Federal Court  Cour fédérale

Date: 20240123

Dockets: T-306-22
T-316-22
T-347-22
T-382-22

Citation: 2024 FC 42

Ottawa, Ontario, January 23, 2024

PRESENT: The Honourable Mr. Justice Mosley

Docket: T-306-22

BETWEEN:

CANADIAN FRONTLINE NURSES and KRISTEN NAGLE

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-316-22

AND BETWEEN:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-347-22

AND BETWEEN:

CANADIAN CONSTITUTION FOUNDATION

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Docket: T-382-22

AND BETWEEN:

**JEREMIAH JOST, EDWARD CORNELL,
VINCENT GIRCYS AND HAROLD RISTAU**

Applicants

and

GOVERNOR IN COUNCIL, HIS MAJESTY IN RIGHT OF CANADA, ATTORNEY GENERAL OF CANADA, and MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT

TABLE OF CONTENTS

I. **Introduction**

[1] These are reasons for judgment in four applications for judicial review under sections 18 and 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 [*Federal Courts Act*], of the decision by the Governor in Council (GIC) to declare a Public Order Emergency (POE) and to approve additional measures in order to end disruptive protests in Ottawa and other locations in Canada.

[2] As the outcome of the four applications varies in certain respects, separate judgments, will be issued for each application. The following reasons apply to the common elements and explain the different outcomes.

II. **Overview**

[3] The Applicants in the four applications before the Court challenge Order in Council P.C. 2022-106, the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 [the Proclamation] issued pursuant to s 17(1) of the *Emergencies Act*, RSC 1985, c 22 (4th Supp) on February 14, 2022 [the "*Emergencies Act*", the "EA" or the "Act"]. Also under review are Order in Council P.C. 2022-107, the *Emergency Measures Regulations*, SOR/2022-21 [the "Regulations"] and Order in Council P.C. 2022-108, the *Emergency Economic Measures Order*, SOR/2022-22, [the "Economic Order"] made on February 15, 2022 pursuant to s 19(1) of the Act.

[4] The Attorney General of Alberta responded to a notice of constitutional question in one of the applications and also sought and obtained leave to intervene to make submissions on several non-constitutional questions.

[5] The Attorney General of Canada brought motions to strike the applications on the grounds that they were moot and that most of the Applicants lacked standing.

[6] As these reasons will explain, I have determined that the Applicants, Kristen Nagle, Canadian Frontline Nurses, Jeremiah Jost and Harold Ristau, lack standing to challenge the Proclamation, the Regulations and the Economic Order. Their applications will be dismissed for that reason. I accept that Edward Cornell and Vincent Gircys have direct standing to challenge the Proclamation, Regulations and Economic Order as they were directly affected by them. I grant the Canadian Civil Liberties Association (CCLA) and the Canadian Constitution Foundation (CCF) public interest standing. I have concluded that the applications of those with standing should be heard notwithstanding that the applications are moot as a result of the revocation of the Proclamation and termination of the related instruments.

[7] On the substantive issues, I have concluded that the applications of Edward Cornell and Vincent Gircys, the CCLA and the CCF must be granted in part for reasons discussed below. In brief, I find that the reasons provided for the decision to declare a public order emergency do not satisfy the requirements of the *Emergencies Act* and that certain of the temporary measures adopted to deal with the protests infringed provisions of the *Canadian Charter of Rights and*

Freedoms – Part I of the *Constitution Act, 1982 adopted as Schedule B to the Canada Act 1982*, 1982, c. 11 (U.K.) [*Charter*] and were not justified under section 1 of the *Charter*.

[8] I find that the temporary measures were not incompatible with the *Canadian Bill of Rights*, SC 1960, c 44 [*Canadian Bill of Rights*] as had been argued by Messrs. Jost, Ristau, Cornell and Gircys, collectively the Jost Applicants.

III. **The Parties**

A. The Applicants

[9] The first two of the four Applications for Judicial Review were filed in the Federal Court by Ms. Kristen Nagle and Canadian Frontline Nurses [CFN] and by the Canadian Civil Liberties Association [CCLA], on February 17 and 18, 2022 respectively. The other two Applications were filed on February 22 and 23, 2022 by the Canadian Constitutional Foundation [CCF] and by the Jost Applicants.

(1) Kristen Nagle and Canadian Frontline Nurses

[10] Kristen Nagle is a Canadian citizen and Ontario resident. Ms. Nagle is a former registered nurse and is a member and director of the CFN. Her registration was suspended by the Ontario College of Nurses due to complaints about her actions at other protests including at hospitals applying vaccine mandates and treating patients suffering from COVID-19 during the pandemic.

[11] The CFN is incorporated under the *Canada Not-for-profit Corporations Act*, SC 2009, c 23. CFN's materials describe it as a "proud advocate of medical freedom" and that its missions are "to unite nurses across Canada, educate the public and ensure that Canadian healthcare reflects the highest ethical standards." Arguments made on behalf of the CFN in these proceedings are the same as those made by Ms. Nagle. It is clear that she is the directing mind and will of the organization.

[12] Ms. Nagle and, through her, CFN, claim to be "opposed to unreasonable COVID-19 related mandates and restrictions that have been implemented by various levels of Canadian governments" during the pandemic.

[13] In their application, Nagle and CFN assert direct standing based on their participation in the "Freedom Convoy 2022". It is unclear from the evidence how CFN participated other than through the person of Ms. Nagle. There is no evidence that any of the assertions made on behalf of the CFN in these proceedings result from resolutions of the membership or board of the organization or are anything other than expressions of Ms. Nagle's personal views.

[14] Ms. Nagle arrived in Ottawa on January 28, 2022 and took up residence in a hotel near the protest sites with her husband and children. Ms. Nagle claims that she provided material support to other participants during the protests, such as the distribution of funds donated to the CFN and by providing access to her hotel room for showers. She claims that she was described as a major participant in the protest by a Member of Parliament but there is no supporting

evidence of this. The CFN logo does appear among others on “Freedom Convoy 2022” promotional materials.

[15] Neither Ms. Nagle nor the CFN were identified by the Royal Canadian Mounted Police (RCMP) to financial service providers as an individual or entity to whom the Regulations and the Economic Order applied. Their bank accounts and other resources were not frozen. However, Ms. Nagle averred that donations to the CFN diminished as a result of the Proclamation and imposition of the Regulations and the Economic Order. As a result, she and her family chose to leave Ottawa.

(2) The Jost Applicants

[16] The four Jost Applicants are private Canadian citizens who assert direct standing based on their participation in the Ottawa protest.

[17] Jeremiah Jost participated in the protests around Parliament Hill from January 29, 2022. He asserts he also financially supported other protest participants in Ottawa.

[18] Edward Cornell is a Canadian military veteran who also participated in the Ottawa protests. His bank account and credit cards were frozen following the Proclamation and making of the Economic Order.

[19] Vincent Gircys is a retired police officer. He participated in the Ottawa protest and his bank account and credit cards were also frozen following the invocation of the Act.

[20] Harold Ristau is a pastor and Canadian military veteran who briefly attended the protests in Ottawa and led participants in prayer, issuing a benediction and praying at the War Memorial. He claims that following his return home he experienced discrimination in his work place and other ill effects due to his participation in the protests, which limited his ability to enjoy his freedom of religion.

(3) Canadian Civil Liberties Association

[21] Founded in 1974, CCLA describes itself as an independent, non-profit, non-governmental organization dedicated to defending and promoting fundamental human rights and civil liberties. The CCLA brought its application on the basis of public interest standing.

[22] CCLA asserts it has been holding governments accountable since its inception by ensuring human rights and freedoms are fostered and observed and that the rule of law is upheld. CCLA claims to advocate on behalf of all people in Canada to ensure the maintenance of the critical balance between civil liberties and competing public and private interests. CCLA has been granted leave to intervene in cases before courts at many levels and asserts that it has contributed to the development of jurisprudence in respect of civil liberties and the application of the *Charter*.

(4) Canadian Constitution Foundation

[23] Founded in 2002, the CCF describes itself as an independent, national and non-partisan charity that seeks to protect constitutional freedoms through education, communication and litigation. It also brought its application on the basis of public interest standing.

[24] The CCF has appeared before all levels of courts in Canada and submits that it has contributed to the development of constitutional law jurisprudence. It has been granted intervener status by the Supreme Court of Canada in 13 cases.

[25] The Respondent did not dispute that the CCLA and the CCF had a valid public interest in these proceedings but argued that their participation was not required as at least two of the Jost Applicants had direct standing.

B. The Respondent (moving party on the Motions to Strike)

[26] The Attorney General of Canada is named as the sole Respondent in three of the four applications. In the fourth application, in Docket: T-382-22, the Jost Applicants named the Governor in Council, Her Majesty in Right of Canada and the Minister of Public Safety and Emergency Preparedness in addition to the Attorney General of Canada.

[27] The Crown is not a federal board, commission or other tribunal for the purposes of sections 18 and 18.1 of the *Federal Courts Act* and cannot, therefore, be a respondent in these proceedings. Decisions by the Governor in Council and the Minister in the execution of their public duties are subject to judicial review. They are represented in these proceedings by the Attorney General of Canada as Respondent.

C. The Intervener

[28] On March 14, 2022, the Jost Applicants filed and served an Amended Notice of Constitutional Question under s 57 of the *Federal Courts Act* on each of the provincial Attorneys General. Only the Attorney General of Alberta responded to the Notice. The Attorney General of Alberta also sought and was granted leave on May 5th, 2022 to intervene in the CCLA and CCF files to make submissions on several non-constitutional questions.

IV. **The Context**

[29] This portion of these reasons will summarize the background to the applications and the making of the Proclamation, Regulations and Economic Order. I do not propose to revisit the detailed history of events, which were thoroughly canvassed in the five volume report of the Public Order Emergency Commission (POEC), released on February 17, 2023. However, I consider it necessary to situate these reasons in the context of those events, as I understand them.

[30] The facts recited below are drawn from the records of the parties filed in each application including the supplementary records based on later disclosures. There has been less dispute in these proceedings about what happened than with how the events should be characterized in applying the law. Where there has been any controversy about the facts, I have scrutinized the relevant evidence with care to determine "whether it is more likely than not that an alleged event occurred": *F.H. v McDougall*, 2008 SCC 53 at para 49.

(1) Public Health Orders

[31] On November 19, 2021, the Public Health Agency of Canada announced that, as of January 15, 2022, certain groups of foreign nationals who were, up to that point, exempt from vaccine requirements for entry to Canada would now be required to be fully vaccinated, including essential service providers such as truck drivers. Similar measures were put in place by the United States government at the border with Canada.

[32] On January 13, 2022, the Minister of Health clarified that an unvaccinated Canadian truck driver could not be denied entry into Canada, but would need to meet requirements for pre-entry, arrival and Day 8 testing as well as quarantine requirements.

(2) Protests in Ottawa and border blockades

[33] As a result of those travel restrictions, a group of individuals prepared to drive across Canada to protest in Ottawa under the name “Freedom Convoy 2022”. On January 22, 2022, the Convoy departed from Prince Rupert, British Columbia, on its way to a planned demonstration in Ottawa scheduled for January 29, 2022. The Convoy’s route to Ottawa was widely publicized and other vehicles and individuals joined along the way.

(a) Ottawa

[34] On January 28, 2022, the Convoy arrived in Ottawa. At this point, it consisted of hundreds of vehicles of various types including tractor-trailer units and thousands of individuals

who intended to protest Canada's public health response to the COVID-19 pandemic and the new vaccination requirements for cross-border truckers. The protestors and vehicles occupied much of the downtown core of Ottawa including streets in the vicinity of the Parliamentary precinct, the Supreme Court of Canada and the Federal Courts. Among other things, the effect was to block vehicular traffic and pedestrian access to offices, businesses, churches and residences in the affected area.

[35] Over the next few days, the protest became a blockade of downtown government, business and residential districts accompanied by incessant noise from truck horns, train type whistles, late night street parties, fireworks and constant megaphone amplified hollers of "freedom". Fumes from the exhausts of diesel and gasoline engines permeated the air and seeped into neighbouring premises. Containers of fuel were being brought in constantly to keep the vehicles running and to provide heat. There were reported incidents of harassment, minor assaults and intimidation. This created intolerable conditions for many residents and workers in the district.

[36] Between January 30 and February 2, 2022, the demonstrators began to erect structures and organize for a prolonged occupation of the core of the national capital. The Ottawa Police Service (OPS) appeared to be unable to cope with the situation. The OPS Chief declared "there may not be a policing solution" and "there need to be other elements brought in to find a safe, swift and sustainable end to this demonstration that's happening here and across the country".

[37] On February 3, 2022, the Mayor of Ottawa submitted a request for additional resources to the Federal and Provincial governments to deal with the protest. The same day, Convoy organizers held a press conference where they stated that they would remain in the city until all COVID-19 mandates were revoked. On February 6, 2022, the Mayor declared a state of emergency.

[38] On February 7, 2022, the Provincial Operations Intelligence Bureau, a branch of the Ontario Provincial Police (OPP), identified the Convoy as a "threat to national security", and the OPS requested an additional 1,800 police officers from other agencies. The same day, a ten-day interim injunction was granted by Justice McLean of the Ontario Superior Court of Justice to "silence the honking horns" and to prevent other by-law breaches by truckers parked in the streets of downtown Ottawa.

[39] Between February 8 and February 10, 2022, the Convoy numbered approximately 418 vehicles and additional cars and trucks were arriving with protestors. Children were estimated to be present in 25 percent of the vehicles. A counter-protest on February 13, 2022 saw hundreds of residents on suburban streets blocking access to vehicles headed to downtown Ottawa. Convoy participants, or their supporters, allegedly engaged in a concerted effort to flood Ottawa's emergency services with calls designed to overwhelm the services' capacity to respond. Donations to fund the protest were received by a crowdfunding site, GiveSendGo. Information subsequently released indicated that 55.7 percent of the funds received, totalling $3.6 million USD were made by U.S. based donors.

[40] On February 10, 2022, the Prime Minister convened the Incident Response Group (IRG), an emergency committee and coordination body of Cabinet and senior public servants whose role is to advise the Prime Minister in the event of a national crisis. The Prime Minister and the President of the United States discussed the situation on February 11, 2022. Further meetings of the IRG took place on February 12 and 13, 2022. The Government of Ontario declared a state of emergency and, on February 12, 2022, enacted a regulation to protect critical infrastructure.

[41] Information considered by the IRG, according to its minutes, included that extremist elements were taking part in the protest. These included members of an organization known as "Diagolon" which reportedly proposed to establish a "diagonal" country from Alaska to Florida under the slogan "gun or rope". The founder, Jeremy MacKenzie, was arrested in January 2022, before coming to protest in Ottawa, after police found firearms, prohibited magazines, ammunition and body armour at his home. Moreover, one of MacKenzie's associates, Derek Harrison, had made a video in which he reportedly expressed his desire to turn the Freedom Convoy protest into "our own January 6th" event, alluding to the storming of the US Capitol. One of the Applicants, Ms. Nagle, was in contact with MacKenzie when she was in Ottawa.

[42] The purpose of referring to this information is not to indicate whether the concerns about Diagolon or the charges against MacKenzie were well-founded. But it is information that was before Cabinet when the decision to invoke the EA was made.

[43] Visible symbols of hate were seen to be held or worn by protestors in media photographs of the occupation. The Applicants, Mr. Jost and Ms. Nagle acknowledged under cross-

examination having seen demonstrators wearing yellow Star of David emblems featuring the words “non vaxx” in comparison to the symbols victims of the Holocaust were forced to wear. News articles reported protestors with flags featuring swastikas, and signs bearing the Nazi “SS” symbol, as well as Confederate flags.

[44] Some of those involved in organizing the protest brought with them a document purporting to be a draft memorandum of understanding between a group called “Canada Unity”, the Senate of Canada and the Governor General. The draft memorandum proposed to form a joint committee to assume government functions in return for which the convoy would cease its occupation of Ottawa. When it was pointed out that this proposition was devoid of any constitutional reality, it appears to have been ignored by others on the scene. But it illustrates an effort by some of those involved in the protest to interfere with the democratic process and undermine the government.

[45] During the events in Ottawa, smaller protests sprang up elsewhere in cities across the country but those were largely managed and resolved within less than a day or two by local law enforcement.

(b) Border blockades

[46] On January 29, 2022 a blockade began at the Sweetgrass-Coutts, Alberta, border crossing. On February 5, 2022, the Minister of Municipal Affairs of Alberta wrote to the Federal Ministers occupying the portfolios of Public Safety and Emergency Preparedness seeking federal assistance, including equipment and personnel, to move about 70 trucks and semi-tractor trailers

as well as approximately 75 personal and recreational vehicles. The Alberta Minister noted that the RCMP had exhausted all local and regional options to alleviate the disruption. By February 11, 2022, between 200 and 250 additional Convoy vehicles had gathered at Milk River, 18 km from Coutts, where the police had set up a checkpoint to limit access to Coutts. Only about 40 vehicles remained at Coutts itself.

[47] On February 6, 2022, a second blockade began at the Ambassador Bridge in Windsor, Ontario, the country's busiest border crossing. On February 11, 2022, the Superior Court of Justice granted an injunction aimed at ending this blockade. On February 13, 2022, the police removed participants and approximately 44 charges were laid. The next day, traffic resumed but the City of Windsor nonetheless declared a state of emergency. Over $390 million in trade with the United States was affected each day of the blockade.

[48] On February 8, 2022, a third blockade was set up on the provincial highway leading to and from the Sarnia Blue Water Bridge, Ontario; Canada's second busiest border crossing. Access was restored on February 14, 2022.

[49] On February 10, 2022, a fourth blockade began north of Emerson, Manitoba. Up to 75 vehicles were involved in the blockade, which allowed cargo like medical supplies and livestock to pass. On February 11, 2022, the Premier of Manitoba sent a letter to the Prime Minister urging immediate and effective federal action regarding the blockade. A fifth blockade began on February 12, 2022 near the Peace Bridge port of entry at Fort Erie, Ontario, Canada's third

busiest land border crossing. On February 14, 2022, the OPP and Niagara Regional Police were able to restore the flow of traffic.

[50] Also on February 12, 2022, protesters' vehicles broke through a RCMP barricade in South Surrey, British Columbia, heading to the Pacific Highway port of entry and forced the closure of the highway at the Canada-U.S. border. By the end of February 14, 2022, 16 people had been arrested in relation to this blockade. By the morning of February 15, 2022, the roads were clear.

[51] Early on February 14, 2022, RCMP officers executed a warrant issued under the *Criminal Code* RSC 1985, c C-46 [*Criminal Code* or *Code*] and raided two camper trailers and a mobile home at Coutts, arrested 11 individuals and seized a cache of weapons, including 14 firearms, a large supply of ammunition and body armour. Four individuals were charged with conspiracy to commit murder and other offences. Some of the body armour seized was marked with the Diagolon insignia.

(3) Invocation of the *Emergencies Act*

[52] The full Cabinet met on February 13, 2022 to discuss the situation. The question of whether to invoke the *Emergencies Act* was then delegated to the Prime Minister, *ad referendum.* In making the decision, the Prime Minister had the benefit of a memorandum from the Acting Clerk of the Privy Council recommending invocation (the Invocation Memorandum).

[53] On February 14, 2022, the Governor in Council [GIC] declared a public order emergency under the *Emergencies Act*, the Proclamation, to end the disruptions and blockades occurring

across the country. There were an estimated 500 trucks and other vehicles remaining in downtown Ottawa at the time.

[54] On February 15, 2022, the GIC enacted the Regulations, as well as the Economic Order. The RCMP completely restored access to the Coutts border crossing that same day and reached a resolution with the protestors at the Emerson blockade.

[55] Between February 15 and February 23, 2022, the RCMP disclosed information from the OPP, OPS and its own investigations on approximately 57 named entities and individuals to financial service providers, resulting in the temporary freezing of about 257 accounts under the Economic Order.

[56] On February 16, 2022, the Public Safety Minister brought a motion before the House of Commons pursuant to section 58 of the Act to confirm the declaration of the public order emergency proclaimed on February 14, 2022. The blockade at Emerson in Manitoba was completely cleared that day.

[57] Subsection 58(1) of the Act requires that an explanation for the reasons for issuing the declaration [the “Section 58 Explanation”] and a report on any consultations with the Lieutenant Governors in Council [LGIC] of the provinces with respect to the declaration [the “Consultation Report”], shall be laid before each House of Parliament within seven sitting days after the declaration is issued. The Section 58 Explanation and the Consultation Report were tabled before each House on February 16, 2022.

[58] Following declaration of the Proclamation and making of the Regulations and Economic Order a number of protestors left the blockades in Ottawa. From February 17 to 21, 2022, the police in Ottawa arrested 196 people, of whom 110 were charged with offences, removed 115 vehicles and dismantled the barricades on the streets.

[59] The motion to confirm the Proclamation was adopted in the House of Commons on February 21, 2022. A motion to confirm the Proclamation was then tabled in the Senate and debate began in that chamber on February 22, 2022. By then the RCMP had contacted financial service providers and advised them that they no longer believed the identified individuals and entities previously disclosed were engaged in prohibited conduct or activities covered under the Regulations and Economic Order.

[60] On February 23, 2022, the declaration of a public order emergency was revoked with the issuance of the *Proclamation Revoking the Declaration of a Public Order Emergency*, SOR/2022-26 [the "Revoking Proclamation"]. Issuance of the Revoking Proclamation had the effect of terminating the Regulations and Economic Order under the terms of the Act. The Ontario government also lifted its state of emergency that day.

[61] Under subsection 62(1) of the *Emergencies Act*, a parliamentary review committee must review the "exercise of powers and the performance of duties and functions pursuant to a declaration of emergency." Accordingly, a Special Joint Committee on the Declaration of Emergency was established by motion of the Senate and House of Commons on March 3, 2022.

[62] On April 25, 2022, Order in Council P.C. 2022-392 was issued under subsection 63(1) of the Act to cause an inquiry to be held into the circumstances that led to the declaration and the measures taken for dealing with the emergency. The Public Inquiry was to report to both Houses of Parliament by February 20, 2023.

V. **Decision under review**

A. The Proclamation

[63] The proclamation of the public order emergency on February 14, 2022 was an act of the Governor in Council. The final decision to invoke the Act and declare an emergency was a decision of the Prime Minister with the approval and support of Cabinet. The formal documents conveying the recommendation of Cabinet were submitted to the GIC by the Minister of Public Safety and Emergency Preparedness.

[64] The Proclamation declared that the Governor in Council believed, on reasonable grounds, that a public order emergency existed and necessitated the taking of special measures for dealing with the emergency.

[65] The Proclamation specified that the emergency was constituted of:

> 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;

[66] The Proclamation further specified that the special temporary measures anticipated by the GIC 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 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.

B. Reasons for the decision

[67] When an administrative decision maker is required by the legislative scheme to provide reasons for its decision, the reasons are the "primary mechanism by which [they] show that their decisions are reasonable"; their purpose is to "demonstrate 'justification, transparency and intelligibility'": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 81. "Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies": *Vavilov* at para 86.

[68] In these proceedings, the Section 58 Explanation constitutes the reasons for the decision.

[69] In addition, further to requests for production under Rule 317 of the *Federal Courts Rules* SOR/98-106 [*Federal Courts Rules*], the annotated agendas and minutes of the several IRG and Cabinet meetings leading to the decision, with redactions, were disclosed to the Court and to the Applicants as they were made available to the POEC. Those minutes and agendas, along with the Invocation Memorandum and the Consultation Report, provide necessary context for understanding how the decision came to be made.

C. Procedural history

[70] These proceedings were under case management from the outset with a Judge and Associate Judge presiding over conferences with counsel for the parties and dealing with motions and procedural issues as they arose.

[71] A motion seeking a temporary interlocutory order to stay the Proclamation while it remained in effect was dismissed as moot when the Proclamation was revoked: *Canadian Frontline Nurses v Canada (Attorney General)*, 2022 FC 284.

[72] Following requests for documentary production of records pertaining to the issuance of the Proclamation under Rule 317 of the *Federal Courts Rules*, the Respondent replied on March 15, 2022 with a letter from the Assistant Clerk of the Privy Council objecting to disclosure of records on the basis of Cabinet Confidentiality.

[73] On or about April 1, 2022, the Applicants were served with a certificate signed by the then Interim Clerk of the Privy Council respecting the application of s. 39 of the *Canada Evidence Act*, RSC, 1985, c C-5 [*CEA*] to the following documents:

1) Submission to the GIC from the Minister of Public Safety and Emergency Preparedness, dated February 2022, regarding the proposed Order in Council directing that a proclamation be issued pursuant to subsection 17(1) of the Emergencies Act, including the signed Ministerial recommendation, a draft Order in Council regarding a proposed proclamation, a draft proclamation, and accompanying materials;

2) The record recording the decision of the GIC concerning the Emergency Proclamation, dated February 2022;

3) Submission to the GIC from the Minister of Public Safety and Emergency Preparedness, dated February 2022, regarding the proposed Order in Council pursuant to subsection l9(l) of the Emergencies Act and concerning emergency measures Regulations, including the signed Ministerial recommendation, a draft Order in Council regarding proposed emergency measures Regulations, draft Regulations, and accompanying materials;

4) The record recording the decision of the GIC concerning emergency measures Regulations, dated February 2022;

5) Submission to the GIC from the Minister of Public Safety and Emergency Preparedness, dated February 2022, regarding the proposed Order in Council pursuant to subsection 19(1) of the Emergencies Act and concerning an emergency economic measures order, including the signed Ministerial recommendation, a draft Order in Council regarding a proposed emergency economic measures order, a draft order, and accompanying materials.

6) The record recording the decision of the GIC concerning an emergency economic measures order, dated February 2022.

[74] A motion brought by the CCF for an Order pursuant to Rule 75 of the *Federal Courts Rules* to extend the scope of their application was dealt with in *Canadian Constitution Foundation v Canada (Attorney General)*, 2022 FC 1232. The Court dismissed the motion on the basis that materials pertaining to the Revoking Proclamation were not before the GIC when the decision under review was made.

[75] On July 19, 2022, the Respondent delivered redacted minutes of the meetings of the IRG on February 10, 12, and 13, 2022 and of Cabinet on February 13, 2022 to the Court and the Applicants. The Chair's annotated and redacted agendas for the IRG meetings were delivered to the parties on July 22, 2022. The documents bear notations that the redactions were made pursuant to privilege claims under *CEA* sections 37, 38 and 39, and in addition, for claims of solicitor-client privilege and for lack of relevance.

[76] A second *CEA* section 39 certificate was issued on August 4, 2022.

[77] On August 26, 2022 the Court dismissed a motion brought by the CCF for an Order directing the Respondent to deliver the items for which Cabinet Confidence had been claimed in an unredacted form and on a counsel-only basis, subject to undertakings: *Canadian Constitution Foundation v Canada (Attorney General)*, 2022 FC 1233 [*CCF v Canada*].

[78] A motion brought by the Jost Applicants for an Order to compel production of the records and documents listed in the March 31, 2022 *CEA* section 39 Certificate was dismissed: *Jost v Canada (Governor in Council)*, 2022 FC 1514 [*Jost v Canada*].

[79] On November 9, 2022, following further discussions with the parties, the Respondent withdrew the majority of its section 37 and 38 claims. The Applicants did not challenge the claims made under solicitor-client privilege or the remaining *CEA* claims. The Court dealt with them in an Order issued on January 9, 2023 following an *ex parte* and *in camera* proceeding with the assistance of an independent, security cleared, *amicus curiae*.

[80] On December 12, 2022, CCF and CCLA filed a joint motion in writing under Rule 369 for an order, pursuant to Rule 312, granting leave to the CCLA to file an additional affidavit containing a selection of evidence from the POEC. A few days later, the Jost Applicants filed a similar motion seeking leave to file a supplementary record containing evidence from the POEC and other material.

[81] On January 27, 2023, the Court granted the CCF and CCLA joint motion in *Canadian Civil Liberties Association v Canada (Attorney General)*, 2023 FC 118, and dismissed the Jost motion in *Jost v Canada (Governor in Council)*, 2023 FC 120. On February 3, 2023, the Respondent filed a Notice of Appeal commencing an interlocutory appeal of the decision to grant the CCF and CCLA motion and seeking an order placing the appeal in abeyance pending the final order on the merits of the underlying applications.

[82] On February 6, 2023, the Respondent filed a motion to admit a supplemental affidavit, pursuant to Rule 312, containing evidence from the POEC. On March 1, 2023, the Court issued an Order granting the motion in part. That decision completed the procedural steps prior to the hearing, which took place on April 3-5, 2023.

VI. **Evidence**

[83] The parties filed extensive evidence, including affidavits, responses to Rule 317 requests, excerpts from debates in the House of Commons, testimony from the POEC hearings, internal and external communications from the three levels of government, media reports and press releases. Over one hundred and fifty exhibits were attached to one Government paralegal's affidavit alone. In total, the record exceeded 11,000 PDF pages. Accordingly, I will not review the evidence in detail but refer only to elements I consider significant.

(1) Nagle/CFN

[84] Kristen Nagle submitted two affidavits to describe her involvement in the Ottawa protest and attached exhibits, including videos, Facebook and Twitter posts to support her assertions. She was present at the protest from January 28, 2022 to February 19, 2022. She was closely cross-examined on her affidavits and exhibits, including the videos she had made during the protest, and on her involvement in other anti-vaccination protests, which led to charges under Ontario public health legislation.

[85] Nagle/CFN also submitted the affidavit of Tom Marazzo, a supporter of the Ottawa protests and volunteer spokesperson and fundraiser. His bank account and credit cards were frozen on February 18, 2022.

[86] The affidavit of a member of the law firm representing Nagle/CFN was tendered to introduce video statements of the Prime Minister, Deputy Prime Minister and Justice Minister

describing the implications of the Regulations and Economic Order. In addition, the affidavit introduced foreign and domestic media reports, public opinion surveys, excerpts from the House of Commons proceedings and a “Tweet” from the account of the President of El Salvador. I will not comment on what I thought of that item.

(2) CCLA

[87] The CCLA filed the affidavit of the Director of the Criminal Justice Program, Abigail Deshman. She provides background on the CCLA, its expertise with respect to constitutional rights, its long involvement in civil liberties cases and contribution to the debates on the inception of the EA in 1988. The affidavit describes other litigation related to the COVID-19 pandemic in which the association was involved. This evidence was relevant to the question of whether the association should be granted public interest standing.

[88] Ms. Deshman’s affidavit also serves to describe the events leading to and following the invocation of the EA based largely on media reports. Published reactions from provincial premiers are also attached as exhibits.

[89] Additional documents were introduced through the affidavit of Cara Zwibel in support of the joint motion of the CCLA and CCF to file a supplementary record, which the Court granted. Key among these were documents relating to the recommendation from the Clerk of the Privy Council to the Prime Minister, the Invocation Memorandum, and excerpts of testimony from the POEC proceedings including that of the Prime Minister and the Clerk.

(3) CCF

[90] The CCF relied on the affidavits of an associate lawyer to introduce some 58 documents, which were also included in the CCLA record. The CCF provided copies of the Ontario and Nova Scotia Regulations issued in response to the protests. The affidavit also introduced numerous media reports, police press releases, statements from the Premiers of Ontario and Manitoba, orders issued by the Superior Court of Justice of Ontario and federal government records pertaining to the deliberations leading to the Declaration.

(4) Jost Applicants

[91] Affidavits from each of the four Applicants describing their personal histories and involvement in the Ottawa protest were filed. A photo of Reverend Ristau in his former military uniform was attached as an exhibit to his affidavit. A copy of the disclosure report made by the RCMP in relation to Mr. Gircys' involvement in the protest was attached to his affidavit. The report led to his accounts being frozen. The Jost Applicants also relied on exhibits attached to the affidavits of Rebecca Coleman, a Department of Justice paralegal, which form part of the Respondent's record.

[92] Each of the Jost Applicants were cross-examined by the Respondent and several additional exhibits were identified.

(5) Respondent

[93] The Respondent filed the affidavits of Steven Shragge, Superintendent Denis Beaudoin and Rebecca Coleman.

[94] Mr. Shragge is a Senior Policy Advisor with the Privy Council Office Security and Intelligence Secretariat. He provides support to the National Security and Intelligence Advisor to the Prime Minister and to the Cabinet process for matters within his area of responsibility. He described himself as having operational knowledge of the mandates, memberships and practices of decision making and coordination structures within the Cabinet but acknowledged having no direct knowledge of the deliberation and decision making discussions during the days immediately preceding the declaration of a public order emergency on February 14, 2022.

[95] Mr. Shragge described the preparation and tabling of the Section 58 Explanation and Consultation Report attached as exhibits to his first affidavit. He refers to the content of the Section 58 Explanation and states that the decision to issue the Declaration was informed by "robust discussions" at three meetings of the IRG. However, as Mr. Shragge put it during cross-examination, he had no "visibility" at those meetings and could not personally speak to what "robust" meant in the circumstances. He was not involved in the writing of the Section 58 Explanation and was not able to be of much assistance in shedding light on the deliberations either because he did not know or because of objections to questions put to him on the ground of Cabinet confidentiality.

[96] Superintendent Beaudoin had an operational role in the implementation of the EA measures. He was responsible for overseeing the use of the Economic Order and developed the process used by the RCMP for sharing information with financial institutions. The Economic Order did not specify the procedure under which financial services providers would identify individuals or entities that met the definition of "designated person". Making it up as they went along, the RCMP developed a template for sharing information with the financial service providers about persons believed to be directly or indirectly involved in activities prohibited under the Regulations. An example of that template is attached to his affidavit. Another is attached to Mr. Gircys' affidavit which pertains to him. The RCMP did not generate the information but received it from the OPP and OPS and facilitated its dissemination to financial institutions. The banks and other service providers would report back to the RCMP under s 5 of the Economic Order on any steps that were taken with the information.

[97] In total, Superintendent Beaudoin averred, the RCMP disclosed information on approximately 57 entities and individuals to financial service providers and approximately 257 accounts were frozen.

[98] On cross-examination, Superintendent Beaudoin acknowledged that the RCMP officers involved in this process did not apply a standard, such as reasonable grounds, before sharing information with the financial institutions.

[99] Ms. Colman's affidavits were employed to introduce a large number of media articles, press releases and police statements and Court materials pertaining to the protests.

VII. **Legal Framework**

[100] The *Emergencies Act* was enacted in the aftermath of the controversy over invocation of the former *War Measures Act*, RSC 1927, c 206, in response to the 1970 terrorist acts in Quebec. The Act contains a number of threshold components and deliberate checks and balances. These include the definition of "national emergency" as constituting an "urgent and critical situation of a temporary nature" which creates a situation that either "seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it," or "seriously threatens the ability of the Government to preserve the sovereignty, security and territorial integrity of Canada."

[101] Moreover, a national emergency can only be found to exist if the situation "cannot be effectively dealt with under any other law of Canada."

[102] Under the Act, for a public order emergency to be declared, there is the additional requirement that there must be a "threat to the security of Canada" drawing on the definition of such threats provided in section 2 of the *Canadian Security Intelligence Service Act*, RSC, 1985, c C-23 (*CSIS Act*). The specific clause of that definition relied upon in issuing the Proclamation in February 2022 concerns "activities…directed toward or in support of the **threat or use of acts of serious violence** against persons or property for the purpose of achieving a political, religious or ideological objective…" [Emphasis added].

[103] In addition to the terms of the Act, the Proclamation and the related Regulations and Economic Order, it will be necessary in these reasons to refer to the relevant provisions of the *Charter, Canadian Bill of Rights and the CSIS Act* , which are set out in the attached Annex "A". The Invocation Memorandum submitted to the Prime Minister recommending the invocation of the Act, the section 58 Explanation and the Consultation Report tabled in both Houses of Parliament as justification, are attached in Annex "B".

VIII. **Issues**

A. *Preliminary issues*

[104] As noted above, on April 12, 2022, the Respondent introduced a motion and counter-motion to strike the four Applications on the basis that they were all moot and that none of the Applicants, save for Cornell and Gircys, had standing to challenge the Proclamation and related instruments. It was decided early in the case management process that the motions would not be dealt with until a hearing on the merits was scheduled and they would then be argued at the outset of the hearing.

[105] The Respondent's motions raise the following issues:

A. Whether the Applications are moot, and if so, whether the Court should nonetheless exercise its discretion to hear the Applications;

B. Whether the Applications should be struck for lack of standing save for two of the Jost Applicants who, the Respondent concedes, have direct standing.

[106] The parties submitted extensive written argument on the preliminary issues. In light of that, I limited the amount of time for oral argument on the motions at the beginning of the hearing on April 3, 2023. In addition, I indicated at the outset of the hearing that I agreed with the Respondent that Jost and Ristau lacked standing for reasons to be provided later. I recognized that the direct standing of Cornell and Gircys was conceded by the Respondent. Accordingly, they would be heard on the merits subject to my findings on mootness.

[107] Apart from the determination regarding the standing of Jost and Ristau, I advised the parties that I would reserve my decisions on the motions.

B. *Substantive issues*

[108] Nagle/CFN submitted that their Application raised issues of whether the Proclamation was *ultra vires* as there was no public order emergency as defined by the Act, and whether the Regulations and Economic Order violate the *Charter* and the *Canadian Bill of Rights*.

[109] CCLA argued that their Application raises the following issues:

- Whether the decision to issue the Proclamation was unreasonable and *ultra vires*;
- If not, whether the prohibitions contained at sections 2, 4, 5 and 10 of the Regulations violated sections 2(b)(c)(d) and 7 of the *Charter*, and whether sections 2 or 5 of the Economic Order infringed section 8 of the *Charter*;
- If so, whether the infringed rights, if any, can be justified under section 1 of the *Charter*.

[110] Similarly, the CCF argued that their Application concerns the following issues:

- Did Cabinet have reasonable grounds to conclude that the protests were threats to the national security of Canada?
- Did Cabinet have reasonable grounds to conclude that the protests could not be effectively dealt with under existing law?
- Did the powers created by the Regulations and Economic Measures violate sections 2(b)(c) and 8 of the charter and can they be saved under section 1?

[111] In their written argument, the Jost Applicants submitted that this case put the following matters in issue:

- What is the test for invocation of the Act, and based on that test, was the invocation of the Act in this case lawful and constitutional?
- Is the phrase throughout the Act "special temporary measure" void for vagueness under s.7 of the *Charter*, unjustifiable under s 1, and therefore requiring a remedy under s 52(1) of the *Constitution Act, 1982*?
- If no, are the "special temporary measures" passed under section 19 of the Act, *ultra vires* of s 19, or in the alternative, do the provisions of the Economic Order violate section 8 of the *Charter*, and are unjustifiable under s.1, thereby requiring a declaration under s.52(1) of the *Constitution Act, 1982* to that effect?

[112] In addition, the Jost Applicants alleged violation of the protection of property rights under section 1(a) of the *Canadian Bill of Rights*. That allegation was also included in their Amended Notice of Constitutional Questions filed on March 14, 2022.

[113] At the hearing, counsel for the Jost Applicants chose to focus on their *Charter* arguments and only briefly asserted infringement of the *Canadian Bill of Rights*. They did not pursue the other questions set out in their factum and Amended Notice of Constitutional Questions.

[114] However, in their oral argument, the Jost Applicants raised fresh questions relating to the application of several international agreements, the Vienna Convention on the Law of Treaties and principles of customary international law. These matters were mentioned but not discussed in their Notice of Application and were not identified as issues or addressed in their Memorandum of Fact and Law. As result, the Respondent had not dealt with them in their written submissions and were not prepared to speak to them in oral argument. The Respondent therefore objected to these arguments being considered.

[115] As a general rule unless the situation is exceptional, new arguments not presented in a party's Memorandum of Fact and Law should not be entertained as to do so would prejudice the opposing party and could leave the Court unable to fully assess the merits of the new arguments. The Court retains the discretion to accept new arguments not raised in a party's memorandum. However, as the Applicants did not raise any exceptional situation or authority for presenting these arguments for the first time at the hearing the Court will not consider them: *Rouleau-Halpin v Bell Solutions Techniques*, 2021 FC 177 at paras 33-34.

[116] Had I accepted that they were admissible, the Jost Applicants' international law arguments would have been of little assistance in these proceedings in view of the principles discussed in *Entertainment Software Association v Society of Composers, Authors and Music*

Publishers of Canada, 2020 FCA 100 at paras 76 to 92. [*Entertainment Software*]. In short, as stated by Justice Stratas, domestic law prevails and the Constitution of Canada is supreme (*Entertainment Software* at para 79).

[117] I note that the Preamble of the *Emergencies Act* states that in taking the special temporary measures authorized by the Act, the Governor in Council must have regard to the *International Covenant on Civil and Political Rights* (ICCPR). In *Quebec (AG) v Moses*, 2010 SCC 17 at para 101 the Supreme Court of Canada said as follows:

> The wording of a statute's preamble often provides insight into the statute's purpose or goal that can be helpful to a court interpreting it. According to s. 13 of the federal Interpretation Act, R.S.C. 1985, c. I-21, "[t]he preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object." […]Although a legislative preamble will never be determinative of the issue of legislative intent since the statute must always be interpreted holistically, it can nevertheless assist in the interpretation of the legislature's intention […]

[118] Accordingly, the reference in the Preamble to the ICCPR may serve as an interpretative aid as to the legislative intent of the EA. However, it is clear from the legislative history and language of the Act that the intent and purpose of the EA was to preserve and protect fundamental rights even in emergency situations where special temporary measures may be required. Thus, it is not necessary to refer to the ICCPR to interpret the provisions of the Act. The modern principle of interpretation set out in *Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 21[*Rizzo & Rizzo*] governs. It requires that the words of the Act "are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament".

[119] The Respondent submits that the issues are simply whether the decision to invoke the Act and to make the Regulations and Economic Order are reasonable and constitutional.

[120] The intervener, the Attorney General of Alberta, made submissions on five questions:

1. What is the definition of "national emergency" in section 3(a) of the Act requiring that it must be "of such proportions or nature as to exceed the capacity or authority of a province to deal with it"?

2. What is the interpretation of the phrase in section 3 of the Act "cannot be effectively dealt with under any other law of Canada"?

3. What are the implications of the requirement in section 17(2)(c) of the Act that the declaration of public order emergency specify the areas of Canada to which the effects of the emergency extend?

4. What is the interpretation of the requirement in section 25(1) of the Act to consult with the provinces?

5. What is the relationship between sections 19(1) and 19(3) of the Act?

[121] In my view, in addition to the preliminary questions relating to mootness and standing, the issues raised by the parties and the Intervener may be summarized in three broad questions:

1. Was the Proclamation unreasonable and *ultra vires* of the Act?

2. Did the powers created by the Economic Order and Regulations violate sections 2(b)(c)(d), 7 or 8 of the *Charter*, and, if so, can they be saved under section 1?

3. Did the Regulations and Economic Order violate the *Canadian Bill of Rights*?

IX. **Argument and Analysis**

A. Preliminary issues

(1) Test for a motion to strike

[122] The Court's jurisdiction to strike a proceeding derives from its inherent jurisdiction to control its own process*: Lukas v Canada (President, Natural Sciences and Engineering Research Council)*, 2015 FC 267 at para 24, cited with approval in *1397280 Ontario Ltd v Canada (Employment and Social Development)*, 2020 FC 20 at para 11; see also *Rebel News Network Ltd v Canada (Leaders' Debates Commission)*, 2020 FC 1181 at para 32 [*Rebel News*]. The threshold applicable on a motion to strike is whether the application is "bereft of any possibility of success". As discussed in *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 33 [*Wenham*] the Court uses the "plain and obvious" threshold or "doomed to fail" standard. Taking the facts pleaded as true, the Court examines whether the application:

> …is "so clearly improper as to be bereft of any possibility of success": *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 at page 600 (C.A.). There must be a "show stopper" or a "knockout punch" – an obvious, fatal flaw striking at the root of this Court's power to entertain the application: *Rahman v. Public Service Labour Relations Board*, 2013 FCA 117 at paragraph 7; *Donaldson v. Western Grain Storage By-Products*, 2012 FCA 286 at paragraph 6; *cf*. *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

Citing *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 47.

[123] The Court must read the notice of application to get at its “real essence” and “essential character” by reading it “holistically and practically without fastening onto matters of form”: *Wenham* para 34. An application can be doomed to fail on a preliminary objection, as in this instance, because of mootness: *Wenham* para 36.

(2) Test for mootness

[124] A matter is moot when there is no longer a live issue between the parties and an order will have no practical effect: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at p 353 [*Borowski*]. The Respondent brought its motion to strike the four applications for judicial review on the basis that all the applications are moot since they seek remedies in respect of legislative instruments that are no longer in effect, as the Public Order Emergency ended and the Proclamation, Regulations and Economic Order were revoked on February 23, 2022. Accordingly, the Respondent argues, there is no live controversy between the parties and nothing concrete or tangible for the Court to opine on that will impact the rights and interests of the parties.

[125] The Court may nonetheless choose to exercise its discretion to hear a moot application upon considering: (1) the presence of an adversarial context; (2) the appropriateness of applying scarce judicial resources; and (3) the Court’s sensitivity to its role relative to that of the legislative branch of government: *Borowski*, pp 358-362.

[126] The Court may also decline to exercise its discretion to hear moot matters when the requesting party did not come to the Court with clean hands: *Merck Frosst Canada Inc. v Canada*, 1999 CanLII 7859 at para 6 (FCA); *Narte v Gladstone*, 2021 FC 433 at paras 33-34.

[127] In these proceedings, all of the Applicants except for Nagle/CFN conceded that there was no longer a live controversy between the parties as a result of the Revoking Proclamation and that the matter is now moot. They all contend that should the Court find that the matter is moot, it should nonetheless exercise its discretion to hear the applications.

(3) The Respondent's position

[128] In essence, the Respondent contends, the four applications are requests for declarations which fail to provide live issues for judicial resolution as they cannot sustain a moot case in and of itself: *Rebel News* at para 64. A mootness finding cannot be avoided because declaratory relief is sought: *Fogal v Canada*, 1999 CanLII 7932 (FC) at paras 24-27, *Rahman v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 137, at paras 17-21. A declaration may be granted only if it will have practical utility and will settle a live controversy between the parties: *Income Security Advocacy Centre v Mette*, 2016 FCA 167 at para 6, citing *Daniels v Canada (Indian Affairs and Northern Development*), 2016 SCC 12 at para 11, *Solosky v The Queen*, [1980] 1 SCR 821 and *Borowski*. In the present case, the Respondent argues, there is no such practical utility.

[129] Moreover, the Respondent submits the Court should avoid expressing an opinion on a question of law where it is not necessary to do so to dispose of the case as abstract constitutional

pronouncements may prejudice future cases: *Phillips v Nova Scotia Commissioner of Inquiry into the Westray Mine Tragedy*, [1995] 2 SCR 97 at paras 9-12; *Mackay v Manitoba*, [1989] 2 SCR 357 at p 361-2; *Danson v Ontario (Attorney General)*, [1990] 2 SCR 1086 at p 1099-1101. Where a proceeding will not have a practical effect on the rights of the parties, it has lost its primary purpose, the Respondent argues, and the Court should not devote scarce resources to it: *Amgen Canada Inc v Apotex Inc*, 2016 FCA 196 at para 16 [*Amgen*]. A "mere jurisprudential interest" does not satisfy the need for a concrete and tangible controversy: *Air Canada Canadian Union of Public Employees (Air Canada Component) v Air Canada*, 2021 FCA 67 at para 7 [*CUPE v Air Canada*].

[130] In the present matter, according to the Respondent, the Applicants have already obtained the relief sought as the measures are no longer in effect; any declaration that the Emergency Measures were invalid or not *Charter*-compliant would provide no practical utility and there is no tangible relief to be provided that warrant this Court's intervention. This is not a case where there is a need to settle uncertain jurisprudence: *Amgen* at para 16. Nor is the Act evasive of review as it provides for adequate oversight and review mechanisms in its provisions for a Public Inquiry and Parliamentary Review.

(4) Positions of the Applicants

[131] The CCLA, CCF and the Jost Applicants concede that their applications are moot but argue that the Court should exercise its discretion to hear them as the *Borowski* factors weigh in their favour. Over the past year, they argue, the parties have presented and continue to present the necessary adversarial context, judicial economy supports hearing this case, which raises

once-in-a-generation issues that are evasive of review, and the Court's role is to explain whether the government's action was reasonable and *Charter*-compliant. Should the Court decide otherwise, they contend, the result is that any proclamation of a public order emergency and imposition of extraordinary measures of a brief duration will never be judicially reviewed. Revocation under the Act should not immunize the executive branch from judicial review, they argue.

[132] Cornell and Gircys add that in their case, the proceedings should be allowed to continue as the Respondent concedes that they have direct standing. The Court should therefore exercise its discretion to hear their case even if it is otherwise moot, they argue.

[133] The Nagle/CFN applicants submit that insofar as they are concerned the matter is not moot and a live controversy exists because their rights and liabilities were affected or may be affected notwithstanding the revocation of the Proclamation and cancellation of the Regulations and Economic Order by virtue of section 43 of the *Interpretation Act*, R.S.C., 1985, c. I-21 [*Interpretation Act*].

(a) Analysis

(i) Presence of an adversarial context

[134] The requirement for an adversarial context is to make sure that the issues are "well and fully argued by parties who have a stake in the outcome": *Borowski*, p. 359. The necessary adversarial context exists where "both sides, represented by counsel, take opposing positions"

(*CUPE v Air Canada* at para 10), where the parties continue to defend opposed positions on the issue (*Laurentian Pilotage Authority v Corporation des Pilotes de Saint-Laurent Central Inc.*, 2019 FCA 83 at para 27 [*Laurentian Pilotage*]), and where an application has been "fully argued on the merits" by the Attorney General of Canada and a public interest organization (*Democracy Watch v Canada (Attorney General*), 2018 FCA 195 at para 15, [*Democracy Watch*]).

[135] Since it was decided over a year ago that the Respondent's motions would not be heard and determined before the date scheduled for the hearing on the merits, the parties have continued to vigorously argue their respective positions. The several contested motions in the past year are, in my view, sufficient evidence of the existence of an adversarial context. Considerable time, energy and resources have been invested in these cases from all parties. The issues have been highly contested and zealously argued throughout.

[136] I agree with Cornell and Gircys that there remains a "tangible and concrete" dispute between the parties. The issues are not simply academic for them as they were directly affected by the invocation of the Act, which, as will be discussed below, arguably had an impact upon their *Charter* rights.

[137] There may be no immediate "collateral consequence" from these applications that could determine related proceedings between the parties, a factor to be taken into consideration as the Respondent contends. However, the existence of collateral consequences are not always essential in determining whether to exercise the court's discretion to hear a case despite its mootness,

especially when the subject matter may otherwise be evasive of review: *N.B. (Minister of Health) v G.(J.)*, [1999] 3 SCR 46 at para 45 [*G.(J.)*].

[138] Nagle/CFN argue that they remain liable to prosecution for breaching the Regulations. I do not accept this. As I discuss further, below, in relation to standing, the possibility of a prosecution against either Nagle or the CFN is entirely hypothetical given subsequent events and the passage of time. Moreover, their assertion of a potential claim for compensation for *Charter* damages or under subsection 48(1) of the Act is speculative given the lack of evidence of any harm to Nagle or the CFN. In the result, I am satisfied that there is no live controversy between them and the Respondent.

[139] These matters are distinguishable from the applications dealt with in *Ben Naoum v Canada*, 2022 FC 1463 [*Ben Naoum*], a case relied upon by the Respondent. In those proceedings, four judicial review applications challenging Canada's vaccine mandates for air and rail passengers were struck. Among the reasons why Associate Chief Justice Gagné declined to hear them were that the mandates had been revoked and declaratory relief would bring no practical utility. However, by the time those matters came before the Court, the federal and provincial health safety measures adopted in the pandemic had already been constitutionally challenged across the country as they were in full force and effect. As a result, there was no uncertain jurisprudence to be resolved: *Ben Naoum* at para 42. Similarly, in *Lavergne-Poitras v Canada*, 2022 FC 1391 it was found that the application was not evasive of review in part because it was already being considered in other courts.

[140] In other cases cited by the Respondent in support of their motion to strike, the decisions at issue had already been reviewed at first instance.: *Spencer v Canada*, 2023 FCA 8; *Right to Life Association of Toronto v Canada*, 2022 FCA 220; *Fibrogen, Inc v Akebia Therapeutics, Inc*., 2022 FCA 135; *Canada v Ermineskin Cree Nation*, 2022 FCA 123; *Wojdan v Canada*, 2022 FCA 120. That is not the situation here as there has been no prior determination by the Courts of the validity of the decision at issue.

[141] In my view, the Applicants have established that an adversarial context continues to exist and have built a record upon which meaningful judicial review of the decision to invoke the Act and issue the Proclamation and related instruments can occur.

(ii) Judicial Economy

[142] Under the judicial economy analysis, courts can consider whether the matter is likely to recur and is evasive of review, and whether the matter is of national or public importance: *Borowski* at p 353. The Respondent does not dispute that the matter is of national and public importance but contends that alone is insufficient in the absence of an additional "social cost in leaving the matter undecided": *Borowski* at p 362. The Respondent suggests that the likelihood of recurrence is uncertain given the exceptional circumstances in which the Act was invoked and contend that further declarations will not be evasive of review going forward in light of the requirements for both a public inquiry and parliamentary review.

[143] I disagree. The risk of other episodes of public disorder of the nature which occurred in February 2022 can not be discounted. While the circumstances were exceptional up to that point

in time, there can be no guarantee that there will not be a recurrence of similar events, or worse, in light of the rise of extremist elements within our society prepared to take their opposition to government policies to another level of protest, and to whip up support for such protests through the extraordinary reach of social media.

[144] I agree with the Applicants that neither the Public Inquiry nor the Special Joint Committee of the House of Commons and the Senate, required by the Act to examine the Declaration of Emergency, are substitutes for judicial review. Without dismissing in any way the importance of those procedures, their roles are not to adjudicate upon the legality and constitutionality of the measures adopted under the Act. Rather, their roles are to consider the events which took place and to make recommendations that, without legislative or other action, have no legal effect. While they are both important accountability mechanisms, they are legally and practically distinct from the Court's adjudicative function: *Canadian Civil Liberties Association v Canada (Attorney General)*, 2023 FC 118, at paras. 56-57. The present proceedings are thus not duplicative of the work done by the POEC or that being undertaken in the Parliamentary process, contrary to the Respondent's submission.

[145] I am conscious of the reality that as a single puisne judge I may err on the findings I make in these reasons. However, such errors can be cured on appellate review. Neither the Commission nor the Parliamentary Committee process are susceptible to appeal.

[146] The Respondent submits that the invocation of the *Emergencies Act* is not evasive of judicial review because the Federal Court is accessible 24 hours a day, 365 days a year for urgent

applications. The Respondent argues that, if necessary, interim stay orders could be issued and time frames abridged. It is true that interim injunctive relief may be rapidly accessed from the Court, but this remedy is generally sought in the context of a long-standing dispute between the parties and there is an adequate evidentiary basis for a considered decision to be rendered promptly.

[147] As the history of these proceedings demonstrates, it can be difficult to obtain the evidence required to bring an application for an injunction against actions by the government when the Executive is in control of the information underlying the decision and unwilling to disclose it. In this instance, at the outset, very little information about the grounds for invocation of the Act was disclosed beyond the Section 58 Explanation. Production requests for material records, under Rule 317 of the *Federal Courts Rules*, were actively resisted by the Respondent under several heads of privilege including broad claims of Cabinet confidentiality.

[148] As argued by the CCF, a public order emergency is a paradigmatic example of a matter that is evasive of review because it will almost always be over and moot by the time a challenge can be heard on the merits. For arguably comparable examples see *Tremblay v Daigle*, [1989] 2 SCR 530, p 539*; G.(J.)* at para 47; *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 at para 20; *Mazzei v British Columbia (Director of Adult Forensic Psychiatric Services)*, 2006 SCC 7 para 15; *A.C. v Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at para 174; *Mission Institution v Khela*, 2014 SCC 24 at para 14; *Canada (Public Safety and Emergency Preparedness) v Chhina*, 2019 SCC 29 at para 15; and *R. v Penunsi*, 2019 SCC 39 at para 11.

[149] The Act's definition of a "public order emergency" requires that it be temporary, which means that such order will likely have ended long before any legal challenges to the proclamation of an emergency are heard by the courts. The timeline of this case illustrates this point. If the Court declines to hear these cases, a precedent may be established that so long as the government can revoke the declaration of an emergency before a judicial review application can be heard, the courts will have no role in reviewing the legality of such a decision.

[150] There would thus be an "additional social cost" in leaving the issues raised in these proceedings undecided, as the Act vests extraordinary powers in the Executive, including the power to create new offences without recourse to Parliament, or public debate, and the power to act in core areas of provincial jurisdiction without provincial consultation or consent.

[151] Uncertainty as to when and how the Act can be invoked necessarily creates a "social cost" in that, in the next emergency, the government may take similar measures without the benefit of the guidance of the courts on their reasonableness or compliance with the *Charter*. In the result, the interests of judicial economy do not foreclose the hearing of these applications.

(iii) Court's sensitivity to its role relative to that of the legislative branch of government.

[152] The courts must be sensitive to their role as the adjudicative branch in our political framework as pronouncing judgment in a moot case may be viewed as making law in the abstract, a task reserved for the legislative branch: *Borowski* at p. 362; *Amgen* at para 16. A court

may decline to exercise its discretion to hear a moot case where Parliament also has a role in considering the same issues: *Democracy Watch* at paras 20-22.

[153] I agree with the Respondent that the Act's requirements for a Parliamentary review process and a public inquiry calls for an extra measure of caution. However, a review of the legislative history of the Act demonstrates that Parliament itself contemplated judicial review of emergency declarations.

[154] The Bill introducing the Act in 1984 was amended to drop the loose requirement that Cabinet only needed to be "of the opinion" that an emergency existed, in favour of the requirement that there be "reasonable grounds" for such a decision. The expressly stated purpose of this wording was to empower courts to judicially review emergency proclamations: Bill C-77, *An act to authorize the taking of special temporary measures to ensure safety during national emergencies and to amend other Acts in consequence thereof* (First Reading) (June 26, 1987) [*Bill C-77*]; *Minutes of Proceedings and Evidence of the Legislative Committee*, 33rd Parl., 2nd Sess., Vol. 1, No. 1 (February 23, 1988), pp. 15 to 16.

[155] A reviewing court may have reference to the legislative history of an enactment as part of the context but that evidence must be examined with caution. The authentic meaning of an enactment must be read according to the modern rules of interpretation set out in *Rizzo & Rizzo.* But "the information obtained from parliamentary debates can be particularly useful when it confirms that the interpretation given is correct": *MediaQMI v Kamel*, 2021 SCC 23 at paras 37-38.

[156] Here it is clear that the change in the draft bill resulting in the present language was made so that there would be an opportunity for judicial review. This was done in the full consideration of the legislators that the Act, as drafted, called for both a Public Inquiry and a Parliamentary Review, as the debates clearly indicate. This, it was recognized, was to ensure that Canadians would be able to challenge in the courts any Proclamation and related statutory instruments made by the Executive. As stated by the Supreme Court of Canada in *Catalyst Paper Corporation v North Cowichan (District)*, 2012 SCC 2 at para 10:

> It is a fundamental principle of the rule of law that state power must be exercised in accordance with the law. The corollary of this constitutionally protected principle is that superior courts may be called upon to review whether particular exercises of state power fall outside the law. We call this function "judicial review".

[157] I am satisfied that the legislative history of the Act weighs heavily in favour of the exercise of the Court's discretion to hear the applications.

(5) Conclusion on mootness

[158] Taking the public and national importance of the subject matter into account, which is not disputed by the Respondent, and my conclusions on the factors of judicial economy and respect for the legislative process, and subject to my remarks below about standing, I am satisfied that the applications should be heard notwithstanding their mootness.

(6) Test for standing

[159] To bring an application for judicial review in this Court a litigant must, generally, establish that they are “anyone directly affected by the matter in respect of which relief is sought”: s 18.1(1) of the *Federal Courts Act*. While the Court has held that the words “directly affected” should not be given a restricted meaning, the evidence must show more than a mere interest in a matter: *Unifor v Vancouver Fraser Port Authority*, 2017 FC 110 at para 29.

[160] An applicant claiming direct standing must show that the impugned decision a) directly affects their rights; b) imposes legal obligations on them; or c) prejudicially affects them: *Friends of the Canadian Wheat Board v Canada*, 2011 FCA 101 at para 21*; League for Human Rights of B'nai Brith Canada v Odynsky*, 2010 FCA 307 at para 58.

[161] The criteria for public interest standing were set out in *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para 37 [*DESW*]; see also *British Columbia (Attorney General) v Council of Canadians with Disabilities*, 2022 SCC 27 [*Council of Canadians with Disabilities*] which confirmed the *DESW* test. In exercising the discretion to grant public interest standing, the court must consider three factors: (1) whether there is a serious justiciable issue raised; (2) whether the plaintiff has a real stake or a genuine interest in it; and (3) whether, in all the circumstances, the proposed proceeding is a reasonable and effective way to bring the issue before the courts.

(a) Respondent's position

[162] The Respondent submits that Nagle/CFN and the Jost Applicants, save for Cornell and Gircys, lack direct standing as they are not "anyone directly affected by the matter in respect of which relief is sought" as required by s 18.1(1) of the *Federal Courts Act*.

[163] The Respondent further adds that Nagle, Gircys, Jost and Ristau demonstrated a lack of clean hands by providing inaccurate, unfounded and exaggerated statements in their evidence, and have approached the judicial review with a lack of candour. For that reason, the Respondent argues, the Court should decline to exercise its discretion to recognize or grant standing in their favour.

[164] The Respondent argues that neither Kristen Nagle nor the CFN were adversely affected by the invocation of the Public Order Emergency and enactment of the related instruments. By her own evidence, Ms. Nagle continued to willingly act in contravention of the measures by, among other things, soliciting donations, distributing funds and providing material support to the demonstrators. However, she was not the subject of any disclosures to financial institutions or, otherwise described to be a "designated person", her bank accounts and financial resources were not frozen and she was not forcibly removed from participating in the Convoy. She chose to leave on February 19, 2022, of her own accord. Ms. Nagle continued to express her views and to fundraise after the invocation of the Act; she was never charged nor was she ever the subject of any measures taken under the Act.

[165] As for the CFN, the Respondent argues that there is no evidence suggesting that anyone other than Nagle acted on behalf of the organization, that any director, member or employee of CFN other than Nagle attended the Convoy, that CFN took any action separate from Nagle, or that the *Emergency Measures* affected CFN any differently than they affected Nagle. CFN was not named a designated entity and its bank account was not frozen. Any potential liability Nagle and the CFN might subsequently face from their involvement is entirely speculative. Moreover, the Respondent submits, even if the *Emergency Measures* had caused a temporary reduction in financial contributions to CFN, judicial review cannot be used to protect interests that are strictly commercial in nature: *Island Timberlands LP v Canada (Minister of Foreign Affairs)*, 2009 FCA 353 at para 7 [*Island Timberlands*].

[166] Similarly, the Respondent submits, Jeremiah Jost and Harold Ristau did not have their bank accounts frozen nor were they more affected by the Emergency Measures than any other member of the public. The restrictions imposed by the Regulations on participation in the protest in downtown Ottawa applied equally to all members of the public. Jost and Ristau were not forcibly removed from downtown Ottawa nor were they otherwise specifically targeted by law enforcement. They left of their own accord.

[167] As for the CCLA and the CCF, the Respondent submits that they should not be granted public interest standing because their proposed arguments are moot and duplicate arguments made by the Applicants with direct standing i.e., Cornell and Gircys.

(b) Applicants' positions

(i) Nagle/CFN

[168] Nagle, and through her the CFN, asserts direct standing based on her participation in the Ottawa protests. Neither claims public interest standing. They deny that their solicitation and distribution of funds are transactions of a "strictly commercial nature"; rather they contend, the purpose underlying soliciting and distributing funds was to facilitate the peaceful assembly of participants in the Convoy in Ottawa and their peaceful expression of dissatisfaction with government policies.

[169] Nagle freely acknowledges having violated the Regulations and the Economic Order for days after their implementation. While the instruments remained in effect, she argues, this made her liable to being charged, and the CFN's funds frozen, for her expression of dissent and financial support to the Convoy. She contends that this had a chilling effect on her activities and thus she refrained from distributing funds as openly as she had before the Proclamation. Moreover, she states in her affidavit, donations to the CFN markedly declined and, as a result, she felt compelled to cease her participation and that of the CFN in the protest.

[170] Ms. Nagle contends that she and the organization continue to be liable because of the operation of s 43 of the *Interpretation Act* notwithstanding revocation of the Act and cancellation of the Regulations and Economic Order. The effect of s 43 in this context, she submits, is to preserve the right of the authorities to investigate and prosecute her and the CFN for their involvement in the protests even long after revocation: *Chen v Canada (Citizenship and*

Immigration), 2018 FC 608 at para 7 [*Chen*]; *R. v Ferkul*, 2019 ONCJ 893 [*Ferkul*] at para 4. A declaration by this Court that the Regulations and Economic Order breached their rights under the *Canadian Bill of Rights* or the *Charter*, or that the Proclamation was *ultra vires*, would eliminate their liabilities, she contends.

(ii) Jost and Ristau

[171] As noted, the Respondent concedes that Cornell and Gircys have standing as persons directly affected by the decision under review. Jeremiah Jost also asserts that he was directly and substantially harmed by the Act as he was carrying out his *Charter* rights to protest in Ottawa when the Act was invoked. He submits that he received notice of police threats to charge protestors, witnessed police brutality and was shoved by the police and his clothes were torn because of the enforcement of the Regulations. Thus, Jost argues his rights to liberty, mobility and freedom of expression were adversely affected, and the Court should therefore recognize that he has direct standing to challenge the Proclamation and related instruments.

[172] Harold Ristau participated in the Convoy protest in Ottawa for just one day, on February 12, 2022, before the Regulations and Economic Order came into effect. He confirmed in his affidavit and on cross-examination that the measures did not impede his ability to participate to anything on that day. His bank accounts were not subsequently frozen and no other action was taken by the police or other authorities against him. Ristau claims that, upon returning home, he suffered negative consequences that were caused by the Proclamation. These, as he described in his affidavit, and acknowledged on cross-examination, appear to have been due to reactions from

other persons within his religious community and place of work who did not agree with his views, and were not due to any action taken by the government or the police.

(iii) CCLA and CCF

[173] While the CCLA and CCF have brought separate applications for review, they have worked closely together in these proceedings. The CCLA has a long history of promoting human rights and civil liberties. The CCF's focus is more on constitutional issues as its name indicates. They submit that public interest standing is a matter of discretion to be exercised in a purposive, flexible and generous manner. The purpose is to ensure that state action conforms to the Constitution and statutory authority and to provide practical and effective ways to challenge the legality of state action: *DESW* at para 31.

(c) Conclusion on standing

[174] As noted above, at the opening of the hearing on April 3, 2023, I advised counsel for the Jost Applicants that on the basis of the record and the transcripts of cross-examination of Jost and Ristau, I agreed with the position of the Respondent that neither of them had standing but Cornell and Gircys had direct standing to be heard on the merits. Having considered the matter further I see no reason to alter that conclusion.

[175] Among the four Jost Applicants, Mr. Ristau had the least claim to standing as none of what he claims to have experienced can be directly connected to the Proclamation and Emergency Measures. His visit to Ottawa was brief and the negative consequences, which he

says followed, occurred at his place of work and within his religious community. The relationship between the Emergency Measures and the alleged harms from private persons is speculative and unsubstantiated. Ristau was not, in my view, a person affected by the decision to issue the Proclamation in any meaningful way.

[176] While Mr. Jost claims to have suffered ill effects as a result of the operations to clear the protestors from downtown Ottawa, they were all transitory. No actions were taken to freeze his resources. Mr. Jost chose to remain in the area notwithstanding clear instructions to depart and was present when the police clearance operation began. He conceded on cross-examination that the Emergency Measures did not impede his ability to attend and participate in the protests. He continued to receive and distribute money to other protestors. While his right to express dissent may have been briefly affected, that was only within the physical confines of the area subject to the Regulations. He was free to leave that area and to continue to express his dissent elsewhere. Jost's evidence lacked candour and was evasive and misleading on cross-examination. He denied, for example, that loud truck horns were blown at night despite incontrovertible evidence of this including his own video recording.

[177] Edward Cornell and Vincent Gircys were directly affected by the Emergency Measures in that their accounts were frozen. Gircys made exaggerated and misleading statements in his evidence about the effect of the invocation of the Act upon him unsupported by any medical or psychological evidence but I do not find that they amount to grounds to deny him standing. The Respondent made no claim of "unclean hands" against Cornell. As a result, I was satisfied that their applications should proceed.

[178] As noted, the Nagle/CFN claim to direct standing is primarily based on s. 43 of the *Interpretation Act*. That section deals with the effect of repeal and revocation of a statute or regulation. Accordingly, they argue, revocation of the Proclamation does not preclude the prosecution of charges against them under the terms of the Regulations and Economic Order as they were during the duration of the Proclamation. They submit that Nagle in her personal capacity, and the organization as an "entity", both fell within the meaning of "designated persons" set out in the *Economic Order* while those instruments were operative because of their activities in support of the Convoy. Accordingly, they argue, they remain subject to potential liability under those provisions, which makes them persons affected under the terms of s. 18.1 of the *Federal Courts Act*.

[179] At the outset of the hearing, I considered whether there was any "air of reality" to this argument, which would justify the recognition of standing for Nagle and the CFN. The Respondent's position is essentially that the argument is highly speculative and the Court should not entertain the possibility that there is any substance to it. I have come to agree with the Respondent's position largely because it is inconceivable at this stage in the aftermath of the February 2022 events that any public body with the authority to investigate and prosecute any hypothetical offences Nagle may have committed, would pursue charges against her or the CFN now. In the unlikely event that might happen, it would remain open to Nagle and the CFN to seek a determination on the constitutionality of the impugned provisions if they chose to do so.

[180] This is not a case of a historical crime discovered long after the statute has been amended which, in my view, is what section 43 of the *Interpretation Act* is intended to address. The

involvement of Nagle and the CFN in the events of February 2022 was discoverable by the authorities at the time. Neither *Chen* nor *Ferkul* are of assistance to them. *Chen* dealt with the application of foreign law and did not address the question of delayed enforcement of a repealed Canadian statute. *Ferkul* deals with the change in the legal framework for cannabis sales and a *Charter* challenge to repealed legislation.

[181] To the extent that donations to the CFN may have diminished after the invocation of the Act that is, as the Respondent argues, purely a financial consideration that does not support a finding that Nagle and the organization should be granted standing: *Island Timberlands,* at para 7.

[182] I am also of the view that Nagle did not bring her application for judicial review with clean hands. The decision to grant standing or to hear a moot application as a matter of fairness constitutes discretionary equitable relief. The clean hands doctrine recognizes that a court can decline to grant equitable relief in favour of a party who has acted unlawfully, shown bad faith or lacked transparency: *Trial Lawyers Association of British Columbia v Royal & Sun Alliance Insurance Company of Canada*, 2021 SCC 47 at para 37; *Laurentian Pilotage* at para 41.

[183] While the Respondent points to Nagle's history of prior misbehaviour, the clean hands doctrine applies to a party's conduct during the court proceedings. Nagle has demonstrated bad faith in these proceedings. At the very outset, in February 2022, she circumvented the Court's instructions against broadcasting a virtual hearing to which she had been granted remote access.

Moreover, the transcript of Nagle's cross-examination is replete with examples of her efforts to avoid answering questions. Her responses lacked transparency and candour.

[184] During the hearing in April 2023, the Court was offended by the behaviour of lead counsel for Nagle/CFN. Despite repeated instructions to address the issues, counsel repeatedly made inappropriate and offensive political statements. These grandstanding remarks were clearly intended to play to the audience observing the hearing remotely. I will note that junior counsel for Nagle/CFN, who presented argument in reply to the Respondent later in the hearing, did not engage in the same misconduct.

[185] Apart from these concerns, having reread their memorandum of fact and law and the transcript of their oral submissions, I am satisfied that Nagle/CFN bring nothing of value to these proceedings. As a result, I find that they lack standing. Their application for judicial review is dismissed and will not be considered further in these reasons.

[186] As for the CCLA and CCF, I have no doubt that their participation in these proceedings meets the criteria set out in *DESW* for public interest standing. As stated by the Supreme Court of Canada at paras 35-36 of *DESW*:

> [35] From the beginning of our modern public interest standing jurisprudence, the question of standing has been viewed as one to be resolved through the wise exercise of judicial discretion. As Laskin J. put it in Thorson, public interest standing "is a matter particularly appropriate for the exercise of judicial discretion, relating as it does to the effectiveness of process" (p. 161); see also pp. 147 and 163; Nova Scotia Board of Censors v. McNeil, 1975 CanLII 14 (SCC), [1976] 2 S.C.R. 265, at pp. 269 and 271; Borowski, at p. 593; Finlay, at pp. 631-32 and 635. The decision to grant or refuse standing involves the careful exercise of judicial

> discretion through the weighing of the three factors (serious justiciable issue, the nature of the plaintiff's interest, and other reasonable and effective means). Cory J. emphasized this point in Canadian Council of Churches where he noted that the factors to be considered in exercising this discretion should not be treated as technical requirements and that the principles governing the exercise of this discretion should be interpreted in a liberal and generous manner (pp. 256 and 253).
>
> [36] It follows from this that the three factors should not be viewed as items on a checklist or as technical requirements. Instead, the factors should be seen as interrelated considerations to be weighed cumulatively, not individually, and in light of their purposes.

[187] The legal issues raised in these proceedings are justiciable and both the CCLA and CCF have a genuine interest in the subject matter, which the Respondent does not contest. The two organizations also provide strong public law capabilities to compliment the more limited substantive arguments raised by Cornell and Gircys. In the circumstances, their applications are in my view, a reasonable and effective means to bring these issues before the Court. Both the CCLA and the CCF have the capacity to present the evidence and argument required to assist the Court in reaching a just determination of the issues, which upholds the principle of legality.

[188] The participation of individuals with direct standing, i.e., Cornell and Gircys, is not a bar to granting public interest standing. Nor would it serve, in my view, as a reasonable and effective means of bringing the issues before the Court to limit the proceedings to the two private litigants. While, as stated in *DESW* at para 37, a party with standing as of right is to be preferred all other relevant considerations being equal, that is not the case here. Neither the evidence submitted nor the arguments advanced by the private litigants would have been sufficient to deal with the issues in these proceedings. The CCLA and CCF brought organized and effective submissions to

the issues before the Court. Moreover, this case transcends the interests of those most directly affected by the Proclamation and related measures: *DESW* at para 51.

[189] Contrary to the Respondent's submissions, there has been a definite advantage in having counsel for the two public interest organizations working alongside, and to some extent guiding, the private litigants to move these proceedings to the point where the issues could be argued on their merits. And there is no suggestion that either Cornell or Gircys wish to exclude CCLA or CCF from the proceedings.

[190] As stated in *Council of Canadians with Disabilities* at para 40, the whole purpose of public interest standing is "to prevent the immunization of legislation or public acts from any challenge". In the circumstances, I am satisfied that granting public interest standing to the CCLA and CCF will satisfy that purpose.

B. Substantive issues

(1) Standard of Review

[191] The Proclamation, Regulation and Economic Order at issue in these proceedings are forms of executive legislation delegated to the Governor in Council by Parliament: EA s 17(1); *Interpretation Act* s 18. Proclamations, Regulations and orders made in the execution of a power conferred by or under an Act of Parliament are statutory instruments as defined in the *Statutory Instruments Act* RSC, 1985, c S-22, s 2. Conferral of the authority to issue such instruments on the Governor in Council by Act of Parliament, as opposed to under a Royal Prerogative, means

effectively that they are made by the federal Cabinet. While that may seem obvious, in these proceedings the Respondent argued that a distinction had to be drawn between decisions made by Cabinet, which are subject to privilege under s 39 of the *CEA*, and the formal issuance of the results of those decisions by the Governor in Council. I disagreed for reasons set out in *CCF v Canada*.

[192] The Governor in Council had the authority to make these instruments on the recommendation of Cabinet. What is at issue is the legality of the Proclamation and related instruments. And that entails a determination of whether they were made in accordance with the governing legal framework including the legislation which delegated the authority to the Executive and prescribed how it was to be exercised. It is the role of the courts to make that determination through judicial review.

[193] As explained by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 27 [*Dunsmuir*], judicial review is intimately connected with the preservation of the rule of law, a constitutional principle which the courts have a duty to enforce. All wielders of public power, including at the highest levels of the Executive, must be reviewable and accountable to the law. How that is done requires the reviewing court to first determine the appropriate standard or standards of review to apply. The leading authority for this is now the decision of the Supreme Court of Canada in *Vavilov*.

[194] In the absence of a legislated standard, or a review related to a breach of natural justice or procedural fairness, the presumption is that the court is to engage in a reasonableness review:

Vavilov at para 23. There are three key exceptions to this presumption: constitutional questions; general questions of law of central importance to the legal system as a whole; and jurisdictional questions. For these, the court is to engage in a correctness review: *Vavilov* at paras 17, 53.

[195] The Respondent, the CCLA and the CCF agree that the reasonableness standard of review applies to Cabinet's decision to invoke the EA and issue the Proclamation and related measures. They disagree on what reasonableness requires in this context.

[196] The Respondent submits that the correctness standard applies to whether the Economic Order and Regulations are *Charter* compliant or comply with the *Canadian Bill of Rights*, citing *Vavilov* at para 17.

[197] The Jost Applicants contended in their Memorandum of Fact and Law that correctness should be the standard for review of the decision to issue the Proclamation on the ground that it raised a question of law of central importance to the legal system as a whole requiring a single determinate answer. They also submitted in their written argument that the *Emergencies Act* was contrary to the *Constitution Act 1867* on division of powers grounds but that position was not pursued at the hearing. In their written reply, they also argued that correctness is the appropriate standard of review on the application of the *Canadian Bill of Rights*.

[198] The Court is not bound by the position taken by the parties as to the appropriate standard of review and has to make its own assessment: *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 17. In this instance, apart from constitutional questions, the sole exception to the

presumption that the standard should be reasonableness that might apply is whether the applications raise general questions of law of central importance to the legal system as a whole. Examples of such questions include those with legal implications for many other statutes or for the proper functioning of the justice system as a whole. It is not enough for the question to raise an issue of "wider public concern": *Mason v Canada (Citizenship and Immigration)* 2023 SCC 21 at para 47 [*Mason*].

[199] While the invocation of the *Emergencies Act* was extraordinary and authorized the Government of Canada to interfere with the constitutional division of powers and to adopt any measure necessary to combat the emergency, it did not disrupt the fundamental legal order of Canada other than on a temporary and limited basis. Nor did it have legal implications for many other statutes or for the proper functioning of the justice system as a whole. For those reasons, the presumption of reasonableness is not displaced.

[200] These proceedings involve challenges under the *Charter* to the related measures adopted to implement the Proclamation and not to the enabling statute itself. As stated in *Vavilov,* at para 57, a distinction is to be drawn between cases in which it is alleged that the effect of the administrative decision being reviewed is to unjustifiably limit rights under the *Charter* and those in which the issue on review is whether a provision of the enabling statute violates the *Charter*. The administrative decision maker's interpretation of the statute in the latter case will be reviewed for correctness.

[201] In these proceedings, the provisions of the EA, which authorized the special measures set out in the Regulations and the Economic Order are not challenged. Thus, the standard remains reasonableness with deference owed to the decision maker and its specialized expertise.

[202] Regarding the issuance of the Proclamation, the question for the Court is whether the Governor in Council, acting on the recommendation of Cabinet, reasonably formed the belief that reasonable grounds existed to declare a public order emergency under s 17 of the Act. As defined in the jurisprudence, the "reasonable grounds to believe" evidentiary standard requires more than mere suspicion and less than proof on a balance of probabilities: *Mugesera v Canada (Minister of Citizenship and Immigration),* 2005 SCC 40 at para 114 [*Mugesera*]. Reasonable belief is the "point where credibly-based probability replaces suspicion." *Hunter* at para 167. It is a probability, rather than possibility based standard: *R. v Chehil* 2013 SCC 49 at para 27. Whether Cabinet had sufficient evidence to satisfy the standard when the decision was made to invoke the Act is a key issue in these proceedings.

[203] In assessing the lawfulness or "*vires*" of the Economic Order and Regulations, the reasonableness standard will also apply: *Portnov v Canada (Attorney General)*, 2021 FCA 171 at para 10 [*Portnov*]; *Innovative Medicines Canada v Canada (Attorney General)*, 2022 FCA 210 at paras 26-44; *International Air Transport Association v Canadian Transportation Agency*, 2022 FCA 211 at paras 186-190.

[204] In conducting reasonableness review, deference is warranted and it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any

relevant factor: *Kanthasamy v Canada (Minister of Citizenship and Immigration*), 2015 SCC 61 [*Kanthasamy*] at para 112; *Vavilov* at para 13.

> Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

[205] Reasonableness review does not give the decision-maker free rein in interpreting the enabling statutes or license to enlarge their powers beyond what the legislature intended: *Vavilov* para 68. The Court must respect Parliament's drafting choices and cannot amend the statute as it sees fit: *Reference re Impact Assessment Act*, 2023 SCC 23 at para 193.

[206] The parties disagree on how "robust" the review of a Cabinet decision may be. The Respondent argues that an extraordinarily high degree of deference should be given to Cabinet because of its status "at the apex of the Canadian executive developing policy in many disparate areas" and because its determinations are "based on wide considerations of policy and the public interest, assessed on polycentric criteria". Such "quintessentially executive" decisions should be "unconstrained and very difficult to set aside": *Vavilov* at paras 108, 110; *Entertainment Software* at paras 28-32; *Gitxaala Nation v Canada*, 2016 FCA 187 [*Gitxaala Nation*] at para 150; *Raincoast Conservation Foundation v Canada (Attorney General)*, 2019 FCA 224 at paras 18–19; *Portnov* at para 44.

[207] The CCLA submits that while Cabinet's decision to invoke the Act is owed deference, the Respondent goes too far in suggesting that it is "unconstrained and very difficult to set aside". This ignores, the CCLA argues, the important distinction between the objective determination of whether the statutory thresholds in s. 17 of the EA were met and the discretionary decision of whether to invoke the Act. While the latter attracts substantial deference, the margin of appreciation to be afforded the former is narrow: *Gitxaala Nation* at para 153.

[208] The CCF submits that while Cabinet may be the ultimate decision making authority, it only has the powers conferred on it by the Constitution, statute and the common law. *Vavilov,* citing *Roncarelli v Duplessis*, [1959] SCR 121 at p 140, affirmed that there is no such thing as absolute and untrammelled discretion and any exercise of discretion must accord with the purposes for which it was given: *Vavilov* at para 108.

[209] Some statutes do confer upon Cabinet an "unconstrained" discretion to make decisions "based on wide considerations of policy and the public interest, assessed on polycentric criteria", as discussed in the Federal Court of Appeal decisions relied upon by the Respondent. However, the relevant provisions of those statutes are very broadly drafted and do not import objective standards constraining the exercise of administrative discretion as are found in the *Emergencies Act*, such as the requirement for "reasonable grounds to believe".

[210] I agree with the CCLA and the CCF that the question of whether a Cabinet decision is unconstrained in the way urged by the Respondent turns on the statutory text and context of the

provisions at issue. The *Emergencies Act* contains objective legal thresholds that must be satisfied before a Proclamation may issue. And these thresholds are "more akin to the legal determinations courts make, governed by legal authorities, not policy": *Entertainment Software* at para 34. Thus, while the ultimate decision of whether to invoke the Act is highly discretionary, the determination of whether the objective legal thresholds were met is not and attracts no special deference beyond that set out in *Vavilov*.

[211] In this instance, as discussed in *Vavilov* at para 124 and *Mason* at para 71, the Court may conclude that the "interplay of text, context and purpose leaves room for a single reasonable interpretation of the statutory provision, or aspect of the statutory provision".

(2) Was the decision to issue the Proclamation unreasonable and ultra vires the Act?

[212] The main question underlying the three applications is whether the decision to issue the Proclamation "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision": *Vavilov* at para 99.

[213] By factual constraints, the Court needs to consider the evidentiary record and general factual matrix that bore on the decision, and the key legal constraints include the governing statutory scheme and the principles of statutory interpretation: *Vavilov* at paras 108-110, 120 and 126.

[214] As noted above, at the hearing counsel for Cornell and Gircys chose not to make most of the substantive arguments set out in their Memorandum of Fact and Law, other than those pertaining to the *Charter* and *Canadian Bill of Rights*. This is to their credit as much of the content of the Memorandum was irrelevant in my view. They indicated that they would rely on the submissions made by counsel for the CCLA and CCF regarding the reasonableness of the decision. Accordingly, the following discussion focuses on those arguments. Where relevant, I will also discuss the Intervener's arguments.

(a) The Court draws no adverse inference from the privilege claims.

[215] The CCLA and the CCF ask the Court to draw an adverse inference against the Respondent on both the administrative law and *Charter* issues because of the extensive redaction of the contents of key documents under s 39 of the *CEA*, in particular portions of the minutes of the February 13, 2022 Cabinet meeting. They did not link this argument to the privilege claims under *CEA* sections 37 and 38 or the protected solicitor client communications.

[216] The Respondent rejected a proposal for counsel-eyes-only disclosure and went on to "cherry pick" the information it would disclose, the Applicants argue, over their "constant and firm objection" to the non-disclosure of that content. In support, they reference authorities which have found that a court may draw an adverse inference in the face of assertions of privilege and "constant and firm objection" to non-disclosure *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, 2021 FCA 72 at para 111, citing *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 SCR 199 at paras 165-166 [*RJR-MacDonald*]; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128, at para 54. I note that in these

cases, adverse inferences were not drawn, except in *RJR-MacDonald* where the Court said, at para 166, that it would be difficult not to infer that the results of the withheld studies must undercut the government's claim.

[217] In a ruling on a motion for production, I declined to go behind the section 39 certificates issued in these proceedings. For reasons that are set out in *Jost v Canada*, I found that there was no basis to question the validity of the certificates.

[218] I am satisfied that even if it is possible to draw an adverse inference against the Government in the circumstances, it is not necessary for the Court to do so in order to decide the substantive issues in these proceedings. The Section 58 Explanation serves as the reasons for the decision to invoke the EA whether or not there were extensive *CEA* s 39 redactions. Moreover, by the conclusion of the preparatory steps, there was considerably more disclosure of related documents and adequate evidence before the Court, in my view, to determine whether the reasonableness standard had been met or the *Charter* and *Canadian Bill of Rights* had been infringed. I am not persuaded that there is an evidentiary basis for concluding that the redacted information would disclose that the GIC either lacked the information required to make the decision or that the redacted information contradicted its belief that the invocation of the EA was necessary. In any event, given the conclusions I have reached, an adverse inference would make no difference to the outcome.

(b) Was there a national emergency?

[219] Paragraph 3 (a) of the Act reads as follows:

> 3 For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that
>
> > (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it …
>
> and that cannot be effectively dealt with under any other law of Canada.

[220] As set out in section 16 of the Act, a public order emergency arises from threats to the security of Canada that are so serious as to be a national emergency.

[221] Subsection 17(1) authorizes the GIC to declare a public order emergency when it believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency. Paragraph 17(2)(c) requires that if the effects of the emergency do not extend to the whole of Canada, the area of Canada to which the effects extend shall be specified. Where the declaration specifies that the effects of the emergency extend only to a specified area of Canada, subsection 19(1) provides that the power to make orders and Regulations is limited to that area.

(i) Argument

[222] The Applicants, and Alberta, contend that one of the key questions in these applications is not simply whether it was "wise" for the GIC to invoke the EA, but whether the option was even available at law on the evidence before them. Before taking that step, they argue it was necessary for the GIC to first reasonably determine that the statutory thresholds had been met.

[223] The Applicants argue that there was no, or insufficient, evidence that the lives, health or safety of Canadians were seriously endangered beyond the capacity or authority of the provinces to deal with the situation or, that it could not effectively be dealt with under any other law of Canada. The Intervener, Alberta, shares that view.

[224] Alberta submits that one of the relevant questions for the GIC to address before invoking the EA was whether the proportions of the situation were such as to exceed the capacity of the provinces. And in assessing whether provincial authority was exceeded, the question was whether the situation was of such a nature as to exceed the province's powers of intervention. Where a province has the capacity or authority to deal with the situation, as Alberta says it had, it was not a proper use of the "Peace, Order and Good Government" emergency power for the federal government to intervene because of a concern that the situation may not be resolved as quickly as it would like or, through a different approach that didn't involve existing authorities.

[225] The Applicants and Alberta submit that the GIC declared the emergency to be present throughout the country, in contradiction with the requirement to specify which areas were affected as per section 17(2)(c) of the Act.

[226] The Respondent submits that it was reasonable for the GIC to have an objective basis for its belief that the requirements of a public order emergency had been met, based on the compelling and credible information that was before Cabinet: *Canada (Minister of Citizenship and Immigration) v Harkat*, 2014 SCC 37 at para 30. The Court should guard against a hindsight analysis and assess the GIC's actions in the context that existed at the time. The Act did not

require the section 58 Explanation to engage in a detailed assessment of the facts, but rather to outline them in a general way.

[227] Regarding provincial capacity, Alberta argues that in order for the GIC to conclude that there was a national emergency, it was necessary for it to ask whether the proportions of the situation were such as to exceed the capacity of the provinces. Similarly, with respect to provincial authority, the GIC had to consider whether the situation exceeded a province's powers of intervention. To do so, the GIC had to consider existing provincial legislation, the provincial power to implement new measures and ability to enforce federal laws such as the *Criminal Code.* Alberta argues that in meeting the test under section 3(a) the GIC has to respect the principles of federalism and focus on whether such provincial capacity or authority exists.

[228] Alberta submits that the Section 58 Explanation misstates the test for declaring a national emergency as a situation "that cannot effectively be dealt with by the provinces or territories". The correct test is whether any other law of Canada cannot effectively deal with the emergency or that the situation exceeds the capacity or authority of a province to deal with it. Similarly, the Invocation Memorandum recommending the invocation of the Act misstated the test as whether the situation could not uniquely be dealt with by the provinces or territories.

[229] The misstated test caused the GIC to focus on whether the provinces were "effectively dealing with" the situation, Alberta submits. The evidentiary records show, it is argued, that the evidence before the GIC would not support a finding that the test was met had it been properly applied. And it is misleading to contend, they say, as the Respondent does, that section 3(a) does

not relate to examining provincial authorities but rather "relates to whether the emergency extends beyond provincial borders, preventing any one province from resolving the entire crisis." Provinces, Alberta observes, cannot act extra-territorially. But in this instance employing the *Criminal Code* and the RCMP, as the provincial law enforcement body, Alberta was able to deal with the situation at Coutts without the benefit of the EA special measures and before they were enacted and applied.

[230] Parliament's intent in enacting the legislation was to ensure the Act would be a measure of last resort and, in particular, only where the provisions of existing Federal law could not handle the situation as ultimately occurred at Coutts, the Applicants and Alberta agree. In dealing with the threat of violence there, the RCMP acted under the authority of judicial search warrants issued pursuant to the *Criminal Code*. That incident did not amount to a truly "national" threat in the Applicants and Alberta's views. Nor was there any real issue of incapacity: whatever dangers existed could have been dealt with under existing Canadian law as both operational capacity and legal authority were available.

[231] The Section 58 Explanation suggests that the police in Ottawa were unable to enforce the rule of law in the downtown core due to the overwhelming volume of protesters. However, it is unclear how the Proclamation could respond to this issue since the Regulations and Economic Order did not increase the operational capacity of the police; if the issue was that the police could not enforce the rule of law, new laws would not be helpful, the Applicants submit.

[232] The Section 58 Explanation also suggests that there was an inability to compel tow trucks to clear vehicles in Ontario. The Applicants submit that military aid was an answer to this problem, as the military could have supplemented the Ottawa police and assist with towing. This, however, was considered by the IRG and discounted as an option for a reason redacted in the minutes further to a *CEA* s 38 claim, which the Court upheld. That reason was valid.

[233] One problem, according to the Section 58 Explanation, was that, outside of Ontario, the police could not compel insurance companies to cancel or suspend the insurance of designated vehicles or persons. The Applicants and Alberta submit that the provinces could have obtained this power by using their respective emergency legislation, e.g. Alberta's *Emergency Management Act*, RSA 2000, c E-6.8. The fact that provinces did not exercise those powers should not mean that they were not available and cannot justify invoking the EA, they argue.

[234] Provincial decisions not to use authorities within their jurisdictions is not incapacity, Alberta submits. Federal disagreement with provincial decisions not to exercise particular powers is not a sufficient basis to conclude that the situation exceeded the capacity or authority of the provinces or could not be effectively dealt with under existing law. The Applicants contend that the existence of available authorities is fatal to the GIC's assertion of incapacity. The phrase in section 3 of the EA, "cannot be effectively dealt with" cannot be read to mean "will not be effectively dealt with".

[235] The Applicants and Alberta argue that the EA does not permit the federal government to override a provincial government's decision not to exercise its powers, as federal emergency

powers sit upon a delicate constitutional foundation. The EA's definition of "national emergency" requires that emergencies "transcend" provincial authorities before justifying resort to the Constitution's "Peace Order and Good Government" emergency power. Thus, they contend, emergency powers are only available in times of genuine provincial incapacity and not simply provincial inaction. It was unreasonable for the GIC to conclude that the requisite thresholds in the Act had been met given the abundance of available alternative authorities.

[236] The Respondent disputes that other legislative tools were available to effectively resolve the protests and occupations occurring across the country. None were ever identified with the capacity to effectively resolve the protests and occupations taking place across the country. It was reasonable for the GIC to believe that the emergency could not have been dealt with effectively under any other law of Canada, as required by section 3 of the EA. Even if other laws could apply, it was open to the GIC to determine that they would not be effective in curtailing the emergency in a safe and timely manner.

[237] The Act does not require that a law has to be tried and proven to be ineffective before a public order emergency can be declared, the Respondent argues. That is contrary to the purpose of the legislation and the threshold of a belief held on reasonable grounds. The situation was dynamic and continuously unfolding in the days leading up to the invocation. The GIC must be able to act before it is too late. The cost of failure can be high: *Suresh v Canada*, 2002 SCC 1, [2002] 1 SCR 3 at para 85 [*Suresh*].

[238] The Respondent points to the comments of the Minister of Justice at the Legislative Committee of the House of Commons considering *Bill C-77*, the EA legislation:

> When the country is threatened by serious and dangerous situations, the decision whether to invoke emergency powers is necessarily a judgment call, or more accurately a series of judgment calls. It depends not only on an assessment of the current facts of the situation, but even more on judgments about the direction events are in danger of moving and about how quickly the situation could deteriorate. Judgments have to be made, not just about what has happened or is happening, but also about what might happen.
>
> In addition, to decide about invoking exceptional measures, judgments have to be made about what the government is capable of doing without exceptional powers, and on whether these capabilities are likely to be effective and sufficient.

[239] In this instance, the Respondent argues that the GIC had reasonable grounds to believe a national emergency existed and the Court should not reweigh the evidence before Cabinet at the time. The textual, contextual and purposive elements of the EA require considerable deference based on what was known at the time and reasonably foreseeable.

[240] As for whether the Declaration should have specified only certain areas of Canada, the Respondent submits that the effects were being experienced across Canada and it was not reasonable to limit the application of the Act. It was reasonable, for example, for the GIC to consider based on what was uncovered at Coutts, that similar actors might be present at other blockades or in the Ottawa occupation. When the decision was made to invoke the EA, there was no certainty that the events were isolated or resolved.

(ii) Analysis and conclusion on whether there was a national emergency.

[241] It may be considered unrealistic to expect the Federal Government to wait when the country is “threatened by serious and dangerous situations”, as the Respondent characterizes the events of January and February 2022, while the Provinces or Territories determine whether they have the capacity or authority to deal with the threat or, if not, could enact what is lacking in their respective legislative or regulatory tool boxes. However, that is what the *Emergencies Act* appears to require.

[242] It is not disputed that the discoveries of weapons, ammunition and other materials at Coutts was deeply troubling and greatly influenced the Cabinet in recommending the invocation of the Act. As did the possibility that similar findings would emerge at any of the other blockades across the country.

[243] While the widely published images of people enjoying the hot tub and bouncy castle set up in proximity to Parliament Hill and the War Memorial suggests a benign intent, there were undoubtedly others present there and elsewhere at the blockades across the country with a darker purpose. And there were threats expressed in social media and other online communications of an intent to resist efforts by the police to dismantle the existing blockades and set up new ones at different locations. But those threats were being dealt with by the police of provincial and local jurisdiction outside of Ottawa.

[244] From the outset of the crisis in late January 2022, there was extensive engagement between federal and provincial ministers and officials to assess the situation across the country, as described in the Consultation Report laid before each House of Parliament in accordance with

section 25 of the Act. A meeting of First Ministers was convened by the Prime Minister on February 14, 2022 to consult premiers on whether to declare a public order emergency. All premiers participated. There was disagreement as to whether the Act should be invoked, or applied nationally. Several premiers expressed support. Others took the position that it was not required in their provinces. In my view, contrary to the views of Alberta, this meeting satisfied the requirement in section 25(1) of the Act that the LGIC of each province, in which the effects of the emergency occur, be consulted before there is a declaration of a public order emergency.

[245] I agree with the Respondent that the Act does not require that there be unanimous agreement from the Provinces before the Federal Government can declare that an emergency exists. But most Premiers informed the Prime Minister that invocation of the Act was not required in their provinces as their legislation and law enforcement authorities could deal with the situation, as they had for example, in Quebec. Those opposed included the Premier of Alberta where the use of existing federal criminal law measures and Alberta's *Critical Infrastructure Defence Act*, SA 2020, c C-32.7, by the RCMP and provincial officials had defused the situation at Coutts as the EA was being invoked.

[246] It bears noting that the Alberta Minister of Municipal Affairs had previously written to Federal Ministers asking for the loan of equipment and personnel to deal with the border blockade at Coutts. And one of the Premiers opposed to the invocation of the Act, the then Premier of Manitoba, was also on the record describing the situation as "urgent".

[247] The Prime Minister's letter to all premiers on February 15, 2022 to outline the reasons why the GIC decided to declare a public order emergency responded to the question of whether the declaration should apply nationally. The letter emphasized that the measures would be applied to targeted areas and would supplement, rather than replace, provincial and municipal authorities.

[248] Section 17(2)(c) of the Act requires that if the effects of the emergency did not extend to the whole of Canada, the area of Canada to which it did extend shall be specified. While the word "area" in the legislative text is singular, per section 33(2) of the *Interpretation Act* that includes the plural. Thus, it was open to the GIC to specify several or many areas that were affected by the emergency excluding others where the situation had not arisen or was under control. However, the Proclamation stated that it "exists throughout Canada". This was, in my view, an overstatement of the situation known to the Government at that time. Moreover, in the first reason provided for the proclamation, which referenced the risk of threats or use of serious violence, language taken from section 2 of the *CSIS Act*, the emergency was vaguely described as happening at "various locations throughout Canada".

[249] I understand that the concern was that new blockades could emerge at any pressure point across the country but the evidence available to Cabinet was that these were being dealt with by local and provincial authorities, through arrests and superior court injunctions, aside from the impasse which remained in Ottawa.

[250] The Prime Minister's letter did not directly address the requirement in section 3(a) of the EA that the situation be of such proportions or nature as to exceed the capacity or authority of a province to deal with it. As of February 15, 2022, this was only true in Ontario because of the situation in Ottawa and that was in part due to the inability of the provincial and municipal authorities to compel tow truck drivers to assist in the removal of the blockading vehicles. It is not clear why that could not have been dealt with under the provincial legislation. The use of military heavy equipment was considered but dismissed for reasons which remain redacted but I accept as valid. There appears to have been no obstacle to assembling the large number of police officers from a variety of other forces ultimately required to assist the OPS to remove the blockade participants.

[251] The Section 58 Explanation expresses a serious concern on behalf of the GIC for the economic impacts relating to the operation of the border crossings and international trade interests. It notes that trade between Canada and the U.S. is crucial to the economy and the lives and welfare of all Canadians. Blockades and protests at points along the Canada-U.S. border had already had a severe impact on Canada's economy. The Explanation provides details of those impacts and their effects on Canada's relationships with its trading partners, including the U.S. that was detrimental to the interests of Canada.

[252] The potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians is addressed at some length in the Section 58 Explanation. The document contends that "[t]he Freedom Convoy could also lead to an increase of individuals who support ideologically motivated violent extremism (IMVE) and the prospect

for serious violence." The Explanation notes that since the convoy began there had been a significant increase in the number and duration of incidents involving threats of violence assessed to be politically or ideologically motivated. It asserts that the OPS had been unable to enforce the rule of law in the downtown core due to the overwhelming volume of protesters. That is a debatable conclusion, as there appear to have been more compelling reasons for the failure of the OPS to prevent the occupation of the city, such as a failure of leadership and determination, together with a mistaken assumption that the protest would be short lived.

[253] Due to its nature and to the broad powers it grants the Federal Executive, the *Emergencies Act* is a tool of last resort. The GIC cannot invoke the *Emergencies Act* because it is convenient, or because it may work better than other tools at their disposal or available to the provinces. This does not mean that every tool has to be used and tried to determine that the situation exceeded the capacity or authority of the provinces. And in this instance, the evidence is clear that the majority of the provinces were able to deal with the situation using other federal law, such as the *Criminal Code*, and their own legislation.

[254] The Section 58 Explanation concludes that the ongoing protests had "created a critical, urgent, temporary situation that is national in scope and cannot effectively be dealt with under any other law of Canada." While I agree that the evidence supports the conclusion that the situation was critical and required an urgent resolution by governments the evidence, in my view, does not support the conclusion that it could not have been effectively dealt with under other laws of Canada, as it was in Alberta, or that it exceeded the capacity or authority of a province to

deal with it. That was demonstrated not to be the case in Quebec and other provinces and territories including Ontario, except in Ottawa.

[255] For these reasons, I conclude that there was no national emergency justifying the invocation of the *Emergencies Act* and the decision to do so was therefore unreasonable and *ultra vires*. Should I be found to have erred in that conclusion, I will proceed to discuss the threshold requirement that for a public order emergency to be declared it must meet the definition set out in section 16 of the Act.

(c) Was the "threats to the security of Canada" threshold met?

[256] In a general sense, it was reasonable for the GIC to be alarmed at the impact of the blockades and the effects they were having on cross-border trade. Those effects could be said to fall within a broader sense of "threats to the security of Canada" or, more generally, the concept of "national security".

[257] The meaning of "national security" is not defined in the statutes. In *Suresh*, the Supreme Court of Canada recognized that the concept was difficult to define because it was highly fact-based and political in a general sense. At para 85, the Court concluded that a broad and flexible approach to the meaning of the words was required along with a deferential standard of judicial review.

[258] In this court, after an extensive review of the authorities, Justice Simon Noël concluded that national security means "at minimum, the preservation of the Canadian way of life,

including safeguarding of the security of persons, institutions and freedoms in Canada": *Canada (Attorney General) v Canada (Commission of Inquiry into the actions of Canadian Officials in Relation to Maher Arar* 2007 FC 766 at para 68 [*Arar*].

[259] A broad and flexible interpretation of the words "threats to the security of Canada" could encompass the concerns which led the GIC to issue the Public Order Emergency Declaration. Had the meaning of those words not been limited by reference to another statute, and applying a deferential standard of review, I would have found that the threshold was satisfied. However, the words "threats to the security of Canada" do not stand alone in the Act and must be interpreted with reference to the meaning of that term as it is defined in section 2 of the *CSIS Act* and incorporated in section 16 of the EA.

[260] "Threats to the security of Canada", in section 2 of the *CSIS Act*, refers to four types of activities. Only one of the four is relevant to these proceedings. Under paragraph 2 (c), threats to the security of Canada means:

> (c) activities within or relating to Canada directed toward or in support of the **threat or use of acts of serious violence against persons or property** for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state…
>
> [Emphasis added]

[261] The definition excludes lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in the four paragraphs including (c).

[262] The Proclamation specified five reasons to justify the declaration of a public order emergency. The first draws directly from the language of the *CSIS Act*. The second, third and fourth reasons pertain to adverse effects on the economy, trade relations and the breakdown in the distribution chain and availability of essential goods, services and resources. The fifth reason cites "the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians."

[263] The first reason specified in the Proclamation cites the threat or use of serious violence against persons or property:

> 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.

[264] The Section 58 Explanation summarizes this as "[t]hreats 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." It then sets out the full text of the five specified reasons for the Proclamation and provides an explanation for why each justified the temporary measures adopted to deal with the emergency. In reference to the first reason it states:

> 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.

[265] There is no dispute that the activities in question in these proceedings were carried out, for the purpose of achieving a political or ideological objective within Canada. The participants in the protests in Ottawa and elsewhere were explicit in demanding changes to government policy. Some of the participants went further in demanding a change in government. The question is whether the activities were directed toward, or in support of the threat or use of acts of serious violence, as the definition requires.

(d) Was there evidence of threats or use of acts of serious violence?

(i) Argument

[266] The use of “serious violence” in the definition indicates that it imposes an elevated threshold, the Applicants argue. They say that the actions and their consequences contemplated in the Proclamation and as described in the Section 58 Explanation, fall far short of the required standard. Loss of cross-border trade, for example, while a valid cause for government concern cannot reasonably be construed as “serious violence”, they argue.

[267] The Applicants contend that the record does not show that there was compelling and credible information before the GIC that there were reasonable grounds to believe in the existence of threats to the security of Canada, as defined by the *CSIS Act*, when the decision was made to issue the Proclamation.

[268] In fact, they submit, Cabinet was presented with evidence to the contrary: the Director of CSIS confirmed in his advice to Cabinet that the Service did not assess that the protests constituted a threat to the security of Canada. That view should have carried great weight with Cabinet, the Applicants argue, even if it was not binding on Cabinet, which had other inputs to consider. The February 13, 2022 Cabinet minutes demonstrate that the concerns of the National Security Intelligence Advisor were centered on the blockades at the multiple ports of entry, the active role of social media in promoting the protests and the effectiveness of "slow roll vehicle activity". It was also noted that invoking the Act would "likely galvanize the broader anti-government narratives" and could "increase the number of Canadians holding extreme anti-government views." But that would be a consequence, not a reason for invoking the Act, the Applicants submit.

[269] There is evidence in the record that an alternative threat assessment, possibly differing from that prepared by CSIS, was to be provided by the National Security Intelligence Advisor but was never submitted. Rather, the final piece of advice produced was the Invocation Memorandum, signed by the Clerk of the Privy Council, which the Prime Minister described in testimony before the POEC as "essential" to him in the decision making process.

[270] A substantial amount of the Invocation Memorandum is redacted under *CEA* s. 39 and solicitor client privilege. The unredacted text of the document describes the EA, the nature of a public order emergency that may constitute a national emergency, the measures that may be adopted to deal with the emergency, subject to *Charter* limitations, the factual background and

the process followed leading to the decision to be made. It was noted that all measures taken under the EA had to be carefully circumscribed to avoid being overbroad.

[271] The Invocation Memorandum sets out the test for declaring a public order emergency including the definition of threats to the security of Canada in the *CSIS Act*. The memorandum advised the Prime Minister that the Privy Council Office was of the view that the evidence collected to date supported a determination that the criteria required to declare a public order emergency pursuant to the EA had been met. It also went further, however, to note that the conclusion "may be vulnerable to challenge".

[272] The Applicants acknowledge that the discovery at Coutts of weapons and ammunition fell within the meaning of threats of "serious violence". They argue, however, that this was a unique and isolated incident that did not support the countrywide invocation of the EA, as, in the absence of any similar events elsewhere, nothing suggested a broader threat to the "security of Canada", and Coutts was in any event largely resolved prior to the enactment of the special measures using existing federal law.

[273] Aside from Coutts, threats of serious violence were absent, the Applicants contend. For example, in Ottawa, the police had made just 26 arrests by February 12, 2022, and none were for serious violent crimes. The Applicants submit that it was unreasonable for the Invocation Memorandum to conclude there were "definitely elements within this movement that have intentions to engage in violence", based solely on the events at Coutts, and that the presence of

ideological extremists at protests indicated a risk of serious violence and the potential for lone attackers to conduct terrorist attacks.

[274] The Applicants argue that the need for "reasonable grounds to believe" called for "an objective basis for the belief based on compelling and credible information that involved a reasonable probability, not just the possibility, of violence: *R v Beaver*, 2022 SCC 54 at para 72(6) [*Beaver*]. They contend that this requirement was not met as the Section 58 Explanation only included vague references to the potential increase in unrest and violence, and undefined "threats to oppose measures to remove the blockades".

[275] The Respondent disputes the relevance of authorities such as *Beaver*, taken from the criminal law context, and argues that a standard of reasonable probability does not apply here. What is required, they say, is consideration of whether it was reasonable for the GIC to have an objective basis for its belief that the requirements of a public order emergency were met: *Spencer v Canada (Health)*, 2021 FC 621 at para 250 [*Spencer-FC*].

[276] The Respondent concedes that the requirement for there to be a "threat or use of acts of serious violence against persons or property" means that there must be something more than a threat of minor acts of violence. They do not accept that this must require the use of or attempted use of actual violence that endangers the life or safety of another person, or inflicts severe psychological damage, as the Applicants contend. The Respondent argues that the statute does not require a probability that such would occur. The Applicants' interpretation, the Respondent

submits, stems from the definition of a "serious personal injury offence" under s 752 of the *Criminal Code*, which has no application in this context.

[277] The Respondent further argues that to understand the meaning of "serious violence" in the context of the EA it is necessary to consider the legislative history of s. 2(c) of the *CSIS Act* and not just that of the EA. The adjective "serious" was added to the *CSIS Act* definition to avoid capturing minor acts of political violence, such as throwing tomatoes at politicians. In this case, the Respondent submits, there were cumulative threats of serious violence to individuals, including the threat of lethal violence against law enforcement and elected officials – along with the general atmosphere of intimidation, harassment and lawlessness. Cutting off the main supply lines of essential goods, food, fuel and medicine to all parts of the country also created a threat that could have lead to unrest and serious violence, according to the Respondent.

(ii) Analysis and conclusion on whether the threshold was met.

[278] It is true, as the Respondent submits, that the adjective "serious" was added to the definition in the *CSIS Act* to avoid capturing minor acts of violence or damage to property. Parliament wished the same threshold to apply to the declaration of a public order emergency for threats or acts of violence against persons or property.

[279] Guidance as to the meaning of a "serious" threat in the context of national security can be found in *Suresh* at para 90:

> …The threat must be "serious", in the sense that it must be grounded on objectively reasonable suspicion based on evidence

> and in the sense that the threatened harm must be **substantial rather than negligible.**
>
> [Emphasis added.]

[280] Substantial harm in the context of violence or threats of violence against persons must rise to the level, in my view, of at least that contemplated by the term "bodily harm" in the *Criminal Code*. The *Code* defines "bodily harm" in section 2 as "any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature". The Supreme Court has interpreted that definition to cover any "hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or well-being of the complainant": *R v CDK*, [2005] 3 SCR 668 at para 20. I agree with the Respondent that the meaning of "serious violence" in s. 2(c) of the *CSIS Act*, as imported into the *Emergencies Act*, does not require threats of violence, or actual violence, rising to the level of death or endangerment of life.

[281] Serious violence to property could encompass the several offences in the *Code* relating to destruction or damage to property, including critical infrastructure, which are punishable on indictment. In particular, destruction or damage to critical infrastructure could amount to serious violence to property should it take down systems such as the electrical grid or natural gas supply required to heat homes and run industries across the country. Absent any authority in support of the proposition, I am unable to find that the term encompasses the type of economic disruption that resulted from the border crossing blockades, troubling as they were. It may be that Parliament will wish to revisit the question of whether the *CSIS Act* definition, which serves the several purposes of that statute, adequately covers the different harms that may result from an

emergency situation when they may fall short of “serious violence” to property. This Court can only apply the law as it finds it. It has no discretion to do otherwise: *R v Osborn*, [1971] SCR 184 at p 190; *Reyes v Canada*, 2019 FCA 7 at para 9.

[282] There is often confusion about the meaning of the “reasonable grounds to believe” standard as courts have frequently used the terms “reasonable and probable grounds”, discussed in *Hunter v Southam Inc* [1984] 2 SCR 145 at 167 [*Hunter*]. The phrase was employed in the criminal statutes until revisions in the mid-1980s began to drop the “and probable” words as surplusage. But the term continues to appear in authorities such as *Beaver*. In *Mugesera*, at para 114, the Supreme Court was clear that the “reasonable grounds to believe” standard requires something more than mere suspicion but less than the standard applicable in civil matters of proof on the balance of probabilities. Reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information.

[283] *Spencer-FC*, relied upon by the Respondent, does not assist in this analysis as the legislative provision at issue there, section 58 of the *Quarantine Act*, SC 2005, c 20, gave the GIC the authority to issue a prohibition order <u>if it is of the opinion</u> that certain criteria were met, including that there is no reasonable alternative. The requirement to be met on judicial review, as the Court found in *Spencer-FC*, was whether there was a reasonable basis in the record to support that opinion, including the criterion of no alternative, applying a deferential standard of review. In my view, this is less than an objective basis for the belief based on compelling and credible information.

[284] I agree with the Applicants that the CSIS assessment that there were no threats to the security of Canada within the meaning of the paragraph (c) definition must be given some weight. The parties agreed that it is not determinative of whether the GIC could or could not invoke the Act. Nor is it determinative that the Director of CSIS ultimately agreed with the decision to invoke. Cabinet had available to it other sources of information which could satisfy the definition of threats to national security. The GIC was not limited to considering the intelligence collected by CSIS in exercising its responsibilities. Or bound by the Service's analysis of that intelligence.

[285] How much weight should the Service assessment be given? I expressed doubt at the hearing that it should weigh heavily. The definition of "threats to the security of Canada" in the *CSIS Act* was designed for a different purpose. The definition was intended to constrain the activities of the new security service and to serve as a threshold for the exercise of its non-intrusive investigative powers and its ability to obtain a warrant for more intrusive measures. It was not designed for the purposes of the EA.

[286] When Bill C-77 to enact the EA was being considered, the *CSIS Act* definition had the virtue of having been recently considered and adopted by Parliament and was dropped into the draft legislation to respond to concerns that its scope was otherwise too broad and would capture minor threats or use of violence. The effect was to raise the level of the test to be met by the GIC before a public order emergency could be declared. The GIC had to have reasonable grounds to believe that the threats to the security of Canada described in s. 2 of the *CSIS Act* existed.

[287] This Court may share the views of those who think that a definition designed to constrain the investigative actions of the security service is ill-suited to serve as a threshold for the invocation of emergency powers by the GIC. Particularly when there may be other valid reasons for declaring an emergency such as those set out in the Proclamation and Section 58 Explanation. But the Court cannot rewrite the statute and has to take the definition as it reads.

[288] Cabinet was in the same position when it was considering how to deal with the situation it was facing in February 2022. It had to consider whether the statutory test was met. Were there reasonable grounds to believe that the people protesting in Ottawa and elsewhere across Canada had engaged in activities directed toward or in support of the threat or use of acts of serious violence against persons or property? This is, as discussed above, an objective standard "more akin to the legal determinations courts make, governed by legal authorities, not policy": *Entertainment Software* at para 34. And while the ultimate decision of whether to invoke the Act is highly discretionary, the determination of whether the objective legal thresholds were met is not and attracts no special deference. There is only room for a single reasonable interpretation of the statutory provision: *Mason* at para 71.

[289] The Clerk had cautioned the Prime Minister that PCO's conclusion that the criteria for declaring a public order emergency had been met was "vulnerable to challenge". Properly so, in my view, as the evidence in support of PCO's analysis was not abundant. It rested primarily on what was uncovered at Coutts, Alberta when the RCMP executed search warrants and discovered firearms, ammunition and the indicia of right wing extremist elements.

[290] The Section 58 Explanation states that "[v]iolent incidents and threats of violence and arrests related to the protests have been reported across Canada." But these reports were vague and unspecified apart from allegations that tow truck drivers in Ottawa had been threatened should they assist the police. What that meant is unclear. The only specific example of threats of serious violence provided is Coutts. Arrests related to the protests may have amounted to evidence of activities directed toward or in support of the threat or use of acts of serious violence against persons or property, but the arrests, aside from those at Coutts, appear to all have been for minor offences. There had yet to be any actual serious violence or threats of it, other than in Coutts, when the decision was made. The Prime Minister acknowledged this in his POEC testimony:

> "And the fact that there was not yet any serious violence that had been noted was obviously a good thing, but we could not say that there was no potential for serious violence"

(Respondent's record at p 90 citing the POEC transcript at p 53).

[291] There was a great deal of speculation about what might happen if the protests were not brought to an end. This was raised several times in the POEC testimony of the Minister of Public Safety. He said this, for example, at pages 77-78 of the transcript, referring to Coutts:

> One thing I didn't mention was that my worry, my real fear, was that had that operation not gone down peacefully, that it might have sparked other gun violence across the country.
>
> […]
>
> My concern was that this was -- that this information was highly sensitive. It involved a hardened cell. It involved guns. It involved ideological symbolism, potentially. And that if that operation to arrest those individuals did not go efficiently, and smoothly and peacefully, that it may have created a chain reaction elsewhere across the country, because there were past reports about the presence of guns."

[292] The potential for serious violence, or being unable to say that there was no potential for serious violence was, of course, a valid reason for concern. But in my view, it did not satisfy the test required to invoke the Act particularly as there was no evidence of a similar "hardened cell" elsewhere in the country, only speculation, and the situation at Coutts had been resolved without violence.

[293] Much of the Section 58 Explanation is devoted to the deleterious effects of the blockades on Canada's economy. The strongest connection to activities directed toward or in support of the threat or use of acts of serious violence against persons or property is found in the section of the explanation discussing the fifth specified reason for the Proclamation – the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians. This section speculates that the convoy could lead to an increase in the number of individuals who support ideologically motivated violent extremism. It describes other events related to anti-public health measures and protests in Quebec and Atlantic Canada and the situation in Ottawa.

[294] While these events are all concerning, the record does not support a conclusion that the Convoy had created a critical, urgent and temporary situation that was national in scope and could not effectively be dealt with under any other law of Canada. The situation at Coutts was dealt with by the RCMP employing provisions of the *Criminal Code*. The Sûreté du Québec dealt with the protests in that province and the Premier expressed his opposition to the *Emergencies Act* being deployed there. Except for Ottawa, the record does not indicate that the police of local jurisdiction were unable to deal with the protests.

[295] Ottawa was unique in the sense that it is clear that the OPS had been unable to enforce the rule of law in the downtown core, at least in part, due to the volume of protesters and vehicles. The harassment of residents, workers and business owners in downtown Ottawa and the general infringement of the right to peaceful enjoyment of public spaces there, while highly objectionable, did not amount to serious violence or threats of serious violence.

[296] This is not to say that the other grounds for invoking the Act specified in the Proclamation were not valid concerns. Indeed, in my view, they would have been sufficient to meet a test of "threats to the security of Canada" had those words remained undefined in the statute. As discussed in *Suresh* and *Arar*, the words are capable of a broad and flexible interpretation that may have encompassed the type of harms caused to Canada by the actions of the blockaders. But the test for declaring a public order emergency under the EA requires that each element be satisfied including the definition imported from the *CSIS Act*. The harm being caused to Canada's economy, trade and commerce, was very real and concerning but it did not constitute threats or the use of serious violence to persons or property.

[297] For these reasons, I am also satisfied that the GIC did not have reasonable grounds to believe that a threat to national security existed within the meaning of the Act and the decision was *ultra vires.*

C. Did the powers created by the Economic Order and Regulations violate sections 2(b)(c)(d), 7 or 8 of the *Charter*, and, if so, can they be saved under section 1?

[298] The Applicants submit that, regardless of the reasonableness of the Proclamation, the Regulations and Economic Order infringed on the *Charter* rights and freedoms guaranteed by sections 2, 7 and 8 and cannot be justified under section 1.

[299] The Respondent argues that the *Charter* was not infringed and that the special measures were, in any event justified.

[300] As noted above, the standard of review of the GIC decision to adopt the special measures is reasonableness: *Vavilov* at para 57. In this instance the legislation incorporates a mixed subjective and objective threshold "…believes on reasonable grounds…" - in section 19(1), the provision authorizing the making of the impugned special measures. In authorizing orders or regulations with respect to public assemblies, the legislation adds an additional objective threshold – "that may reasonably be expected to lead to a breach of the peace,…".

[301] It is clear from the record of Cabinet deliberations and the Invocation Memorandum that the GIC was aware that the intent of the *Emergencies Act* was to preserve and protect fundamental rights protected under the *Charter* even in dire situations.

(a) *Section 2*

[302] The Applicants argue that the Regulations violated the fundamental freedoms set out in section 2 in the *Charter*. Specifically, they argue the prohibition on public assembly in section 2 of the Regulations, the prohibition on travel to an assembly in section 4 and the prohibition on

providing property at section 5 inhibit basic and essential forms of democratic participation, and infringe the freedoms of expression, peaceful assembly and association.

(i) Freedom of thought, belief, opinion and expression.

[303] The Applicants submit that sections 2, 4 and 5 of the Regulations infringe *Charter* section 2(b) freedom of thought, belief, opinion and expression in ways that meet the requirements set out by the *Supreme Court* in *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927 at p. 978:

1. The activities targeted by the Regulations are all expressive in a way that goes to the core of the freedom, i.e. the right to protest government action (*Figueiras v Toronto (Police Services Board*), 2015 ONCA 208 at para 69);

2. The method or location of the expressive activity does not remove it from the scope of protected expression as the protests were by and large peaceful and occurred often on public streets;

3. The prohibitions contained in the Regulations had the effect or the purpose of restricting freedom of expression and were designed to stop protest.

[304] The Respondent contends that there was no infringement to the freedoms guaranteed by s. 2(b) of the *Charter*, because harmful activities like violence, threats of violence, and non-

peaceful assembly are not protected: *R v Khawaja*, 2012 SCC 69 at paras 67, 70. The Regulations only prohibited participation in public assemblies that might reasonably be expected to breach the peace by disrupting movements of persons or goods or seriously interfering with trade or with critical infrastructure, or supporting the threat or use of serious violence. Such actions are not constitutionally protected or free from reasonable limits.

[305] In reply, the Applicants submit that to say protests are not protected insofar as they could be reasonably expected to lead to a breach of the peace is a novel restriction on section 2(b) rights since the only internal limit to date is violence: *R v Keegstra*, [1990] 3 SCR 697 at p 731. Additionally, they submit, the Regulations go beyond capturing the threat or use of acts of serious violence, they also capture mere disruption.

[306] Protests are inherently disruptive and are constitutionally protected political expression that goes to the core of the freedom: *Harper v Canada (Attorney General*), 2004 SCC 33 at paras 47 and 66, [*Harper-2004*].

[307] Moreover, the Applicants argue, the effect of the Regulations was to criminalize attendance at the protests by anyone, no matter if they participated in the actual conduct leading to a breach of peace. By criminalizing the entire protest, the Regulations limited the right to expression of protestors who wanted to convey dissatisfaction with government policies, but who did not intend on participating in the blockades.

[308] I agree with the Applicants that the scope of the Regulations was overbroad in so far as it captured people who simply wanted to join in the protest by standing on Parliament Hill carrying a placard. It is not suggested that they would have been the focus of enforcement efforts by the police. However, under the terms of the Regulations, they could have been subject to enforcement actions as much as someone who had parked their truck on Wellington Street and otherwise behaved in a manner that could reasonably be expected to lead to a breach of the peace.

[309] One aspect of free expression is the right to express oneself in certain public spaces. By tradition, such places become places of protected expression: *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62 at para 61. To the extent that peaceful protestors did not participate in the actions of those disrupting the peace, their freedom of expression was infringed.

(ii) Freedom of peaceful assembly.

[310] Similarly, the Applicants submit, the prohibition on public assembly and travel to an assembly infringes section 2(c) of the *Charter*, which protects freedom of peaceful assembly. The prohibition on public assembly captures any assembly that may lead to a breach of the peace, they argue, thus it prohibits an assembly before it occurs and before it becomes an assembly that falls outside of the scope of 2(c).

[311] The Respondent argues that section 2(c) was not infringed because the Regulations did "not prohibit all anti-government protests, only those that were likely to result in a breach of peace". Moreover, the Regulations were carefully tailored to include exceptions and did not

apply to a person who resided in, worked in, or had a reason other than to participate or facilitate a non-peaceful assembly. The decision to adopt the special measures calls for deference particularly when addressing a complex issue and the measures are among several reasonable alternatives.

[312] I note that section 19(1)(a)(i) of the EA expressly authorizes the making of orders or regulations that prohibit "any public assembly that may reasonably be expected to lead to a breach of the peace". This is anticipatory language. The legislation clearly permits special measures to prevent public assemblies that will likely lead to a breach of the peace. The evidence supports a finding that the notion of blockading and occupying the downtown core of the Nation's Capital and other major centres, including cross border ports of entry, with massive trucks, falls within the scope of the authorizing enactment.

[313] I agree with the Respondent that "gatherings that employ physical force, in the form of enduring or intractable occupations of public space that block local residents' ability to carry out the functions of their daily lives, in order to compel agreement [with the protestors' objective] are not constitutionally protected."

[314] I therefore find no breach of the *Charter* right of peaceful assembly.

(iii) Freedom of Association

[315] Regarding *Charter* section 2(d), the Applicants argue that the prohibition on public assembly and on travel to an assembly infringes freedom of association, which serves to protect

individuals “banding together in the pursuit of common goals” and “empowering individuals to achieve collectively what they could not achieve individually”: *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 58 and 62. By prohibiting individuals from meeting and forming associations in the form of protest and discouraging the collective pursuit of common goals, the Regulations strike at the heart of this freedom.

[316] The Respondent submits that the Applicants misapprehend the nature of the protection. Freedom of association protects only the associational aspect of activities, such as the freedom to form and maintain associations, not the activity itself: *Harper-2004* at para 125.

[317] In my view, the special measures adopted to deal with the occupation of Ottawa and blockades at other locations did not infringe upon the participants’ freedom of association. They were free to communicate with each other in pursuit of their collective goals and form whatever organization they thought necessary to do so elsewhere. I find no breach of *Charter* section 2(d).

(b) *Section 7*

[318] In section 7, the *Charter* guarantees the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[319] Section 10(2) of the Regulations created penalties for failure to comply with the special measures. Summary conviction could lead to a fine of up to $500 and imprisonment for up to six

months, whereas conviction upon indictment could lead to a fine of up to $5,000 and imprisonment for up to five years.

[320] The Applicants argue that this provision creating an offence punishable by imprisonment engages the liberty interest protected by section 7 of the *Charter* and was geographically overbroad, citing *R v Heywood*, [1994] 3 SCR 761 at p. 794 [*Heywood*]. Section 10(2) exposed everyone in Canada to punishment for contravention of the Regulations, regardless of whether they were present in an area where the protests were taking place. The principle of overbreadth proscribes any law that is "so broad in scope that it includes some conduct that bears no relation to its purpose": *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 112.

[321] The fact that no one was actually charged is irrelevant, the Applicants submit. It is the overbroad application and not the implementation that concerns section 7. Infringement of the liberty interest protected by section 7 can be based on reasonable hypotheticals that have not yet materialized: *R v Hills*, 2023 SCC 2 at para 70. The fact that the Regulations were only in force for 9 days and not used outside of "red zones" does not alleviate the section 7 problem, according to the Applicants. During those 9 days, they applied to places where no Convoy-related protests had occurred or were expected to occur. As such, the Regulations were overbroad.

[322] The Respondent submits that there is no overbreadth and that reliance on *Heywood* is misplaced as the *Criminal Code* provision in question in that case covered many places where the prohibited conduct could not take place. In this instance, the blockades and occupations were

nation-wide. Moreover, the Regulations prohibited only a narrow, defined range of activities and did so for no more than 9 days. Thus, the Regulations were tailored to limit constitutional rights no more than reasonably necessary to address the issues.

[323] It is likely that in considering what the scope of the Regulations should be; Cabinet and the GIC were concerned that they could be confronted with what might be described as a "whack-a-mole" scenario. Whenever one blockade or occupation was contained, another would pop up at a different location. There was evidence of attempts to have convoy-style disruptions in other locations, such as downtown Toronto, at other border crossings and in Quebec.

[324] At first impression, the extension of the temporary measures throughout the country including where no disruption had occurred would appear to have been overbroad. However, a party asserting a violation of section 7 must not only show that the impugned law interfered with or deprived them of their life, liberty or security of the person, which laws do all the time, but also that the deprivation in question is not in accordance with the principles of fundamental justice: *Carter v Canada (Attorney General* 2015 SCC 5 at para 55. In this instance, the deprivation was temporary in nature and subject to judicial review as these proceedings have demonstrated. In the result, I am not prepared to find a breach of section 7.

(c) Section 8

[325] Section 8 provides that everyone has the right to be secure against unreasonable search or seizure. A search will be reasonable under section 8 if it is authorized by law, if the law itself is

reasonable, and if the search was carried out in a reasonable manner: *R v Caslake*, [1998] 1 SCR 51 at para 10 citing *R v Collins*,[1987] 1 SCR 265 and *Hunter*.

[326] The issue here, the Applicants submit, is whether the law that authorized the search, the Economic Order, was reasonable. They submit a law will be reasonable when it reasonably balances the importance of the state objective with the degree of impact on the individual's privacy interest: *R v Rodgers*, 2006 SCC 15 at para 27.

[327] A reasonable provision authorizing a search must create a system of: 1) prior authorization, 2) determined by a neutral third party not involved in the investigation, and 3) on the standard of "reasonable and probable grounds to believe" that an offence has been committed and that evidence of the offence will be found in the place subject to the search: *Hunter* at pp. 160 to 168. As noted above, the words "and probable" no longer appear in most of the relevant *Code* provisions. But the standard remains the same.

[328] The Applicants argue that two of the provisions of the Economic Order contravene *Charter* section 8. First, section 2(1) of the Economic Order empowered financial institutions to freeze the assets of any designated person, which constitutes a seizure within the meaning of *Charter* s. 8. Second, section 5 of the Economic Order required financial institutions to disclose private information, such as what money people have and how they spent it, regarding designated persons, to the RCMP or CSIS. That is a search, the Applicants contend.

[329] The Applicants submit that government authorities requesting private data from non-state entities can constitute a search by the state under section 8 of the *Charter*: *R v Spencer*, 2014 SCC 43 at para 6 [*Spencer - SCC*]; *R v Marakah*, 2017 SCC 59 at para 19, [*Marakah*]. "Designated persons", those whose information was provided by the RCMP to the financial institutions, had a reasonable expectation of privacy in the subject matter, i.e., their private financial and transactional records. Reasonable expectations of privacy have been found in relation to records held by Internet Service Providers, even if they lack direct control over the records: *Spencer-SCC* at para 66. A search may also reveal details about the choices and lifestyles of an individual: *Marakah*, at paras 31-32; *R v Patrick* 2009 SCC 17 at para 32.

[330] Here, the Applicants submit, the Economic Order required banks to disclose a great deal of information about a designated person's finances and how their money was being used, information which had the potential to reveal information about the most intimate details of someone's life.

[331] The Respondent contends that the Economic Order did not authorize activity that constitutes a "seizure" within the meaning of *Charter* s. 8. The authority cited for this proposition is *Quebec (AG) v Laroche*, 2002 SCC 72 at paras 52-53 [*Laroche*].

[332] *Laroche* involved restraint orders and warrants for the seizure of vehicles issued under the *Criminal Code* due to irregularities in relation to the insurance files for the vehicles. The restraint order and warrants were ultimately upheld by the Supreme Court. At paragraph 52, Justice LeBel, for the majority, defined a seizure in the context of *Charter* s. 8 by reference to earlier decisions. In *R v Dyment*, [1988] 2 SCR 417 at p 431 [*Dyment*] the essence of a seizure

was described as "the taking of a thing from a person by a public authority without that person's consent." Similarly in *Thomson Newspapers Ltd v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission),* [1990] 1 SCR 425 at p 493 [*Thomson Newspapers*] it was said to be "the taking hold by a public authority of a thing belonging to a person against that person's will."

[333] At paragraph 53 of *Larouche,* Justice LeBel discussed limitations on the scope of the word "seizure" which, he said, were to be found in the context in which the process (of taking a thing from a person without their consent) is carried out. These were necessary, he said, to avoid expanding the scope of the protection to include property rights which the *Charter* did not protect. In support of this interpretation Justice LeBel cited a text which states:

> Specifically, where property is taken by governmental action for reasons other than administrative or criminal investigation a "seizure" under the *Charter* has not occurred.
>
> *Search and Seizure Law in Canada,* at p.2-5*:* S.C. Hutchison, J.C. Morton and M.P. Bury.

[334] This is the basis for the Respondent's position that there was no "seizure" of the frozen bank accounts. I have considerable difficulty with that position as I stated at the hearing. While the purpose of *Charter* s 8 is to protect privacy rights and not property, governmental action that results in the content of a bank account being unavailable to the owner of the said account would be understood by most members of the public to be a "seizure" of that account as defined in *Dyment* and *Thomson Newspapers* above. Alternatively, I am satisfied that the disclosure of information about the bank and credit card accounts of the "designated persons" by the financial institutions to the RCMP constituted a "seizure" of that information by the government.

Financial records are part of the "biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state": *R. v. Plant*, 3 SCR 281 at p 293; see also *Schreiber v Canada (Attorney General)*, [1998] 1 SCR 841 at para 19 [*Schreiber*]. Bank account and credit card information can reveal personal details about someone such as their financial status and lifestyle choices: *Schreiber* at para 55. As such, Messrs. Cornell and Gircys had a strong expectation of privacy in their financial records and that interest was protected by s. 8 of the *Charter*.

[335] The Applicants further submit that section 5 of the Economic Order did not meet the requirements of a reasonable search, as there was no prior authorization or involvement of a neutral third party such as a judge. The Economic Order also failed to require reasonable grounds before the search was conducted.

[336] Financial institutions had to disclose information "without delay" anytime they had a "reason to believe", that someone was a designated person. The Economic Order did not define or provide any guidance on what the standard for that belief was. This, the Applicants submit, was an insufficient basis to intrude upon an expectation of privacy: *R v MacKenzie*, 2013 SCC 50 at para 41.

[337] On the evidentiary record, the names were provided to the financial institutions by the RCMP and that was considered sufficient to require disclosure to the police. The absence of any objective standard was confirmed by Superintendent Beaudoin, who oversaw the implementation of the Economic Order. He acknowledged in cross-examination that the RCMP did not apply a

standard of either reasonable grounds or a standard of reasonable suspicion, and all they required was “bare belief”.

[338] The Applicants submit that the procedure adopted compares unfavourably with that set out in the *Proceeds of Crime (Money Laundering*) *and Terrorist Financing Act*, SC 2000, c.17, where reports of suspicious transactions by entities are made to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), an independent agency that serves as a middle layer between financial institutions and law enforcement. In turn, FINTRAC gives information out to the police only in specified circumstances and where there are “reasonable grounds to suspect”. The Applicants argue the financial institutions were effectively acting as agents of the police and became “part of government”: *R v Buhay*, 2003 SCC 30 at para 25. Thus, the Applicants argue, the Economic Order was unreasonable and violated section 8.

[339] The Respondent concedes that the searches authorized by sections 5 and 6 of the Economic Order engaged *Charter* s 8. They argue that the searches were reasonable due to their limited scope, duration, and targeted focus. And since they were non-criminal in nature, the standards imposed by s. 8 are more flexible, and the Court’s analysis has to regard the purpose for which the search occurs. Any effect that the searches conducted under sections 5 and 6 had on the privacy interests of the individuals affected was proportionate to the important objective of responding to the public order emergency and thus consistent with the *Charter*.

[340] In requiring the financial institutions to act on the instructions of the RCMP, in my view, the Economic Order effectively enlisted them as subordinates of the government and engaged

Charter s. 8: *Godbout v Longueuil (City)*, [1997] 3 SCR 844 at para 53. While the financial institutions were private entities and thus normally beyond the reach of the *Charter*, the activity in question here can be ascribed to government. The act was truly "governmental" in nature to implement the temporary measures enacted by the GIC and thus brought the banks and other financial services providers within the scope of section 8 to the extent of that activity: *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 at para 44.

[341] I find that the failure to require that some objective standard be satisfied before the accounts were frozen breached s. 8. Whether that could be justified in the circumstances depends on a section 1 analysis.

(d) Section 1

[342] The party seeking to uphold a limitation on a right or freedom guaranteed by the *Charter* bears the burden on a preponderance of probability to demonstrate that the infringement is justified: *R v Oakes*, [1986] 1 SCR 103 at paras 66-67. Two central criteria must be satisfied. First the objective must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom": *Oakes* para 69. This is usually referred to as a "pressing and substantial objective". Second, the means chosen must be shown to be reasonable and demonstrably justified as proportionate to the objective: *Oakes* at para 70. The infringing measures must be justified based on a "rational inference from evidence or established truths": *RJR-MacDonald* at para. 128. Bare assertions will not suffice: evidence, supplemented by common sense and inference, is needed: *R v Sharpe*, 2001 SCC 2 at para 78.

[343] The Applicants contend that the government has adduced little evidence to support the assertion that any infringement of Charter rights are demonstrably justified, even if deference is accorded. The issue is whether the right was infringed "as little as is reasonably possible" within a range of reasonable options leaving a reasonable margin of actions available to the state: *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 194.

[344] To consider whether a violation of section 2(b) can be saved under section 1, the Applicants submit, the Court must assess the level of protection the targeted expression is entitled to: *R v Lucas*, [1998] 1 SCR 439 at para 34 [*Lucas*]. The closer the expression is to the core values underpinning section 2(b), the more difficult it will be to justify limiting it: *Lucas* at para 34; *Thomson Newspapers* at para 91.

[345] Political speech is granted the highest level of protection because of its essential role in democratic life: See *R v Guignard*, 2022 SCC 14 at para 20; *Harper-2004* at para 66; *Harper v Canada*, 2000 SCC 57 at para 20. Since the Regulations directly target a political demonstration and the right to free expression of the protestors, the Applicants submit that the highest level of protection is warranted in this case. While parked trucks obstructing the roads and blaring horns are not "high value" speech, the Regulations did not simply prohibit this conduct, which was already illegal under provincial and municipal law, but criminalized the attendance of every single person at those protests regardless of their actions.

[346] By applying throughout Canada, the Applicants submit, the Regulations exposed everyone in the country to their reach: the fact that they were not enforced in particular areas is

inconsequential because they still applied everywhere. The Regulations impaired the right to free expression more than was necessary. They captured bystanders who did not agree with the blockades, did not create them and protested in a non-disruptive way. The Regulations also criminalized travelling to a protest where there might have been a blockade, no matter the person's purpose for being there and whether an actual breach of the peace had occurred or not. This, the Applicants argue, is not minimally impairing.

[347] The Respondent submits that the measures were carefully tailored to the objectives to swiftly end the national emergency, which could not be effectively dealt under any other law of Canada. Moreover, the EA measures were minimally impairing in terms of the time they were in force (February 14 to February 23, 2022), which was the shortest amount of time possible to manage the emergency. The measures were promptly revoked when the situation was stabilized. The Economic Order did not prescribe any lasting impacts on the designated persons beyond the time that it was in effect.

[348] It was necessary for the measures to apply nationwide, the Respondent submits, rather than be limited to specific provinces or municipalities as protests continued to spring up in different locations. It was unknown where the next one might arise.

[349] With regard to the infringement of section 8, a finding that a search and seizure power is unreasonable leaves little room for upholding the law as reasonable under section 1. In this context, the Applicants argue that the Economic Order also fails on minimal impairment and could not be upheld under section 1. The search power contained in section 5 of the Economic

Order did not minimally impair the right against unreasonable search and seizure as it required extensive financial disclosure to law enforcement, predicated on an unconstitutional “any reason to believe” standard, subject to no system of prior authorization.

[350] The Respondent submits that the collective benefit of, swiftly and peacefully, ending the blockades outweighed any deleterious effects. The EA measures were a balanced, measured and proportionate approach to the national emergency. The negative effects of the Economic Order were inevitable, but the successful deterrent effect outweighed any deleterious impacts. The measures were tailored in length and to narrow the prohibitions. It did not prohibit all protests or demonstrations, only those likely to result a breach of peace.

(i) Conclusion on section 1 justification

[351] There was no real dispute between the parties that the government had a pressing and substantial objective when they enacted the measures: to clear out the blockades that had formed as part of the protest. Only the Jost Applicants in their Memorandum contended that the objective was not pressing and substantial but they failed to provide any argument in support of that position and did not press it at the hearing. The CCF and CCLA acknowledge that the Regulations and Economic Order were rationally connected to the goal of ending the blockades.

[352] I agree with the Respondent that the objective was pressing and substantial and that there was a rational connection between freezing the accounts and the objective, to stop funding the blockades. However, the measures were not minimally impairing.

[353] Minimal impairment requires that the measures affect the rights as little as reasonably possible, they must be "carefully tailored": *Frank v Canada (Attorney General)*, 2019 SCC 1 at para 66. The Regulations and Economic Order fail the minimal impairment test for two reasons: 1) they were applied throughout Canada; and 2) there were less impairing alternatives available.

[354] The scope of the Declaration and the measures could have been limited to Ontario which faced the most intransigent situation. And possibly Alberta, although the Coutts situation had been resolved when the Act was invoked. Elsewhere the authorities were able to use existing legislative tools such as the *Criminal Code* and provincial public safety statutes to remove blockades and prevent new ones from being established without the threat or use of serious violence from the protesters.

[355] The Respondent's position is that it was necessary to apply the measures across Canada because the participants in the several blockades came from across the country, as did their financial support. That may have been a compelling reason if there was evidence that the measures would not have achieved their objective if they did not have effect throughout the country. But that evidence was not part of the Respondent's record.

[356] Those that were targeted by the Economic Order appear to have all been present at the major blockade sites, notably Ottawa. And there is no evidence that the financial institutions would have refused to cooperate with the implementation of the measures if, for example, their account holders resided in Prince Edward Island or the Territories which had no illegal protests and had travelled to Ottawa to participate in the blockade.

[357] The Respondent acknowledges that the suspension of bank accounts and credit cards affected joint account holders and credit cards issued on the accounts to other family members and suggests that it was unavoidable. Indeed the Jost Applicants submitted evidence of that happening to one of them. Thus someone who had nothing to do with the protests could find themselves without the means to access necessaries for household and other family purposes while the accounts were suspended. There appears to have been no effort made to find a solution to that problem while the measures were in effect.

[358] Of particular concern from a section 1 justification perspective is that there was no standard applied to determine whether someone should be the target of the measures or process to allow them to question that determination. As described by Superintendent Beaudoin in cross-examination, it was all informal and *ad hoc.*

[359] Having found that the infringements of *Charter* sections 2(b) and 8 were not minimally impairing, I find that they were not justified under section 1.

D. Did the Regulations and Economic Order violate the *Canadian Bill of Rights*?

[360] The Preamble to the *Emergencies Act* states that the "special temporary measure" are subject to the *Canadian Bill of Rights.*

[361] Section 1 (a) of the *Canadian Bill of Rights* provides that: "[i]t is hereby recognized and declared that in Canada there have existed and continue to exist […] the right of the individual to […] enjoyment of property, and the right not to be deprived thereof except by due process of

law." Section 2 requires that "[e]very law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights,* be construed and applied as not to abrogate, abridge or infringe …any of the rights or freedoms herein recognized and declared…" There is no notwithstanding clause in the EA.

[362] Part II of the Act which created the *Canadian Bill of Rights,* extends its application to any law, including Regulations, within the legislative authority of the Parliament of Canada that existed before or after the coming into force of the Act. There is, therefore, no question that it applies to the *Emergencies Act*, the Regulations and the Economic Order. Any provision inconsistent with the *Canadian Bill of Rights* is to be declared inoperative: *The Queen v Drybones*, [1970] SCR 282.

[363] While many of the provisions of the *Canadian Bill of Rights* were superseded by the adoption of the *Charter* in 1982, it continues to operate: *Singh v Canada (Minister of Employment and Immigration)* [1985] 1 SCR 177 at page 224. And was described as "quasi-constitutional legislation" in *Bell Canada v Canada Telephone Employees Association*, 2003 SCC 36 at para 28.

[364] The *Canadian Bill of Rights* provides two protections not expressly available in the *Charter*. The first is the protection of the enjoyment of property in section 1(a), the deprivation of which must occur through the due process of law. The second protection is found in section 2(e) which guarantees a fair hearing in accordance with the principles of fundamental justice for

the determination of rights and obligations: *Authorson v Canada (Attorney General)*, 2003 SCC 39 at para 34 [*Authorson*].

[365] As noted above, Messrs. Cornell and Gircys had their accounts frozen, as a result of the Declaration and imposition of the Economic Order. As a consequence, they have standing to seek a declaration as to the alleged conflict between the EA's measures and the *Canadian Bill of Rights*: *Smith, Kline & French v Attorney General of Canada*, [1986], 1 FC at p 298 [*Smith*].

[366] In their written argument and Amended Notice of Constitutional Question, the Jost Applicants, of which Messrs. Cornell and Gircys were then part, alleged that the Economic Order infringed sections 1 and 2 of the *Canadian Bill of Rights* as they pertain to due process and property rights. A similar assertion was made in oral argument. No authority was cited in support of the proposition other than by reference to the terms of the *Canadian Bill of Rights* itself. In reply to the Respondent's written argument, the Jost Applicants contended that the Economic Order was in clear contravention of due process property rights at common law and pursuant to the *Canadian Bill of Rights*, again without citing authority for the proposition.

[367] In far ranging oral argument at the hearing, referencing *Charter* section 8 and due process concerns, counsel argued that Cornell and Gircys were entitled to have a hearing in a court before their accounts could be frozen. Their submissions envisaged a small army of prosecutors, defence counsel and judges being mobilized to deal with the cases before any concrete action could be taken against the participants' property interests. Counsel likened such a process to the busy dockets in criminal courts across the country.

[368] The Respondent did not reply to the claims regarding the *Canadian Bill of Rights* raised by the Jost Applicants in their written argument. But in responding to Nagle/CFN's similar claims, the Respondent argued that the process followed by the RCMP complied with due process of law requirements. The content of those requirements being "eminently variable, inherently flexible and context-specific": *Vavilov*, at para 77. And in the context of an emergency, the requirements need not always be satisfied when the initial decision is made but can be later if maintained or continued after the immediate urgency: *Ross v Mohawk Council of Kanesatake*, 2003 FCT 531 at para 79.

[369] This is not a case in my view that squarely addresses the enjoyment of property protection in section 1(a) of the *Canadian Bill of Rights.* The freezing of Messrs. Cornell and Gircy's bank accounts was of short duration. While no doubt inconvenient, it did not cause them significant harm and they were both able to manage without quick access to cash or the use of credit cards. I agree with the Respondent that in this context, due process did not require that the special measures be put on hold while counsel and courts were engaged and hearings conducted. This would be contrary to the very purpose of the *Emergencies Act* and an unnecessary burden on the justice system given the temporary nature of the special measures.

X. **Conclusion**

[370] At the outset of these proceedings, while I had not reached a decision on any of the four applications, I was leaning to the view that the decision to invoke the EA was reasonable. I considered the events that occurred in Ottawa and other locations in January and February 2022 went beyond legitimate protest and reflected an unacceptable breakdown of public order. I had

and continue to have considerable sympathy for those in government who were confronted with this situation. Had I been at their tables at that time, I may have agreed that it was necessary to invoke the Act. And I acknowledge that in conducting judicial review of that decision, I am revisiting that time with the benefit of hindsight and a more extensive record of the facts and law than that which was before the GIC.

[371] My preliminary view of the reasonableness of the decision may have prevailed following the hearing due to excellent advocacy on the part of counsel for the Attorney General of Canada had I not taken the time to carefully deliberate about the evidence and submissions, particularly those of the CCLA and CCF. Their participation in these proceedings has demonstrated again the value of public interest litigants. Especially in presenting informed legal argument. This case may not have turned out the way it has without their involvement, as the private interest litigants were not as capable of marshalling the evidence and argument in support of their applications.

[372] I have concluded that the decision to issue the Proclamation does not bear the hallmarks of reasonableness – justification, transparency and intelligibility – and was not justified in relation to the relevant factual and legal constraints that were required to be taken into consideration. In my view, there can be only one reasonable interpretation of EA sections 3 and 17 and paragraph 2(c) of the *CSIS Act* and the Applicants have established that the legal constraints on the discretion of the GIC to declare a public order emergency were not satisfied.

[373] As discussed above, I have found that Kristen Nagle, Canadian Frontline Nurses, Jeremiah Jost and Harold Ristau lack standing to seek judicial review of the decision and their

applications are dismissed for that reason. I recognize that Edward Cornell and Vincent Gircys have direct standing to challenge the decision and grant public interest standing to the CCLA and CCF. I find that the remaining Applicants have established that the decision to issue the Proclamation was unreasonable and led to infringement of *Charter* rights not justified under section 1. Their applications are granted to that extent. I find no reason to apply the *Canadian Bill of Rights.*

(1) Remedies

[374] The Applicants all sought declaratory relief if any of the legislative instruments were found to be unreasonable or unconstitutional. Gircys and Cornell went further in their Memorandum of Fact and Law to request a declaration that the *Emergencies Act* is inconsistent with s 91, s 92 and s 96 of *The Constitution Act, 1867*, 30 & 31 Vict, c 3, and, to the extent of those inconsistencies, is of no force or effect pursuant to s 52(1) of the *Constitution Act.* As they did not make that argument at the hearing, I took it to have been abandoned. In any event, I considered it to be of no merit. This case was not about the constitutionality of the Act but, rather, how it was applied in this instance.

[375] Judgments will be issued in each Application to reflect the conclusions I have reached.

(2) Costs

[376] The public interest litigants have not requested costs and none will be awarded to them. Gircys and Cornell requested costs in their Notice of Application and having succeeded on key

elements, are entitled to be compensated, at least for the hearing. I will not award them costs for the preliminary steps in these proceedings which I considered to be often misguided or for the preparation of the largely irrelevant memorandum of fact and law that was filed. They may confer with the Respondent on what would be a reasonable cost award for the hearing, including disbursements. If a joint position is not reached the parties may submit within thirty days of the receipt of these reasons written representations not exceeding five pages in length for the Court to determine an appropriate award.

"Richard G. Mosley"
Judge

ANNEX A / ANNEXE A

***Emergencies Act,* RSC 1985, c 22 (4th Supp)**

Preamble

WHEREAS the safety and security of the individual, the protection of the values of the body politic and the preservation of the sovereignty, security and territorial integrity of the state are fundamental obligations of government;

AND WHEREAS the fulfilment of those obligations in Canada may be seriously threatened by a national emergency and, in order to ensure safety and security during such an emergency, the Governor in Council should be authorized, subject to the supervision of Parliament, to take special temporary measures that may not be appropriate in normal times;

AND WHEREAS the Governor in Council, in taking such special temporary measures, would be subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights and must have regard to the International Covenant on Civil and Political Rights, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency;

NOW THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

(…)

National Emergency

3 For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that

***Loi sur les mesures d'urgence,* LRC 1985, c 22 (4e suppl)**

Préambule

Attendu :

que l'État a pour obligations primordiales d'assurer la sécurité des individus, de protéger les valeurs du corps politique et de garantir la souveraineté, la sécurité et l'intégrité territoriale du pays;

que l'exécution de ces obligations au Canada risque d'être gravement compromise en situation de crise nationale et que, pour assurer la sécurité en une telle situation, le gouverneur en conseil devrait être habilité, sous le contrôle du Parlement, à prendre à titre temporaire des mesures extraordinaires peut-être injustifiables en temps normal;

qu'en appliquant de pareilles mesures, le gouverneur en conseil serait assujetti à la Charte canadienne des droits et libertés ainsi qu'à la Déclaration canadienne des droits et aurait à tenir compte du Pacte international relatif aux droits civils et politiques, notamment en ce qui concerne ceux des droits fondamentaux auxquels il ne saurait être porté atteinte même dans les situations de crise nationale,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

(…)

Crise nationale

3 Pour l'application de la présente loi, une situation de crise nationale résulte d'un concours de circonstances critiques à caractère d'urgence et de nature temporaire, auquel il n'est pas possible de faire face adéquatement sous le régime des lois

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

(…)

PART II

Public Order Emergency

Definitions

16 In this Part,

declaration of a public order emergency means a proclamation issued pursuant to subsection 17(1); (*déclaration d'état d'urgence)*

public order emergency means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency; (*état d'urgence)*

threats to the security of Canada has the meaning assigned by section 2 of the Canadian Security Intelligence Service Act. (*menaces envers la sécurité du Canada)*

Declaration of a public order emergency

17 (1) When 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

du Canada et qui, selon le cas :

a) met gravement en danger la vie, la santé ou la sécurité des Canadiens et échappe à la capacité ou aux pouvoirs d'intervention des provinces;

b) menace gravement la capacité du gouvernement du Canada de garantir la souveraineté, la sécurité et l'intégrité territoriale du pays.

Définitions

16 Les définitions qui suivent s'appliquent à la présente partie.

déclaration d'état d'urgence Proclamation prise en application du paragraphe 17(1). (*declaration of a public order emergency*)

état d'urgence Situation de crise causée par des menaces envers la sécurité du Canada d'une gravité telle qu'elle constitue une situation de crise nationale. (*public order emergency)*

menaces envers la sécurité du Canada S'entend au sens de l'article 2 de la Loi sur le service canadien du renseignement de sécurité. (*threats to the security of Canada*)

Proclamation

17 (1) Le gouverneur en conseil peut par proclamation, s'il croit, pour des motifs raisonnables, qu'il se produit un état d'urgence justifiant en l'occurrence des mesures

emergency, the Governor in Council, after such consultation as is required by section 25, may, by proclamation, so declare.

extraordinaires à titre temporaire et après avoir procédé aux consultations prévues par l'article 25, faire une déclaration à cet effet.

c) si l'état d'urgence ne touche pas tout le Canada, la désignation de la zone touchée.

Contents

(2) A declaration of a public order emergency shall specify

(a) concisely the state of affairs constituting the emergency;

(b) the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and

(c) if the effects of the emergency do not extend to the whole of Canada, the area of Canada to which the effects of the emergency extend.

Contenu

(2) La déclaration d'état d'urgence comporte :

a) une description sommaire de l'état d'urgence;

b) l'indication des mesures d'intervention que le gouverneur en conseil juge nécessaires pour faire face à l'état d'urgence;

c) si l'état d'urgence ne touche pas tout le Canada, la désignation de la zone touchée.

Effective date

18 (1) A declaration of a public order emergency is effective on the day on which it is issued, but a motion for confirmation of the declaration shall be laid before each House of Parliament and be considered in accordance with section 58.

Prise d'effet

18 (1) La déclaration d'état d'urgence prend effet à la date de la proclamation, sous réserve du dépôt d'une motion de ratification devant chaque chambre du Parlement pour étude conformément à l'article 58.

Expiration of declaration

(2) A declaration of a public order emergency expires at the end of thirty days unless the declaration is previously revoked or continued in accordance with this Act.

Cessation d'effet

(2) La déclaration cesse d'avoir effet après trente jours, sauf abrogation ou prorogation antérieure en conformité avec la présente loi.

Orders and Regulations

19 (1) While a declaration of a public order emergency is in effect, the Governor in Council may make such orders or Regulations with respect to the following matters as the Governor

Gouverneur en conseil

19 (1) Pendant la durée de validité de la déclaration d'état d'urgence, le gouverneur en conseil peut, par décret ou règlement, prendre dans les domaines suivants toute mesure qu'il

in Council believes, on reasonable grounds, are necessary for dealing with the emergency:

(a) the regulation or prohibition of

(i) any public assembly that may reasonably be expected to lead to a breach of the peace,

(ii) travel to, from or within any specified area, or

(iii) the use of specified property;

(b) the designation and securing of protected places;

(c) the assumption of the control, and the restoration and maintenance, of public utilities and services;

(d) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered; and

(e) the imposition

(i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or

(ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment,

croit, pour des motifs raisonnables, fondée en l'occurrence :

a) la réglementation ou l'interdiction :

(i) des assemblées publiques dont il est raisonnable de penser qu'elles auraient pour effet de troubler la paix,

(ii) des déplacements à destination, en provenance ou à l'intérieur d'une zone désignée,

(iii) de l'utilisation de biens désignés;

b) la désignation et l'aménagement de lieux protégés;

c) la prise de contrôle ainsi que la restauration et l'entretien de services publics;

d) l'habilitation ou l'ordre donnés à une personne ou à une personne d'une catégorie de personnes compétentes en l'espèce de fournir des services essentiels, ainsi que le versement d'une indemnité raisonnable pour ces services;

e) en cas de contravention aux décrets ou règlements d'application du présent article, l'imposition, sur déclaration de culpabilité :

(i) par procédure sommaire, d'une amende maximale de cinq cents dollars et d'un emprisonnement maximal de six mois ou de l'une de ces peines,

(ii) par mise en accusation, d'une amende maximale de cinq mille dollars et d'un emprisonnement maximal de cinq ans ou de l'une de ces peines.

for contravention of any order or regulation made under this section.

Restriction

(2) Where a declaration of a public order emergency specifies that the effects of the emergency extend only to a specified area of Canada, the power under subsection (1) to make orders and Regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, may be exercised or performed only with respect to that area.

Idem

(3) The power under subsection (1) to make orders and Regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, shall be exercised or performed

(a) in a manner that will not unduly impair the ability of any province to take measures, under an Act of the legislature of the province, for dealing with an emergency in the province; and

(b) with the view of achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed

(…)

Revocation by Governor in Council

22 The Governor in Council may, by proclamation, revoke a declaration of a public order emergency either generally or with respect to any area of Canada effective on such day as is specified in the proclamation.

(…)

Limitation

(2) Dans les cas où la déclaration ne concerne qu'une zone désignée du Canada, les décrets et règlements d'application du paragraphe (1) et les pouvoirs et fonctions qui en découlent n'ont d'application qu'à l'égard de cette zone.

Idem

(3) Les décrets et règlements d'application du paragraphe (1) et les pouvoirs et fonctions qui en découlent sont appliqués ou exercés :

a) sans que soit entravée la capacité d'une province de prendre des mesures en vertu d'une de ses lois pour faire face à un état d'urgence sur son territoire;

b) de façon à viser à une concertation aussi poussée que possible avec chaque province concernée.

(…)

Abrogation par le gouverneur en conseil

22 Le gouverneur en conseil peut, par proclamation, abroger une déclaration d'état d'urgence soit de façon générale, soit pour une zone du Canada, à compter de la date fixée par la proclamation.

(…)

Consultation

25 (1) Subject to subsections (2) and (3), before the Governor in Council issues, continues or amends a declaration of a public order emergency, the lieutenant governor in council of each province in which the effects of the emergency occur shall be consulted with respect to the proposed action.

Consultation

25 (1) Sous réserve des paragraphes (2) et (3), le gouverneur en conseil, avant de faire, de proroger ou de modifier une déclaration d'état d'urgence, consulte le lieutenant-gouverneur en conseil de chaque province touchée par l'état d'urgence.

Idem

(2) Where the effects of a public order emergency extend to more than one province and the Governor in Council is of the opinion that the lieutenant governor in council of a province in which the effects of the emergency occur cannot, before the issue

Idem

(2) Lorsque plus d'une province est touchée par un état d'urgence et que le gouverneur en conseil est d'avis que le lieutenant-gouverneur en conseil d'une province touchée ne peut être convenablement consulté, avant la déclaration ou sa modification, sans que soit compromise l'efficacité des mesures envisagées, la consultation peut avoir lieu après la prise des mesures mais avant le dépôt de la motion de ratification devant le Parlement.

Indication

(3) The Governor in Council may not issue a declaration of a public order emergency where the effects of the emergency are confined to one province, unless the lieutenant governor in council of the province has indicated to the Governor in Council that the emergency exceeds the capacity or authority of the province to deal with it.

Pouvoirs ou capacité de la province

(3) Le gouverneur en conseil ne peut faire de déclaration en cas d'état d'urgence se limitant principalement à une province que si le lieutenant-gouverneur en conseil de la province lui signale que l'état d'urgence échappe à la capacité ou aux pouvoirs d'intervention de la province.

Effect of expiration of declaration

26 (1) Where, pursuant to this Act, a declaration of a public order emergency expires either generally or with respect to any area of Canada, all orders and Regulations made pursuant to the declaration or all orders and Regulations so made, to the extent that they apply with respect to that area, as the case may be, expire on the day on which the declaration expires.

Cessation d'effet

26 (1) Dans les cas où, en application de la présente loi, une déclaration d'état d'urgence cesse d'avoir effet soit de façon générale, soit à l'égard d'une zone du Canada, ses décrets ou règlements d'application, ainsi que les dispositions des autres décrets ou règlements qui concernent cette zone, cessent d'avoir effet en même temps.

Effect of revocation of declaration

Abrogation

(2) Where, pursuant to this Act, a declaration of a public order emergency is revoked either generally or with respect to any area of Canada, all orders and Regulations made pursuant to the declaration or all orders and Regulations so made, to the extent that they apply with respect to that area, as the case may be, are revoked effective on the revocation of the declaration.

Effect of revocation of continuation

(3) Where, pursuant to this Act, a proclamation continuing a declaration of a public order emergency either generally or with respect to any area of Canada is revoked after the time the declaration would, but for the proclamation, have otherwise expired either generally or with respect to that area,

> **(a)** the declaration and all orders and Regulations made pursuant to the declaration, or
>
> **(b)** the declaration and all orders and Regulations made pursuant to the declaration to the extent that the declaration, orders and Regulations apply with respect to that area,

as the case may be, are revoked effective on the revocation of the proclamation.

Effect of revocation of amendment

(4) Where, pursuant to this Act, a proclamation amending a declaration of a public order emergency is revoked, all orders and Regulations made pursuant to the amendment and all orders and Regulations to the extent that they apply pursuant to the amendment are revoked effective on the revocation of the proclamation.

(…)

(2) Dans les cas où, en application de la présente loi, la déclaration est abrogée soit de façon générale, soit à l'égard d'une zone du Canada, ses décrets ou règlements d'application, ainsi que les dispositions des autres décrets ou règlements qui concernent cette zone, sont abrogés en même temps.

Cas de prorogation

(3) Dans les cas où une proclamation de prorogation de la déclaration soit de façon générale, soit à l'égard d'une zone du Canada est abrogée après la date prévue à l'origine pour la cessation d'effet, générale ou pour la zone, de la déclaration, celle-ci, ses décrets ou règlements d'application, ainsi que les dispositions des autres décrets ou règlements qui concernent la zone, sont abrogés en même temps.

Cas de modification

(4) Dans les cas où, en application de la présente loi, une proclamation de modification de la déclaration est abrogée, les décrets ou règlements consécutifs à la modification, ainsi que les dispositions des autres décrets et règlements qui lui sont consécutifs, sont abrogés en même temps.

(…)

58 (1) Subject to subsection (4), 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, shall be laid before each House of Parliament within seven sitting days after the declaration is issued.

Summoning Parliament or House

(2) If a declaration of emergency is issued during a prorogation of Parliament or when either House of Parliament stands adjourned, Parliament or that House, as the case may be, shall be summoned forthwith to sit within seven days after the declaration is issued.

Summoning Parliament

(3) If a declaration of emergency is issued at a time when the House of Commons is dissolved, Parliament shall be summoned to sit at the earliest opportunity after the declaration is issued.

Tabling in Parliament after summoned

(4) Where Parliament or a House of Parliament is summoned to sit in accordance with subsection (2) or (3), the motion, explanation and report described in subsection (1) shall be laid before each House of Parliament or that House of Parliament, as the case may be, on the first sitting day after Parliament or that House is summoned.

Consideration

(5) Where a motion is laid before a House of Parliament as provided in subsection (1) or (4), that House shall, on the sitting day next following the sitting day on which the motion

58 (1) Sous réserve du paragraphe (4), il est déposé devant chaque chambre du Parlement, dans les sept jours de séance suivant une déclaration de situation de crise, une motion de ratification de la déclaration signée par un ministre et accompagnée d'un exposé des motifs de la déclaration ainsi que d'un compte rendu des consultations avec les lieutenants-gouverneurs en conseil des provinces au sujet de celle-ci.

Convocation du Parlement ou d'une chambre

(2) Si la déclaration est faite pendant une prorogation du Parlement ou un ajournement d'une de ses chambres, le Parlement, ou cette chambre, selon le cas, est immédiatement convoqué en vue de siéger dans les sept jours suivant la déclaration.

Dissolution de la Chambre des communes

(3) Si la déclaration est faite alors que la Chambre des communes est dissoute, le Parlement est convoqué en vue de siéger le plus tôt possible après la déclaration.

Dépôt devant le Parlement après convocation

(4) Dans les cas où le Parlement, ou une de ses chambres, est convoqué conformément aux paragraphes (2) ou (3), la motion, l'exposé et le compte rendu visés au paragraphe (1) sont déposés devant chaque chambre du Parlement ou devant cette chambre, selon le cas, le premier jour de séance suivant la convocation.

Étude

(5) La chambre du Parlement saisie d'une motion en application des paragraphes (1) ou (4) étudie celle-ci dès le jour de séance suivant celui de son dépôt.

was so laid, take up and consider the motion.

Vote

(6) A motion taken up and considered in accordance with subsection (5) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

Revocation of declaration

(7) If a motion for confirmation of a declaration of emergency is negatived by either House of Parliament, the declaration, to the extent that it has not previously expired or been revoked, is revoked effective on the day of the negative vote and no further action under this section need be taken in the other House with respect to the motion.

(…)

Review by Parliamentary Review Committee

62 (1) The exercise of powers and the performance of duties and functions pursuant to a declaration of emergency shall be reviewed by a committee of both Houses of Parliament designated or established for that purpose.

Membership

(2) The Parliamentary Review Committee shall include at least one member of the House of Commons from each party that has a recognized membership of 12 or more persons in that House and at least the Leader of the Government in the Senate or Government Representative in the Senate, or his or her nominee, the Leader of the Opposition in the Senate, or his or her nominee, and the Leader or Facilitator who is referred to in any of paragraphs 62.4(1)(c) to (e) of the Parliament of

Mise aux voix

(6) La motion mise à l'étude conformément au paragraphe (5) fait l'objet d'un débat ininterrompu; le débat terminé, le président de la chambre met immédiatement aux voix toute question nécessaire pour décider de la motion.

Abrogation de la déclaration

(7) En cas de rejet de la motion de ratification de la déclaration par une des chambres du Parlement, la déclaration, sous réserve de sa cessation d'effet ou de son abrogation antérieure, est abrogée à compter de la date du vote de rejet et l'autre chambre n'a pas à intervenir sur la motion.

(…)

Examen

62 (1) L'exercice des attributions découlant d'une déclaration de situation de crise est examiné par un comité mixte de la Chambre des communes et du Sénat désigné ou constitué à cette fin.

Composition du comité

(2) Siègent au comité d'examen parlementaire au moins un député de chaque parti dont l'effectif reconnu à la Chambre des communes comprend au moins douze personnes, et au moins le leader ou représentant du gouvernement au Sénat, ou son délégué, le leader de l'opposition au Sénat, ou son délégué, et le leader ou facilitateur visé à l'un ou l'autre des alinéas 62.4(1)c) à e) de la Loi sur le Parlement du Canada, ou son délégué.

Canada Act, or his or her nominee.

Oath of secrecy

(3) Every member of the Parliamentary Review Committee and every person employed in the work of the Committee shall take the oath of secrecy set out in the schedule.

Meetings in private

(4) Every meeting of the Parliamentary Review Committee held to consider an order or regulation referred to it pursuant to subsection 61(2) shall be held in private.

Revocation or amendment of order or regulation

(5) If, within thirty days after an order or regulation is referred to the Parliamentary Review Committee pursuant to subsection 61(2), the Committee adopts a motion to the effect that the order or regulation be revoked or amended, the order or regulation is revoked or amended in accordance with the motion, effective on the day specified in the motion, which day may not be earlier than the day on which the motion is adopted.

Report to Parliament

(6) The Parliamentary Review Committee shall report or cause to be reported the results of its review under subsection (1) to each House of Parliament at least once every sixty days while the declaration of emergency is in effect and, in any case,

(a) within three sitting days after a motion for revocation of the declaration is filed under subsection 59(1);

(b) within seven sitting days after a proclamation continuing the

Serment du secret

(3) Les membres du comité d'examen parlementaire et son personnel prêtent le serment de secret figurant à l'annexe.

Réunions à huis clos

(4) Les réunions du comité d'examen parlementaire en vue de l'étude des décrets ou règlements qui lui sont renvoyés en application du paragraphe 61(2) se tiennent à huis clos.

Abrogation ou modification

(5) Si, dans les trente jours suivant le renvoi prévu par le paragraphe 61(2), le comité d'examen parlementaire adopte une motion d'abrogation ou de modification d'un décret ou d'un règlement ayant fait l'objet du renvoi, cette mesure s'applique dès la date prévue par la motion; cette date ne peut toutefois pas être antérieure à celle de l'adoption de la motion.

Rapport au Parlement

(6) Le comité d'examen parlementaire dépose ou fait déposer devant chaque chambre du Parlement un rapport des résultats de son examen au moins tous les soixante jours pendant la durée de validité d'une déclaration de situation de crise, et, en outre, dans les cas suivants :

a) dans les trois jours de séance qui suivent le dépôt d'une motion demandant l'abrogation d'une déclaration de situation de crise en conformité avec le paragraphe 59(1);

b) dans les sept jours de séance qui suivent une proclamation de

declaration is issued; and

(c) within seven sitting days after the expiration of the declaration or the revocation of the declaration by the Governor in Council.

Inquiry

63 (1) The Governor in Council shall, within sixty 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.

Report to Parliament

(2) A report of an inquiry held pursuant to this section shall be laid before each House of Parliament within three hundred and sixty days after the expiration or revocation of the declaration of emergency.

***Emergency Measures Regulations*, SOR/2022-21**

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;

(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.

prorogation d'une situation de crise;

c) dans les sept jours de séance qui suivent la cessation d'effet d'une déclaration ou son abrogation par le gouverneur en conseil.

Enquête

63 (1) Dans les soixante jours qui suivent la cessation d'effet ou l'abrogation d'une déclaration de situation de crise, le gouverneur en conseil est tenu de faire faire une enquête sur les circonstances qui ont donné lieu à la déclaration et les mesures prises pour faire face à la crise.

63 (1) Dépôt devant le Parlement

(2) Le rapport de l'enquête faite en conformité avec le présent article est déposé devant chaque chambre du Parlement dans un délai de trois cent soixante jours suivant la cessation d'effet ou l'abrogation de la déclaration de situation de crise.

***Règlement sur les mesures* d'urgences, DORS/2022-21**

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:

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).

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).

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

Mineur

(2) Il est interdit de faire participer une personne âgée de moins de dix-huit ans à une assemblée visée au paragraphe (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) 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

determined by the Minister of Citizenship and Immigration or the Minister of Public Safety and Emergency Preparedness, is in the national interest.

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

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.

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

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 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.

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

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 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.

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

and storage of any vehicle, equipment, structure or other object that is part of a blockade.

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.

Verbal request

(3) Any verbal request must be confirmed in writing as soon as 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.

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.

Compensation

(2) Any person who suffers loss, injury or damage as a result of anything done or

remorquage et l'entreposage de véhicules, d'équipement, des structures ou de tout autre objet qui composent un blocage.

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.

Demande verbale

(3) La demande verbale est confirmée par écrit dès que possible.

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

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.

Indemnisation

(2) Toute personne qui subit des dommages corporels ou matériels entraînés par des actes

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.

Emergency Economic Measures Order, **SOR/2022-22**

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,

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.

Décret sur les mesures économiques d'urgence, **DORS/2022-22**

Définitions

1 Les définitions qui suivent s'appliquent au présent décret :

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)

entité S'entend notamment d'une personne

fund, unincorporated association or organization or foreign state. (entité)

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)

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.

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.

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.

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.

Duty to determine

3 The following entities must determine on a continuing basis whether they are in possession

Vérification

3 Il incombe aux entités mentionnées ci-après de vérifier de façon continue si des biens qui sont en

or control of property that is owned, held or controlled by or on behalf of a designated person:

(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;

leur possession 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 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) 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;

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) entities authorized under provincial legislation to engage in the business of dealing in securities or to provide portfolio management or investment counselling services;

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) entities that provide a platform to raise funds or virtual currency through donations; and

k) les plateformes collaboratives et celles de monnaie virtuelle qui sollicitent des dons**;**

(l) entities that perform any of the following payment functions:

l) toute entité qui exécute l'une ou l'autre de fonctions suivantes :

(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,

(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**,**

(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,

(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) the initiation of an electronic funds transfer at the request of an end user,

(iii) l'initiation d'un transfert électronique de fonds à la demande d'un utilisateur final,

(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

(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) the provision of clearing or settlement services.

(v) la prestation de services de compensation ou de règlement.

Registration requirement — FINTRAC

4 (1) The entities referred to in paragraphs 3(k)

Inscription obligatoire — Centre

4 (1) Les entités visées aux alinéas 3k) et l)

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.

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.

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.

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

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.

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.

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.

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

reason to believe is owned, held or controlled by or on behalf of a designated person; and

(b) any information about a transaction or proposed transaction in respect of property referred to in paragraph (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.

***Proclamation Declaring a Public Order Emergency*, SOR/2022-20**

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;

contrôle appartiennent à une personne désignée ou sont détenus ou contrôlés par elle ou pour son compte;

b) tout renseignement portant sur une transaction, réelle ou projetée, mettant en cause des biens visés à l'alinéa a).

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.

***Proclamation déclarant une urgence d'ordre public*, DORS/2022-20**

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;

And We do specify the emergency as constituted of

(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

Sachez que Nous décrivons l'état d'urgence comme prenant la forme suivante :

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

would further threaten the safety and security of Canadians;

menaceraient davantage la sécurité des Canadiens;

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

Sachez que Nous jugeons les mesures d'intervention ci-après nécessaires pour faire face à l'état d'urgence :

(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,

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) 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 the provision of reasonable compensation in respect of services so rendered,

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 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) 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

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

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,

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) measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference,

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) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the Emergencies Act; and

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) other temporary measures authorized under section 19 of the Emergencies Act that are not yet known.

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-

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

Chief of 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.

BY COMMAND,

Deputy Registrar General of Canada

Simon Kennedy

***Canadian Security Intelligence Service Act,* RSC 1985, c C-23**

Definitions

2 In this Act,

(…)

threats to the security of Canada means

(a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,

(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,

(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and

Canada.

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.

PAR ORDRE,

Le sous-registraire général du Canada,

Simon Kennedy

***Loi sur le service canadien du renseignement de sécurité,* LRC 1985, c C-23**

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

(…)

menaces envers la sécurité du Canada Constituent des menaces envers la sécurité du Canada les activités suivantes :

a) l'espionnage ou le sabotage visant le Canada ou préjudiciables à ses intérêts, ainsi que les activités tendant à favoriser ce genre d'espionnage ou de sabotage;

b) les activités influencées par l'étranger qui touchent le Canada ou s'y déroulent et sont préjudiciables à ses intérêts, et qui sont d'une nature clandestine ou trompeuse ou comportent des menaces envers quiconque;

c) les activités qui touchent le Canada ou s'y déroulent et visent à favoriser l'usage de la violence grave ou de menaces de violence contre des personnes ou des biens dans le but d'atteindre un objectif politique, religieux ou idéologique au Canada ou

(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d). (*menaces envers la sécurité du Canada*)

The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

Canadian Charter of Rights and Freedoms

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2 Everyone has the following fundamental freedoms:
(…)
(b) freedom of thought, opinion and expression, including freedom of the press and other media of communication;
(c) freedom of peaceful assembly; and
(d) freedom of association

dans un État étranger;

d) les activités qui, par des actions cachées et illicites, visent à saper le régime de gouvernement constitutionnellement établi au Canada ou dont le but immédiat ou ultime est sa destruction ou son renversement, par la violence.

La présente définition ne vise toutefois pas les activités licites de défense d'une cause, de protestation ou de manifestation d'un désaccord qui n'ont aucun lien avec les activités mentionnées aux alinéas a) à d). (*threats to the security of Canada*)

Loi constitutionnelle de 1982, Annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11

Charte canadienne des droits et libertés

Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :

Garantie des droits et libertés

Droits et libertés au Canada

1 La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

Libertés fondamentales

2 Chacun a les libertés fondamentales suivantes :
(…)
b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
c) liberté de réunion pacifique;
d) liberté d'association.

(…)

Legal Rights

Life, liberty and security of person

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8 Everyone has the right to be secure against unreasonable search or seizure.

(…)

Primacy of Constitution of Canada

52 (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

(…)

(…)

Garanties juridiques

Vie, liberté et sécurité

7 Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

Fouilles, perquisitions ou saisies

8 Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.

(…)

Primauté de la Constitution du Canada

52 (1) La Constitution du Canada est la loi suprême du Canada; elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.

(…)

Canadian Bill of Rights, SC 1960, c 44

Déclaration canadienne des droits, SC 1960, c 44

Preamble

The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

Préambule

Le Parlement du Canada proclame que la nation canadienne repose sur des principes qui reconnaissent la suprématie de Dieu, la dignité et la valeur de la personne humaine ainsi que le rôle de la famille dans une société d'hommes libres et d'institutions libres;

Il proclame en outre que les hommes et les institutions ne demeurent libres que dans la mesure où la liberté s'inspire du respect des valeurs morales et spirituelles et du règne du droit;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Recognition and declaration of rights and freedoms

1 It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(…)

Construction of law

2 Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to (…)

Et afin d'expliciter ces principes ainsi que les droits de l'homme et les libertés fondamentales qui en découlent, dans une Déclaration de droits qui respecte la compétence législative du Parlement du Canada et qui assure à sa population la protection de ces droits et de ces libertés,

En conséquence, Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète :

Reconnaissance et déclaration des droits et libertés

1 Il est par les présentes reconnu et déclaré que les droits de l'homme et les libertés fondamentales ci-après énoncés ont existé et continueront à exister pour tout individu au Canada quels que soient sa race, son origine nationale, sa couleur, sa religion ou son sexe :

a) le droit de l'individu à la vie, à la liberté, à la sécurité de la personne ainsi qu'à la jouissance de ses biens, et le droit de ne s'en voir privé que par l'application régulière de la loi;

(…)

Interprétation de la législation

2 Toute loi du Canada, à moins qu'une loi du Parlement du Canada ne déclare expressément qu'elle s'appliquera nonobstant la Déclaration canadienne des droits, doit s'interpréter et s'appliquer de manière à ne pas supprimer, restreindre ou enfreindre l'un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s'interpréter ni s'appliquer comme (…)

ANNEX B

INVOCATION MEMORANDUM

SECRET
Confidence of the Queen's Privy Council

MEMORANDUM FOR THE PRIME MINISTER

INVOKING THE *EMERGENCIES ACT* TO END NATION-WIDE PROTESTS AND BLOCKADES

(Decision Sought)

SUMMARY

- s.39 [redacted]
- The EA came into force in 1988, and is meant to be used as a measure of last resort. The Act authorizes action when one of four types of emergencies is declared – in this instance: a public order emergency which is an emergency that arises from threats to the security of Canada that is so serious as to be a national emergency. 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. All measures taken under the EA must be exercised in accordance with the *Canadian Charter of Rights and Freedoms* (*Charter*) and should be carefully circumscribed to avoid being overbroad. Additional information on the EA is provided under **Tab B**.
- Since February 10, 2022, you have convened three Incident Response Group (IRG) meetings with key Ministers, including the Minister of Public Safety who, under the *Emergency Management Act*, is responsible for providing national leadership and coordination among

government departments and agencies on emergency management activities in cooperation with the provinces. The President of the Queen's Privy Council and Minister of Emergency Preparedness, Minister of National Defence, Deputy Prime Minister and Minister of Finance, Minister of Justice and Attorney General of Canada, Minister of Transport, Minister of Intergovernmental Affairs, Infrastructure and Communities, and senior government officials were also in attendance.

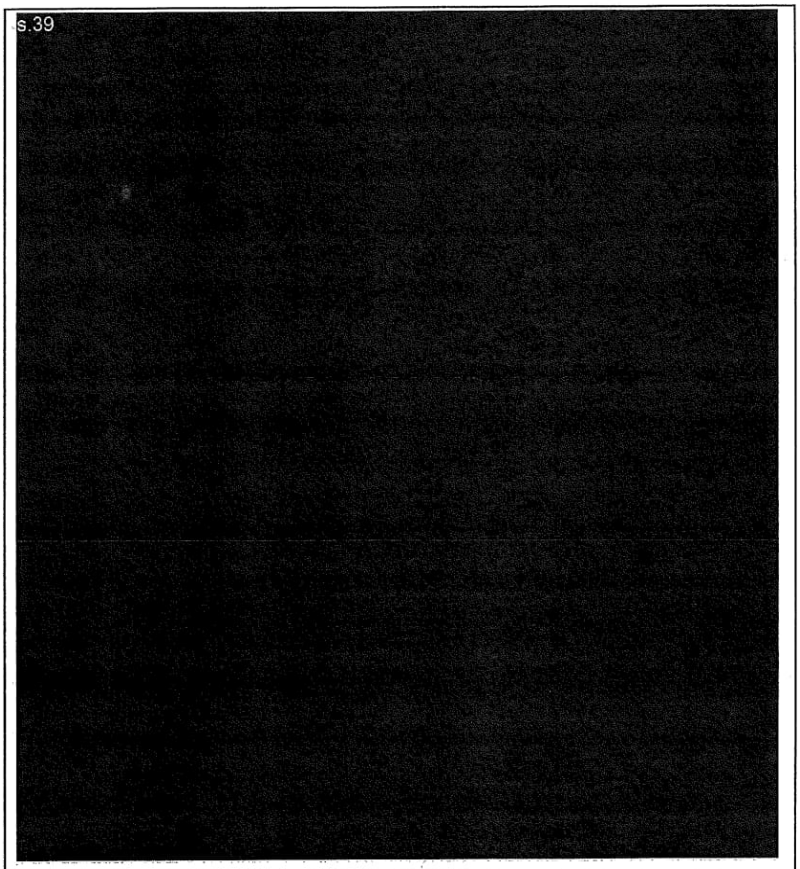
- s.39 [redacted]

- While the demonstrations started out relatively peaceful, they have grown more complex and expanded into multiple locations in the country. The movement is considered to be highly organized, well financed, and is feeding a general sense of public unrest that could continue to escalate with severe risks to public security, economic stability and international relations. The economic impact to date is estimated at approximately 0.1 per cent of Canada's gross domestic product (GDP) per week, however 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 this continues. Solicitor-Client Priv. [redacted] Solicitor-Client Priv. [redacted] Solicitor-Client Priv. [redacted] A more detailed threat assessment is being provided under separate cover.

- The objective of invoking this legislation would be to take a proportional approach, with time-limited measures that would supplement provincial and territorial authorities to address the current situation. These would not displace or replace their authorities, nor would they derogate provinces and territories' authority to direct their police forces. Rather, these measures would aim to assist in bringing an end to the illegal activities observed across the country. s.39 [redacted]

SECRET
Confidence of the Queen's
Privy Council

s.39



- On February 14, 2022, you convened a First Ministers Meeting to discuss with Premiers and seek their views on this scenario and the measures being explored. The Premiers expressed a variety of views – those closest to the situation (e.g., the Premier of Ontario) were completely supportive of invoking the EA and moving forward with robust measures. A large number of other Premiers expressed concern about the need to act carefully to avoid enflaming the underlying

SECRET
Confidence of the Queen's
Privy Council

sentiment they considered to lie behind the protest, which they linked to public health measures including federal vaccine mandates. These Premiers were not seeing the local manifestations of this movement yet in their jurisdictions. The Premier of Quebec had a strong negative reaction to the proposal, saying that he would oppose the application of federal emergency legislation in Quebec. This First Ministers Meeting will meet the requirements for consultation with the provinces under the EA. A letter will also be sent to First Ministers to set out more clearly the assessment of the underlying risks facing Canada and the nature of the measures that would be taken to respond.

Recommendation

- PCO recommends you approve, s.39 s.39 declaring a public order emergency under the EA.
- s.39
- s.39 These measures would be monitored closely, including through regular Deputy Ministers meetings and subsequent IRG meetings, as required. Regular updates would also be provided to you and your office as the situation evolves. Further advice will also follow on the required Parliamentary processes.
- **Do you agree?**

Background

- The "Freedom Convoy 2022" was the first manifestation of this growing movement. It began 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, 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). Additional details are provided under **Tab D**.

- Participants of these activities have adopted a number of tactics that are disrupting the peace, impacting the Canadian economy, and feeding a general sense of public unrest – either in favor or against the movement. This has included slow roll activity, slowing down traffic and creating traffic jams, in particular near POEs, as well as reports of protesters bringing children to protest sites to limit the level and types of law enforcement intervention. Earlier today, RCMP made 11 arrests related to the protest at the border in Coutts, Alberta and also seized a cache of firearms with a large quantity of ammunition indicating that there are definitely elements within this movement that have intentions to engage in violence.
- The movement has moved beyond a peaceful protest, and there is significant evidence of illegal activity underway.

Initial Municipal and Provincial Responses

- Municipal and provincial authorities have attempted to manage the different demonstrations under their existing authorities, with varying degrees of success. The Ottawa Police Service has publicly admitted that the situation in Ottawa has overwhelmed its officers, and has consistently sought additional resources to assist with enforcement of municipal bylaws. The City of Ottawa is planning on filing an injunction on February 14, 2022, and the Attorney General (AG) of Ontario and AG of Canada are expected to seek leave to intervene.
- On February 11, 2022, the Province of Ontario declared a province-wide state of emergency under its *Emergency Management and Civil Protection Act* (EMCPA), 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 EMPCA (Ontario Regulation 71/22) making it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.

- Through ongoing bilateral discussions at the officials and ministerial levels, no other province has signaled its intent to take steps similar to Ontario. Alberta has indicated that its *Critical Infrastructure Defence Act* provides substantial measures for law enforcement to use.
- On February 14, you convened a First Ministers Meeting with Premiers of all provinces and territories (PTs). During this meeting, Premiers expressed a variety of views – those closest to the situation (e.g., the Premier of Ontario) were completely supportive of invoking the EA and moving forward with robust measures. A large number of other Premiers expressed concern about the need to act carefully to avoid enflaming the underlying sentiment they considered to lie behind the protest which they linked to public health measures including federal vaccine mandates. These Premiers were not seeing the local manifestations of this movement yet in their jurisdictions. The Premier of Quebec had a strong negative reaction to the proposal, saying that he would oppose the application of federal emergency legislation in Quebec.

Federal Action

- Most law enforcement activities in response to the convoy have fallen with the municipal and provincial jurisdiction. A number of RCMP resources have been made available in response to requests from lead jurisdictions. The RCMP is currently assisting in various affected areas across the country and is focused on areas where enforcement or the risk of escalation is most acute, in addition to locations where it is the provincial police of jurisdiction, under its contract policing program (e.g., Coutts, Alberta, and Emerson, Manitoba).
- Nothing in the invocation implies a role for the Canadian Armed Forces (CAF) in the response to this emergency. Planning does continue to explore whether, how and when military assets could be used to advise and assist with the management of the situation. This could include CAF providing available resources and equipment support such as towing operations. CAF could also be deployed to support law enforcement in certain situations, in response to a request from a province/territory. A

decision to deploy the CAF would be taken pursuant to authorities in the *National Defence Act* and not the EA.

- A full list of measures explored and being undertaken by other federal departments and agencies are outlined in **Tab E**.

Test for Declaring a Public Order Emergency

- In order to declare a public order emergency, the EA requires that there be an emergency that arises from threats to the security of Canada that is so serious as to be a national emergency.
- Threats to the security of Canada does not include lawful advocacy protest or dissent, unless carried out in conjunction with any of the following activities:
  - espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
  - foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
  - activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
  - activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.
- 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 uniquely 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.

PCO Comment

- PCO is of the view that the examples of evidence collected to date Solicit Solicitor-Client Priv. support a determination that the two criteria required to declare a public order emergency pursuant to the EA have been met.

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- Specifically, PCO is of the view that 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. The situation across the country remains concerning, volatile and unpredictable. While there is no current evidence of significant implications by extremist groups or international sponsors, PCO notes that the disturbance and public unrest is being felt across the country and beyond the Canadian borders, which may provide further momentum to the movement and lead to irremediable harms – including to social cohesion, national unity, and Canada's international reputation. In PCO's view, this fits within the statutory parameters defining threats to the security of Canada, though this conclusion may be vulnerable to challenge.
- In addition, PCO is of the view that this is a national emergency situation that is urgent, critical, temporary and seriously endangers the health and safety of Canadians that cannot be effectively dealt with uniquely by the provinces or territories.
- For these reasons, PCO is of the view that it is in the national interest to move ahead with declaring a public order emergency, pursuant to the EA.

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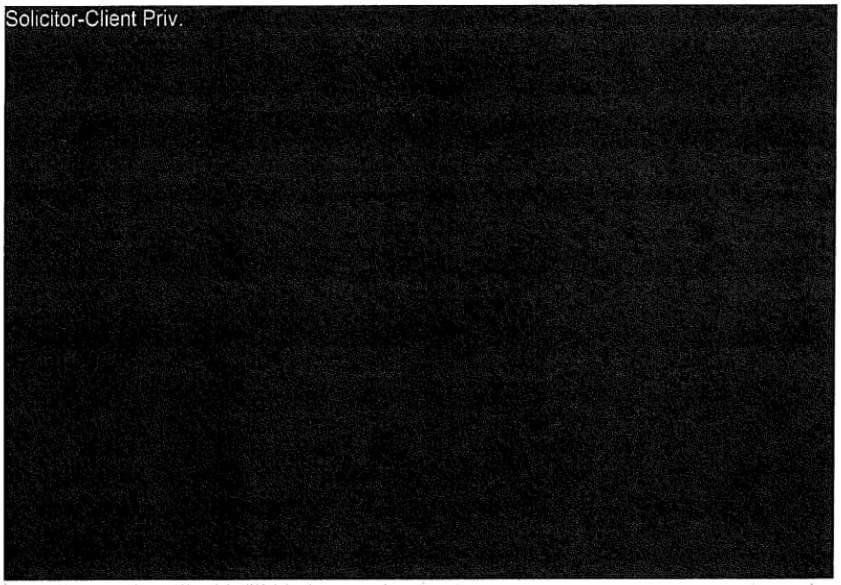

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Intergovernmental Considerations

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- Continued engagement and collaboration with provinces and municipalities, will be essential to continue to respect jurisdictional authorities and inherent provisions of the EA.

Parliamentary Strategy

- A strong parliamentary strategy will be required to ensure support by Members of Parliament. A motion supporting the proclamation must be passed in both Houses of Parliament within seven days of the declaration.
- The House of Commons is sitting the week of February 14, 2022, and is adjourned the week of February 21, 2022. The Senate is adjourned the week of February 14, 2022, and is scheduled to return on February 22, 2022, for three days. Should an emergency be declared on February 14, 2022, a motion for the confirmation of the declaration would have to be tabled by March 2, 2022, in the House of Commons (but it could be tabled earlier).
- The motion is to be considered by each chamber the sitting day after it is tabled in each respective chamber, and is debated without interruption until the House is ready for the question, at which point a vote will take place. Should either the House or the Senate defeat the motion, the declaration is revoked immediately.
- s.39 [redacted]
- There is no legal requirement to have both Houses deal with the motion concurrently.

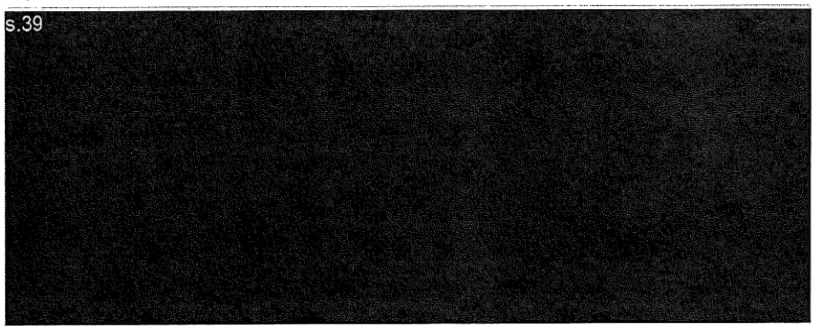
- The EA also requires additional Parliamentary measures, including standing up a Joint House and Senate Committee and an eventual Public Inquiry. PCO will provide further advice on these matters in the coming days.

Communications Strategy

- The manner in which the Government manages its communications around the decision to invoke a public order emergency will be equally important. While the public may support decisive action, this support could decrease with time if measures are perceived as disproportional or ineffective.
- There is a strong possibility that the Government's decision could anger and potentially escalate action by protesters and their sympathizers. PCO notes that a robust and proactive communications strategy would need to demonstrate the need for these measures including the national importance of removing illegal blockades and restoring public order and the rule of law as well as dealing with the underlying threats and risks behind some elements of this movement. Explaining the concrete nature of the measures to be taken, as well as clarifying what the EA does and does not allow enforcement authorities to do will be essential.
- Further, public communications should emphasize the fair and proportionate action taken by government, that is time limited, and subject to robust accountability provisions. The goal of the measures – strengthening the public's trust in its institutions, including policing services and their ability to enforce the law – needs to be clear. The Government could also lean on likeminded messaging from external stakeholders and partners to support the need for the measures at this time.

Specific Measures

s.39



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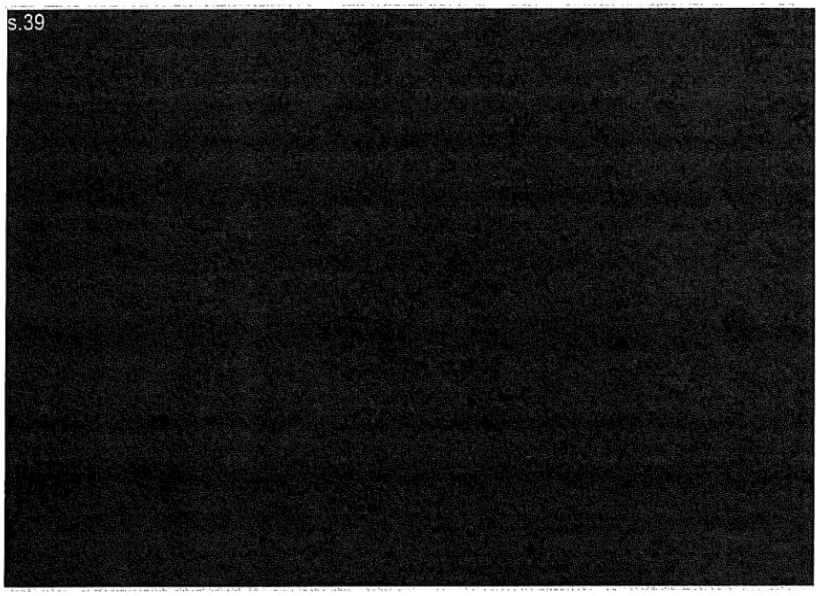

- PCO believes that, combined, these measures will provide decision makers and law enforcement the authorities required to act, the means to do so, as well as introduce measures to dissuade and prevent further resurgence of this type in the short term.

Approved electronically by

Janice Charette

Attachments

Mainville/Proulx/Setlakwe/Tupper/Drouin

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* requires 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. is 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.

Report to the Houses of Parliament: Emergencies Act Consultations

February 16, 2022

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 trough 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

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-306-22 T-316-22 T-347-22 T-382-22
STYLE OF CAUSE:	Canadian Frontline Nurses and Kristin Nagle v Attorney General of Canada
AND BETWEEN:	Canadian Civil Liberties Association v Attorney General of Canada
AND BETWEEN:	Canadian Constitution Foundation v Attorney General of Canada and Attorney General of Alberta
AND BETWEEN:	Jeremiah Jost, Edward Cornell, Vincent Gircys and Harold Ristau v Governor-in-Council, His Majesty in Right of Canada, Attorney General of Canada and Minister of Public Safety and Emergency Preparedness
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	APRIL 3-5, 2023
REASONS FOR JUDGMENT:	MOSLEY J.
DATED:	JANUARY 23, 2024

APPEARANCES:

David G. Cowling Alexander Boissonneau-Lehner	FOR THE APPLICANTS (Canadian Frontline Nurses, Kristin Nagle)
Brandon Chung Ewa Krajewska	FOR THE APPLICANTS (Canadian Civil Liberties Association)
Sujit Choudhry Janani Shanmuganathan	FOR THE APPLICANTS (Canadian Constitution Foundation)

Mandy England Shaheer Meenai	FOR THE INTERVENER (Attorney General of Alberta)
Blair D Ector Bath-Sheba van den Berg	FOR THE APPLICANTS (Jeremiah Jost, Edward Cornell, Vincent Gircys, Harold Ristau)
Christopher Rupar Jeff Anderson John Provart David Aaron Kathleen Kohlman	FOR THE RESPONDENTS (Attorney General of Canada & Governor in Council, His Majesty in Right of Canada)

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