and effective response on behalf of Canadians.

Annex:

- Letter from the Prime Minister to premiers

Annex: Letter from the Prime Minister to premiers

Dear Premier:

I would like to thank you for the productive conversation we had at the First Ministers' Meeting on February 14, 2022, where we consulted you on the declaration of a public order emergency under the *Emergencies Act*.

I recognize many Canadians, including myself, are frustrated with the pandemic, and with having our lives disrupted for two years. However, while some protestors have participated to demonstrate their fatigue and frustration with public health measures, this is no longer the motivation of many of the participants and organizers. We are seeing activity that is a threat to our democracy and that is undermining the public's trust in our institutions.

The Government of Canada believes firmly in the right to peaceful protest. But as we discussed, the activities taking place across the country have gone well beyond peaceful protest. These are organized events, and the situation is very volatile. While this may have started in Ottawa, we are seeing flare-ups in almost every jurisdiction.

We are facing significant economic disruptions, with the breakdown of supply chains. This is costing Canadians their jobs and undermining our economic and national security, with potentially significant impacts on the health and safety of Canadians. It is affecting Canada's reputation internationally, hurting trade and commerce, and undermining confidence and trust in our institutions.

Given that this situation is escalating, we each have to look at all possible measures to resolve the current challenges as quickly as possible. We believe that we have reached the point where there is a national emergency arising from threats to Canada's security. That is why the Government of Canada has determined it is necessary to take action to protect Canadians and safeguard our economy by declaring a public order emergency under the *Emergencies Act*.

The declaration of a public order emergency serves as authority for Canada to enact measures under paragraph 19(1) of the *Emergencies Act*. During our

call, Minister Lametti highlighted six types of temporary, time-limited measures that could be adopted under the *Emergencies Act*:

1. **Regulation and prohibition of public assemblies that lead to a breach of the peace other than lawful advocacy, protest, or dissent**

   What we are seeing in Ottawa and at the Ambassador Bridge are not lawful protests. Examples of measures could include: prohibiting minors from participating in an unlawful activity; prohibiting foreign nationals from entering Canada to participate in an illegal gathering; removing foreign nationals from Canada when appropriate; and adding to the list of offences that qualify as inadmissible criteria for entry into Canada.

2. **Designating and securing places where blockades are to be prohibited**

   This could include geographically limited application at borders, approaches to borders, other critical infrastructure, or the City of Ottawa.

3. **Directing persons to render essential services to relieve impacts of blockades on Canada's economy**

   This could include tow trucks and their drivers, for compensation.

4. **Authorizing or directing financial institutions to render essential services to relieve impact of blockades**

   This could include regulating and prohibiting the use of property to fund or support the blockades.

5. **Measures enabling the RCMP to enforce municipal by laws and provincial offences where required, and if asked by local authorities**

   All measures enacted pursuant to the *Emergencies Act* would be enforceable by municipal and provincial police services; the RCMP can contribute if asked to do so.

6. **The imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act***

Our Government recognizes the importance of coordinating with provinces, territories, and municipalities to ensure the safety and security of Canadians.

Targeted, time-limited, and proportional measures under the *Emergencies Act* would provide further support to police within your jurisdiction. This is not about displacing provincial or territorial jurisdiction, or superseding measures you have in place. This is about supplementing measures in your jurisdiction with additional legal authorities to give local law enforcement the maximum leverage to be able to uphold the rule of law and deal with the situation we are facing. We are not proposing to have the RCMP or any other authority supplant local law enforcement; rather, we wish to expand the range of tools available to law enforcement at all levels. We want to ensure that the federal response complements the efforts that your governments and municipalities continue to make to bring stability to the nation. The federal government continues to stand by to assist with resource asks, if and when required, to deal with the current situation.

I appreciate the views you shared yesterday on our call and I can assure you that they have been taken into account in the approaches we are taking, and will also inform the consultation report which will be tabled with the motion confirming the declaration. In addition to our discussions to date, briefings and discussions amongst officials in the coming days will also be useful. Consultation and coordination will continue to be essential on implementation which is consistent with the requirements of the *Emergencies Act* for consultations.

I would like to thank you, once again, for the discussion we have had on the *Emergencies Act* and I look forward to continue to get your perspective through this ongoing, consultative process. The federal government will continuously monitor and assess the implementation of the powers and authorities under the *Emergencies Act*, and stands ready to be able to respond to any need that emerges from premiers. The Minister of Public Safety will also have regular updates with his counterparts. Please follow up with me, or with Ministers Lametti, Mendicino, or LeBlanc, should you wish to discuss these matters further.

I am forwarding, for their information, a copy of this letter to David Lametti, Minister of Justice and Attorney General of Canada; Chrystia Freeland, Deputy Prime Minister and Minister of Finance; William Sterling Blair,

President of the Queen’s Privy Council for Canada and Minister of Emergency Preparedness; Marco E. L. Mendicino, Minister of Public Safety; and Dominic LeBlanc, Minister of Intergovernmental Affairs, Infrastructure and Communities.

Sincerely,

Appendix 36

February 14, 2022 Declaration of Public Order Emergency: Explanation pursuant to subsection 58(1) of the *Emergencies Act*

Declaration of Public Order Emergency

On February 14, 2022, the Governor in Council directed that a proclamation be issued pursuant to subsection 17(1) of the *Emergencies Act* declaring that a public order emergency exists throughout Canada that necessitates the taking of special temporary measures for dealing with the emergency.

In order to declare a public order emergency, the *Emergencies Act r*equires that there be an emergency that arises from threats to the security of Canada that are so serious as to be a national emergency. Threats to the security of Canada include the threat or use of acts of serious violence against persons or property for the purpose of achieving a political or ideological objective. A national emergency is an urgent, temporary and critical situation that seriously endangers the health and safety of Canadians that cannot be effectively dealt with by the provinces or territories, or that seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada. It must be a situation that cannot be effectively dealt with by any other law of Canada. Any measures taken under the Act must be exercised in accordance with the *Canadian Charter of Rights and Freedoms* and should be carefully tailored to limit any impact on *Charter* rights to what is reasonable and proportionate in the circumstances.

The *Proclamation Declaring a Public Order Emergency* made on February 14, 2022 specified that the public order emergency is constituted of:

> (i) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

(ii) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,

(iii) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States (U.S.), that are detrimental to the interests of Canada,

(iv) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(v) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

The proclamation specifies six types of temporary measures that may be necessary to deal with the public order emergency:

(i) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure,

(ii) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures

to identify those essential services and the persons competent to render them and to provide reasonable compensation in respect of services so rendered,

(iii) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including measures to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade,

(iv) measures to authorize the Royal Canadian Mounted Police (RCMP) to enforce municipal and provincial laws by means of incorporation by reference,

(v) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and

(vi) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

These measures have been implemented by the *Emergency Measures Regulations* and the *Emergency Economic Measures Order.*

Section 58(1) of the *Emergencies Act* requires that a motion for confirmation of a declaration of emergency, signed by a Minister of the Crown, together with an explanation of the reasons for issuing the declaration and a report on any consultation with the lieutenant governors in council of the provinces with respect to the declaration, be laid before each House of Parliament within seven sitting days after the declaration is issued.

Background leading to the declaration of emergency

The “Freedom Convoy 2022” was the first manifestation of this growing movement centered on anti-government sentiments related to the public health response to the COVID-19 pandemic. Trucker convoys began their journey from various points in the country, and the movement arrived in Ottawa on Friday, January 28, 2022. Since then, the movement has only continued to gain momentum across the country, with significant increase in numbers in Ottawa as well as protests and blockades spreading in different locations, including strategic ports of entry (e.g., Ambassador Bridge, Ontario; Coutts, Alberta; and Emerson, Manitoba).

Participants of these activities have adopted a number of tactics that are threatening, causing fear, disrupting the peace, impacting the Canadian economy, and feeding a general sense of public unrest – either in favour or against the movement. This has included harassing and berating citizens and members of the media, slow roll activity, slowing down traffic and creating traffic jams, in particular near ports of entry, as well as reports of protesters bringing children to protest sites to limit the level and types of law enforcement intervention. The movement has moved beyond a peaceful protest, and there is significant evidence of illegal activity underway. Regular citizens, municipalities and the province of Ontario have all participated in court proceedings seeking injunctive relief to manage the threats and impacts caused by the convoy’s activities, and a proposed class-action has been filed on behalf of residents of Ottawa.

Anecdotal reports of donations from outside Canada to support the protesters were given credence when, on February 13, 2022, hackers of the crowdfunding website, GiveSendGo.com, released hacked data that revealed information about donors and the amount of donations directed to the protesters. According to the Canadian Broadcasting Corporation’s February 14, 2022 analysis of the data, 55.7% of the 92,844 donations made public were made by donors in the U.S., compared to 39% of donors located in Canada. The remaining donors were in other countries, with the

U.K. being the most common. The amount donated by U.S. donors totaled $3.6 million (USD). Many of the donations were made anonymously.

Requests for Assistance and Consultations

The federal government has been in contact with its provincial counterparts throughout this situation. Some requests for federal support to deal with the blockades were from:

- the City of Ottawa for policing services;
- the Province of Ontario with respect to the Ambassador Bridge in Windsor, Ontario; and
- the Province of Alberta with respect to tow truck capacity at the Coutts port of entry.

For further details on the consultations, please see the Report to the Houses of Parliament: *Emergencies Act* Consultations.

Emergency Measures Taken by Ontario and other provinces

On February 11, 2022, the Province of Ontario declared a province-wide state of emergency under its *Emergency Management and Civil Protection Act*, in response to the interference with transportation and other critical infrastructure throughout the province, which is preventing the movement of people and delivery of essential goods.

Measures that have since been implemented under these emergency measures include: fines and possible imprisonment for protesters refusing to leave, with penalties of $100,000 and up to one year of imprisonment for non-compliance.

On February 12, 2022, the Ontario Government also enacted legislation under the *Emergency Management and Civil Protection Act*, (Ontario Regulation 71/22) making it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure. New Brunswick has announced that it will update its *Emergency Act* to prohibit stopping or parking a vehicle or otherwise contributing

to the interruption of the normal flow of vehicle traffic on any road or highway. Nova Scotia similarly issued a directive under its *Emergency Management Act* prohibiting protests from blockading a highway near the Nova Scotia-New Brunswick border.

No other province has signaled its intent to take similar steps.

As detailed in the Reasons below, the convoy activities have led to an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency.

Reasons for Public Order Emergency

The situation across the country remains concerning, volatile and unpredictable. The decision to issue the declaration was informed by an assessment of the overall, national situation and robust discussions at three meetings of the Incident Response Group on February 10, 12 and 13, 2022.

The intent of these measures is to supplement provincial and territorial authorities to address the blockades and occupation and to restore public order, the rule of law and confidence in Canada's institutions. These time-limited measures will be used only where needed depending on the nature of the threat and its evolution and would not displace or replace provincial and territorial authorities, nor would they derogate provinces and territories' authority to direct their police forces. The convoy activities and their impact constituting the reasons for the emergency as set out in the *Proclamation Declaring a Public Order Emergency* are detailed below:

i. **the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons**

or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada

The protests have become a rallying point for anti-government and anti-authority, anti-vaccination, conspiracy theory and white supremacist groups throughout Canada and other Western countries. The protesters have varying ideological grievances, with demands ranging from an end to all public health restrictions to the overthrow of the elected government. As one example, protest organizers have suggested forming a coalition government with opposition parties and the involvement of Governor General Mary Simon. This suggestion appears to be an evolution of a previous proposal from a widely circulated "memorandum of understanding" from a group called "Canada Unity" that is taking part in the convoy. The "memorandum of understanding" proposed that the Senate and Governor General could agree to join them in forming a committee to order the revocation of COVID-19 restrictions and vaccine mandates.

Tactics adopted by protesters in support of these aims include slow roll activity, slowing down traffic and creating traffic jams, in particular near ports of entry, as well as reports of protesters bringing children to protest sites to limit the level and types of law enforcement intervention. The intent of the protestors at ports of entry was to impede the importation and exportation of goods across the Canada-U.S. border in order to achieve a change in the Government of Canada's COVID health measures in addition to other government policies.

Trucks and personal vehicles in the National Capital Region continue to disrupt daily life in Ottawa and have caused retail and other businesses to shutter. Local tow truck drivers have refused to work with governments to remove trucks in the blockade. The Chief of the Ottawa Police Service resigned on February 15, 2022 in response to criticism of the police's response to the protests.

Convoy supporters formerly employed in law enforcement and the military have appeared alongside organizers and may be providing them with logistical and security advice, which may pose operational challenges for law enforcement should policing

techniques and tactics be revealed to convoy participants. There is evidence of coordination between the various convoys and blockades.

Violent incidents and threats of violence and arrests related to the protests have been reported across Canada. The RCMP's recent seizure of a cache of firearms with a large quantity of ammunition in Coutts, Alberta, indicated that there are elements within the protests that have intentions to engage in violence. Ideologically motivated violent extremism adherents may feel empowered by the level of disorder resulting from the protests. Violent online rhetoric, increased threats against public officials and the physical presence of ideological extremists at protests also indicate that there is a risk of serious violence and the potential for lone actor attackers to conduct terrorism attacks.

To help manage these blockades and their significant adverse impacts, the *Emergency Measures Regulations* prohibit certain types of public assemblies ("prohibited assemblies") that may reasonably be expected to lead to a breach of the peace by: (i) the serious disruption of the movement of persons or goods or the serous interference with trade; (ii) interference with the functioning of critical infrastructure; or (iii) the support the threat or use of acts of serious violence against persons or property. They also prohibit individuals from (i) participating or causing minors to participate in prohibited assemblies; (ii) travelling to or within an area where prohibited assemblies are taking place, or causing minors to travel to or within 500 metres of a prohibited assembly, subject to certain exceptions; and (iii) directly or indirectly using, collecting, providing, making available or soliciting property to facilitate or participate in a prohibited assembly or to benefit any person who is facilitating or participating in a prohibited assembly. Foreign nationals are also prohibited from entering Canada with the intent to participate or facilitate a prohibited public assembly, subject to certain exceptions.

The *Emergency Management Regulations* also designate certain places as protected and provide that they may be secured, including Parliament Hill and the parliamentary

precinct, critical infrastructures, official residences, government and defence buildings, and war memorials.

ii. the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings

Trade and transportation within Canada and between Canada and the U.S. are highly integrated. Border crossing, railway lines, airports and ports of entry are integrated and are adversely affected where one or more of the components is blockaded or prevented from operating under normal capacity.

Trade between Canada and the U.S. is crucial to the economy and the lives and welfare of all Canadians. Approximately 75% of Canadian exports go to the U.S., generating approximately $2 billion in imports/exports per day and $774 billion in total trade between the two countries in 2021.

Blockades and protests at numerous points along the Canada–U.S. border have already had a severe impact on Canada's economy. Protests at the major ports of entry at the Ambassador Bridge in Windsor, Ontario; Emerson, Manitoba; Coutts Alberta; and, Pacific Highway in British Columbia, each of which is critical to the international movement of people and goods, required the Canada Border Services Agency (CBSA) to suspend services.

An essential trading corridor, the Ambassador Bridge is Canada's busiest crossing, handling over $140 billion in merchandise trade in 2021. It accounted for 26% of the country's exports moved by road in 2021 ($63 billion out of $242 billion) and 33% of the country's imports ($80 billion out of $240 billion). Since the blockades began at the Ambassador Bridge, over $390 million in trade each day with Canada's most important trading partner, the U.S., has been affected, resulting in the loss of

employee wages, reduced automotive processing capacity and overall production loss in an industry already hampered by the supply shortage of critical electronic components. This bridge supports 30% of all trade by road between Canada and the U.S. The blockades in Coutts, Alberta, and Emerson, Manitoba, have affected approximately $48 million and $73 million in trade each day, respectively. These recent events targeting Canada's high volume commercial ports of entry have irreparably harmed the confidence that our trading partners have in Canada's ability to effectively contribute to the global economy and will result in manufacturers reassessing their manufacturing investments in Canada, impacting the health and welfare of thousands of Canadians.

In addition, throughout the week leading up to February 14, 2022, there were 12 additional protests that directly impacted port of entry operations. At two locations, Pacific Highway and Fort Erie, protestors had breached the confines of the CBSA plaza resulting in CBSA officers locking down the office to prevent additional protestors from gaining entry.

More specifically, disruptions at strategic ports of entry in Alberta, British Columbia, Manitoba and Ontario prior to the declaration of the emergency included:

- **Ambassador Bridge, Windsor, Ontario**: The busiest crossing along the Canada-U.S. border had been blocked since February 7, 2022. After an injunction was issued on February 11, 2022, law enforcement started to disperse protesters. On February 13, 2022, police enforcement action continued with reports of arrests being made and vehicles towed. As of the evening of February 13, 2022, the Ambassador Bridge has been fully reopened, and no delays at the border crossing are being reported, but efforts continue to ensure that the bridge remains open.
- **Sarnia, Ontario**: On February 8, 2022, two large groups of protestors conducted a blockade of the provincial highway leading to and from the Sarnia Blue Water Bridge. This port of entry is Canada's second busiest border crossing with imports and exports serving the oil and gas, perishable foods,

livestock and automotive sectors. The protest resulted in the suspension of all outbound movement of commercial and traveller vehicles to the U.S. along with reduced inbound capacity for incoming conveyances. The Ontario Provincial Police (OPP) were able to restore order to the immediate area of the port of entry after ten hours of border disruption. On February 9, 2022, members of one of the protest groups established a highway blockade approximately 30 kilometres east of Sarnia on the provincial highway, resulting in the diversion of international traffic to emergency detour routes to gain access to the border. This activity continued until February 14, 2022 when access to the portion of the highway was restored.

- **Fort Erie, Ontario**: On February 12, 2022, a large protest targeted the CBSA Peace Bridge port of entry at Fort Erie, Ontario. This port of entry is Canada's third busiest land border crossing responsible for millions of dollars in international trade each day of perishable goods, manufacturing components and courier shipments of personal and business goods being imported and exported. The protest disrupted inbound traffic for a portion of the day on February 12, 2022 and resulted in the blockade of outbound traffic until February 14, 2022 when the OPP and Niagara Regional Police were able to restore security of the trade corridor linking the provincial highway to the border crossing.
- **Emerson, Manitoba**: As of February 13, 2022, vehicles of the blockade remain north of the port of entry. Some local traveller traffic was able to enter Canada, however commercial shipments are unable to use the highway North of Emerson resulting in disruptions to live animal, perishable and manufactured goods shipments into Canada and exports to the U.S. The protesters have allowed some live animal shipments to proceed through the blockade for export to the U.S.
- **Coutts, Alberta**: The blockade began on January 29, 2022, resulting in the disruption of Canada and U.S. border traffic. This port of entry is a critical commercial border point for the movement of live animals, oil and gas, perishable and manufactured goods destined for Alberta and western

Saskatchewan. As of February 14, 2022, the RCMP, who is the police of jurisdiction pursuant to the provincial Police Service Agreement, have arrested 11 individuals and seized a cache of weapons and ammunition. Four of these individuals were charged with conspiracy to commit murder, in addition to other offences. The RCMP restored access to the provincial highway North of Coutts on February 15, 2022 and border services were fully restored, but efforts continue to ensure that it remains open.

- **Vancouver, British Columbia (BC), and Metro area**: On February 12, 2022, several vehicles including a military-style vehicle broke through an RCMP barricade in south Surrey, BC, on their way to the Pacific Highway port of entry. Protesters forced the highway closure at the Canada-U.S. border in Surrey.

In addition, on February 12, 2022, police in Cornwall, Ontario warned of potential border delays and blockages due to protests.

These blockades and protests directly threaten the security of Canada's borders, with the potential to endanger the ability of Canada to manage the flow of goods and people across the border and the safety of CBSA officers and to undermine the trust and coordination between CBSA officials and their American partners. Additional blockades are anticipated. While Ontario's *Emergency Management and Civil Protection Act* authorizes persons to provide assistance, it specifically does not compel them to do so. Tow truck operators remain free to decline requests to tow vehicles that were part of the blockades and they have refused to render assistance to the government of Ontario. It was beyond the capacity of the province of Ontario to ensure in a timely manner that tow trucks could be used to clear vehicles. The emergency measures now allow the federal Minister of Public Safety and Emergency Preparedness or any other person acting on their behalf to immediately compel individuals to provide and render essential goods and services for the removal, towing or storage of any vehicle or other object that is part of a blockade and provides that reasonable compensation will be payable. Individuals who suffer loss or damage because of actions taken under these Regulations may apply for compensation.

Threats were also made to block railway lines, which would result in significant disruptions. Canada's freight rail industry transports more than $310 billion worth of goods each year on a network that runs from coast to coast. Canada's freight railways serve customers in almost every part of the Canadian economy: from manufacturing to the agricultural, natural resource, wholesale and retail sectors. In addition, freight railways have Canadian operating revenues of more than $16 billion a year.

The impact on important trade corridors and the risk to the reputation of Canada as a stable, predictable and reliable location for investment may be jeopardized if disruptions continue. The current federal and provincial financial systems are ill-equipped to mitigate the adverse effects of the economic impact without additional measures. The *Emergency Economic Measures Order* requires a comprehensive list of financial service providers to determine whether any of the property in their possession or control belong to protesters participating in the illegal blockades and to cease dealing with those protesters. Financial service providers who would otherwise be outside federal jurisdiction are subject to the Order. Given the ability to move financial resources between financial service providers without regard to their geographic location or whether they are provincially- or federally-regulated, it is essential that all financial service providers be subject to the Order if protesters are to be prevented from accessing financial services. The importance of this measure is highlighted by the Canadian Broadcasting Corporation's recent reporting about the crowdfunding website, GiveSendGo.com, which indicated that the majority of the donations to the protests were made by donors outside of Canada.

Before the new measures, in respect of insurance, provinces would only be able to cancel or suspend policies for vehicles registered in that province. Protestors from different provinces would not be subject to, for example, the Government of Ontario's powers under its declaration of a state of emergency to cancel licenses of vehicles participating in blockades or prohibited assemblies. The emergency measures now require insurance companies to cancel or suspend the insurance of any vehicle or

person while that person or vehicle is taking part in a prohibited assembly as defined under the new *Emergency Measures Regulations*.

iii. the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the U.S., that are detrimental to the interests of Canada

The U.S. has expressed concerns related to the economic impacts of blockades at the borders, as well as possible impacts on violent extremist movements. During a call with President Joe Biden on February 11, 2022, the critical importance of resolving access to the Ambassador Bridge and other ports of entry as quickly as possible was discussed, given their role as vital bilateral trade corridors, and as essential to the extensive interconnections between our two countries.

Disruptions at ports of entry have significant impacts on trade with U.S. partners and the already fragile supply chain, and have resulted in temporary closures of manufacturing sites, job loss, and loss of revenues. One week of the Ambassador Bridge blockade alone is estimated to have caused a total economic loss of $51 million for U.S. working people and businesses in the automotive and transportation industry. Consequently, the protests have been the cause of significant criticism and concern from U.S. political, industry and labour leaders.

The Governor of Michigan has issued several statements expressing her frustration with the ongoing protests and blockade and the damage they are doing to her state and constituents. Similar frustrations have been voiced by the General President of the International Brotherhood of Teamsters and the Canada-U.S. Business Association. The blockades and protests are of such concern to the U.S government that the Department of Homeland Security Secretary has offered its assistance in ending the protests.

More generally, the protests and blockades are eroding confidence in Canada as a place to invest and do business. Politicians in Michigan have already speculated that

disruptions in cross border trade may lead them to seek domestic, as opposed to Canadian, suppliers for automotive parts.

iv. the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number

Canada has a uniquely vulnerable trade and transportation system. Relative to global competitors, Canadian products travel significantly further, through challenging geography and climate conditions. Moreover, trade and transport within Canada, and between Canada and the U.S. is highly integrated.

The closure of, and threats against, crucial ports of entry along the Canada-U.S. border has not only had an adverse impact on Canada's economy, it has also imperiled the welfare of Canadians by disrupting the transport of crucial goods, medical supplies, food, and fuel across the U.S.- Canada border. A failure to keep international crossings open could result in a shortage of crucial medicine, food and fuel.

In addition to the blockades along the border, protesters attempted to impede access to the MacDonald-Cartier International Airport in Ottawa and threatened to blockade railway lines. The result of a railway blockade would be significant. As noted above, Canada's freight rail industry transports more than $310 billion worth of goods each year on a network that runs from coast to coast. Canada's freight railways serve customers in almost every part of the Canadian economy: from manufacturing, to the agricultural, natural resource, wholesale and retail sectors.

v. the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians

The protests and blockades pose severe risks to public safety. While municipal and provincial authorities have taken decisive action in key affected areas, such as law

enforcement activity at the Ambassador Bridge in Windsor, considerable effort was necessary to restore access to the site and will be required to maintain access.

There is significant evidence of illegal activity to date and the situation across the country remains concerning, volatile and unpredictable. The Freedom Convoy could also lead to an increase in the number of individuals who support ideologically motivated violent extremism (IMVE) and the prospect for serious violence. Proponents of IMVE are driven by a range of influences rather than a singular belief system. IMVE radicalization is more often caused by a combination of ideas and grievances resulting in a personalized worldview. The resulting worldview often centres on the willingness to incite, enable or mobilize violence.

On February 14, 2022, the RCMP arrested numerous individuals in Coutts, Alberta associated with a known IMVE group who had been engaged with the protests and seized a cache of firearms with a large quantity of ammunition, which indicates that there are elements within this movement that intend to engage in violence. Four of these individuals were charged with conspiracy to commit murder, in addition to other offences.

Since the convoy began, there has been a significant increase in the number and duration of incidents involving criminality associated with public order events related to anti-public health measures and there have been serious threats of violence assessed to be politically or ideologically motivated. Two bomb threats were made to Vancouver hospitals and numerous suspicious packages containing rhetoric that references the hanging of politicians and potentially noxious substances were sent to offices of Members of Parliament in Nova Scotia. While a link to the convoy has not yet been established in either case, these threats are consistent with an overall uptick in threats made against public officials and health care workers. A number of threats were noted regarding the Nova Scotia-New Brunswick border demonstration set for February 12, 2022, including a call to bring “arms” to respond to police if necessary. An Ottawa tow truck operator reported that he received death threats from protest supporters who mistakenly believed he provided assistance to the police.

The Sûreté du Québec (SQ) has been dealing with multiple threats arising from the protests. In early February, 2022, the SQ was called in to provide protection to the National Assembly in response to the convoy protests in Quebec City. Some individuals associated with the protests had threatened to take up arms and attack the National Assembly. This led to all parties at the National Assembly strongly denouncing all threats of violence. While that protest was not accompanied by violence, the threat has not ended; the protesters have stated that they plan to return on February 19, 2022. At the same time, the SQ is also dealing with threats of protests and blockades along Quebec's border with New York State. This requires the SQ to deploy resources to establish checkpoints and ensure that crucial ports of entry remain open.

Other incidents which have occurred during the course of the blockades point to efforts by U.S.- based supporters of IMVE to join protests in Canada, or to conduct sympathetic disruptive blockades on the U.S. side of ports of entry. In some cases, individuals were openly carrying weapons. U.S.-based individuals, some openly espousing violent extremist rhetoric, have employed a variety of social media and other methods to express support for the ongoing blockades, to advocate for further disruptions, and to make threats of serious violence against Canadian law enforcement and the Government of Canada.

Several individuals with U.S. status have attempted to enter Canada with the stated purpose of joining the blockades. One high profile individual is known to have openly expressed opposition to COVID-19-related health measures, including vaccine mandates and has attempted to import materials to Canada for the express purpose of supporting individuals participating in the blockades.

As of February 14, 2022, approximately 500 vehicles, most of them commercial trucks, were parked in Ottawa's downtown core. There have been reports of protesters engaging in hate crimes, breaking into businesses and residences, and threatening law enforcement and Ottawa residents.

Protesters have refused to comply with injunctions covering downtown Ottawa and the Ambassador Bridge and recent legislation enacted by the Ontario Government under the *Emergency Management and Civil Protection Act* (Ontario Regulation 71/22), which makes it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure. In Ottawa, the Ottawa Police Service has been unable to enforce the rule of law in the downtown core due to the overwhelming volume of protesters and the Police's ability to respond to other emergencies has been hampered by the flooding of Ottawa's 911 hotline, including by individuals from outside Canada. The occupation of the downtown core has also hindered the ability of emergency medical responders to attend medical emergencies in a timely way and has led to the cancellation of many medical appointments.

The inability of municipal and provincial authorities to enforce the law or control the protests may lead to a further reduction in public confidence in police and other Canadian institutions.

The situation in downtown Ottawa also impedes the proper functioning of the federal government and the ability of federal government officials and other workers to enter their workplaces in the downtown core safely.

Furthermore, the protests jeopardize Canada's ability to fulfil its obligations under the *Vienna Convention on Diplomatic Relations* as a host of the diplomatic community and pose risks to foreign embassies, their staff and their access to their diplomatic premises.

Conclusion

The ongoing Freedom Convoy 2022 has created a critical, urgent, temporary situation that is national in scope and cannot effectively be dealt with under any other law of Canada. The blockades of the ports of entry have disrupted the transportation of crucial medicine, goods, fuel and food to Canadians and are causing significant adverse effects on Canada's economy, relationship with trading partners and supply

chains. These trade disruptions, the increase in criminal activity, the occupation of downtown Ottawa and the threats of violence and presence of firearms at protests – along with the other reasons detailed above – constitute a public order emergency, an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency. The types of measures set out in the February 14, 2022 *Proclamation Declaring a Public Order Emergency* are necessary in order to supplement provincial and territorial authorities to address the blockades and occupation and to restore public order, the rule of law and confidence in Canada's institutions. The measures have been carefully tailored such that any potential effects on rights protected under the *Canadian Charter of Rights and Freedoms* are reasonable and proportionate in the circumstances.