

PUBLIC ORDER EMERGENCY COMMISSION

B E T W E E N :

FREEDOM CORP. ET AL

Applicants/Moving Parties

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA
and ATTORNEY GENERAL OF CANADA

Respondents/Responding Parties

**FINAL WRITTEN SUBMISSIONS OF FREEDOM CORP. ET AL – RELEASED IMMEDIATELY
AFTER FILING TO FEDERAL PARLIAMENTARIANS, THE CANADIAN PUBLIC, AND THE
CANADIAN AND FOREIGN MEDIA**

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I. Introduction

1. In using the *Emergencies Act*,¹ which gifts the government with extraordinary powers, including infringing on s.92 of the *Constitution Act, 1867*,² the Government of Canada (“**GOC**”) chose the use of force, that is, state violence over peaceful negotiation and democratic engagement with the Canadians. The sad irony is that the protest in Ottawa was fundamentally about government overreach.
2. In response to the unprecedented unison of voices of many Canadians, including a voice by way of millions of dollars in donations to the cause, and those donations constitute political expression under s.2(b) of the *Charter*.³ Notwithstanding, the GOC refused to engage or listen to these Canadians. Instead, by invoking the *Emergencies Act*, the government stepped even further into their oppressive governance by quashing the most fundamental right that belongs to a *Canadian* democracy, that is the right to come together in their nation’s capital, in front of Parliament, to engage in dialogue with their elected officials by way of protest.
3. Protesting is in fact, a dialogue between citizens and their government as a last resort of engagement when all other avenues for discourse have failed or have been censored. A healthy democracy demands continuous engagement between people and government, and when the government uses violence to assert its power over the people, the fabric of democracy is torn. This is what was witnessed at the protest following the invocation of the *Emergencies Act*.
4. Freedom Corp. et al (“**Freedom Corp.**”) submits as a Commission of Inquiry (the “**Commission**”) under s.63 of the *Emergencies Act* that the Commission’s role is to do the following:
 - (1) Make findings of fact;
 - (2) Make findings of law with respect to what the *Emergencies Act* legally requires to be invoked and what is legally required to pass the measures passed following invocation;
 - (3) Set out findings and lessons learned, including on the use of the *Emergencies Act* and the appropriateness and effectiveness of the measures taken under the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*, and to make recommendations, as pertains to the matters examined, on the use of the *Emergencies Act*;⁴ and

¹ *Emergencies Act*, [RSC 1985, c 22 \(4th Supp\)](#)

² *Constitution Act*, [1867 30 & 31 Vict, c 3](#).

³ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act, 1982 (UK), 1982, c 11*. Re: s.2(b) see *Libman v. Quebec (Attorney General)*, [\[1997\] 3 S.C.R. 569](#), para. 35, and *Harper v. Canada (Attorney General)*, [2004 SCC 33](#), para. 2.

⁴ It’s submitted (1) through (3) arise from s.63 of the *Emergencies Act*, and provision (a)(ii) of the April 25, 2022, Order-in-Council, being P.C. 2022-392 creating this Commission as required by s.63 of the *Emergencies Act*, and provision (a)(iii) expanding and not limiting the Commission’s fact, law and mixed fact and law finding abilities is as well.

- (4) Make a report to Parliament with only (1), (2), and (3) therein, and leave it to Parliament as its own Court⁵ and the public, to decide what needs to be done as a result of (1), (2), and (3).
5. Freedom Corp. will, therefore, first outline what this Commission can do and is permitted to do at law. **This will include requiring the Commission to issue a decision within 7 days, that is by Friday December 15, 2022, that it will not issue its report to the Governor-in-Council prior to its report to both Houses of Parliament through the Speaker of the House and Speaker of the Senate.** Freedom Corp. will outline as well, what provisions of the April 25, 2022, Order-in-Council creating this commission are *ultra vires* and issued without jurisdiction, and therefore do not and cannot be followed as nullities if the Commission is to carry out its statutory mandate under s.63 of the *Emergencies Act* that Parliament as a whole has given it. There can be no debate that legislation from Parliament trumps an order-in-council from the executive branch if there is a conflict between the two.
6. Freedom Corp. will then summarize the finding of facts it seeks the Commission to make. Freedom Corp. will then summarize the finding of law it seeks the Commission to make, as well as findings of mixed fact and law. As well, Freedom Corp. will summarize the recommendations it seeks the Commission to make to Parliament in the Commission's report. Thereafter, Freedom Corp. will go through in detail the evidential basis for the finding of facts sought to be made. Freedom Corp. will then outline the statutory interpretation exercise behind the finding of law and apply that law to the facts for the purpose of the findings of mixed fact and law sought to be made. There, it will also be outlined why the GOC's argument regarding s.2 of the *Canadian Security and Intelligence Act*⁶ ("**CSIS Act**"), meaning something different in the *Emergencies Act* than it does in the *CSIS Act*, is both absurd and laughable. Freedom Corp. sought findings of fact and law will speak for themselves as justification for the recommendations that it submits the Commission should make in its report to Parliament.
7. What is made abundantly clear in the evidence before this Commission, and in the herein submission, is that the invocation of the *Emergencies Act* by the GOC on February 14, 2022, and the measures that followed, were entirely unlawful, violated s.92 of the *Constitution Act, 1982*, violated s.7 and s.8 of the *Charter*, were politically motivated, based on misinformation created and spread by the GOC and the Liberal Party of Canada ("**LPC**"), hurt Canadians, and hurt Canada's reputation internationally. As should be noted on the title page of this submission, this submission is made available to the media, federal Parliamentarians, and the public. This is so, as the Commission has not made many of Freedom Corp.'s filings public, and such suppression has no basis in fact or law.

⁵ *Canada (House of Commons) v. Vaid*, [2005 SCC 30](#), para 34.

⁶ *Canadian Security and Intelligence Act*, [RSC 1985, c C-23](#).

II. Jurisdiction, Role, and Legal Authority of the Commission

8. As the Commissioner stated at the opening of the hearing, the Commission was given two mandates. The first, and lawful mandate, is mandatory at law and provided by Parliament in s.63 of the *Emergencies Act*. The statutory mandate from Parliament is to gather evidence via “an inquiry into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency” and thereafter make a “report of [the] inquiry [and have it] laid before each House of Parliament within three hundred and sixty days after the expiration or revocation of the declaration of emergency”.
9. The report to Parliament from this Commission is to be laid before each House of Parliament by February 18, 2023, but February 18, 2023, being a Saturday, is adjusted to Monday, February 20, 2022, under s.26 of the *Interpretation Act*,⁷ being 360 days (1 year, less 5 days) from the date of revocation of February 23, 2022. The herein filing being made on December 9, 2022, the Commission has 22 days in December, 31 days in January, and 20 days in February for a total of **71 days**, not including the date of filing to meet the s.63 *Emergencies Act* deadline in order to complete the report and have it laid before each House of Parliament. As will be shown, the Commission will be legally compelled to complete and submit its s.63 *Emergencies Act* report sooner if it is to abide by the second mandate in the April 25, 2022, Order-in-Council to submit a report to the Governor-in-Council on February 6, 2022, even though the provision requiring that is *ultra vires*, without jurisdiction, and need not be followed.
10. The Commission’s creation and appointment of the Commissioner for same in the Order-in-Council of April 25, 2022, that is within the jurisdiction of s.63 of the *Emergencies Act*, is limited to all or part of the provisions in (a) [part only], and (a)(i) through to and including (a)(iii) [all]. Provision (a) is within the purview of s.63 of the *Emergencies Act* in so far as it creates the Commission and appoints the Commissioner. Provisions (a) [part], (a)(iv), (a)(vi)(F), (a)(vi)(G), and (a)(l) of the April 25, 2022, Order-in-Council are not authorized by s.63 of the *Emergencies Act*, are *ultra vires* and passed without jurisdictional capacity. The framework of considering if provisions in an Order-in-Council or regulation passed by the Executive Branch of government are legal/*ultra vires*, was set out by Lord Diplock of the House of Lords, and applied by Canadian courts, as follows:
 - (1) Determine the meaning of the words used in s.63 of the *Emergencies Act* to describe the subordinate legislation or instrument which the authority is authorized to make;
 - (2) Determine the meaning of the subordinate legislation or instrument itself, here being the April 25, 2022 Order-in-Council;

⁷ *Interpretation Act*, [R.S.C., 1985, c. I-21](#), s.26 on holidays and time, and though “Saturday” is not a holiday under that Act, the Federal Court of Appeal has held it is a holiday in Ontario for the purpose of that Act: *Canada (Human Rights Commission) v. Canada (Armed Forces)* [1996] F.C.J. No. 528 (F.C.A.).

- (3) Decide whether the impugned provisions of the April 25, 2022 Order-in-Council, being provisions (a) [part], (a)(iv), (a)(vi)(F), (a)(vi)(G), and (a)(I), comply with the description at (1)⁸; and
- (4) Linked to (3), whether the Rules of the Commission comply with the description at (1) or the law generally.

11. Freedom Corp. will deal with this matter utilizing the Lord Diplock framework and the added fourth (4) consideration to the framework to deal with the Commission’s rules. It is apt and operates similarly, if not identical, to the constitutional analysis of a statute for compliance with the Constitution of Canada, in considering if the statute is *ultra vires* or of no force and effect.

(1): Meaning of the words used in s.63 of the *Emergencies Act* to describe the subordinate legislation or instrument which the authority is authorized to make

12. Regarding (1), what s.63 of the *Emergencies Act* means only requires references to one section in the *Inquiries Act*, being s.2 therein. The two operative provisions of the *Emergencies Act* and *Inquiries Act* are as follows:

| <i>Emergencies Act</i>, RSC 1985, c 22 (4th Supp) | <i>Inquiries Act</i>, RSC 1985, c I-11 |
|--|---|
| <p>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.</p> <p>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.</p> | <p>Inquiry 2 The Governor in Council may, whenever the Governor in Council deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof.</p> |

13. At common law, and under s.2 of the *Inquiries Act*, Cabinet and the Governor-in-Council can do as they choose regarding anything “*motivated by political expediency*” or “*policy considerations*,”⁹ including cancelling or not having an inquiry. That discretion is completely usurped by Parliament via s.63(1) of the *Emergencies Act*. Furthermore, the Governor-in-Council’s discretion to determine the matter looked into is also removed by s.63(1), and via that section, Parliament requires the

⁸ *McEldowney v. Forde*, [1971] A.C. 632, [1969] 2 All E.R. 1039 (H.L.) as adopted in *R. v. Wonderland Gifts Ltd.* [1996] N.J. No. 146 (N.L.C.A.), para. 48-49.

⁹ See *Dixon v. Canada (Somalia Inquiry Commission)*, [1997] F.C.J. No. 985 (Fed. C.A.), para. 16-17.

inquiry to be into “*the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.*” In that way, the Governor-in-Council and Cabinet cannot interfere in any way, via an order-in-council or otherwise, to frustrate Parliament’s statutory mandate requiring the Commission to inquire into the circumstances described in s.63(1) of the *Emergencies Act*. Anything, including the April 25, 2022, Order-in-Council itself, is without jurisdiction to the extent it interferes with s.63(1) of the *Emergencies Act*, either on its face or by its operation.

14. As stated by the Honourable Justice Poelman in *Canada (Attorney General) v Smykot*,¹⁰ in permitting an attack on the *vires* and lack of jurisdiction on an order-in-council of the Governor in Council passed by the current GOC Executive branch outside of judicial review so as it simply would not apply to the administrative firearms hearing under the *Criminal Code* before a Provincial Court:

The rule of law conveys a sense of orderliness and executive accountability to legal authority and vouchsafes a stable, predictable and ordered society in which citizens and residents may conduct their affairs: *Re Resolution to amend the Constitution*, [1981 CanLII 25 \(SCC\)](#), [1981] 1 S.C.R. 753 at 806 and *Secession reference*, at para 70. It requires that “governmental powers, or any authority delegated by Parliament, must be exercised pursuant to valid laws, either directly or indirectly permitted by an act of Parliament or of a Legislature”: Régimbald and Newman, para 3.73. In the words of Laskin C.J.C., “**there is no principle in this country, as there is not in Great Britain, that the Crown may legislate by proclamation or order in council to bind citizens where it so acts without the support of a statute of the Legislature,**” with general reference to Dicey: *Reference re Anti-Inflation Act (Canada)*, [1976 CanLII 16 \(SCC\)](#), [1976] 2 S.C.R. 373, at 433.¹¹ [Emphasis added]

15. The preamble of the April 25, 2022, Order-in-Council makes it clear that the Order-in-Council was passed under s.63(1) of the *Emergencies Act* only and makes no references to s.2 of the *Inquiries Act*. The body and provision of the Order-in-Council also make zero reference to s.2 of the *Inquiries Act*, though it incorporates the *Inquiries Act* for procedural purposes.
16. The provision at s.63 of the *Emergencies Act* is also specific and special legislation, whereas s.2 of the *Inquiries Act* is general legislation that is not specific or special, and therefore s.63 of the *Emergencies Act* is paramount to s.2 of the *Inquiries Act* when s.63 of the *Emergencies Act* is triggered. The maxim of *specialia generalibus derogant*, which holds a specific statutory provision in conflict with a general statutory provision should be interpreted as an exception to the general one, must be applied in this case. The maxim was best described by the English jurist Sir John Romilly in *Petty v. Solly*¹², stating:

The general rules which are applicable to particular and general enactments in statutes are very clear, the only difficulty is in their application. The rule is, that wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative,

¹⁰ *Canada (Attorney General) v. Smykot*, [2022 ABQB 61](#)

¹¹ *Ibid*, para. 64.

¹² *Petty v. Solly* [1859] EngR 249, (1859) 26 Beav 606, (1859) 53 ER 1032 and Pierre-Andre’ Cote’s, *The Interpretation of Legislation in Canada*, 2nd ed (Toronto: Yvon Blais Inc, 1992), p.62.

and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

17. This contextual rule has been expressly adopted by the Supreme Court of Canada numerous times.¹³
18. Where an order-in-council, or any government order for that matter, passed by a decision-maker not of competent jurisdiction to make either it or any or part of its terms, it simply doesn't have to be followed by anyone to the extent there was no jurisdiction to pass its terms. It is not a violation not to follow such an order, and it is not prohibited to attack it in any form by way of the general prohibition on collateral attack. As per the Supreme Court of Canada decision of *Toronto (City) v. C.U.P.E., Local 79*¹⁴, the prohibition on collateral attack is one of the three species of interrelated common law doctrines, the other two being issue estoppel and abuse of process.¹⁵ The law is clear, however, that when the decision-maker has no jurisdiction to pass all or some of provisions of an order, like here being the Governor-in-Council's passing of the April 25, 2022 Order-in-Council, the Order-in-Council is a nullity in so far as its terms are without legal jurisdiction.
19. The law is clear that the doctrine prohibiting collateral attack of such an order, by refusing to follow it in these proceedings, does not apply to a nullity. In *Macfarlane v. Leclaire*,¹⁶ the Privy Council ruled that:

If an appeal was excluded by the Act, the Order was an excess of jurisdiction, and must be regarded as a nullity.¹⁷
20. In the decision *In re Sproule*¹⁸, Taschereau J. of the Supreme Court of Canada, writing in the majority for himself, stated:

Where, as here, a judge having a limited jurisdiction **exercises a jurisdiction which does not belong to him, his decision, or his acts, amount to nothing** and do not create any necessity for an appeal.¹⁹ [Emphasis added]
21. In *Volhoffer v. Volhoffer*²⁰ the unanimous Saskatchewan Court of Appeal ruled:

[W]here the tribunal has **not been given any jurisdiction over the subject-matter, no matter what state of facts may exist, an order made in respect of it is a nullity, and need not be appealed against, and its invalidity may be set up as an answer in any proceeding taken under it.**²¹

¹³ See *Canada (Director of Soldier Settlement) v. Alberta (Registrar, North Alberta Land Registration District)* [1991] 2 S.C.R. 481, para. 54; and *Hirsch v. Montreal Protestant School Board Commissioners* [1926] S.C.R. 246, para. 29.

¹⁴ *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63.

¹⁵ *Ibid*, para. 22.

¹⁶ *Macfarlane v. Leclaire*, 15 Moo. RC. 181.

¹⁷ *Ibid*, p. 185.

¹⁸ *In re Sproule*, 1886 12 S.C.R. 140.

¹⁹ *Ibid*, p. 242.

²⁰ *Volhoffer v. Volhoffer*, 1925 CanLII 173 (SK CA).

²¹ *Ibid*, para. 25.

22. In *R. v. Litchfield*,²² the Supreme Court of Canada stated:

The lack of jurisdiction which would oust the rule against collateral attack would be a lack of capacity in the court to make the type of order in question, such as a provincial court without the power to issue injunctions.²³

23. More recently, in *Métis Nation of Alberta Association Fort McMurray Métis Local Council 1935 v Alberta*,²⁴ Justice Nate Whitling, a nationally renowned Harvard educated appellate counsel prior to his recent appointment to the Alberta Court of Kings Bench, ruled:

[A] decision or order is only immune from collateral attack if the decision-maker was of competent jurisdiction to make it.²⁵

24. If there existed a statutory appeal mechanism that the April 25, 2022, Order-in-Council could be appealed outside a Court's general jurisdiction for judicial review, which is not an appeal, a collateral attack could potentially be prohibited.²⁶ There is no statutory appeal mechanism for the April 25, 2022, Order-in-Council, however, and as such, its terms that are beyond the jurisdiction of the Governor-in-Council to pass under s.63 of the *Emergencies Act*, as well as any rules created under those terms by the Commission, are not binding on any party or anyone, including the Commission itself. They are a nullity, meaningless, amount to nothing, and they do not create any necessity to challenge before an actual Court, in so far as they conflict on their face or by their operation with "*an inquiry into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency*" as statutorily prescribed by the Parliament of Canada in s.63 of the *Emergencies Act*. This includes the rules passed by the Commission under the April 25, 2022, Order-in-Council that would hinder the purpose of the s.63 *Emergencies Act* inquiry and any other action that does so.

(2) and (3): The April 25, 2022, Order-in-Council and provisions (a) [part], (a)(iv), (a)(vi)(F), (a)(vi)(G), and (a)(l) ultra vires and without jurisdiction, and remaining provisions with jurisdiction

25. Provision (a)(i) of the April 25, 2022, Order-in-Council is within the purview of s.63 of the *Emergencies Act*, as it repeats the statutory terminology of s.63 of the *Emergencies Act*, as well as the particulars and dates of the invocation, the regulations and orders passed under it, and their revocation. The directions to the Commissioner at (a)(ii)(A) through (a)(ii)(E) on their own would not be authorized by s.63 of the *Emergencies Act* but are saved with the prefacing provision in (a)(ii) that states "*direct the Commissioner to examine issues, **to the extent relevant to the circumstances of the declaration and measures taken, with respect to**" prior to (a)(ii)(A) through (a)(ii)(E). The underlined text saves (a)(ii)(A) through (a)(ii)(E) by repeating the statutory language of s.63, so long as it is interpreted in accordance with s.63, which requires the following be read in between "*to*" and "**the circumstance**" in the above underlined: "*inquiry into the circumstances that led to*". It is*

²² *R. v. Litchfield*, [1993] 4 S.C.R. 333.

²³ *Ibid*, p. 348.

²⁴ *Métis Nation of Alberta Association Fort McMurray Métis Local Council 1935 v. Alberta*, 2021 ABQB 282.

²⁵ *Ibid*, para. 59.

²⁶ See *Alberta Securities Commission v. Felgate*, 2022 ABCA 107, paras. 5-7.

submitted that under the purposive approach, provision (a)(ii) of the April 25 2022, Order-in-Council can be given such an interpretation, thereby making (a)(ii), inclusive of (a)(ii)(A) through (a)(ii)(E), within the statutory authorization of s.63 of the *Emergencies Act*. That said, (a)(ii)(A) through (a)(ii)(E) unnecessarily prolonged and complicated the hearing and did nothing but give the GOC some legitimacy in the public eye to mount the purported defences they did in the hearing. The hearing was far longer than the mere 10 days the invocation and its measures were in force, which it is submitted was absurd.

26. The GOC knew that (a)(ii)(A) of the April 25, 2022, Order-in-Council, being the “*goals of the convoy and blockades, their leadership, organization, and participants*” bore zero relation to s.2 threats under the *CSIS Act* as incorporated in the *Emergencies Act* on and before April 25, 2022. The GOC also knew that “*crowdfunding*” and “*foreign funding*” had nothing to do with s.2 threats under the *CSIS Act*, as any funding to the crowdfunds from persons outside of Canada were not at the behest of a foreign state, nor a catalyst for “*clandestine or deceptive or involve a threat to any person*” which s.2 of the *CSIS Act* requires. This is particularly so, as it is indisputable that the protestors did not, and could not, access the crowdfunds as GoFundMe prevented them from accessing that crowdfund, the GiveSendGo crowdfund was frozen by Court Order. The GOC knew all this to be the case on and before April 25, 2022.
27. The GOC used provisions (a)(ii)(D), being “*the impact of the blockades, **including their economic impact,***” to muddy the waters and misinform the public. They used (a)(ii)(D) to convince the public that the invocation of the *Emergencies Act* was justified on economic grounds, even though the *Emergencies Act* and its adoption by reference to s.2 of the *CSIS Act* are crystal clear and do not include an “*economic threat*” as a legal basis authorized by Parliament to invoke the *Emergencies Act*, and in any event, the GOC presented zero actual and real evidence that the protests had any real effect on the economy nationally. The GOC knew there was no real economic threat on and before April 25, 2022. In particular, on April 5, 2022, Statistics Canada issued a report on the subject, which found that the blockades “*appear to have had little impact on the aggregate values of Canadian imports and exports in February*” of 2022.²⁷ The GOC proceeded to pretend there was economic harm before the Commission, notwithstanding there clearly wasn’t.
28. The GOC clearly used provision (a)(ii)(E), being “*the efforts of police and other responders prior to and after the declaration,*” as a defence to their conduct leading to the invocation as far as the protest in Ottawa was concerned. The GOC has tried to lay blame and justification for the invocation on the Ottawa Police Service, and in particular, Chief Sloly. Chief Sloly, who had zero decision making ability regarding the invocation of the *Emergencies Act*, spent a gruelling full two days on the stand, while Ministers and Deputy Ministers of the Crown who did contribute to or decided the invocation were rushed through their evidence and given the benefit of testifying in panels to assist one another, all while counsel were kept to strict cross-examination timelines that GOC witnesses used to “*talk out the clock*” with long-winded and irrelevant answers. This makes zero sense and was entirely unreasonable.

²⁷ Memorandum for the Prime Minister from PCO, SSM.CAN.00000498_REL.0001.

29. With respect to the s.63 *Emergencies Act* report to be laid before each House of Parliament, that Report is required to be given directly to both the Speaker of the House and Speaker of the Senate before it is given to any third party to review, including the third-party that is in the second mandate, being the Governor-in-Council. It is not legally permissible for that second mandate report or a summary of it to go to the Governor-in-Council, being the Elected Executive Branch who invoked the *Emergencies Act*, before the report is due to the Speaker of the House and Speaker of the Senate under s.63 of the *Emergencies Act*. The second mandate appears to contemplate it being permissible to have the due date for the report to the Governor-in-Council 14 days prior to the statutory due date of the report to be laid before both Houses of Parliament.
30. The Supreme Court of Canada in *Phillips v. Nova Scotia (Commissioner, Public Inquiries Act)*²⁸ held that this Commission is required to ensure “that an inquiry both be and appear to be independent and impartial in order to satisfy the public desire to learn the truth”.²⁹ If the Commission gives a report to the Governor-in-Council prior to the report required by s.63 of the *Emergencies Act* being laid before both Houses of Parliament, the Commission will completely lose both its legitimacy as well as its jurisdiction, due to bias, just like in *R. v. Cowan*³⁰ from earlier this year. In *R. v. Cowan*, after a verdict of guilty had been entered by a jury following a trial for second-degree murder, but prior to the sentence being passed or a sentencing hearing taking place, the Crown Prosecutors on the case went for drinks with the trial judge on the case at the trial judge’s request. Over drinks, the judge, among other things, told the Crown Prosecutor, and the Crown Prosecutor agreed that the jury was intelligent and the verdict was fair. The trial judge also poked fun at the Crown Prosecutor for not being able to control his facial expression in Court. In finding a reasonable apprehension of bias and ordering a new trial, the unanimous Ontario Court of Appeal stated:

The test for reasonable apprehension of bias is:

[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. . . . [T]he test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. . . ." [Citations removed]

In my view, when one measures the nature and number of undisputed facts as set out above against this test, the legal phrase that comes to mind, immediately for me, is *res ipsa loquitur*: the reasonable apprehension of bias speaks for itself.³¹

31. Commission Counsel has disclosed to all the Parties that they have been having off-the-record dealings with the GOC in the hearing through the Department of Justice (“DOJ”), in particular, “negotiating” what the DOJ will and will not disclose, and such dealings are reflected in the decisions of the Commissioner already issued publicly. Canadians, the parties to this proceeding, and federal

²⁸ *Phillips v. Nova Scotia (Commissioner, Public Inquiries Act)*, [1995] 2 S.C.R. 97.

²⁹ *Ibid*, para. 175.

³⁰ *R. v. Cowan*, 2022 ONCA 432. Re: loss of jurisdiction over bias, see *Energy Probe v. Atomic Energy Control Board*, 1984 CanLII 5388 (FCA).

³¹ *Ibid*, para. 26-27.

Parliamentarians are reasonable and right-minded persons. They have been informed of the proceeding of the Commission to date live on television and live streaming publicly on the internet. Those persons viewing the matter realistically and practically — and having thought the matter through, will only conclude that in the Commission issuing a report to the Governor-in-Council on or before February 6, 2022, being 14 days prior before the Commission is to report to Parliament, that the Commission is providing the said report to get feedback from the GOC about what it will put in its Report to Parliament, and are giving the GOC a chance to both review and influence the Commission off the public record about what the report to Parliament is going to say.

32. **This being the case, Freedom Corp., as well as Canadians, require the Commission to confirm, in a decision issued in the next 7 days, that it will not provide any report whatsoever to the Governor-in-Council, or any third-party, either verbally or in writing, prior to the report to both Houses of Parliament is submitted to the Speaker of the House and the Speaker of the Senate. IF THAT DECISION DOES NOT ISSUE OR IS ISSUED AND A FACTUAL FOUNDATION OR INFORMATION OF RISK APPEARS TO EXIST WILL NOT BE FOLLOWED, PLEASE TAKE NOTICE THAT FREEDOM CORP. WILL FILE AN APPLICATION BEFORE THE FEDERAL COURT OF CANADA FOR AN ORDER IN THE NATURE OF A WRIT OF PROHIBITION PREVENTING THE COMMISSION FROM ISSUING A REPORT TO THE GOVERNOR-IN-COUNCIL, OR ANY OTHER THIRD-PARTY, PRIOR TO PROVIDING ITS REPORT TO PARLIAMENT.**
33. The April 25, 2022, Order-in-Council was passed by the Executive Branch who invoked the *Emergencies Act*. The Order-in-Council, like any other statutory instrument, must be read in accordance with the purposive approach. Provisions (a) [part], (a)(iv), (a)(vi)(F), (a)(vi)(G), and (a)(I), of the April 25, 2022, Order-in-Council are *ultra vires* s.63 of the *Emergencies Act* and the Governor-in-Council had no jurisdiction to pass them, and they are nullities.
34. Provision (a) of the Order-in-Council is unlawful in one respect if interpreted improperly, being that the Commission is to exist until March 31, 2022. The Commission loses all jurisdiction to do anything with respect to the s.63 *Emergencies Act* mandate authorized by Parliament by February 20, 2022, being 360 days after the revocation, as adjusted under the *Interpretation Act*. Therefore, after that time, the existence of the Commission after February 20, 2022, as far as the *Emergencies Act* is concerned, is merely administrative and to wrap up its operation. If interpreted in any other way, provision (a) does not comply with s.63 of the *Emergencies Act*.
35. At provision (a)(iv) of the Order-in-Council, it directs the Commissioner to do another report to the Governor-in-Council in both official languages on its findings and recommendations on or before February 6, 2022. As stated, this Report is due 14 days prior to the Report to Parliament required under s.63 of the *Emergencies Act*, which is to be given to the Speaker of the House and the Speaker of the Senate on or before February 20, 2023. Provision (a)(iv) is not authorized by s.63 of the *Emergencies Act*, it cannot be interpreted in such a way as to bring it into compliance with s.63 of the *Emergencies Act* under the purposive approach, and provision (a)(iv) is, therefore, *ultra vires*, *without* jurisdiction and need not be followed. It is also *ultra vires* as following it, at least if the report to the Governor-in-Council is provided prior to the report to both Houses of Parliament, the Commission will lose its jurisdiction due to bias. Therefore, if provision (a)(iv) is to be followed by

the Commission, even though it is *ultra vires*, it requires the Commission to **issue its report to both Houses of Parliament before the report to the Governor-in-Council.**

36. The April 25, 2022, Order-in-Council also sets out from a(v) through to a(vi)(K) some provisions that were not necessary, nor authorized by s.63 of the *Emergencies Act*. With respect to provisions entirely unnecessary, they include (a)(v)(A) through to and including (a)(vi)(B), and the *Inquiries Act* deals with all of those items. The direction in the Order-in-Council at (a)(vi)(C) to prevent disclosure that would be injurious to “*international relations, national defence, or national security*” other than to the GOC has no legal authority or jurisdiction behind it. The Order-in-Council also shows that DOJ had dominant control over the records in this case, whereas it should have been the Commission itself, completely independent of the DOJ, that had such control.

(4): The Commission Rules and Admissibility of Evidence

37. Regarding the Commission rules past under the Order-in-Council, in so far as they obstruct the admissibility of evidence, they are not enforceable and need not be followed. And they will not be in this submission. The law is clear, and as stated by the Ontario Court of Appeal in *Bortolotti v. Ontario (Ministry of Housing)*³², the rule as to admissibility of evidence before a commission of inquiry was firmly laid down:

In my opinion, any evidence should be admissible before the Commission which is reasonably relevant to the subject matter of the inquiry, and the only exclusionary rule which should be applicable is that respecting privilege ...

...

Relevant evidence, then, is evidence that in some degree advances the inquiry, and thus has probative value...

...

In deciding whether evidence is reasonably relevant it is necessary to scrutinize carefully the subject matter of the inquiry ...

The foregoing test of relevancy means that the gates will be opened quite wide in the admission of evidence. All the evidence admitted will not, of course, be of equal probative value. It will be the task of the Commission to determine the weight which should be given the oral or documentary evidence presented to it, when making its recommendations and report.

If evidence is reasonably relevant to the subject matter of the inquiry, the Commission is not entitled to reject it as offending one of the exclusionary rules of evidence as applied in the courts, other than the rule as to privilege which is made expressly applicable by Section 11 of *The Public Inquiries Act, 1971*. If this were not so, it would be possible, as Morden J. points out in *Re Royal Commission into Metropolitan Toronto Police Practices and Ashton, supra* at p.121, for the Commission to "*define its own terms*

³² *Bortolotti v. Ontario (Ministry of Housing)*, [1977 CanLII 1222 \(ON CA\)](#).

of reference under the guise of evidential rulings on admissibility" and consequently to govern its jurisdiction.³³

38. All of the evidence provided in this submission not already marked as an exhibit must be. The Commission's rules can have no bearing whatsoever on the admissibility of evidence, and the law is clear on that. The Commission is not permitted to define its own terms of reference under the guise of evidential rulings on admissibility and thereby govern its own jurisdiction. The Commission has made evidential rulings to date it is not permitted to make regarding admissibility of evidence, non-compulsion of records from the DOJ, and suppressing the public availability of filings. It had no, and has no, ability at law to do any of that.
39. Each document that is in the Heuristica Relativity 'POEC - Party Database' system ("**POEC Database**") is admissible in evidence in the Commission so long as it is reasonably relevant, as are any other provided by any party at any time, so long as they are reasonably relevant. The record or evidence need not be referred to during the *viva voce* hearing, and it can be put in now by any party or after these submissions if a party tenders it, so long as it is "*reasonably relevant*" to:
- (1) The "*inquiry into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency*",
 - (2) The "*appropriateness and effectiveness of the measures taken under the Emergency Measures Regulations and the Emergency Economic Measures Order*",
 - (3) The "*impact, role and sources of misinformation and disinformation*" including where the source is the GOC or the LPC; and
 - (4) The "*recommendations, as pertains to the matters examined*".
40. All evidence tendered and referred to in this submission are reasonably relevant to (1) through (4). The Commission has no jurisdiction to deem any of that evidence inadmissible or not make this submission or any document it refers not publicly available.

III. Sought Finding of Facts

41. Freedom Corp. seeks that the Commission makes the following findings of fact:
- (1) The lockdown and quarantine policies and COVID-19 vaccine and travel mandates, including the ArriveCAN App, of Federal, Provincial and Municipal governments across Canada collectively caused widespread mental and economic harm to Canadians.
 - (2) GOC Requirements for truckers entering Canada in effect as of January 15, 2022, was the last straw that led to the protests at (3).
 - (3) It was the harm at (1) and the last straw at (2) that led to the protests that took place between January 28, 2022, and February 14, 2022, in Ottawa (Ontario), Windsor (Ontario), Emerson (Manitoba), Coutts (Alberta), and Surrey (British Columbia).

³³ Ibid, para. 24.

- (4) GOC Requirements for truckers entering Canada in effect as of January 15, 2022, did not increase Canadian's safety or protect them from contracting COVID-19.
- (5) The true purpose of the GOC Requirements for truckers entering Canada in effect as of January 15, 2022, was passed to compel people it applied to take COVID-19 vaccine.
- (6) There is no evidence before the Commission, and none was offered, that the GOC Requirements for truckers entering Canada in effect as of January 15, 2022, were recommended by Health Canada or other professional medical advice, and it can safely be found no such recommendation was made.
- (7) GOC Requirements for truckers entering Canada in effect as of January 15, 2022, created delays and economic harm to truckers at the Canada-US border. Many such truckers stop doing cross-border hauling due to the delays and lack of economic viability due to the GOC Requirements for truckers entering Canada in effect as of January 15, 2022.
- (8) On January 25, 2022, Mary-Liz Power, Issues and Policy Advisor to the Office of the Prime Minister, has a text message exchange with Alexander Cohen, Director of Communications to the Minister of Public Safety, where they planned, with the knowledge of the Minister of Public Safety Mendicino, capitalizing on a growing narrative of the truckers arising from one YouTube video posted on Twitter by media personalities.
- (9) On January 25, 2022, Alexander Cohen, Director of Communications to the Minister of Public Safety, put Marie Woolf of Global News onto the narrative at (8) and encouraged journalists to take a closer look at who the protesters in the Convoy were and where three million dollars came from in the GoFundMe crowdfund that existed at that time.
- (10) On January 25, 2022, Mary-Liz Power, Issues and Policy Advisor to the Office of the Prime Minister, has a text message exchange with Alexander Cohen, Director of Communications to the Minister of Public Safety, where they planned framing and labeling the protestors in the Convoy similar to what Prime Minister Trudeau and Minister of Emergency Preparedness Blair said of the January 6, 2021, attackers on United States Capitol.
- (11) At 9:49 AM on January 27, 2022, Deputy Prime Minister Freeland, in consultation with political staffer Farees Nathoo, agreed to wait until after the weekend of January 29 and 30, 2022, regarding the protest in Ottawa to consider the tactics of what they would tie to Erin O'Tool, then leader of the Conservative Party of Canada, and the Conservative Party itself, at what was described at that date and time a "tough moment" for Erin O'Tool and the Conservative Party of Canada.
- (12) At 11:00 AM on January 27, 2022, Zita Astravas, the Chief of Staff to Minister of Emergency Preparedness Blair, sought to build a narrative around the truckers described as "building a chain of doom" and did so with other political staffers of the GOC and LPC.

- (13) On January 27, 2022, between 4:21 PM and 7:05 PM, Caroline Williams, Director of Parliamentary Affairs of the Privy Council, with the knowledge and assistance of Zita Astrava, Chief of Staff to Minister of Emergency Preparedness Blair, Annie Cullinan, Mary-Liz Power, and all other political staffers in the relevant email chain, built the following false narrative before the Convoy protesters arrived in Ottawa, that was to be used by the GOC and LPC:
- a. That there were threatening acts of violence and inciting of hatred by the Convoy protestors.
 - b. That what was being made up at a. above was unacceptable and did not reflect the views of the majority of Canadians; and
 - c. That the Government of Canada condemned the “hateful and violent rhetoric” of Convoy protestors in Ottawa in the strongest terms.
- (14) On January 27, 2022, during televised remarks, Prime Minister Trudeau refers to the Convoy protestors coming to Ottawa as a “*small fringe minority*” and stated that those protestors hold “*unacceptable views*”.
- (15) On January 29, 2022, Conservative Party of Canada Member of Parliament, Michael Cooper, attends the protest in Ottawa. CBC News was interviewing Mr. Cooper on camera about the protest. As the interview was taking place, an unidentified Caucasian woman with blond hair wearing a bright pink snow suit, a black headband ear warmer with an upside down Canada flag on a wooden pole with a swastika drawn on it appears behind Mr. Cooper without his knowledge.
- (16) On the afternoon of January 29, 2022, a group of people all wearing sunglasses, headwear/hats, winter outfits, and red/white lanyards around their necks are in the protest. They are carrying several black flags that state “Fuck Trudeau,” and one man is carrying a Nazi Flag. Protestor Shawn Folks met the man carrying the Nazi Flag on January 29, 2022, and swore and filed an affidavit in this proceeding indicating that the man is the same person in the photo of Brian Fox on the Enterprise Canada website.
- (17) The purported protestor who attended the protest on January 29, 2022, fully covered, with camera men, wearing a balaclava, and carrying a Confederate Flag with a truck on it, has not been identified. On January 29, 2022, David Chan took photos of this purported protestor who attended the protest on January 29, 2022, fully covered, wearing a balaclava, and carrying a Confederate Flag with a truck on it has not been identified. On January 29, 2022, David Chan then uploaded those photos to Getty Images and registered the rights to same in his own name.

- (18) On January 30, 2022, Supriya Dwivedi of Enterprise Canada publishes an article online via the Toronto Star titled: *"Conservative party's embrace of trucker convoy is deeply troubling"*, where a photo of a purported protestor carrying a confederate flag taken by David Chan is first published online by media or a news outlet, outside Getty Images. Supriya Dwivedi then posts the article on her twitter on January 30, 2022, at 9:22 AM.
- (19) On January 31, 2022, Prime Minister Trudeau gives a speech to the Canadian public from isolation at his lakeside retreat. The text of that speech can be found at paragraph 113 herein. In summary, the objective of Prime Minister Trudeau's speech was to sow the seeds of his fabricated narrative that the protestors were engaged in 'hateful behaviour', 'threats' and 'violence' allegedly evidenced by photos of unidentifiable people carrying flags with 'Nazi symbolism' and 'racist imagery'. He also accused protesters of 'desecrating' the statue of Terry Fox and the Tomb of the Unknown Soldier. Prime Minister Trudeau encouraged Canadians to be disgusted with the protestors.
- (20) The narrative created and spread by the GOC and LPC in the paragraphs above constituted misinformation. The GOC continued to spread that misinformation up to and including the invocation of the *Emergencies Act* and thereafter.
- (21) The protest in Ottawa was not an unlawful protest. Further, the label of the protest as an "occupation" has no bearing on if it was an unlawful protest.
- (22) The GOC's claims about the economic impacts of the border blockades were false and misinformation. The Statistics Canada report on the subject proves that to be the case, trucks quickly diverted to the other US-Canada border crossing, and there were no significant economic impacts.
- (23) No witness testified before the Commission, giving evidence that a protestor physically assaulted them in the Convoy in Ottawa or any other protestor throughout Canada between January 28, 2022, and February 15, 2022. It can be safely found, as a matter of fact, the protestors did not physically assault residents of Ottawa between January 28, 2022, and February 15, 2022.
- (24) No witness testified before the Commission giving evidence that they were threatened by a protestor in the Convoy in Ottawa that the protestor was going to physically harm them between January 28, 2022, and February 15, 2022. It can be safely found, as a matter of fact, the protestors did not physically assault residents of Ottawa between January 28, 2022, and February 15, 2022.
- (25) No witnesses testified before the Commission, giving evidence that a protestor in the Convoy in Ottawa destroyed their property between January 28, 2022, and February 15, 2022. It can be safely found, as a matter of fact, the protestors did not destroy residents of Ottawa property between January 28, 2022 and February 15, 2022.

- (26) No witnesses testified before the Commission giving evidence that they were threatened by a protestor in the Convoy in Ottawa that the protestor was going to destroy their property, or by any other protestor throughout Canada, between January 28, 2022, and February 15, 2022. It can be safely found, as a matter of fact, the protestors did not physically assault residents of Ottawa between January 28, 2022, and February 15, 2022.
- (27) There is no evidence before the Commission to support the claim that between January 28, 2022, and January 31, 2022, that a protestor tried to steal food from the Shepherds of Good Hope in Ottawa. In particular, no witness testified before the Commission as to witnessing this happening, who did so witness, or what was actually witness. Though hearsay is admissible before the Commission, hearsay of this nature with no source and no identification of the source etc., has zero probative value and must be given zero weight. It is, therefore, safe to find, as a matter of fact, that this did not occur.
- (28) There is no evidence before the Commission to support the claim that Councillor Fleury testified he was told about, being that a protestor bear sprayed a homeless person who was a client of the Shepherds of Good Hope. Though hearsay is admissible before the Commission, hearsay of this nature with no source and no identification of the source etc., has zero probative value and must be given zero weight. It is, therefore, safe to find, as a matter of fact, that this did not occur.
- (29) The allegations of protestors carrying Nazi Flags, Confederate Flags, hate symbols and spreading hate during the protest in Ottawa were cited by the GOC, and its Ministers, as justification for invoking the *Emergencies Act* from February 14, 2022, onward, and prior to that time.
- (30) Those carrying Nazi Flags, Confederate Flags, hate symbols and spreading hate during the protest in Ottawa were not protestors with the Convoy.
- (31) The GOC and LPC conspired to misinform Canadians with an intent to utilize that misinformation to harm the opposition, the Conservative Party of Canada, as well as the Convoy protestors who Freedom Corp. represents.
- (32) There is evidence that an agreement between the Mayor of Ottawa and Ottawa protestors was reached and was being successfully implemented before the *Emergencies Act* was invoked.
- (33) There is evidence that there was an Engagement Proposal, developed by the Ontario Provincial Police, was put to Cabinet for approval before the *Emergencies Act* was invoked.
- (34) The Windsor (Ontario) protest on the Windsor-Detroit bridge ended on February 12, 2022.
- (35) In Coutts (Alberta), 70% of the town of Coutts supported the protest at the border crossing. The protestors at Coutts were normal Canadians, not terrorists or criminals.

- (36) On February 9, 2022, an RCMP undercover operation discovered some local people from the area were planning some sort of threat to the RCMP with firearms. The undercover officers, two females, were recruited or agreed with the suspects to carry firearms into the protest in a hockey bag. All subjects were arrested and taken into custody before the invocation of the Emergencies Act. Therefore, there was no threat arising under s. 2 of the *CSIS Act* on the basis of those subjects at the time of invocation.
- (37) The protest in Coutts (Alberta) ended without resorting to any powers under the invocation of the *Emergencies Act*. The protestors voluntarily left after being told by the RCMP about the immediately aforesaid arrests.

IV. Sought Finding of Law and Findings of Mixed Fact and Law

42. Under the Order-in-Council, the Commission is to set out findings, “including on the use of the *Emergencies Act* and the appropriateness and effectiveness of the measures taken under the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*.” By operation, this requires the Commission to make a finding as to what the law in the *Emergencies Act* means regarding its invocation, as well as determine if the invocation can be justified under the law based on the facts and that law.
43. Freedom Corp. submits the Commission should make the following findings of law with respect to the requirements to invoke the *Emergencies Act*. In Particular, Freedom Corp. submits that the GOC must satisfy each and every element of the following:

(1) The GOC is statutorily prohibited from relying upon lawful advocacy, protest or dissent, unless they believe there are reasonable grounds the advocacy, protest or dissent is carried on in conjunction with the activities proven at (2). Whether the protest was “lawful” or “unlawful” is a red herring, as the protest still must be carried on in conjunction with (2) even if it’s unlawful.

(2) The GOC must believe, on reasonable grounds, that a public order emergency exists, which requires there to be threats to the security of Canada as defined in s.2 of the *CSIS Act*. In this circumstance, the GOC has essentially conceded that s.2(c) of the *CSIS Act* is all that is in issue, being a threat to the security of Canada in the nature of

(a) “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”, with “acts of serious violence” means, and is limited to:

(i) As against persons, such actions as murder, attempted murder, manslaughter and aggravated sexual assault;

(ii) As against property, such action that is carried out in conjunction with a(ii), including arson, but not merely including mere taking, destruction, or occupying property alone, as such is not “serious violence”

(b) The activities at (a) are for “the purpose of achieving a political, religious or ideological objective within Canada or a foreign state”.

(3) If the GOC proves (1) and (2), they then must also prove that the GOC believes on reasonable grounds, that the threat established in (2) is a national emergency in that it is:

(a) A “urgent and critical situation of a temporary nature”;

(b) It seriously endangers the lives, health or safety of Canadians;

(c) the serious endangerment at (b) are either:

(i) of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

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

(d) the serious endangerment at (c) cannot be effectively dealt with under any other law of Canada; and

(4) Where the effects of the public order emergency are confined to one province, the GOC is prohibited from issuing a declaration of public order emergency, unless the lieutenant governor in council of that province has indicated to the Governor in Council that the emergency exceeds the capacity or authority of the province to deal with it.

44. It also needs to be understood what the *Emergencies Act* is at law, and what it does. The *Emergencies Act* is a statute pass under Parliament’s power in s.91 of the *Constitution Act, 1867*, over “Peace, Order, and Good Governance” (“**POGG**”). POGG has three “heads of power” within it at common law. The first is the “gap” branch, where there is nothing in s.91 or 92 regarding jurisdiction, which is not at issue here. The second is matters of national concern or the national concern doctrine, which is incorporated in the *Emergencies Act* by requiring that the emergency *cannot be effectively dealt with under any other law of Canada*. The third is the emergency power, which is temporary, like war, a pandemic, or insurrection etc. The power under POGG rests with Parliament alone, however, they can delegation that power to the GOC on statutory terms they see fit. Parliament has done so with the *Emergencies Act*. However, Parliament is strictly limited when the GOC can use that delegated power by the terms in the *Emergencies Act*.
45. Though this Commission is not a judicial review, it’s submitted standards of review are important to this Commission making findings. It is important that there is a proper standard of review with respect to the grounds to invoke the *Emergencies Act* and the grounds for the measures put in place. It is submitted that the standard of review of the invocation of the *Emergencies Act* is correctness, with zero deference to the GOC. This must be so for three reasons.
46. The first is that when the GOC declares a public order emergency without the statutory requisites of the *Emergencies Act* being met, s.91 of the *Constitution Act, 1867* is violated. This is so, as Parliament has only delegated its POGG power to the GOC via the *Emergencies Act* on the strictest

of terms. If those terms are not met, the declaration of a public order emergency, and the regulations made under it, are *ultra vires* the s.91 POGG power and of no force and effect under s.52(1) of the Constitution Act, 1867. As it's a matter of constitutional law, it has to be looked at through the lens of correctness, with zero deference to the GOC.³⁴

47. Second, the *Emergencies Act* via POGG permits the infringement by the Federal Executive branch upon the jurisdiction of Provincial Legislatures as protected in s.92 of the *Constitution Act*, 1867. The invocation and the orders and regulations that followed, which infringe on s.92 of the *Constitution Act*, 1982, are required to be looked at through the lens of correctness. Just as one example, the measures passed following the invocation infringed upon s.92(5) of the *Constitution Act*, 1867, being Management of Public Lands belonging to the Province by way of the GOC taking control of Crown lands in the right of the Province of Ontario in Ottawa in creating exclusion zones. This requires a correctness standard with zero deference to the GOC, as again, it's a constitutional question.³⁵
48. Third, the standard set out in the *Emergencies Act* for invocation, being "reasonable grounds," is well known in law. It is a standard in and of itself, and when applied in the criminal context, and one less than that of a standard of a balance of probabilities and its own legal standard. In the criminal context, it dictates a standard of review of correctness when assessing if the facts found by the finder of fact meet the requisite threshold for reasonable grounds.³⁶ In the administrative context, the Federal Court of Canada has always applied a standard of review of reasonableness to reasonable grounds when applying the *Immigration and Refugee Act* to persons deemed inadmissible to Canada on the grounds of a terrorism or national security threat.³⁷ Since *Vavilov*, the issue of whether reasonable grounds in the administrative context remains reasonableness has not been addressed. As said by the majority of the Court in *Vavilov*:

Any framework rooted in legislative intent must, to the extent possible, respect clear statutory language that prescribes the applicable standard of review. This Court has consistently affirmed that legislated standards of review should be given effect.³⁸

49. Fourth and finally, whether the invocation of the *Emergencies Act* was justified is a general question of law of central importance to the legal system, requiring a single determinate answer, thereby dictating a standard of review of correctness.³⁹ If the *Emergencies Act* invocation is not of national importance, nothing is. Its very invocation makes it so by letting loose the emergencies powers stemming from POGG, permitting the infringement upon the jurisdiction of Provincial Legislatures jurisdiction in s.92 of the *Constitution Act*, 1867, and circumscribing the rights of Canadians protected by the *Charter* without due process or judicial authorization. There can be zero deference

³⁴ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#), para. 55.

³⁵ *Ibid.*

³⁶ *R. v. Shepherd*, [2009 SCC 35](#), para. 20.

³⁷ See *Cacha Collas v. Canada (Citizenship and Immigration)*, [2016 FC 820](#), para. 33-34.

³⁸ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, above, para. 34.

³⁹ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, above, para. 58-62.

given to the GOC in such circumstances, and this Commission, therefore, must not give any such deference.

50. Freedom Corp. seeks there to be findings of law, or mixed fact and law, on the following incidental matters put in issue before the Commission:

- (1) The GOC and LPC conspired to misinform Canadians with an intent to utilize that misinformation to harm the opposition, the Conservative Party of Canada, as well as the Convoy protestors who Freedom Corp. represents. The intent to injure the opposition, the Conservative Party of Canada, as well as the convoy Protestors, is clearly the main purpose of the agreement to create the misinformation narrative. Clear concrete action was taken by the GOC and LPC in doing so, and conspiracy is made out based on the facts and the law of conspiracy.
- (2) The invocation of the *Emergencies Act* was not justified on the facts and the law, as on February 14, 2022, being the date of invocation:
 - i. There existed no s.2 *CSIS Act* threat, in particular, but not limited to, there did not exist reasonable grounds of *“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”*;
 - ii. Due to the finding at (i), there did not exist reasonable grounds *“the advocacy, protest or dissent”* in Ottawa (Ontario), Windsor (Ontario), Emerson (Manitoba), Coutts (Alberta), and Surrey (British Columbia) were *“carried on in conjunction with”* s.2 *CSIS Act* threat;
 - iii. The *“advocacy, protest or dissent”* in Ottawa (Ontario), Windsor (Ontario), Emerson (Manitoba), Coutts (Alberta), and Surrey (British Columbia) did not constitute reasonable grounds of a situation that *“seriously endangers the lives, health or safety of Canadians”*;
 - iv. There exist no reasonable grounds that the *“advocacy, protest or dissent”* in Ottawa (Ontario), Windsor (Ontario), Emerson (Manitoba), Coutts (Alberta), and Surrey (British Columbia) was a serious endangerment *“of such proportions or nature as to exceed the capacity or authority of a province to deal with it”*
 - v. There exist no reasonable grounds that the *“advocacy, protest or dissent”* in Ottawa (Ontario), Windsor (Ontario), Emerson (Manitoba), Coutts (Alberta), and Surrey (British Columbia) *“seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada”*;
 - vi. There exist no reasonable grounds that the *“advocacy, protest or dissent”* in Ottawa (Ontario), Windsor (Ontario), Emerson (Manitoba), Coutts (Alberta), and

Surrey (British Columbia) could not have been effectively dealt with under any other law of Canada; and

- vii. If there was a Public Order Emergency, which is strongly denied, the *effects of the public order emergency were confined* to one province and only in Ottawa, Ontario, and the GOC was prohibited from issuing a declaration of public order emergency as the lieutenant governor of Ontario had not “*indicated to the Governor in Council that the emergency exceeded the capacity or authority*” of the Province of Ontario “*to deal with it*”.
- (3) Economic, financial and budgetary considerations in and of themselves cannot justify a declaration of a Public Order Emergency. It is unconstitutional to violate *Charter* rights on the basis of such considerations, and as such, the economic, financial and budgetary consideration to justify the invocation on February 14, 2022, and thereafter pass orders and regulations on February 15, 2022, and then used to violate *Charter* rights, cannot be considered as a ground of justification to invoke the *Emergencies Act*.
 - (4) There are only three legal categories of protest: (i) lawful assembly; (ii) unlawful assembly; and (iii) riot. At all times before the invocation of the *Emergencies Act* and the passing of the regulations and orders on February 15, 2022, the protest in Ottawa remained at (i), being a lawful assembly.
 - (5) Following the invocation of the *Emergencies Act* and the passing of the regulations and orders on February 15, 2022, the protester in Ottawa still had a right to protest in Ottawa and elsewhere in the Capital region, so long as the protest complied with the invocation of the *Emergencies Act* and the regulations and orders of February 15, 2022.
 - (6) Carrying Nazi Flags, Confederate Flags, hate symbols and spreading hate, as a matter of constitutional law, is prohibited from being considered “violence” due to the operations of s.2(b) of the *Charter*, being freedom of expression.
 - (7) Those Canadians who donated to the Freedom Convoy GoFundMe crowdfund had a constitutional right to do so under s.2(b) of the *Charter*, being freedom of expression and interference with crowdfunding by the City of Ottawa and Dep. Chief S. Bell, in convincing GoFundMe to cancel the fund, interfered with the intended purpose of that expression, thereby violating s.2(b) of the *Charter*.
 - (8) The protests in Ottawa (Ontario), were not a s.2 *CSIS Act* threat.
 - (9) The protests in Windsor (Ontario) were not a s.2 *CSIS Act* threat.
 - (10) The protests in Emerson (Manitoba) were not a s.2 *CSIS Act* threat.
 - (11) The protests in Coutts (Alberta) were not a s.2 *CSIS Act* threat.

- (12) The protests in Surrey (British Columbia) were not a s.2 *CSIS Act* threat.
- (13) Collectively, the protests in Ottawa (Ontario), Windsor (Ontario), Emerson (Manitoba), Coutts (Alberta), and Surrey (British Columbia) were not a s.2 *CSIS Act* threat.

51. An in-depth analysis justifying the framework will be outlined below after the detailed facts on which the sought findings of fact are based upon. Some of the findings of fact and law will be dealt with in the 'Evidence and Evidential Law Requiring Sought Finding of Law' portion of this brief, but the application of the *Emergencies Act* and its lack of justification will be dealt with separately in the 'Finding of Law and Findings of Mixed Fact and Law' portion.

V. Sought Recommendations

52. Freedom Corp. seeks that the following recommendations be made, all of which encompass leaving provisions of the *Emergencies Act* the way they are or adding or amending the *Emergencies Act*, as well as some other statutes, as follows:

- (1) The *Emergencies Act* at s.63 regarding the timeline for an inquiry in s.63 of the *Emergencies Act* to complete should remain the same for an inquiry into a Public Order Emergency being 360 days, but the *Emergencies Act* at s.63 should be amended to permit 2 years for an inquiry into a Public Welfare and War Emergency to complete.
- (2) The *Emergencies Act* should be amended at s.63 so that the hearing portion of the inquiry into a Public Order Emergency should be no longer than the time period in days that the declaration of Public Order Emergency was in place. In this matter, that should have been 10 days.
- (3) The *Emergencies Act* should be amended at s.63 so that the Commissioner and Commission of the inquiry are to be appointed in the following way in the following timeframe:
 - i. Within 10 days of the revocation or expiry of the declaration of emergency, the Governor-in-Council will submit a report to the Speaker of the House of Commons with three (3) names of potential Commissioners to lead the inquiry;
 - ii. The House of Commons shall debate the appointment of the persons from the three (3) names provided by in the report from the Governor-in-Council at i. for 2 full days of sitting in the House of Commons;
 - iii. The name of the potential Commissioner who receives the majority of rank ballot votes in the House of Commons shall be appointed as the Commissioner of the inquiry by the Governor-in-Council forthwith on the date of the vote under s.63 of the *Emergencies Act*; and

- iv. The process at i. through iii. shall be complete within 20 days of the date at i. when the Governor-in-Council will submit a report to the Speaker of the House of Commons with three (3) names of potential Commissioners to lead the inquiry.
- (4) The *Emergencies Act* should be amended at s.63 so that s.39 of the *Canadian Evidence Act*,⁴⁰ and the common law on Cabinet Confidence, as well as solicitor-client privilege as it relates to legal advice the GOC received regarding the invocation of a Public Welfare or Public Order Emergency, have no applicability to the GOC in any shape or form regarding the invocation of the *Emergencies Act* or other proceeding arising from said invocation. All other privileges, such as s.37/s.38 of the *Canada Evidence Act* etc., should remain.
- (5) The *Emergencies Act* should be amended at s.63 so as to state that the GOC is required to produce all relevant and material records for the inquiry, unredacted and not obscured, as would be required in disclosure and production before the Federal Court of Canada by a defendant in a civil case with respect to both a Public Welfare Emergency and Public Order Emergency. This should include a mandatory timeline of 4 months from the date of invocation for the GOC to produce all said records, thereby giving interested parties time to obtain further and better records.
- (6) The *Emergencies Act* should be amended at s.63 so that the records produced at (4) are available to the public before the inquiry and that those records be both available at the Library Archives of Canada (“LAC”), as well as other like institutions in the Provinces and Territories, as well as be available online. All of which must be complete within 120 days following the revocation of the Public Welfare Emergency and Public Order Emergency.
- (7) The *Royal Canadian Mounted Police Act*⁴¹ should be amended at s.5 so as to make the Commissioner of the Royal Canadian Mounted Police (“RCMP”) to hold their office at “good behaviour,” not “at pleasure,” and for the Commissioner of the RCMP to have a term of 5 years, thereby making the Commissioner of the RCMP independent from undue influence of the Political Executive.
- (8) The *CSIS Act* should be amended at s.4(2), removing “pleasure” and replacing same with “good behavior” but keeping the term of five years therein, thereby making the Director of the Canadian Security Intelligence Service (“CSIS”) has independence from undue influence of the Political Executive.
- (9) The *Criminal Code* should be amended so as to make the spreading of misinformation on matters of public safety by Ministers and all employees of the GOC, or their agents or contractors, a criminal offence in the sole jurisdiction of Provincial and Territorial Courts as the Court of first instance, prosecutable with the consent of the Attorney General of any Province or Territory, or the Attorney General of Canada, and that such

⁴⁰ *Canada Evidence Act*, R.S.C., 1985, c. C-5.

⁴¹ *Royal Canadian Mounted Police Act*, [RSC 1985, c R-10](#).

offence garners a sentence of no more than 2 years in jail, thereby allowing the imposition of a Conditional Sentence Order, jail, or any other sentence a judge of a Provincial or Territorial Court deems fit under the laws of sentencing, in particular s.718 of the *Criminal Code*. The offence section should state as follows:

(1) It is an offence for a Minister of the Crown, and all employees of the Government of Canada or their agents or contractors, to spread false information by any means with the intent to mislead the public, regarding the possibility of, actual, risk or perception of harm to the public, including significant dangers, injuries, damages, or harms, and threats as defined in s.2 of the Canadian Security and Intelligence Act RSC 1985, c C-23.

(2) Upon conviction of the offence at (1), to be sentenced to a maximum of 2 years imprisonment.

- (10) The law with respect to lawful assembly, unlawful assembly, and riot should not change.
- (11) The threats that apply so as to permit the GOC to invoke the *Emergencies Act* on the basis of a Public Order Emergency, being threats under s.2 of the *CSIS Act*, should not be changed or expanded. There should be a declaration by amendment to the *Emergencies Act* that states, “*Due to the circumstances that led to the declaration of a Public Order Emergency on February 14, 2022 being issued and the measures taken for dealing with the emergency, it is affirmed that s.2 of the Canadian Security and Intelligence Act RSC 1985, c C-23 has the identical meaning in the herein act as it does in the the Canadian Security and Intelligence Act RSC 1985, c C-23.*”
- (12) There should be a Parliamentary Committee struck to use the Commission’s live-streaming and televised proceedings, online reactions, and misinformation on the proceedings as a case study into the debate regarding having such live-streaming and televised proceedings in Court room proceedings across Canada.
- (13) The Minister of Justice should not hold the position of Attorney General because of the conflict of interest and bias that can result, as it did in this case. The Attorney General is supposed to act completely independently in the public interest without reference to partisan politics.⁴²
- (14) That s.63(1) of the *Emergencies Act* is read together with the Preamble so that the mandate of the Commission includes an examination of the compliance of the measures taken with the *Charter* and International Human Rights Law.

⁴² <http://www.slaw.ca/2015/02/05/separating-the-offices-of-the-attorney-general-and-minister-of-justice/>
<https://www.constitutionalstudies.ca/2019/06/inherent-tension-is-it-time-to-separate-the-minister-of-justice-from-the-attorney-general/?print=print>.

53. Justification for this recommendation will be outlined below following the finding of facts evidential portion and the finding of law portion in the herein submission.

VI. Evidence and Evidential Law Requiring Sought Finding of Law

(a) Sought Findings of Fact (1) through (7): Lockdowns, COVID Vaccine Mandates, and GOC Requirements for truckers entering Canada in effect as of January 15, 2022

54. The lockdown policies and COVID-19 vaccine mandates of Federal, Provincial and Municipal governments across Canada collectively caused widespread mental and economic harm to Canadians. It was this harm that led to the protests that took place between January 28, 2022, and February 15, 2022, in Ottawa (Ontario), Windsor (Ontario), Emerson (Manitoba), Coutts (Alberta), and Surrey (British Columbia). GOC Requirements for truckers entering Canada in effect as of January 15, 2022, was the last straw that led to the aforesaid protests. These facts are proven and evidenced clearly in Statements_Final.pdf HRF00001660, which is submitted must become a full exhibit in the herein proceeding.
55. They are further proven by the testimony of all Freedom Corp. witnesses that testified, particularly Tamara Lich. Tamara Lich's evidence was credible, trustworthy, and logical. As was the evidence of all witnesses Freedom Corp. had called. All Freedom Corp. witnesses bore the hallmarks of credibility. These witnesses' statements of mind toward the GOC and other parties were not ones of malice, anger or bias. There was direct corroboration of their evidence with documents, records and like testimony for others. There were no inconsistencies in their evidence. None of these witnesses had witnesses/backgrounds, lifestyles, associations, and past conduct that show the witnesses were of poor character and should not be believed. Their demeanour on the stand was professional, heartfelt and honest. Their evidence was not vague, and there were no omissions in their evidence-in-Chief from the Commission brought in cross-examination by any party. The oral testimony of all Freedom Corp. witnesses must be accepted for the truth of its contents and given full weight.
56. The DOJ and GOC provided zero evidence that the GOC Requirements for truckers entering Canada, in effect as of January 15, 2022, increased Canadian's safety or protected them from contracting COVID-19. There is no evidence before the Commission, and none was offered, that the GOC Requirements for truckers entering Canada in effect as of January 15, 2022, were recommended by Health Canada or other professional medical advice.
57. The true purpose of the GOC Requirements for truckers entering Canada in effect as of January 15, 2022, was passed to compel people it applied to take the COVID-19 vaccine. This was admitted by Deputy Prime Minister Freeland in cross-examination as follows:

Q: And you'd agree with me that, given that there was no regulation in place from March 2020 through January 15th, 21 2022, during the throes of the pandemic, there was no reason to pass one in January 15th, 2022, was there; there was no health risk?

A: No, I'm afraid I don't agree. In January we had an Omicron wave; we were still fighting COVID; and there was a real value in encouraging as many Canadians as possible to get vaccinated.

Q: The purpose was to encourage Canadians to get vaccinated, to compel them to get vaccinated; is that fair?

A: That's right.⁴³

58. GOC Requirements for truckers entering Canada in effect as of January 15, 2022, created delays and economic harm to truckers at the Canada-US border. Many such truckers stopped doing cross-border hauling due to the delays, and lack of economic viability is doing cross-border hauling as a result of the GOC Requirements for truckers entering Canada in effect as of January 15, 2022.

(b) Sought Findings of Fact (8) through (30): Ottawa January 13, 2022, to February 1, 2022, GOC and LPC Misinformation

January 13 and 14, 2022

59. On January 13, 2022, Pat King hosts Facebook Livestream where early plans for a convoy to Ottawa and a protest in Ottawa are discussed and planned. The OPP Project Hendon reports pick up on this and begin reporting on the plan as of January 13, 2022. On January 14, 2022, Tamara Lich created a GoFundMe account to raise funds for the protestors going to Ottawa.⁴⁴

January 24, 2022

60. On January 24, 2022, the virtual Cabinet Retreat of the Government of Canada starts as scheduled.
61. On January 24, 2022, at 10:27 PM, Glenn McGregor of CTV published the following "tweet" on Twitter linking to a YouTube video where an unnamed potential Ottawa protestor says something likely entirely inappropriate [the YouTube link is no longer active, and its contents no longer available]:



⁴³ Transcript of Proceedings, November 24, 2022, Volume 30 at p. 78, line 19 to p.79, line 6, being record TRN00000030.

⁴⁴ Overview Report, Timeline of Key Events, COM.OR.00000004, p. 4, January 13 and 14.

⁴⁵ January 25, 2022 Tweet of Glenn McGregor HRF00001622, item 12 and page 21.

January 25, 2022

62. On the morning of January 25, 2022, Althia Raj, independent journalist and author of the book *Contender: The Justin Trudeau story*,⁴⁶ “re-tweets” the above “tweet” from Glen McGregor:



63. On January 25, 2022, at 9:22 AM, Mary-Liz Power, Issues and Policy Advisor to the Office of the Prime Minister, has a text message exchange with Alexander Cohen, Director of Communications to the Minister of Public Safety. It begins with Mary-Liz Power sending Alexander Cohen the above “re-tweet” from Althia Raj, then the following exchange follows:

Mary-Liz Power

I’m sure you’ve seen this but flagging.

Alexander Cohen:

Yup

I’ve been encouraging journalists to take a closer look at who these people are (and where their three mil comes from)

Obviously a light touch given the portfolio

Mary-Liz Power

Hm. Do you know if there’s anything to be found in that gofundme?

Alexander Cohen:

I think it’s worth looking

I’ve put **Marie Woolf** onto it [bold & underlining add]

She’s obsessed with this kinda stuff

Mary-Liz Power

⁴⁶ Bio, Althia Raj, McGill University, Cundill History Prize Bio: <https://www.cundillprize.com/jury/2014>.

⁴⁷ January 25, 2022 Tweet of Althia Raj HRF00001622, item 14, and page 23.

Nice. I'll look into it too on our end.⁴⁸

64. On January 25, 2022, at 12:01 PM, Mary-Liz Power and Alexander Cohen had a text message exchange as follows:

Mary-Liz Power:

Got quick responses, people are into it

Lmk if your boss is too. Happy to help however I can!

This is what I sent through btw:

[Hi,

I just had a chat with Alex at PS who had a bit of an interesting idea. As you saw in the pod goals chat, the truckers convoy and some of their more extreme comments (IE calling for a Jan 6 style insurrection) are getting more coverage in media. Alex was surveying whether there'd be interest in his boss doing some media on this eventually. He was chatting with Mendicino about right before he went into cabinet retreat.

I think there could be an opportunity to in on this growing narrative of the truckers, particularly with the research that LRB is doing into their backers. My thoughts of the framing here would be similar to what PM/Blair said last year when Jan. 6th occurred:

-Our democracy is something we need to nurture and protect every day

-We will always protect the right to peaceful protest

-Some of the calls that organizers of these events are making are concerning, and we're taking them seriously (would need something to back this up)

-We'll continue to monitor the situation closely. [Highlighting added] [Ending copy and paste of message that Mary-Liz Power sent to someone] [Refer to Paragraph 66].

The fine line to walk would be to ensure we are not looking like we're directing the police, which obviously is not the goal here. Hoping to canvass your thoughts – Alex said he'd come back to me with a proposal this aft when he gets to chat with Mendicino again, obviously pending his boss's and our interest in looking into this further.

Alexander Cohen:

Thanks!

I had an initial chat with my boss and he's supportive, but wants to wait a day or two

⁴⁸ January 25, 2022 12:01PM Text messages between Mary-Liz Power & Alexander Cohen, SSM.CAN.00007731_REL.0001.

There's a danger that if we come down too hard, **they might push out the crazies** [bold and underline added]

Mary-Liz Power:

I think that's fair. Apparently **global & others** are working on stories, maybe we see how those land⁴⁹ [bold and underlining added]

65. On January 25, 2022, at 5:25 PM, Alex Boutilier & Rachel Gilmore of Global News published an online article titled "*Far-right groups hope truckers protest will be 'Canada's January 6th'*". The article discusses the same YouTube video "tweeted" by Glenn McGregor and "re-tweeted" by Althia Raj. In that article, there is a quote from Parliamentary Protective Service. This article states as follows:

Canadian far-right and white nationalist groups see the so-called "Freedom Convoy" as an opportunity, with some hoping the protests will be Canada's version of last year's Jan. 6 riot in Washington.

...

The loosely-organized group – has raised almost \$4.5 million through GoFundMr since Jan. 14 – and is said to oppose vaccine mandates, particularly a new vaccination requirements for truckers crossing the Canada-U.S. border into Canada.

...

One of the groups associated with the event, Canada Unity, has produced a pseudo-legalistic "memorandum of understanding" they plan to present to Gov. General Mary Simon and the Senate, which they mistakenly believe would force the government to rescind COVID-19 public health measures, or force the government to resign en masse.

...

The Parliamentary Protective Service, who are responsible for security on Parliament Hill, told Global News they are aware of the protest plans and are coordinating with other security agencies.

"The service continuously monitors threats and is closely monitoring (this) situation. The service adjusts its security posture on Parliament Hill and within the Parliamentary precinct as required," the service said in a statement.⁵⁰ [highlighting added]

66. On January 25, 2022, at 8:03 PM, Ben Cousins of CTV News published a news article online titled "*So many angry people': Experts say online conversation around trucker convoy veering into dangerous territory*". Therein it states:

⁴⁹ January 25, 2022 5:25PM Text messages between Mary-Liz Power & Alexander Cohen, SSM.CAN.00007731_REL.0001, SSM.CAN.00007722_REL.0001, & SSM.CAN.00007724_REL.0001.

⁵⁰ January 25, 2022 Article by Alex Boutilier & Rachel Gilmore of Global News titled *Far-right groups hope truckers protest will be 'Canada's January 6th'* <https://globalnews.ca/news/8537433/far-right-groups-trucker-protest-jan-6/> HRF00001622 at item 21 and page 40.

Organizers for the convoy insist they are abiding the laws and intend for a peaceful rally in Ottawa this weekend. Even though the organizers say it will be peaceful, Phillips said he's seen people online calling the trucker convoy Canada's version of the U.S. Capitol insurrection on Jan. 6, 2021, for the truckers to ram their trucks into Parliament, and people encouraging the hanging of politicians. "Some of the organizers are trying to get people to dial back the rhetoric, but the genie's already out of the bottle," he said. "People are energized in an incredible way right now, and it's hard to see something not happening. I don't know if it would be on the scale of Jan. 6 in the United States, but there are so many angry people." Peter Smith, a journalist working with the Canadian Anti-Hate Network, said he's seeing a lot of similarities between this latest convoy and a similar truck convoy from 2019 that was meant to protest federal pipeline policies. "Right from the start, the largest groups ... have been organized and managed by people who have connections to those types of groups like the Yellow Vests, the separatist Western movements," he said. "So right from the start, this began as part of fringe politics."

...

As of Tuesday evening, more than \$4.5 million has been raised for the trucker convoy through GoFundMe, though the funds have been temporarily frozen. Both Smith and Phillips are concerned for what might happen when the truckers arrive in Ottawa this weekend.⁵¹

January 26, 2022

67. On January 26, 2022, at 4:18 PM, Marie Woolf and Joan Bryden published an article on Global News website titled "*Ottawa braces for 'significant' trucker convoy disruptions as police warn of risks*". In that article, Marie Woolf and Joan Bryden state:

Some with extreme, far-right views have latched onto the protest. One online video includes a man expressing hope the rally will turn into the Canadian equivalent of the Jan. 6, 2021, riot at the U.S. Capitol by supporters of former president Donald Trump. Donald Trump Jr. took to social media Tuesday to endorse the Canadian truck convoy's fight against "tyranny" and to urge Americans to follow suit.

Kayla Preston, who studies the far right in the University of Toronto's sociology department, said the truckers were a magnet for white nationalists as well as people who oppose vaccine mandates.

⁵¹ January 25, 2022 Article by Ben Cousin of CTV News titled: '*So many angry people*': Experts say online conversation around trucker convoy veering into dangerous territory <https://www.ctvnews.ca/canada/so-many-angry-people-experts-say-online-conversation-around-trucker-convoy-veering-into-dangerous-territory-1.5754580> [Note, in the email there is a third link to an Apple News article, but it is one and the same as the CTV News Article by Ben Cousins]. HRF00001622 at item 23 and page 49.

“Some in the far-right have latched themselves onto the convoy,” she said. “The convoy is tapping into the national frustration right now. They are also attracting people who are not part of the far right or white nationalists who are frustrated with COVID.”

A group called Canada Unity is organizing the movement, which its members refer to as the “freedom convoy.”

A “memorandum of understanding,” posted on the Canada Unity website, says its coalition is opposed to restrictions and mandates related to COVID-19, rules it deems are “unconstitutional, discriminatory and segregating.”

The memorandum’s goal, it says, is to form a committee with the Senate and Governor General that would override all levels of Canadian government to stop the use of vaccine passports, waive fines linked to COVID-19 and reinstate employees who were fired for breaking COVID-19 rules.

If the Senate and Governor General refuse to join such a committee, the group says they should “resign their lawful positions of authority immediately.”

Transport Minister Omar Alghabra said he is “concerned about the small number of far-right, vocal opposition that is polluting much of our political debate.”

Some supporters of the convoy, including some Conservative MPs, have taken to social media to warn the vaccine mandate for truckers will leave store shelves empty. Some have gone so far as to predict Canadians will starve.⁵²

68. At some point before the arrival of the protests in Ottawa, CSIS briefs Minister of Public Safety Marco Mendicino on the matter. Though the record of this briefing does not have a date, it is clear from reading same it is prior to the arrival of the protestors, prior to the protests first weekend in Ottawa, and is speaking to the intent of the protestors when they arrive. Like other intelligence prior to the arrival of the protestors, it states there is no tangible plan or plot by protestors to engage in serious violence. In particular, it states:

CSIS has seen online commentary calling for violence and the storming of Parliament Hill buildings. These are likely aspirational but cannot be completely ignored by law enforcement.

...

Within the broader protest, it is possible that opportunist, low-level violence (e.g. vandalism, mischief) will occur over the weekend.

CSIS is unaware, at this time, of any tangible plots or plans of serious violence.⁵³
[Emphasis added]

⁵² <https://globalnews.ca/news/8540245/ottawa-trucker-convoy-risks/> HRF00001622 item 26 and at page 57.

⁵³ CSIS Briefing to Minister Mendicino on the “Freedom Convoy”, TS.NSC.CAN.001.00000197_REL_0001.

January 27, 2022

69. At 9:49 AM on January 27, 2022, Deputy Prime Minister Freeland emails Farees Nathoo, Alex Woznyl, and Alexann Kropman, stating:

-
> -----Original Message-----
> From: Freeland, Honourable/Honorable Chrystia <Personal Info. >
> Sent: Thursday, January 27, 2022 9:49 AM
> To: Nathoo, Farees <Personal Info. >; Alex Wozny
<alexander.wozny@fin.gc.ca>; Alexann Kropman <aPersonal Info. a>
> Subject: QP
>
> One more thing to consider for QP - calling out Conservative MPs for their anti-vax sentiments
and how this is what is hurting Canadians and our economy.
> C
>
> Sent from my iPhone

54

70. At 9:55 AM on January 27, 2022, Farrees Nathoo replies to all, stating:

> On Jan 27, 2022, at 9:55 AM, Nathoo, Farees <Personal Info. > wrote:
>
> On this, I would recommend we wait and see how this convoy plays out this weekend, we'll
want to consider the tactics of what we tie to O'Toole and the Conservatives at this tough moment
for them!
>
>

55

71. At 9:58 AM, Deputy Prime Minister Freeland replies all, stating:

Re: QP

From: "Freeland, Honourable/Honorable Chrystia" <Personal Info. @Personal Info. >
To: "Nathoo, Farees" <Personal Info. >
Cc: "Wozny, Alexander" <alexander.wozny@fin.gc.ca>, Alexann Kropman
<alexann.kropman@canada.ca>, "Lawrence, Alex" <Personal Info. >
Date: Thu, 27 Jan 2022 14:58:31 +0000

Agreed!
Just something to consider and work up as an option.
C

Sent from my iPhone

56

72. At 11:00 AM on January 27, 2022, government staffers have a call and notes circulate thereafter. Present includes "Z," being Zita Astravas, the Chief of Staff to Minister of Emergency Preparedness Blair, and Rheal Lewis, the Chief of Staff to the Leader of the Government in the House of Commons.

⁵⁴ SSM.CAN.00001145_REL.0001.

⁵⁵ Ibid.

⁵⁶ Ibid.

11AM call

Date: Thu, 27 Jan 2022 18:52:26 +0000

- * MPs have expressed some concerns if protestors stick around until Monday, having to walk through a group
- * Nothing new from CSIS
- * Parl security has been prepping post Jan 6th

Rheal:

- * We can't tell other parties what to do
- * We can offer security briefs to the parties

Z: Sunday/Monday is awhile away.

Stevie:

- * National Capital Commission reports unto PSPC. Planning closures on QED and in parallel with Ottawa closures, monitoring for illegal camping and will report to police
- * Parl Precinct: Monitoring as there is an open construction site
- * Official Residences: PM now self-isolating

Rheal:

- * Been in touch with House admin to make sure they're prepared, taking it seriously, been assured that they are.

Health:

- * We're out on a press conference with the doctors on this tomorrow

Z: Feed your updates into ML and Caroline, our offices will share latest updates

Transport:

- * Minister is out a lot over the next few days

Udita:

- * Truckers talking a lot about vaccine mandates, tying it to Minister
- * Keeping track of chatter

Vanessa Hage-Moussa:

- * No updates
- * Will be watching what actors are saying and state of preparedness on Ottawa's part

Z: Still considering whether we should convene a formal Minister's meeting. Have to also be careful regarding our issues vs Ottawa Police's.

Building a chain of doom.

57

73. Again, this is prior to the protest arriving. Zita Astravas is already talking about calling a formal Minister meeting, being careful regarding “our issues vs Ottawa Police’s” and ends with “**Building a chain of doom.**”
74. On January 27, 2022, a 4:21 PM, Caroline Williams, Director of Parliamentary of the Privy Council, emails Zita Astrava, Chief of Staff to the Minister of Emergency Preparedness Bill Blair, and Annie Cullinan stating:

From: Williams, Caroline <Caroline.Williams@opc-cpr.gc.ca>
Sent: Thursday, January 27, 2022 4:21 PM
To: Power, Mary-Liz <Mary-Liz.Power@pmo-cpm.gc.ca>
Cc: Astravas, Zita <Zita.Astravas@opc-cpr.gc.ca>; Cullinan, Annie <Annie.Cullinan@opc-cpr.gc.ca>
Subject: Convoy issues messaging

Hey ML,

Wanted to reach out on the current issues lead situation for the convoy. Given how this is transitioning into a whole-of-government coordination response, I feel like as Emergency Preparedness we are a well-positioned office to provide more of the high-level messaging going forward. Public Safety of course has a major role to play when it comes to the RCMP, CSIS, and IMVE threats, but we have a helpful perspective on the whole-of-government coordination + collaboration with other levels of government.

These are lines that we worked up earlier today. Any thoughts on if this is a helpful approach?

Convoy – Emergency Preparedness

- * Our government recognizes and respects that everyone in Canada has a right to safe and peaceful protest.
- * Threatening acts of violence and inciting hatred, as we have seen from a select few in recent days, is unacceptable and does not reflect the views of the majority of Canadians.
- * We condemn all such hateful and violent rhetoric in the strongest terms.
- * As is common with any significant gathering with a potential impact on government operations, such as the annual Canada Day celebrations, law enforcement and security agencies across all levels of government are engaged and coordinated to ensure a safe event.

-Caroline

58

⁵⁷ SSM.CAN.00005793_REL.0001.

⁵⁸ January 27, 2022 Email Exchange SSM.CAN.00006358_REL.0001.

75. On January 27, 2022, at 4:34 PM, Marie-Liz Power replies to the above email stating:

From: Power, Mary-Liz <Mary-Liz.Power@pmo-cpm.gc.ca>
 Sent: Thursday, January 27, 2022 4:34 PM
 To: Williams, Caroline <Caroline.Williams@qpc-cpr.gc.ca>
 Cc: Astravas, Zita <Zita.Astravas@qpc-cpr.gc.ca>; Cullinan, Annie <Annie.Cullinan@qpc-cpr.gc.ca>;
 Vaillancourt, Ann-Clara <Ann-Clara.Vaillancourt@pmo-cpm.gc.ca>; Roy, Cecely <Cecely.Roy@pmo-
 cpm.gc.ca>; Khalil, Samantha <Samantha.Khalil@pmo-cpm.gc.ca>
 Subject: RE: Convoy issues messaging

Hey Caroline,
 Sorry I missed your call a moment ago. Adding AC, Cecely and Sam here.

59

76. On January 27, 2022, at 4:55 PM, Caroline Williams replies to the above email, stating:

From: Williams, Caroline
 Sent: Thursday, January 27, 2022 4:55 PM
 To: Power, Mary-Liz <Mary-Liz.Power@pmo-cpm.gc.ca>
 Cc: Astravas, Zita <Zita.Astravas@qpc-cpr.gc.ca>; Cullinan, Annie <Annie.Cullinan@qpc-cpr.gc.ca>;
 Vaillancourt, Ann-Clara <Ann-Clara.Vaillancourt@pmo-cpm.gc.ca>; Roy, Cecely <Cecely.Roy@pmo-
 cpm.gc.ca>; Khalil, Samantha <Samantha.Khalil@pmo-cpm.gc.ca>
 Subject: RE: Convoy issues messaging

What I would say to that is yes, PS can and absolutely should be speaking to the RCMP's preparedness. But this is a situation where there are a number of portfolios and levels of government are involved – including notably PPS, which doesn't answer to any portfolio. As a convening/coordinating office, I think there's a role we can play to articulate overall federal government readiness here.

Could we maybe have a quick call when you're free?

60

77. On January 27, 2022, there is a call after the above email. After that call, Carolina Williams follows up with the following email:

From: Williams, Caroline <Caroline.Williams@qpc-cpr.gc.ca>
 Sent: Thursday, January 27, 2022 5:30 PM
 To: Power, Mary-Liz <Mary-Liz.Power@pmo-cpm.gc.ca>
 Cc: Astravas, Zita <Zita.Astravas@qpc-cpr.gc.ca>; Cullinan, Annie <Annie.Cullinan@qpc-cpr.gc.ca>;
 Vaillancourt, Ann-Clara <Ann-Clara.Vaillancourt@pmo-cpm.gc.ca>; Roy, Cecely <Cecely.Roy@pmo-
 cpm.gc.ca>; Khalil, Samantha <Samantha.Khalil@pmo-cpm.gc.ca>
 Subject: RE: Convoy issues messaging

Hey ML –

Thanks for the call just now. I'll touch base with Minister Mendicino's team, but just to reiterate I do still hold that this is becoming an issue that is more our wheelhouse from a 'overall government preparedness' perspective.

- Caroline

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78. On January 27, 2022, in response to the above email, Samantha Khali of the Prime Minister's Office states:

From: Khalil, Samantha <Samantha.Khalil@pmo-cpm.gc.ca>
 Sent: Thursday, January 27, 2022 5:35 PM
 To: Williams, Caroline <Caroline.Williams@qpc-cpr.gc.ca>; Power, Mary-Liz <Mary-Liz.Power@pmo-
 cpm.gc.ca>
 Cc: Astravas, Zita <Zita.Astravas@qpc-cpr.gc.ca>; Cullinan, Annie <Annie.Cullinan@qpc-cpr.gc.ca>;
 Vaillancourt, Ann-Clara <Ann-Clara.Vaillancourt@pmo-cpm.gc.ca>; Roy, Cecely <Cecely.Roy@pmo-
 cpm.gc.ca>
 Subject: RE: Convoy issues messaging

Hi Caroline,

CAN - RELATIVITY Production 02 SSM.CAN.0006358_REL.0001

I think the Ministers are doing a good job right now and if Minister Blair would like to start doing comms as well that is great. At this time I don't feel we should limit the Ministers going out on this as everyone has a piece and I think our narrative is getting through.

Sam

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⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

79. Carolina Williams ends the email thread with the full plan for the “*narrative*”. On January 27, 2022, at 7:05 PM, Carolina Williams states:

RE: Convoy issues messaging

From: "Williams, Caroline" <caroline.williams@gpc-cpr.gc.ca>
To: "Khalil, Samantha" <samantha.khalil@pmo-cpm.gc.ca>, "Power, Mary-Liz" <mary-liz.power@pmo-cpm.gc.ca>
Cc: "Astravas, Zita" <zita.astravas@gpc-cpr.gc.ca>, "Cullinan, Annie" <annie.cullinan@gpc-cpr.gc.ca>, "Vaillancourt, Ann-Clara" <ann-clara.vaillancourt@pmo-cpm.gc.ca>, "Roy, Cecey" <cecey.roy@pmo-cpm.gc.ca>
Date: Thu, 27 Jan 2022 23:05:26 +0000

I absolutely agree, we shouldn't be limiting the Ministers who go out on this at all.

I am coming at this from more of an internal issues management angle. Right now, Public Safety is setting all the core messaging. And they are responsible for two very significant pieces in the RCMP and CSIS, so it absolutely makes sense they have a prominent role here.

But as a new portfolio with convening responsibilities, we've been spending the last 24-48+ hours centralizing info not only from PS but from all of the implicated players. We are in the best position to compile the messaging that says our government is doing everything possible to encourage a safe event and prepare for all eventualities.

I tweaked the lines to try to better capture what we're trying to articulate. Does the highlighted make a bit more sense?

Convoy – Emergency Preparedness

- * Our government recognizes and respects that everyone in Canada has a right to safe and peaceful protest.
- * Threatening acts of violence and inciting hatred, as we have seen from a select few in recent days, is unacceptable and does not reflect the views of the majority of Canadians.
- * We condemn all such hateful and violent rhetoric in the strongest terms.
- * As is common with any significant gathering with a potential impact on government operations, such as the annual Canada Day celebrations, **implicated agencies from all levels of government** are engaged and coordinating to ensure a safe event.

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80. It is submitted this is the narrative that was going to apply to the protestors by the Government of Canada upon the arrival of the protestors. It simply was not true; it was misinformation made up before their arrival. It was “planned” before the protestors arrived in Ottawa to tell Canadians:

- a. That there were threatening acts of violence and inciting of hatred by the protestors;
- b. That what was being made up at a. above, was unacceptable and does not reflect the views of the majority of Canadians;
- c. That the Government of Canada condemned the “hateful and violent rhetoric” that they would make up.

81. On January 27, 2022, during televised remarks, the Prime Minister refers to the protestors coming to Ottawa as a “small fringe minority” and said that the protestors hold “unacceptable views”.⁶⁴

January 28, 2022

82. On January 28, 2022, Mary-Liz Power formally briefs the Prime Minister in writing regarding the Freedom Convoy. In that briefing, Mary-Liz Power states:

The key organization coordinating the security response to the convoy is called INTERSECT, the strategic law enforcement and first responder body in Ottawa that will make decisions on the ground. INTERSECT comprises Ottawa Police, CSIS, DND, SQ, OPP, PPS, Gatineau Police, City of Ottawa Emergency Management, Gatineau paramedics, Ottawa paramedics, Ottawa fire, RCMP, Mike Macdonald (Assistant Secretary to the

⁶³ Ibid.

⁶⁴ Overview Report, Timeline of Key Events, COM.OR.00000004, p. 5, January 28.

Cabinet for the Privy Council Office) serves as a federal public service representative on that board, and is providing information to the political level as required.

....

Ministerial Involvement

Chiefs of Staff, PCO representatives and members of the PMO communication and issues management teams have been meeting regularly to discuss issues arising across government relating to the convoy. PCO alongside the Commissioner of the RCMP and the Director of CSIS have led briefing for Ministers Leblanc, Mendicino, Blair and Alghabra over the last two days.

Ministers Mendicino and Alghabra, have done a number of media interviews regarding the vaccine mandate, extremism and increased violence of rhetoric, preparations and called for peaceful protest. Ministers, including Minister Blair, are available this weekend should they be needed for a formal government response, pending an escalation.

...

National Security/Ideologically Motivated Violent Extremism Nexus

There has been an increase in social media posts from users suggesting that violence should be used if the government does not acknowledge the convoy. The RCMP asserts that no substantiated threats or credible plans have been identified at this time.⁶⁵

83. On January 28, 2022, there is a Ministerial Briefing. Present are Minister Leblanc, Minister of Emergency Preparedness Bill Blair, Minister of Public Safety Marco Mendicino, and Minister of Transport Alghabra. They are being briefed by Commissioner of RCMP Brenda Lucki and Director of CSIS David Vigneault. One of the Ministers raises concerns, stating:

Calling for civil war - Global reporting on this individual.

84. It appears this concern was responded to. In particular, directly under the above note, the following points are stated:

- Rhetoric is different from concrete action, training.
- Conversations with social media, bringing those posts down.⁶⁶

85. It can be inferred that the Global news reporting referenced immediately above are the January 25, 2022, 5:25 PM article of Alex Boutilier & Rachel Gilmore of Global News published an online article titled *"Far-right groups hope truckers protest will be 'Canada's January 6th' and/or the January 26, 2022, 4:18 PM, article of Marie Woolf and Joan Bryden publish an article on Global News website titled "Ottawa braces for 'significant' trucker convoy disruptions as police warn of risks".*

⁶⁵ January 28, 2022 Briefing Note from Mary-Liz Power, Chief of Staff to the Prime Minister, to the Prime Minister, _SSM.CAN.NSC.00002798_REL.0001.

⁶⁶ TS.NSC.CAN.001.00000197_REL_0001.

86. It must be remembered that prior to the Global news article, on January 25, 2022, Mary-Liz Power, Issues and Policy Advisor to the Office of the Prime Minister, had a text message exchange with Alexander Cohen, Director of Communications to the Minister of Public Safety Marco Mendicino. These news articles were created at the urging of these two staffers. As said by Alexander Cohen:

I think it's worth looking
I've put Marie Woolf onto it
She's obsessed with this kinda stuff⁶⁷

87. Alexander Cohen, Director of Communications to the Minister of Public Safety Marco Mendicino, gets Marie Woolf to do the article. Alexander Cohen says that “*there’s a danger that if we come down too hard, **they might push out the crazies**,*” meaning they wanted the “crazies” to stay with the protest so they could be labelled easier. Clearly, Minister of Public Safety Marco Mendicino knows about this narrative, as he is the person who allowed Alexander Cohen to push the narrative as his “boss,” and this was set out on January 25, 2022. Notwithstanding, the Ministers in the Ministerial briefing raise the Global News articles to both the Director of CSIS and the RCMP as a reason for concern. The news articles are products, however, created at the direction of Alexander Cohen, and they arise from the YouTube tweeted on January 24, 2022, at 10:27 PM by Glenn McGregor of CTV.
88. It should be noted during the January 28, 2022, Ministerial Briefing that the Political Executive are telling the ears of the Administrative Executive of the intelligence and police branches of the Federal Government, being Commissioner of RCMP Brenda Lucki and Director of CSIS David Vigneault, that the Political Executive are concerned about the Global reporting. The same reporting that they had input into creating.
89. On January 28, 2022, at the direction of Ottawa Police Services, trucks and protest vehicles are escorted into downtown Ottawa, including Wellington Avenue, and the protest begins.⁶⁸

January 29, 2022

Racist Imagery 1 of 3 - Political attack on Conservative Party Member of Parliament, Michael Cooper

90. On January 29, 2022, Conservative Party Member of Parliament, Michael Cooper, attended the protest in Ottawa. CBC News was interviewing Mr. Cooper on camera about the protest. As the interview took place, an unidentified Caucasian woman with blond hair wearing a bright pink snowsuit, a black headband ear warmer with an upside down Canada flag on a wooden pole with a swastika drawn on it appears behind Mr. Cooper without his knowledge.⁶⁹

⁶⁷ January 25, 2022, 12:01 PM Text messages between Mary-Liz Power & Alexander Cohen, SSM.CAN.00007731_REL.0001.

⁶⁸ POEC Transcript Volume 26, page 36 para 14-25.

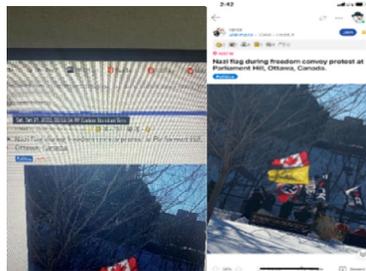
⁶⁹ <https://www.cbc.ca/news/canada/edmonton/edmonton-area-mp-under-fire-for-photo-of-him-near-flag-bearing-nazi-symbol-1.6333266> HRF00001622 at item 34 and page 77.



91. The woman in the bright pink snow suit has not been identified.

Racist Imagery 2 of 3: The Nazi Flag

92. On the afternoon of January 29, 2022, a group of people all wearing sunglasses, headwear/hats, winter outfits, and red/white lanyards around their necks are in the protest. They are carrying several black flags that say “Fuck Trudeau,” and one man is carrying a Nazi Flag.
93. At 3:12 PM, Reddit user “u/skimpop” posts a picture with the heading “Nazi flag during freedom convoy protest at Parliament Hill, Ottawa, Canada”.⁷¹ This is the first time the picture appears online, as follows:



94. The picture goes viral. The identity of the flag holder, the photographer, and the identity of “u/skimpop” were unknown. Other photos and videos of the man with the Nazi flag emerge from other sources. The man has a short beard and is wearing a black hat, black sunglasses, and a black winter coat with a fur or wool-rimmed hood which is down:

⁷⁰ POE.HRF0000024.

⁷¹ https://www.reddit.com/r/pics/comments/sfql2g/nazi_flag_during_freedom_convoy_protest_at/ HRF00001622 at page 81.



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95. On October 24, 2022, the Commission was given the statement of Ottawa protestor Mr. Shawn Folks. In that statement, Mr. Folks outlined how he met the man with the Nazi Flag on January 29, 2022, and spoke with him. The Commission did not ask to hear from Mr. Folks as a witness. One November 21, 2022, when Counsel for Freedom Corp. raised on the public record that it was Mr. Fox who was the man with the Nazi Flag, Mr. Folks was watching. Mr. Folks then went online and looked at Mr. Fox's photo on the Enterprise Canada website. He then advised Counsel for Freedom Corp. that the photo of Mr. Fox on the Enterprise Canada website was the same man that he saw with the Nazi Flag on January 29, 2022. Thereafter, he provided a sworn affidavit identifying the man with the Nazi Flag as the same person as the photo of Brian Fox on the Enterprise Canada website.⁷³
96. On January 30, 2022, True North Media offered the public up to \$6500.00 if they could identify the man carrying the Nazi Flag on January 29, 2022.⁷⁴ Other than in this proceeding, no one has been able to do so.

⁷² HRF00001622 at item 35.1 on pages 82-84

⁷³ HRF00001659.

⁷⁴ <https://tnc.news/2022/01/30/everything-we-know-so-far-about-the-nazi-flag-guy2/> HRF00001622 at item 41 at page 97.

97. Mr. Fox threatened to sue counsel for Freedom Corp. through a third party, being Enterprise Group website and social media, for asking questions and making an argument before this Commission. That threat is contemptuous and constitutes intimidation of a justice participant.⁷⁵ The Commission permitted the contemptuous letter into evidence and used it as evidence to rebut the sworn evidence of Mr. Folks and pictures of Mr. Fox.
98. Mr. Fox then organized for a process server to serve counsel for Freedom Corp. a “defamation notice”. The law is clear, however, that a defamation notice only applies to newspapers or broadcasts as per s.5 of the *Libel and Slander Act*, R.S.O. 1990, c. L.12. The only broadcast were the proceedings themselves, which are protected by privilege.⁷⁶ The notice served by Mr. Fox means entirely nothing, and it's not even written by him. Furthermore, serving a lawyer at a court proceeding with a notice like this regarding the Court proceeding is further evidence of contempt and intimidation of a justice participant.⁷⁷
99. The witnesses for the GOC expressed concerns about the Ottawa protestors being ideological extremists. Police and CISA witnesses confirmed that they investigated those involved in the convoy with respect to this concern. However, the Director of CSIS, David Vigneault, was cross examined about the identity of the man with the Nazi flag. There is simply no legal justification not to answer a question about a man's identity in a public photo during a protest under any form of national security law especially given the heavy emphasis by the GOC witnesses as to the flags justifying their concerns. Notwithstanding, the exchange was as follows:

Mr. Brendan Miller: And have you identified the individual, the one that is -- there was - - he was all over the news, the gentleman that was carrying the Nazi flag? Have you identified him yet?

⁷⁵ 423.1(1)(b) and s.139, Criminal Code (R.S.C., 1985, c. C-46). As to s.139, see *R. v. Pare*, 2010 ONCA 563, para. 12.

⁷⁶ On top of general privilege regarding things stated in a quasi-judicial proceeding, the proceedings are protected by parliamentary privilege as pursuant to s.63(2) of the Emergencies Act, the inquiry is to complete a report to Parliament, making it an extension of Parliament itself, and thus cloaking the proceedings with the parliamentary privilege: *Tafler v. British Columbia* (Commissioner of Conflict of Interest), 1995 CanLII 1367 (BC SC), last paragraph affirmed 1998 CanLII 6216 (BC CA). See also *Harvey v. New Brunswick (Attorney General)*, [1996] 2 SCR 876: “The power of Parliament and the legislatures to regulate their procedures both inside **and outside the legislative chamber arises from the *Constitution Act, 1867*. The preamble to the *Constitution Act, 1867* affirms a **parliamentary system of government, incorporating into the Canadian Constitution the right of Parliament and the legislatures to regulate their own affairs**”.**

⁷⁷ Threats of suit of a justice participant via threat to sue for defamation based on what is said in court proceedings, see *Denis v. Sauvageau* April 13, 2022, ABKB Unreported [attached], stay of conviction denied [2022 ABCA 166](#), conviction reversed on procedural grounds [2022 ABCA 354](#) .; see also *State v. Hynes*, [978 A.2d 264 \(N.H. 2009\)](#) threat of suit constituting extortion where no basis; as well as threats of suit without basis constituting “harassment” from the Court of Appeal of England and Wales *Worthington & Anor v Metropolitan Housing Trust Ltd* [\[2018\] EWCA Civ 1125](#).

Mr. David Vigneault: Mr. Commissioner, as I said before, we -- the specific details of our investigation have been shared, you know, with the Commission earlier. I would not be able to go into more specific details.⁷⁸

100. The Commission, it is submitted, has no choice but to find that the Nazi flag in downtown Ottawa on January 29, 2022, was not there being waived by a protestor, as there is properly admissible evidence before the Commission that it was not a protestor, but that it was there being waived by a political operative in furtherance of the government's disinformation campaign.

Racist Imagery 3 of 3: Pictures of Man with Confederate Flag by David Chan

101. Sometime on January 29, 2022, David Chan, a freelance photographer who freelances for the Prime Minister, takes the following photos:



102. At some point in time on January 29, 2022, known to David Chan but not known to the Freedom Corp., David Chan uploaded the two aforesaid photographs to Getty Images and registered the two photos in his name as follows:

DETAILS
 Restrictions: Contact your local office for all commercial or promotional uses. Full editorial rights UK, US, Ireland, Italy, Spain, Canada (not Quebec). Restricted editorial rights elsewhere, please call local office.
 Credit: DAVE CHAN / Contributor
 Editorial #: 1238062324
 Collection: AFP
 Date created: January 29, 2022
 License type: Rights-managed
 Release info: Not released. More information
 Source: AFP
 Barcode: AFP
 Object name: AFP_9XF4WVQ
 Max file size: 4500 x 3000 px (15.00 x 10.00 in) - 300 dpi - 4 MB

DETAILS
 Restrictions: Contact your local office for all commercial or promotional uses. Full editorial rights UK, US, Ireland, Italy, Spain, Canada (not Quebec). Restricted editorial rights elsewhere, please call local office.
 Credit: DAVE CHAN / Contributor
 Editorial #: 1238062091
 Collection: AFP
 Date created: January 29, 2022
 License type: Rights-managed
 Release info: Not released. More information
 Source: AFP
 Barcode: AFP
 Object name: AFP_9XF4WR
 Max file size: 4500 x 3000 px (15.00 x 10.00 in) - 300 dpi - 3 MB

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January 30, 2022

103. Supriya Dwivedi is *“a GTA-based Liberal political commentator who works as senior counsel for Enterprise Canada.”*⁸² Supriya Dwivedi’s profile on the Enterprise Canada website states that she has *“[e]xtensive political campaign experience as a communications advisor for Liberal and progressive campaigns.”*⁸³

⁷⁸ POEC Transcript Volume pages 122-123.

⁷⁹ HRF00001622 at item 39.2 at page 91.

⁸⁰ Freedom Corp. Amended 2nd Motion - 2022-11-20.

⁸¹ Freedom Corp. Amended 2nd Motion - 2022-11-20.

⁸² Toronto Star Bio of Supriya Dwivedi,

https://www.thestar.com/authors.dwivedi_supriya.html#:~:text=Supriya%20Dwivedi%20is%20a%20GTA-based%20Liberal%20political%20commentator,for%20the%20Star.%20Follow%20her%20on%20Twitter%3A%2040supriyadwivedi.

⁸³ https://enterprisecanada.com/team_members/supriya-dwivedi/

104. On January 30, 2022, on or before 9:22 AM, Supriya Dwivedi published an article online via the Toronto Star titled: *“Conservative party’s embrace of trucker convoy is deeply troubling,”* where a photo of a purported protestor carrying a confederate flag taken by David Chan is first published online by media or a news outlet, outside Getty Images.⁸⁴ Supriya Dwivedi then posts the article on her twitter on January 30, 2022, at 9:22 AM:



105. Again, the image in the article of Supriya Dwivedi of the purported protestor carrying a confederate flag with a truck is the first time the image appeared online in a news or media outlet outside Getty Images. The picture goes viral and results in commentary and other photos of the purported protestor who attended the protest on January 29, 2022, fully covered, with camera men, and the flag bearer is wearing a balaclava:



106. The Post Millennial news site obtains a video of the purported protestor from January 29, 2022. The video shows the purported protestor walking through the crowd, being told to leave, not speaking with anyone, and wearing his balaclava.

⁸⁴ <https://www.thestar.com/opinion/contributors/2022/01/30/conservative-partys-embrace-of-trucker-convoy-is-deeply-troubling.html> and HRF00001622 at item 39 at page 87.

⁸⁵ HRF00001622 at item 39.1 at page 90.

⁸⁶ HRF00001622 at item 39.2 at page 91.



The video is here: <https://thepostmillennial.com/canadian-trucker-convoy-confront-masked-man-confederate-flag>⁸⁸

107. The photograph circled in red in the photo above is alleged by the news site “The Daily” and others to be the personal photographer for the Prime Minister, Andrew Scotti.⁸⁹ That was denied by Mr. Scotti.
108. Other than the four incidents of raciest imagery above, there are no other photos of “nazis,” Nazi symbolism, racist imagery, or “hate” in downtown Ottawa between January 28 and 31, 2022, that can be located, and there is no evidence before this Commission of any others in that time period. Nor is there any evidence that those with the raciest imagery were with the protest. Strangely, none of the persons in the protest identified in the GOC records were ones portraying Nazi symbolism, racist imagery, or “hate” in downtown Ottawa between January 28 and 31, 2022. No member of the Political or Administrative Executive branch identified a single protestor in the Convoy displaying Nazi symbolism, racist imagery, or “hate.”
109. When the Director of CSIS was asked who the man with the Nazi flag on January 29, 2022, was, the Director cited national security/investigative privilege. Yet, the Commission knows via government records who many members of the Convoy protest are, who displayed no such imagery or carried out any acts of violence or threats. It is entirely illogical, from a national security law perspective, that those displaying hate in downtown Ottawa were not identified at all by the Government of Canada but that those who were, were not.
110. On January 30, 2022, at 2:18 PM, Member of Parliament and Leader of the NDP, Jagmeet Singh, posts on twitter:

⁸⁷ POE.HRF00000013.

⁸⁸ HRF00001626.

⁸⁹ <https://thedaily.ca/news/2022/02/01/why-is-justin-trudeaus-personal-photographer-with-the-guy-at-the-protest-who-just-happens-to-have-a-brand-new-confederate-flag/> HRF00001622 item 40 at page 95.



January 31, 2022

111. Crimes of violence or vandalism on January 27 or January 28, 2022, in relation to the protestors have not been alleged before the Commission. According to the OPS institutional Report, there are literally no crimes of violence or vandalism where charges were laid from January 29 to January 31, 2022.⁹¹ There are no hate crimes, no crimes of threats etc. There are a total of 4 charges from the beginning of the protest on January 28, 2022, when Prime Minister Trudeau spoke to Canadians on January 31, 2022.
112. On January 31, 2022, Prime Minister Trudeau gave a speech on a television and online video broadcast from isolation in his lakeside retreat. But recall, before the Convoy and protestors even arrived in Ottawa, between January 25, 2022, and January 27, 2022, the GOC and LPC already planned to label the Convoy protestors as follows:

- (1) That there were threatening acts of violence and inciting of hatred by the protestors;
- (2) That what was being made up at a. above, was unacceptable and does not reflect the views of the majority of Canadians;
- (3) That the Government of Canada condemned the “hateful and violent rhetoric” that they would make up.

113. In his January 31, 2022, speech Prime Minister Trudeau stated:

Two years the battle against COVID-19 is still dominating so many parts of our lives. This virus affects us all. Two of my own children have now contracted it, and this morning I learned, I tested positive for COVID-19 as well. I feel well and have no symptoms. Of course, I'll be working remotely this week and will keep following public health guidelines. I want to take this opportunity to remind Canadians to please get vaccinated. It's a challenge that my family and I are facing, but there's nothing unusual or special about it. It's a challenge too many Canadians and people around the world know all too well.

⁹⁰ HRF00001622 at item 41.1 and page 101.

⁹¹ OPS.IR.00000001 being Schedule C.

Throughout this pandemic, people have lost loved ones. Our healthcare workers are continuing to work very hard. Scientists are working day and night to ensure that we can get vaccines to keep us safe. The pandemic is not over, and we have to be there for one another, and as we continue to have each other's backs as we steel ourselves for the challenges ahead.

I know you're wondering about what you saw in our capital city this weekend. As my friend Irwin Cotler said on Saturday, freedom of expression, assembly and association are cornerstones of democracy, but Nazi symbolism, racist imagery and desecration of war memorials are not. It is an insult to memory and truth. Hate can never be the answer. Over the past few days, Canadians were shocked and frankly disgusted by the behaviour displayed by some people protesting in our nation's capital. I want to be very clear. We are not intimidated by those who hurl insults and abuse at small business workers and steal food from the homeless. We won't give in to those who fly racist flags. We won't cave to those who engage in vandalism or dishonour the memory of our veterans.

The statue of Terry Fox and the Tomb of the Unknown Soldier are not only symbols of the past, they are important symbols from our history that represent Canadian heroes and the values for which they fought. The sacrifices that these heroes made allowed us to build a better Canada. All Canadians have the right to express their opinion or their disagreement with the government, but they don't have the right to threaten or harass their fellow citizens or to spread hateful messages.

I want to thank the many Canadians who've made donations to the Shepherds of Good Hope and to the Terry Fox Foundation in response to what they saw this weekend. There is no place in our country for threats, violence or hatred. So to those responsible for this behaviour, it needs to stop and to anyone who joined the convoy but is rightly uncomfortable with the symbols of hatred and division on display. Join with your fellow Canadians. Be courageous and speak out. Do not stand for or with intolerance and hate. In these difficult times, all politicians need to show responsible leadership. We need to work to bring people together in a positive way. We need to fight division and fear with facts.

Politicians exploiting people's fears, I ask you to think long and hard about the consequences of your actions. To the nearly 90% of truckers across the country who've gotten vaccinated and who continue working hard to keep us fed and keep our economy moving, thank you. Truckers have tough jobs, long hours on the road, days away from their families, real challenges, particularly over the past two years, as they've continued to step up, to put food on our shelves and on our tables, to support us with lifesaving medication and supplies. We have relied on you, and you can rely on us to continue to stand with you and allow you to do your jobs safely. Almost 90% of you are doing exactly that, and we thank you deeply for everything you've done. The behaviour on display this weekend does not represent you. And to Canadians at home watching in disgust and disbelief at this behaviour, wondering how this could have happened in our nation's

capital after everything we've been through together. This is not the story of our pandemic, of our country, of our people. Canada is strong because you are strong.

For nearly two years, Canadians have shown strength, generosity, and respect. You've shown your courage. You've made huge sacrifices. For nearly two years, you've been there for each other as neighbours, friends, and fellow Canadians. I think of the moms and dads who looked after their families. The kids who stepped up in so many different ways. Seniors who stayed strong in our darkest days. Volunteers throughout our communities who supported our most vulnerable. Frontline workers, from truckers to store clerks, who have kept our shelves stocked and made sure we have food on our table. Healthcare heroes who've saved countless lives and continue to do so. We know you're tired, and yet you do not stop. You inspire us, Canadians support you. We're in your corner, all of you. You are the story of this pandemic, not the convoy.

This pandemic is also the story of the millions of people who made good choices who got vaccinated, and who made sacrifices to ensure their safety and the safety of others. I can say that I will continue to encourage people to get vaccinated. Whether it's for booster shots or vaccinations for children, I will continue to be there for you. I wish I could tell you that there are no more difficult moments ahead, but we all know I can't say that. What I can say is that this government will continue to have your backs. We will continue to be there for you, as long as it takes, with as much as it takes. That's how we've all gotten through this pandemic so far, and that's what we, and I, we'll continue to focus on because we believe in you. Canadians are compassionate, kind, strong, and resilient. You elected us all to get big things done, and with the return of Parliament, we all have work to do.

Later today, I'll be participating in question period, an important part of our democratic system, alongside parliamentarians, who, despite threats and intimidation, will continue to serve you, Canadians and work together to deliver results for people. This afternoon we'll be introducing legislation to ensure we continue providing as many rapid tests as possible to the provinces and territories, and tonight, I'll be virtually addressing the House of Commons about the situation in Ukraine. I'll be talking about the importance of freedom, democracy and the rule of law in the face of Russian provocation. In this difficult time, more than ever, we must stay true to our values, to who we are as Canadians. As Canadians, we stand up for what's right, and mostly we stand up for each other. That's how we've gotten through this so far, that's how we'll continue to get through this, that's how we remain true to who we are.

114. Immediately after the speech, and in the same video, the media asks Prime Minister Trudeau questions. The first two questions and responses are relevant and material and are questions and answers between Mia Robson of Canadian Press and Prime Minister Trudeau as follows:

Mia Robson, Canadian Press:

Q: Yeah good afternoon, I'm wondering, a lot of leaders or organizers of this Convoy have asked to meet or at least hear from you about what's happening and their demands, have

you or will you or anyone from your government meet with them or negotiate with them in anyway?

Prime Minister Trudeau:

A: My focus is standing with Canadian and getting through this pandemic. The way to get through this pandemic is to continue making the challenging choices and sacrifices as citizens, as individuals, as communities to keep each other safe, to trust science, to trust facts, and continue being there for each other. That is my focus, that is what I will stay focused one.

Mia Robson, Canadian Press:

Q: Can you explain why you wont participate or meet with them? You've attended rallies on the Hill in the past including during the Black Lives Matter and others, is there a reason that you can give as to why you will not discuss or have negotiations with this particular group?

Prime Minister Trudeau:

A: I have attended protests and rallies in the past, when I agreed with the goals when I supported the people expressing their concerns and issues. Black Lives Matters is an excellent example of that. But I have also chosen to not go anywhere near protests that have expressed hateful rhetoric, violence towards fellow citizens, and a disrespect not just of science, but frontline health works and quite frankly the 90% of truckers who have been doing the right thing to keep Canadians save, put food on our tables. Canadians know where I stand. This is a moment for responsible leaders to think carefully about where they stand, and who they stand with.⁹²

February 1, 2022

115. On February 1, 2022, the Liberal Government and NDP brought four motions in the House of Commons. The unanimous consent motions introduced by the LPC included condemning the use of Nazi and antisemitic symbols, anti-Muslim rhetoric and the waving of racist flags. The fourth motion effectively called on the House to declare there is nothing peaceful about the protests in Ottawa, it was harassing residents of Ottawa, particularly those who identify as LGBTQ. The Conservative Party of Canada brought a cross-motion in response to condemn Blackface, which was not passed.⁹³
116. On February 1, 2022, Minister of Justice and Attorney General Lametti stated:

When those protests appropriate symbols that are Nazi, appropriate symbols that are racist, call (for) violent acts towards the prime minister, result in people defecating on the doorsteps of people flying gay pride flags, rainbow flags, that goes too far...We need to think about the

⁹² January 31, 2022, Prime Minister Justin Trudeau responds to ongoing protest in Ottawa, HRF00001629 [<https://www.youtube.com/watch?v=cATciT3MnpY>].

⁹³ <https://www.thestar.com/politics/2022/02/01/remaining-protesters-say-they-will-not-leave-until-all-covid-restrictions-are-lifted.html> HRF00001622 at item 43 at page 106.

fact that all rights are limited by limits that we find in free and democratic societies, and that's what our charter does.⁹⁴

Argument as to Findings of Facts between January 25, 2022, and February 1, 2022

117. It is a fact that Prime Minister Trudeau repeated the rhetoric and narrative that the GOC and LPC created between January 25, 2022, and January 27, 2022, before the Convoy protest arrived in Ottawa on January 28, 2022, in his January 31, 2022 speech and in response to the questions he was asked above right after. It is simply undeniable, and the January 27, 2022, narrative and their portions in the Prime Minister's statements on January 31, 2022, are highlighted above, as is the statement from Minister of Justice and Attorney General Lametti.
118. Either the GOC and LPC have a flux capacitor and a Delorian and can time travel into the future to see what was going to happen between January 28, 2022, and January 31, 2022, or they made it up between January 25, 2022, and January 27, 2022, before the Convoy protestors arrived and continued to contribute to that false narrative. As Prime Minister Trudeau stated, we must "*believe in science,*" and Freedom Corp. agrees. Seeing as time travel is still scientifically impossible, it is a fact that between January 25, 2022, and January 27, 2022, the GOC created and spread a false narrative about the Convoy protestors before the Convoy protestors arrived, lied to and misinformed Canadians and the public, and did so for political gain and to create a line of attack on their opposition in Parliament and pressure them to not support the Convoy protest.
119. The GOC and LPC built the "**chain of doom,**" as Zita Astravas, the Chief of Staff to Minister of Emergency Preparedness Blair, described it. A chain doom that the GOC and LPC would wait and see how it played out over the January 28 - 30, 2022. Then, just as Deputy Prime Minister Freeland and Farees Nathoo, Director of Parliamentary Affairs and Issues Management for the Deputy Prime Minister, agreed they would in the January 27, 2022 emails between them, the GOC and LPC would "**consider the tactics of what [they] tie to O'Tool and the Conservatives at this tough moment for them**". On January 27, 2022, there was no "tough moment," but the GOC and LPC clearly created one over the weekend, and it was this lie, this narrative, that led to the invocation of the *Emergencies Act*.
120. As the Prime Minister said himself, he would "*not go anywhere near protests that have expressed hateful rhetoric, violence towards fellow citizens,*" even one that he knew did not, but pretended that it did. Prime Minister Trudeau is an actor and drama teacher by trade after all, accustomed to reading out scripts and lines fed to him, and his speech on January 31, 2022, was just that, a script that had been written on January 27, 2022, about a future event that had yet to occur, and that when it did, did so not by the protestors but by the Government of Canada's fabrication of events and false narrative and disinformation.
121. These are undeniable findings of fact that the Commission must make. They are not speculative or even require much of an inference, but at the least, they are clearly inferable at law. In *R. v.*

⁹⁴ Ibid.

Munoz,⁹⁵ Justice Ducharme of the Ontario Superior Court of Justice thoroughly canvassed the law of inferences, stating:

It is difficult, if not impossible, to define with any precision a bright line distinction between the drawing of reasonable inferences and mere speculation. However, in this regard I would adopt the language of Aldisert J. in *Tose v. First Pennsylvania Bank, N.A.*, 648 F.2d 879 (3rd Cir., 1981), cert. denied 454 U.S. 893, 102 S. Ct. 390 (1981), at p. 895:

The line between a reasonable inference that may permissibly be drawn by a jury from basic facts in evidence and an impermissible speculation is not drawn by judicial idiosyncrasies. The line is drawn by the laws of logic. If there is an experience of logical probability that an ultimate fact will follow a stated narrative or historical fact, then the jury is given the opportunity to draw a conclusion because there is a reasonable probability that the conclusion flows from the proven facts. As the Supreme Court has stated, "the essential requirement is that mere speculation be not allowed to do duty for probative facts after making due allowance for all reasonably possible inferences favoring the party whose case is attacked." *Galloway v. United States*, 319 U.S. 372, 395, 63 S. Ct. 1077, 1089, 87 L. Ed. 1458 (1943). [See Note 11 below]

However, it must be emphasized that this requirement of "logical probability" or "reasonable probability" does not mean that the only "reasonable" inferences that can be drawn are the most obvious or the most easily drawn. [See Note 12 below] This was explicitly rejected in *R. v. Katwaru*, supra, note 5, per Moldaver J.A. at C.C.C. pp. 329-330, O.R. p. 444: [page149]

[I]n the course of his instructions on the law relating to circumstantial evidence, the trial judge told the jury on numerous occasions that they could infer a fact from established facts but only if the inference flowed "easily and logically from [the] other established facts".

The appellant submits, correctly in my view, that the trial judge erred by inserting the word "easily" into the equation. **In order to infer a fact from established facts, all that is required is that the inference be reasonable and logical. The fact that an inference may flow less than easily does not mean that it cannot be drawn. To hold otherwise would lead to the untenable conclusion that a difficult inference could never be reasonable and logical.** [Emphasis added]

Rather, the requirement of reasonable or logical probability is meant to underscore that the drawing of inferences is not a process of subjective imagination, but rather is one of rational explication. Supposition or conjecture is no substitute for evidence and cannot be relied upon as the basis for a reasonably drawn inference. Therefore, it is not enough

⁹⁵ *R. v. Munoz*, [2006 CanLII 3269 \(ON SC\)](#).

simply to create a hypothetical narrative that, however speculative, could possibly link the primary fact or facts to the inference or inferences sought to be drawn. As Fairgrieve J. noted in *R. v. Ruiz*, [2000] O.J. No. 2713 (C.J.), at para. 3, "Simply because a possibility cannot be excluded does not necessarily mean that a reasonable trier could be justified in reaching such a conclusion on the evidence." The inference must be one that can be reasonably and logically drawn and, even where difficult, it cannot depend on speculation or conjecture, rather than evidence, to bridge any inferential gaps.⁹⁶

122. The law with respect to conspiracy is settled in civil matters. Traditional conspiracy requires proof, and a balance of probabilities, of four elements, not including damages:

- (i) There must be an agreement between two or more persons (entities) to injure;
- (i) The intent to injure must be the main purpose of the agreement;
- (i) The intention must be specific to the aggrieved party, either alone or as part of an identified group; and
- (i) The conspirators must have taken concrete action to achieve their intent.⁹⁷

123. In summary, at the least, an inference that a conspiracy occurred to misinform Canadians can be made out on a balance of probabilities due to the following:

- (a) On January 25, 2022, Mary-Liz Power, Issues and Policy Advisor to the Office of the Prime Minister, has a text message exchange with Alexander Cohen, Director of Communications to the Minister of Public Safety, where they planned, with the knowledge of Minister of Public Safety Mendicino, capitalizing on a growing narrative of the truckers arising from one youtube video posted on twitter by media personalities. This is proven by records of the DOJ.
- (b) On January 25, 2022, Alexander Cohen, Director of Communications to the Minister of Public Safety, put Marie Woolf of Global News onto the narrative at (a), and encouraged journalists to take a closer look at who the protesters in the Convoy were and where the three million dollars came from in the GoFundMe crowdfund that existed at that time. This is proven by records of the DOJ.
- (c) On January 25, 2022, Mary-Liz Power, Issues and Policy Advisor to the Office of the Prime Minister, has a text message exchange with Alexander Cohen, Director of Communications to the Minister of Public Safety, where they planned framing and labelling the protesters in the Convoy similar to what Prime Minister Trudeau and Minister of Emergency Preparedness Blair said of the January 6, 2021 attackers on United States Capitol. This is proven by records of the DOJ.

⁹⁶ Ibid, para. 30-31. See also the discussion by the Supreme Court of Canada in *R. v. Villaroman*, [2016 SCC 33](#).

⁹⁷ *Crowe Mackay & Company Ltd (formerly Mackay & Company Ltd) v Ferry*, [2019 ABQB 574](#), para. 22.

- (d) At 9:49 AM on January 27, 2022, Deputy Prime Minister Freeland, in consultation with political staffer Farees Nathoo, agreed to wait until after the weekend of January 29 and 30, 2022, regarding the protest in Ottawa to consider the tactics of what they would tie to Erin O’Tool, then leader of the Conservative Party of Canada, and the Conservative Party itself, at what was described at that date and time a “tough moment” for Erin O’Tool and the Conservative Party of Canada. This is proven by records of the DOJ.
- (e) At 11:00 AM on January 27, 2022, Zita Astravas, the Chief of Staff to Minister of Emergency Preparedness Blair, other staffers of the GOC and LPC, sought to build a narrative around the truckers described as “building a chain of doom” and did so with other political staffers of the GOC and LPC. This is proven by records of the DOJ.
- (f) On January 27, 2022, between 4:21 PM and 7:05 PM, Caroline Williams, Director of Parliamentary Affairs of the Privy Council, with the knowledge and assistance of Zita Astrava, Chief of Staff to Minister of Emergency Preparedness Blair, Annie Cullinan, Mary-Liz Power, and all other political staffers in the relevant email chain, built the following false narrative before the Convoy protesters arrived in Ottawa, that was to be used by the GOC and LPC:
- a. That there were threatening acts of violence and inciting of hatred by the Convoy protesters;
 - b. That what was being made up at a. above was unacceptable and did not reflect the views of the majority of Canadians; and
 - c. That the Government of Canada condemned the “hateful and violent rhetoric” of Convoy protesters in Ottawa in the strongest terms.
- This is proven by records of the DOJ.
- (g) On January 27, 2022, during televised remarks, Prime Minister Trudeau referred to the Convoy protesters coming to Ottawa as a “small fringe minority” and stated that those protesters hold “unacceptable views” before the Convoy protesters even arrive in Ottawa. This is proven in an Overview Report of the Commission.
- (h) On January 29, 2022, Conservative Party of Canada Member of Parliament, Michael Cooper, attends the protest in Ottawa. CBC News was interviewing Mr. Cooper on camera about the protest. As the interview was taking place, an unidentified Caucasian woman with blond hair wearing a bright pink snow suit, a black headband ear warmer with an upside down Canada flag on a wooden pole with a swastika drawn on it appears behind Mr. Cooper without his knowledge.

This is proven by video recorded and pictorial evidence of CBC. This would be a “tough moment” for Erin O’Tool and the Conservative Party of Canada.

- (i) In the afternoon of January 29, 2022, a group of people all wearing sunglasses, headwear/hats, winter outfits and red/white leis around their necks are in the protest. They are carrying several black flags that say “Fuck Trudeau,” and one man is carrying a Nazi Flag. Another man is seen wearing a military patterned pack back. Shawn Folks met the man carrying the Nazi Flag on January 29, 2022, providing the Commission with a statement stating the same on October 24, 2022. After hearing on November 21, 2022, Shawn Folks looked up Brian Fox on his own accord. Shawn Folks then swore and filed an affidavit in these proceedings indicating that man looked like the same person in the photo of Brian Fox on the Enterprise Canada website.
- (j) The purported protestor who attended the protest on January 29, 2022, fully covered, with camera men, wearing a balaclava, and carrying a Confederate Flag with a truck on it has not been identified. This is an undisputable fact, and we have no evidence of who the man wearing the balaclava is.
- (k) On January 29, 2022, David Chan took photos of this purported protestor who attended the protest on January 29, 2022, fully covered, wearing a balaclava, and carrying a Confederate Flag with a truck on it has not been identified. On January 29, 2022, David Chan then uploaded those photos to Getty Images and registered the rights to same in his own name. This is proven by pictorial and video evidence.
- (l) On January 30, 2022, Supriya Dwivedi, *“a GTA-based Liberal political commentator who works as senior counsel for Enterprise Canada”* published an article online via the Toronto Star titled: *“Conservative party’s embrace of trucker convoy is deeply troubling,”* where a photo of a purported protestor carrying a confederate flag taken by David Chan is first published online by media or a news outlet, outside Getty Images. Supriya Dwivedi then posts the article on her twitter on January 30, 2022, at 9:22 AM. This is proven by documentary evidence, including pictorial evidence and other reliable records. Another “tough moment” for Erin O’Tool and the Conservative Party of Canada, planned by the GOC and LPC on January 27, 2022.
- (m) On February 1, 2022, the Liberal Government and NDP brought four motions in the House of Commons. The unanimous consent motions introduced by the LPC, including to condemn the use of Nazi and antisemitic symbols, anti-Muslim rhetoric and the waving of racist flags. The fourth motion effectively called on the House to declare there was nothing peaceful about the protests in Ottawa, and it was harassing residents of Ottawa, particularly those who identify as LGBTQ. Another “tough moment” for Erin O’Tool and the Conservative Party of Canada, planned by the GOC and LPC on January 27, 2022.

- (n) Prime Minister Trudeau repeated the rhetoric and narrative that the GOC and LPC created between January 25, 2022, and January 27, 2022, before the Convoy protest arrived in Ottawa on January 28, 2022, in his January 31, 2022 speech and in response to the questions he was asked above right after.
- (o) On February 1, 2022, the Liberal Government and NDP brought four motions in the House of Commons. The unanimous consent motions introduced by the LPC included condemning the use of Nazi and antisemitic symbols, anti-Muslim rhetoric and the waving of racist flags. The fourth motion effectively called on the House to declare there is nothing peaceful about the protests in Ottawa, it was harassing residents of Ottawa, particularly those who identify as LGBTQ. The Conservative Party of Canada brought a cross-motion in response to condemn Blackface, which was not passed. It undebatable as to its occurrence and is a matter of Parliamentary record. Another “tough moment” for Erin O’Tool and the Conservative Party of Canada, planned by the GOC and LPC on January 27, 2022.

124. It can be unequivocally found from the above-established facts that a reasonable and logical inference can be drawn that there was a conspiracy to misinform Canadians with an intent to utilize that disinformation to harm the opposition, the Conservative Party of Canada, as well as the Convoy protestors who Freedom Corp. represents. The intent to injure the opposition, the Conservative Party of Canada, as well as the convoy Protestors, is clearly the main purpose of the agreement to create the misinformation narrative. Clear, concrete action was taken by the GOC and LPC in doing so. A traditional conspiracy is clearly made out on a balance of probabilities, if not beyond a reasonable doubt, and the Commission must find one occurred.
125. As much as the Commission has tried, it simply cannot avoid this evidence, issue and argument. The reasonably relevant standards mean that the gates will be opened quite wide in the admission of evidence, and the Commission has to accept said evidence into the record so long as it is reasonably relevant to the *“inquiry into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency,” “appropriateness and effectiveness of the measures taken under the Emergency Measures Regulations and the Emergency Economic Measures Order,” the “impact, role and sources of misinformation and disinformation”* including where the source is the GOC or the LPC; and the *“recommendations, as pertains to the matters examined”*. The evidence, argument, is on all fours with the mandate, it is simply that it hurts the GOC and LPC. To not admit the evidence would result in the Commission defining its own terms of reference under the guise of evidential rulings on admissibility and consequently to govern its jurisdiction, which is simply not permissible.
126. As to the Commission’s legal requirement to consider this evidence and argument, the majority of the Saskatchewan Court of Appeal in *Hitchings v. P.S.S. Professional Salon Services Inc.*⁹⁸ stated regarding Saskatchewan’s Human Rights Commission:

⁹⁸ *Hitchings v. P.S.S. Professional Salon Services Inc.* [2007 SKCA 149](#).

[A] tribunal cannot reasonably make a valid finding of fact on the basis of no evidence or irrelevant evidence. Nor can it reasonably make a valid finding of fact in disregard of relevant evidence or upon a mischaracterization of relevant evidence. To do so is to err in principle or, in other words, to commit an error of law. [Citations omitted] Nor can a tribunal reasonably make a valid finding of fact based on an unfounded or irrational inference of fact.

The all-important point is that to make a finding of fact on any of these bases is to error in principle by offending the implicit requirements of the statute, as well as the common law duty of procedural fairness perhaps. To suppose otherwise is to suppose the legislature intended, in conferring power upon a human rights tribunal to determine facts in controversy much as judges do, to empower the tribunal to engage in unfounded, unreasonable, or arbitrary fact-finding. The fact-finding process, or method by which facts in controversy are to be determined in this quasi-judicial setting, does not permit of this, either in its statutory or common law conception.⁹⁹

127. It is submitted the Commission must consider the herein argument and evidence, weight the evidence, and decide the argument in issue fairly and judiciously.

Some Point in February

128. At some point during the protests in February 2022, CSIS issued another small report on the protests in Ottawa. The report states:

Downtown Ottawa: mood was actually quite festive – not threatening to passerby
-Some criminal acts did occur – law enforcement¹⁰⁰

129. Regarding the flags, CSIS states:

Numerous flags/posts focussing on the above-messaging.

- Most posters/flags not violent – clearly anti Trudeau/vaccines – some with more violent undertones
- A very small number of more inflammatory flags
 - Confederate, Nazi, Swastika, III%, Punish (based on a 1974 Marvel comic book hero), Quebec Patriate flag.

A random flag is just a flag until the reason the person holding it explains why. Flags can have multiple meanings and are routinely co-opted by various groups/individuals. No way of connecting those viewed holding flags with any online content. The presence of the III% flag, for example, does NOT necessarily mean that members of the III% are in attendance.¹⁰¹

⁹⁹ Ibid, para. 68-69.

¹⁰⁰ CSIS Report, no date, titled “Freedom Convoy 2022”, at pg.1, TS.NSC.CAN.001.00000159_REL_0001.

¹⁰¹ Ibid.

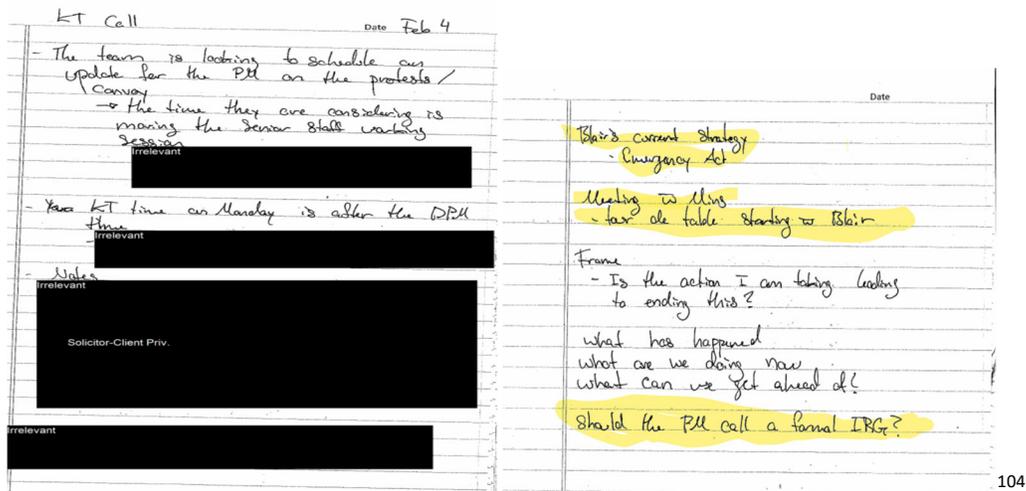
130. It is clear this report is in February, given the “flags” did not appear until the weekend and only came in issue with the GOC officially on or about January 31, 2022.
131. At some point during the protest in Ottawa, CSIS provided “CSIS Input” to Public Safety regarding “Convoy Key Messages.” It made clear that CSIS could not investigate the protests unless they gave rise to a s.2 threat under the *CSIS Act*.¹⁰²

February 3, 2022

132. On February 3, 2022, CSIS assessed that “*there were not indications that known IMVE [Ideological Motivated Violent Extremism] actors were planning to engage in violence*” and advised Cabinet of same.¹⁰³

February 4, 2022

133. On February 4, 2022, the Prime Minister meets with his Chief of Staff, Katie Telford, with the Officer Manager of Katie Telford, Sarah Jackson, taking notes. The meeting is primarily about the protests in Ottawa and outlining to the Prime Minister his schedule. The notes of Sarah Jackson from February 4, 2022, are as follows:



134. As noted in the notes, on February 4, 2022, it states

Blair's current strategy
-Emergency Act

135. As stated by the Prime Minister on January 31, 2022, in response to the questions from the media about meeting with the protestors, he refused. He refused because he had labelled them Nazi

¹⁰² Public Safety – Convoy Key Messages – CSIS Input, TS.NSC.CAN.001.00000160_REL_0001.

¹⁰³ CSIS Report, no date, titled Ideological Motivated Violent Extremism – CSIS Engagement 2017-2022, heading “Cabinet Advice”, at p.5, TS.NSC.CAN.001.00000206_REL_0001.

¹⁰⁴ Sarah Jackson Notes, SSM.CAN.00007719_REL.0001 – Highlighting Added.

symbolism supports, supporters of hate, the fringe and basically not real Canadians. The strategy was to invoke the *Emergencies Act* by February 4, 2022, and it was Minister of Emergency Preparedness Blair carrying out that strategy. The above notes indicate the Prime Minister was aware of it. The Prime Minister is present for the taking of the aforesaid notes, and it is noted that “*your KT time on Monday after the DPM*” time, being that the Prime Minister’s time with his Chief of Staff was after his time with Deputy Prime Minister Freeland. That finding is made out on a balance of probabilities and should be made.

136. As a result of interventions and misrepresentations by the Ottawa City Police and the Mayor of Ottawa, GoFundMe announces that it is cancelling the \$10 million Freedom Convoy fundraiser.

February 7, 2022

137. On February 7, 2022, Mayor of Ottawa, Jim Watson, called on the Federal Government to bring in a mediator to deal with the protestors and did so publicly. This, of course, would not work with the February 4, 2022, strategy to invoke the *Emergencies Act*. And it would not abide by the Prime Minister’s stance given to the public on January 31, 2022, that he had “*chosen to not go anywhere near protests that have expressed hateful rhetoric, violence towards fellow citizens, and a disrespect not just of science*”, after falsely labeling the Convoy protest in Ottawa as such.
138. Mayor Watson’s February 7, 2022, request irked Minister of Emergency Preparedness Blair. On February 7, 2022, at 9:30 AM, in response to an email from his Chief of Staff, Zita Astravas, where she provided him with the news article where Mayor Watson was calling on the Federal Government to bring in a mediator, Minister of Emergency Preparedness Bill Blair states:

I don’t know who is advising Mayor Watson but this is a bad mistake. He has conceded without even using the many tools available to the city.

His language is also problematic. This is not a labour dispute between interests. It’s an unlawful occupation.

As long as the city and its police force refuse to do anything, no progress will be possible.¹⁰⁵

February 8, 2022

139. A Confidential Meeting was held with the representatives of the Ottawa protestors, City of Ottawa Manager, and Ottawa Police Services, and an agreement was made to attempt to move trucks from certain key areas, including Rideau and Sussex, to Wellington Street.¹⁰⁶
140. In evidence, Superintendent Robert Drummond confirmed that Superintendent Mark Patterson, the Event Commander, did not give approval for the trucks to move from the Rideau and Sussex

¹⁰⁵ February 7, 2022 email from Bill Blair to Zita Astravas, SSM.NSC.CAN.00003070_REL.0001.

¹⁰⁶ Description from Freedom Convoy Timeline, HRF00001221 pages 15-16.

intersection to Wellington Street as was agreed between the protesters, the City of Ottawa and the Ottawa Police Services police liaisons.¹⁰⁷

February 10, 2022

141. An email from Michelle McCormack, Deputy Director (Commercial) for Global Affairs Canada, with the subject heading Re: Meeting with US Ambassador, states:

NGA's Commercial team doesn't have an off-the-shelf brief on the impact of the border protests and the economy. Not surprising, as it has just happened. And even after the initial concern that there would be an affect on cross-border trade when the new vaccination statistics come into place, the statistics that I saw somewhere, were that the affect was marginal.¹⁰⁸

142. An email from Julie Turcotte, Director General, Economic Analysis and Forecasting for Finance Canada, in a High Priority email, "Economic Impacts of Blockades at Border Crossings:" states:

Nick thinks we are too soft – made some changes to points upfront to emphasize the impacts that could become more sizable...¹⁰⁹

143. In a Call between President Biden and Prime Minister Trudeau, the two agreed that "the actions of the individuals who are obstructing travel and commerce between our two countries are having a significant direct impact on citizens' lives and livelihoods."¹¹⁰ The Prime Minister then said that he "promised quick action in encouraging the law."¹¹¹

February 11, 2022

144. In a text message from Minister Mendicino to Katie Telford, he says he had a call with Ford and that he said:

He would stand with the PM

I said the situation at ambassador bridge is serious. It's hurting working families. Killing jobs. We need Ontario there. He said he would tell Sylvia to participate at the tripartite table. So that was good.¹¹²

145. Rob Stewart, Deputy Minister for Public Safety, sends the OPP Engagement Proposal to RCMP Commissioner Lucki and Jody Thomas, National Security and Intelligence Advisor for the Privy Council Office ("PCO"). The email gets forwarded to Janice Charette, Clerk of the PCO, who states: "I would like to green light this today if possible – you will see why when you read it."¹¹³

¹⁰⁷ POEC Transcript Volume 10 pages 276-279.

¹⁰⁸ February 10, 2022 email from Michelle McCormack, PB.CAN.00000022_REL.0001.

¹⁰⁹ February 10, 2022 email from Julie Turcotte, SSM.CAN.00003778_REL.0001.

¹¹⁰ US Media roll-up "Freedom Convoy" Protest, PB.CAN.00000045_REL.0001.

¹¹¹ Ibid.

¹¹² February 11, 2022 text from Minister Mendicino to Katie Telford, SSM.NSC.CAN.00002951_REL.0001.

¹¹³ February 11, 2022 email from Rob Stewart to PCO office, SSM.CAN.NSC.00002859_REL.0001.

146. Dean French, acting as an intermediary between the Mayor of Ottawa and the Ottawa protestors, presents a plan to de-escalate the tensions in downtown residential areas. The plan proposes that trucks and protest vehicles will relocate over three days starting on February 14th, with some vehicles infilling Wellington Street and the remainder relocating to the staging areas that had been set up outside of Ottawa or returning home.
147. The board of directors of Freedom Corp. voted to approve the agreement with the Mayor on the evening of February 11th, 2022.

February 12, 2022

148. OPP together with the Ontario government negotiated a peaceful resolution at the Ambassador Bridge.
149. The deal between Ottawa protestors and the Mayor of Ottawa to remove trucks from residential areas and move trucks to Wellington Street and out of the city is formalized through the exchange of letters (the "**Ottawa Agreement**").¹¹⁴
150. Information about the Ottawa Agreement is distributed to the truckers and protestors in the afternoon and evening.
151. OPP Engagement Proposal tabled at IRG and Cabinet meeting. The Engagement Proposal reads (the "**Engagement Proposal**"):

Protected Advice to Ministers

Principles: Provide a venue for airing of grievances without compromising the government's position

Considerations: Engagement creates room for peaceful disbursement, before enforcement action is taken, and supports enforcement by evidencing other options have been tried.¹¹⁵

February 13, 2022

152. The Ottawa Agreement to remove trucks from residential areas and move trucks to Wellington Street and out of the city is made public by the Mayor.
153. Prime Minister and Cabinet were made aware of the Ottawa Agreement to remove trucks from residential areas and move trucks to Wellington Street made public at the Cabinet meeting.¹¹⁶
154. Prime Minister and Cabinet made aware of OPP Engagement Proposal:

¹¹⁴ February 12, 2022 letter from Mayor Watson to Tamara Lich, HRF00000107 and letter from Tamara Lich to Mayor Watson, HRF00000045.

¹¹⁵ February 12, 2022 Engagement Proposal to Ministers, SSM.CAN.00008763_REL.0001.

¹¹⁶ February 13, 2022 Cabinet Meeting Minutes, SSM.NSC.CAN.00000216_REL.0001.

Plan presented yesterday with Solely for approval. OPP/RCMP have approved. Will further present to ministers.¹¹⁷

155. Secret Cabinet Talking Points for the Minister of Public Safety for the IRG Meeting state:

While we have observed multiple messages of support for the convoy emanate from individuals believed to be outside of Canada, we are watching for signs of activities by any listed entities or foreign governments, and to date have not seen any.

Further, at this stage, we have no information to indicate that [redacted] state actors are involved with the Convoy protest or conducting any disinformation campaign against Canada in relation to the said protest.

The Director of CSIS and the Commissioner of the RCMP have assured me that any possible threats of foreign interference or ideologically motivated violent extremists are being closely monitored and addressed.¹¹⁸

156. "Enforcement actions are also occurring at other points of entry (POEs), including Coutts and Emerson."¹¹⁹

157. **Minister Mendicino confirms Windsor Bridge opened.**¹²⁰

158. Minister Lametti says:

I think we are on inexorable march to EA. Not enough happening in Windsor.

Redacted

I thought nws action, Bridge was still blocked¹²¹

159. Text message between Minister Lametti and Greg Fergus, Parliamentary Secretary to the Prime Minister and Parliamentary Secretary to the President of the Treasury Board:

Lametti: Our only other legal option is the emergencies act

Fergus: That is exactly where people are at. It is where I am at.

Lametti: And me. And Marco, but he is being a good soldier

¹¹⁷ The IRG Meeting Minutes Engagement Proposal mentioned, SSM.CAN.NSC.00002872_REL.0001.

¹¹⁸ February 13, 2022 Secret Cabinet Talking Points for the Minister of Public Safety for the IRG Meeting, TS.NSC.CAN.001.00000171_REL_0001.

¹¹⁹ February 13, 2022 Incidence Response Group Minutes, SSM.CAN.00000095_REL.0001.

¹²⁰ February 13, 2022 text message from Minister Mendicino to Katie Telford, SSM.CAN.00007751_REL.0001.

¹²¹ February 13, 2022 text message from Minister Lametti to Alex Steinhouse, SSM.CAN.00007861_REL.0001.

Fergus: Consensus from our call: 1. Use Emergencies Act, 2. Close down Coventry and Baseline basis of operations, 3. Put a solid RCMP or CAF spokesman before the press since we politicians have pissed away our credibility.¹²²

February 14, 2022

158. Mayor Watson and others confirmed that 103 protest vehicles cleared the downtown residential area with 23 trucks moving to Wellington Street and the remainder leaving to outside of Ottawa and never came back to the downtown area.¹²³
159. RCMP at Coutts planned to execute an operation plan in the morning to “dissemble” the blockade, which occurred “on the 14th and the morning of the 15th of February.”¹²⁴ **The Coutts border blockade was successfully managed by local RCMP before the *Emergencies Act* was invoked.**
160. Secret Memorandum for the Prime Minister “Invoking the Emergencies Act to End Nation-Wide Protests and Blockades” where the “PCO recommended the PM to approve declaring a public order emergency under the EA.”¹²⁵
161. **Notwithstanding that the Ottawa Agreement had been reached and successfully implemented, and the Engagement Proposal was made to the Government of Canada for approval, the GOC invoked the *Emergencies Act***
162. Banks, without notice, court order, or due process and under instructions from the GOC, unlawfully froze Canadian's bank accounts.¹²⁶

February 15, 2022

163. Police blocked protest vehicles from moving out of the downtown residential area to Wellington Street or out of Ottawa.¹²⁷
165. Superintendent Robert Drummond confirms that the Agreement would “shrink the footprint,” “relieve pressure on some of the residential areas” and it could have been the “first step towards a negotiated end to the demonstration.”¹²⁸

February 16, 2022

166. Police again blocked the protest vehicles from moving out of downtown despite many trucks and protest vehicles being ready to move.

¹²² February 13, 2022 text message between Minister Lametti and Greg Fergus, SSM.CAN.00008736_REL.0001.

¹²³ Interview Summary Mayor Jim Watson, City of Ottawa, WTS.00000018 and POEC Transcript Volume 4 page 274.

¹²⁴ POEC Transcript Volume 23, page 320, paras. 3-11 and page 322 paras. 22-28.

¹²⁵ February 14, 2022 Secret Memorandum for the Prime Minister, SSM.NSC.CAN.00003224_REL.0001.

¹²⁶ POEC Transcript Volume 15, pages 197-199.

¹²⁷ POEC Transcript Volume 3, page 160 at paras 2-9 and POEC Transcript Volume 4, pages 234-235.

¹²⁸ POEC Transcript Volume 10, page 251, paras 4-16.

February 18, 2022, to February 20, 2022

167. Police authorities kicked, beat, arrested and charged peaceful and unarmed protestors.¹²⁹ In -20 degree weather, police authorities processed peaceful and unarmed protestors for over 2 hours, took them to the outskirts of the City of Ottawa and left them stranded without shelter, access to communications, transportation or other means.¹³⁰
168. Hundreds of Canadians had their bank accounts frozen, including those who made small donations and who were not involved in the protest. Further, not all bank accounts were unfrozen after the *Emergencies Act* was revoked. The impact of the freezing of bank accounts of Canadians is long-lasting, and far-reaching and has caused irreparable damage.¹³¹
169. On November 4, 2022, Commissioner Rouleau ruled that the use of force and violence used by the police forces in arresting protestors on February 18 and 19, 2022, was not relevant to the Commission's mandate and that rather it was 'anecdotal.'¹³² It is submitted that the police forces operated pursuant to arrangements made under the umbrella of the *Emergencies Act*, namely the Exclusion Zone and the authority to use force against the protestors because the *Emergencies Act* had deemed the lawful protest as prohibited. Therefore, the arrests and nature of the police operations in arresting, beating, detaining, and deporting protestors in Ottawa sits squarely within the '*the measures taken for dealing with the emergency*' portion of s63(1) of the *Emergencies Act*. And that those '*measures taken*' are to be read in as the '*special temporary measures*' which, as per the Preamble of the *Emergencies Act*, are subject to the *Charter*, 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.
170. In the final week of the factual hearing of the Commission, officials of the Government of Canada, namely Ministers, testified that the *Emergencies Act* measures taken were *Charter* compliant. It is submitted that they were not and, in fact, that instead, there were numerous violations of the *Charter* and International Human Rights Law. It was the intention of the Parliament in 1988 when passing the *Emergencies Act* Bill C-77 that any invocation would be *Charter* and human rights compliant: "passage of this bill will ensure an appropriate response to an emergency while assuring that the fundamental rights of Canadians are fully protected in emergencies."¹³³ Bill C-77 would not have become law, that is the *Emergencies Act*, without the guarantee that the *Emergencies Act* would be subject to the *Charter*.

¹²⁹ POEC Transcript Volume 17, page 96.

¹³⁰ POEC Transcript Volume 17, page 127.

¹³¹ POEC Transcript, Volume 15, pages 198-199; POEC Transcript, Volume 14, pages 120-125.

¹³² POEC Transcript, Volume 17, pages 87-88.

¹³³ Canada, Parliament, *House of Commons Debates*, 33rd Parl, 2nd Sess, Vol XII (25 April 1988) at 10812.

VII. Finding of Law and Findings of Mixed Fact and Law

171. Prior to the advent of the *Emergencies Act*, Canada’s federal emergency statute was the *War Measures Act*. The *War Measures Act* pre-dated the *Charter*, but the *Emergencies Act* does not. The *War Measures Act* did not provide for any standard that the GOC had to find to invoke it, but the *Emergencies Act* clearly does. The only check and balance into the invocation of the *War Measures Act* was a relatively minor review regarding compliance with the “emergency power” steaming from the preamble of s.91 of the *Constitution Act, 1867* regarding Peace, Order and Good Governance (“**POGG**”). All that was needed to invoke the *War Measures Act* was a rational basis for determining that there is an emergency, and the legislation was required to deal with it.¹³⁴ Its invocation was not subject to judicial review, nor was there a Commission to consider the circumstances around its invocation or if it was justified.
172. The *Emergencies Act* completely changed that. It brought in statutory requisites and statutory thresholds with origin in criminal statutes and the common law. This was in keeping with Canada’s evolution in 1982 from a country governed solely on the principles of Parliamentary Supremacy and Federalism to one of the dominant principles of Constitutional Supremacy.¹³⁵
173. Further, the use of the *War Measures Act*¹³⁶ throughout the time of its operation contributed to the *Emergencies Act* and its contents. The *War Measures Act* was passed in response to World War I on August 22, 1914, and immediately invoked. It was then invoked two more times. In particular, the *War Measures Act* was invoked on the following dates and for the following reasons:
- August 1914: World War I;
 - August 1939: World War II; and
 - October 1970: October Crisis/ Front de libération du Québec (“**FLQ**”) Crisis.
174. These 3 occasions of the invocation of the *War Measures Act* resulted in “lessons learned,” public outcry and court challenges, all of which contributed to what would become the *Emergencies Act*.
175. The legislative history of both the *CSIS Act* and the *Emergencies Act* are inseparable. This is particularly so due to the GOC’s *ex post facto* misguided argument that somehow s.2 of the *CSIS Act* has a different meaning in its adoption by reference in the *Emergencies Act*. The *CSIS Act* was passed first in time, and shortly thereafter, the *Emergencies Act* was passed, adopting s.2 of the *CSIS Act* by reference. In the Hansard, regarding the second reading of the bill that would become the *Emergencies Act*, the Hon. Perrin Beatty, then Minister of Defence, stated of the adoption of s.2 of the *CSIS Act* in the *Emergencies Act*:

¹³⁴ *Anti-Inflation Reference* [1976] 2 SCR 373.

¹³⁵ *Law society of Upper Canada v. Skapinker*, 1984 CanLII 3 (SCC), [1984] 1 SCR 357.

¹³⁶ *War Measures Act*, R.S.C. 1927, c. 206.

Likewise, it has been said that probably the most contentious clause in this Bill is the one that deals with public order emergencies. This the type of situation which gave rise to the use of the War Measures Act in 1970. This clause takes definition of threat from the *Canadian Security and Intelligence Service Act*. This fact alone should make us very cautious because of the difficulties already encountered with CSIS in determining what is subversion and what is legitimate dissent. **I would remind Members of this House that the definition of “threats to the security of Canada” received exhaustive scrutiny by Parliament in 1983 during deliberations on the CSIS Act. The language in the definition has, therefore, already received Parliament’s blessing.**¹³⁷ [Emphasis added]

176. Quite clearly, Parliament’s intent is to have s.2 of the *CSIS Act* adopted in the *Emergencies Act* to mean exactly what it does in the *CSIS Act* itself. General statutory interpretation also supports this. At s.16 of the *Emergencies Act*, it states:

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;

threats to the security of Canada has the **meaning assigned by section 2** of the Canadian Security Intelligence Service Act.

177. In s.2 of the *CSIS Act*, prior to listing the four recognized threats, it states, “*threats to the security of Canada* **means...**”. When a statutory definition states the phrase to be defined, then states it “**means**” what follows, it cannot mean anything else at all, and the list following the word “means” in s.2 of the *CSIS Act* is exhaustive in the *Emergencies Act* as well, as it has “*the meaning assigned by*” s.2 of the *CSIS Act*.¹³⁸ Both s.16 of the *Emergencies Act* and s.2 of the *CSIS Act* are clear. Entertaining the GOC argument, let's assume there was somehow a debate as to s.2 of the *CSIS Act* being capable of having a second meaning that is more “broad,” as the GOC asserts. The fact is that the *Emergencies Act* is a statute that, upon its invocation, is aimed at depriving liberty and privacy rights, as happened here. It has long been a principle of statutory interpretation that where “*Legislation that invades privacy or takes away rights should be interpreted strictly – unless other, more compelling considerations suggest otherwise.*”¹³⁹ As stated by the Supreme Court of Canada in *Marcotte v. Deputy Attorney General (Canada) et al.*¹⁴⁰ regarding ambiguity in a statute that effects liberty:

No authority is needed for the proposition that if real ambiguities are found, or doubts of substance arise, in the construction and application of a statute affecting the liberty of a

¹³⁷ House of Commons Debate (Hansard), November 16, 1987, Second Session – Thirty-Third Parliament 36 Elizabeth II, Volume IX, 1987, at p. 100810.

¹³⁸ *Yellow Cab Ltd. v. Board of Industrial Relations et al.*, [1980] 2 SCR 761, para. 12: “It is significant that the Act employs the word “means” in this definition and not the word “includes” and it follows, in my view, that the definition is to be construed as being exhaustive and that in so far as the Board adopted common law principles defining “employer” which were at variance with the language of the section, there was an error of law”. See also Pierre Andre Cote, *The Interpretation of Legislation in Canada*, 2nd ed (Toronto: Yvon Blais .Inc, 1982), p. 57.

¹³⁹ Ruth Sullivan, *The Construction of Statutes*, 6th Ed (Markham: LexisNexis, 2014), adopted, para. 15.23, adopted in *Hans v. STU*, 2016 NBQB 49, para. 22, *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2021 ABQB 2, para. 26; and *R. v. Lux* 2012 SKCA 129, para. 22.

¹⁴⁰ *Marcotte v. Deputy Attorney General (Canada) et al.*, [1976] 1 S.C.R. 108.

subject, then that statute should be applied in such a manner as to favour the person against whom it is sought to be enforced. If one is to be incarcerated, one should at least know that some Act of Parliament requires it in express terms, and not, at most, by implication.

178. Therefore, the Government of Canada's argument that s.2 of the *CSIS Act*, as adopted in the *Emergencies Act*, is "more broad" than in s.2 of the *CSIS Act* itself is without merit.
179. Now, assuming there was an ambiguity in the *Emergencies Act* regarding a s.2 *CSIS Act* threat, which there is not, s.2 of the *CSIS Act* as adopted in the *Emergencies Act*, has to be read in conjunction with the relevant provisions in the *Emergencies Act*. At s.3(a) of the *Emergencies Act*, it states that a national emergency is on that "seriously endangers the lives, health or safety of Canadians", unless the emergency at issue is one that relates to "sovereignty, security and territorial integrity of Canada," which is clearly not at issue here. Hypothetically, if a "threat or use of acts of serious violence against persons or property" were proven, that threat still must "seriously endanger the lives, health or safety of Canadians", even if it's a threat to property.
180. What does "lives, health and safety" in s.3(a) mean? It is submitted it could have no more scope than s.7 of the *Charter* regarding "life, liberty and security of a person", and therefore like s.7 of the *Charter*, does not apply to any form of economic health or economic safety, as s.7 of the *Charter* does not a guarantee financial prosperity or economic security.¹⁴¹ It protects no economic rights, no economic security, and no property rights.¹⁴² How, then, could a regular statute with more restrictive wording than s.7 of the *Charter*, like s.3(a) of the *Emergencies Act*, have any applicability to an economic emergency when s.7 of the *Charter* cannot? It is submitted it cannot.
181. Furthermore, it is generally impermissible for the GOC, or any government, to infringe upon *Charter* rights on the basis of economic or budgetary constraints. This is so "budgetary considerations in and of themselves cannot normally" justify breaching a *Charter* right, as "there are always budgetary constraints and there are always other pressing government priorities".¹⁴³ Further, as the *Charter* does not protect economic security or economic liberty, it's submitted a threat to economic interests or economic security of Canada cannot play any role in deciding to limit a *Charter* right, such as being free from having your bank account frozen or seized without due process in *prima facie* violation of s.8 of the *Charter* protection against unreasonable a search and seizure, particularly without a warrant.
182. This is not to say that if there were an actual threat, and the GOC could meet the test to justify the invocation, which is simply not possible here, the GOC could not pass measures that go to economic security as they did during the invocation of the *War Measures Act* during the great wars regarding

¹⁴¹ *Real Estate Strategies Group Inc v Prairie Communities Corp*, [2016 ABCA 286](#), para. 12.

¹⁴² *Olympia Interiors Ltd. v. R.* [1999] F.C.J. No. 643 (Fed. Ct.), para. 88, affirmed [1999] F.C.J. No. 1474.

¹⁴³ *Newfoundland (Treasury Board) v. N.A.P.E.* [2004 SCC 66](#), para. 71 and para. 72.

residential housing rental caps.¹⁴⁴ However, a threat (or war) would be required completely independent of any economic issue that allowed the invocation. Therefore, it is submitted:

- a. The GOC cannot invoke a public order emergency on the basis of an economic emergency, as to do so is not authorized by the *Emergencies Act*, nor would it be constitutionally compliant to limit *Charter* rights by such an invocation on the basis of economic issues; and
- b. If however, there does actually exist a public order emergency that threatens the lives, health and safety of Canadian, and in effect puts their life, liberty and security of a person at risk, then and only then can the GOC pass economic measures following a declaration and in relation to that risk.

183. It is submitted that on the above analysis, the Commission must reject the Government of Canada's "broad view" of s.2 of the *CSIS Act*, whatever that view may be.

184. In assessing reasonable grounds, the Commission must consider what the GOC subjectively believed and what is objectively reasonable. The existence of reasonable grounds entails both an objective and a subjective component, requiring the GOC to subjectively have an honest belief there is a public order emergency under the *Emergencies Act*, but also objectively, there must exist reasonable grounds for this belief.¹⁴⁵

185. Prime Minister Trudeau was wrong when he testified that the threshold for invoking the *Emergencies Act* is based on "opinion".¹⁴⁶ In fact, during the Parliamentary Debates of the then Bill C-77, *Emergencies Act*, the wording 'opinion' was specifically replaced with 'reasonable grounds' the rational being:

...judgements made about the necessity for exceptional measures must now be based on "reasonable grounds" rather than the unqualified opinion of the Governor in Council. This change means that all important decisions by the Governor in Council relating to the invocation and use of the emergency power will be challengeable in courts [...] accountability of the Governor in Council [is] inherent in this new wording.¹⁴⁷

186. The hierarchy of the standards of proof arising from the Constitution of Canada, common law, and statute were best articulated by the majority of the Manitoba Court of Appeal in *The Director of Criminal Property and Forfeiture v. Ramdath et al*¹⁴⁸ where they stated:

A standard of proof is a test that sets out the level of certainty required to establish proof in a legal proceeding. There is a spectrum of standards of proof that arises either from

¹⁴⁴ See *Anderson (Plaintiff) Respondent v. Lacey and Lacey (Defendants) Appellants* 1948 CarswellMan 38 (Man. C.A.).

¹⁴⁵ *R. v. Bernshaw*, [1995] 1 SCR 254, para. 48.

¹⁴⁶ POEC Transcript, Volume 31, page 50.

¹⁴⁷ Canada, Parliament, *House of Commons Debates*, 33rd Parl, 2nd Sess, Vol XII (25 April 1988) at 14765-6.

¹⁴⁸ *The Director of Criminal Property and Forfeiture v. Ramdath et al*, 2021 MBCA 23.

legislation or from constitutional or common law. Standards of proof fall on a spectrum ranging from the most exacting and demanding standard to the least:

- 1) proof beyond a reasonable doubt;
- 2) proof on a balance of probabilities;
- 3) a *prima facie* case;
- 4) reasonable grounds to believe; and
- 5) reasonable suspicion.

While there are other standards of proof (e.g., a strong *prima facie* case or a serious question to be tried), these are the principal ones.¹⁴⁹

187. In *R. v. Nunes*,¹⁵⁰ Leibovich J. of the Ontario Superior Court of Justice stated in the context of search warrants:

Reasonable grounds to believe does not require proof on the balance of probabilities, much less proof beyond a reasonable doubt. It requires more than an experienced-based "hunch" or reasonable suspicion. The statutory and constitutional standard is one of "credibly-based probability"¹⁵¹

188. In the national security context, this is best described as the difference between the requisite standard of "reasonable suspicion" for CSIS to open up an investigation and "reasonable grounds" for CSIS to get a warrant. In describing that distinction under the *CSIS Act*, Justice S. Noël stated in *X (Re)*.¹⁵²

Understanding the distinction between "reasonable grounds to suspect" at section 12(1) and "reasonable grounds to believe" at section 21 proves crucial to properly appreciating the *CSIS Act* in regard to investigations and to obtaining warrants.

The coexistence of two distinct standards for the various stages of investigation was clearly intentional, as excerpts from committee work on Bill C-9 in 1984 show. Mr. Kaplan was the Solicitor General at the time and Mr. Ted Finn was the Executive Director of the Security Intelligence Transitional Group, Department of the Solicitor General. Mr. Finn then became the first Director of the civilian [CSIS](#) following the transition. The following are excerpts from their testimonies before the Standing Committee on Justice and Legal Affairs in regard to Bill C-9.

Mr. Kaplan: I feel that the standard provided in subclause 12.(1), that "reasonable grounds to be suspected of constituting threats to the security of Canada", is a significant threshold ensuring that non-threatening activities would not be put under surveillance and that this is the threshold appropriate for the activities of the security service. [...]

¹⁴⁹ *Ibid*, para. 14.

¹⁵⁰ *R. v. Nunes*, [2021 ONSC 1412](#) [OJ].

¹⁵¹ *Ibid*, para. 24.

¹⁵² *X (Re)*, [2016 FC 1105](#)

Mr. Finn: I would make just a brief comment if I may, Mr. Chairman, and say that in contrasting that test with the test contained in the warrant section, Clause 21, the language of subclause 21.(1) requires reasonable grounds to believe that the conduct constitutes a threat to the security of Canada.

Mr. Kaplan: So in other words, before intrusive techniques can be resorted to, the additional test of subclause 21.(1) has to be reached. [...]

(House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs*, 32nd Parl, 2nd Sess, No 28 (3 April, 1984) at p 10:41 to 10:43 (Chair: Claude-André Lachance).)¹⁵³

189. The question is whether the total of the evidence offered provided reasonable grounds on an objective standard. It is submitted that to consider reasonable grounds, the following is the law:

- (a) The test is whether or not what the GOC understood to be the grounds at the time were reasonable and probable grounds.
- (b) It is, therefore, in a sense subjective because what is looked into is the state of mind of the GOC, and what did they understand the circumstances to be.
- (c) It is also objective because the circumstances as understood by the GOC must be objectively examined.
- (d) It is not an objective test in the sense that we are to look over the shoulder of GOC to see whether or not the circumstances as they understood them were factual, but the grounds the GOC understood to be present must be weighed on the test of reasonableness and probability.
- (e) The evidence should be looked at as a whole, in a common sense, practical, non-technical way, and reasonable inferences may be drawn from the evidence.
- (f) It does not require proof on a balance of probabilities, but rather a credibly-based probability.
- (g) What matters is whether there was sufficient credible and reliable evidence that might reasonably be believed on the basis of which the invocation could – not would – have issued”.
- (h) In reviewing the invocation, the Commission should exclude erroneous information relied upon.¹⁵⁴

¹⁵³ Ibid.

¹⁵⁴ *R. v. Sadikov*, 2014 ONCA 72, para. 84; and *R. v. Morelli*, 2010 SCC 8, para. 41.

190. Turning now to the facts, on February 14, 2022, was there reasonable grounds the advocacy, protest or dissent in Ottawa and elsewhere was carried on in conjunction with the 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? It is submitted no. There is no evidence of this. There was no violence, let alone “serious violence”.
191. In fact, according to Superintendent Pat Morris, Ontario Provincial Police’s Provincial Operations Intelligence Bureau lead said the “lack of violent crime was shocking,” specifically he stated:

But we never -- that’s true, but **we never had intelligence of that, threats of those**, and I mean I’ve reviewed the arrest and the charges and stuff to try and ascertain how accurate we were and there was -- I would say, the lack of violent crime was shocking, the lack -- I mean even in the arrests and charges considering the whole thing in totality, I think there were ten charges for violent crimes, six of which were against police officers. [emphasis added]¹⁵⁵

192. Counsel for the GOC counsel attempted to establish that some credible threats were made, but again Superintendent Patrick Morris dismissed the allegation outright:

No, but if there was an actual threat, then there would have been an investigation, and if it was an actual threat, I assume the Ottawa Police Service would have laid a charge for uttering threats.¹⁵⁶

193. This was also corroborated by Former Chief Sloley, who under cross examination, was asked about whether there was a credible threat of violence, stated:

Mr. Peter Sloly: There was a wide array of social media posting. I don't know to what extent they were all identified, validated, and in one way or the other, cancelled as a threat, but I was aware of a wide variety of open source social media that made a wide range of threatening type behaviour that might touch on one or more of the points that you raise, sir.

Mr. Rob Kittredge: And do you consider any social media posts to be a credible threat?

Mr. Peter Sloly: On its own, no. It has to be validated and corroborated by other information.

Mr. Rob Kittredge: But you aren't aware of any social media post that was validated and corroborated?

Mr. Peter Sloly: Not to my awareness, sir, no.¹⁵⁷

194. There was no s.2 *CSIS Act* threat, period. A couple of tweets and emails from unknown persons to members of the GOC are simply insufficient.

¹⁵⁵ POEC Transcript Volume 5, page 287 paras. 18-25.

¹⁵⁶ POEC Transcript Volume 5, page 288 paras. 13-16.

¹⁵⁷ POEC Transcript Volume 13, pages. 243-24.

195. From an objective view, when the Deputy Minister of Public Safety, the Director of CSIS, and the Commissioner of the RCMP tell Cabinet that there is no s.2 *CSIS Act* threat, how can the GOC invoke the *Emergencies Act*? Of course, the Deputy Minister of Public Safety, the Director of CSIS, and the Commissioner of the RCMP are not the deciders, but they are the provider of the information for the deciders. It appears that the Deputy Minister of Public Safety, the Director of CSIS, and the Commissioner of the RCMP did not provide the GOC evidence to justify the invocation, which it is submitted is quite odd as where else would they get it from, twitter?
196. There was zero evidence that the protestors *seriously endangered the lives, health or safety of Canadians*, which is what is required to invoke the *Emergencies Act*. Nor was anything *of such proportions or nature as to exceed the capacity or authority of a province to deal with*", and no provincial government called for the invocation.
197. Given the above, the question that remained outstanding throughout the inquiry is why the GOC, with all its resources and power, could not, and would not, engage with its citizens and why were they so afraid to do so?

VIII. Conclusion

198. This inquiry was more than just about looking into the circumstances that led to the government's decision to invoke the *Emergencies Act*. On the first day of this Public Order Emergency Inquiry, Commissioner Rouleau said that "uncovering the truth is an important goal. When difficult events occur that impact the lives of Canadians, the public has a right to know what happened."
199. As stated by the then Honourable Member of the New Democratic Party, Mr. Derek Blackburn, during the House of Commons Debates in 1988 on the third reading of the *Emergencies Act*: "...we have at this stage, a much better Bill than that which was introduced for first reading in the House, Bill C-77, in its final form, is a Bill that is certainly acceptable to the majority of Canadians [...] Finally, Canadians **will not be kept in the dark after the emergency is over** [...] Any Government that abuses the emergency powers will certainly be made to pay the political price." [emphasis added].¹⁵⁸
200. Canadians deserve to know the truth, but the law also demands it. It is clear that the inquiry was not meant to be an adversarial proceeding. However, the Commission's actions made it into one by failing or refusing to carry out their duty to obtain unredacted records where the redactions had no legal basis in law. It has already been raised in the Parliamentary committee of inquiry that these redactions were not justified, though Parliamentarians have laid blame on the Government of Canada and not the Commission.
201. As stated by the Honourable Stephen Goudge in his text on Commissions of Inquiry: "When the co-operative approach proves fruitless, Commissioners must take steps to enforce orders for production. ... A commission of inquiry may (and should) conduct most of its search for evidence prior to the public hearing. The more thorough the preparation, the more focused and efficient the hearing can be. However, inquiries must take pains to ensure that information obtained before and

¹⁵⁸ Canada, Parliament, *House of Commons Debates*, 33rd Parl, 2nd Sess, Vol XII (25 April 1988) at 14768.

after the public hearing is shared with all affected participants; otherwise, it seriously discredits the process if significant additional information comes before the inquiry outside the hearing.”¹⁵⁹

202. This is what the law requires. If the Commission will not follow the law, and not ensure a transparent process, the Commission has no credibility in the public’s eyes. It is not for the Commission to protect politicians and state actors in Ottawa from potential embarrassment but to ensure a fair and open process aimed at getting at the truth.

¹⁵⁹ Goudge, Stephen and MacIvor, Heather, *Commissions of Inquiry*, (Toronto: LexisNexis Canada, 2019) at pages 206 and 231.