



## PUBLIC ORDER EMERGENCY COMMISSION

### RULES OF PRACTICE AND PROCEDURE (REVISED SEPTEMBER 23, 2022)

#### **Introduction**

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 The order was in effect until it was revoked on February 23, 2022.

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

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

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

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

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

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

These Rules of Practice and Procedure (the “Rules”) apply to the conduct of the Inquiry and are designed to guide the Commission’s public proceedings and the fulfilment of the Commission’s mandate.

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



## RULES OF PRACTICE AND PROCEDURE

### General

1. These Rules apply to the Public Order Emergency Commission, established under the Act and pursuant to the Terms of Reference.
2. Subject to the Terms of Reference and the Act, the conduct of, and procedure to be followed at, the Inquiry is under the control and at the discretion of the Honourable Paul S. Rouleau (the “Commissioner”).
3. The Commissioner may amend, supplement or vary these Rules or dispense with compliance with them as he deems necessary to ensure that the Inquiry is complete, fair and timely.
4. The Commissioner may make such orders or give such directions as he considers proper to maintain order and to prevent the abuse of the Commission’s process.
5. In the computation of time under these Rules, except where a contrary intention appears,
  - a. where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if the words “at least” are used;
  - b. where a period of seven days or less is prescribed, holidays shall not be counted; and
  - c. where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.
6. For the purpose of these Rules, the Commissioner will have discretion to determine what constitutes “reasonable notice” or “at the earliest opportunity” in all of the circumstances.
7. All Parties and their legal representatives are bound by the Rules of Practice and Procedure. They may raise any issues of non-compliance with the Commissioner, if unresolved in consultation with Commission counsel. Witnesses and attendees are bound by the Rules of Practice and Procedure, to the extent applicable.
8. The Commissioner shall deal with a breach of these Rules as he sees fit including, but not restricted to, revoking the standing of a Party, and imposing restrictions on the further participation in or attendance at (including exclusion from) the hearings by any Party, legal representative, individual, or member of the media.
9. In these Rules,
  - “holiday” refers to Saturday; Sunday; New Year’s Day; Good Friday; Easter



Monday; Christmas Day; the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning Sovereign; Victoria Day; Canada Day; the first Monday in September, designated Labour Day; National Day for Truth and Reconciliation, which is observed on September 30; Remembrance Day; and any day appointed by proclamation to be observed as a day of general prayer or mourning or day of public rejoicing or thanksgiving;

- “persons” refers to individuals, organizations, governments, agencies, institutions, associations or any other entity;
- “Party” refers to a person who has been granted standing to participate in the Commission pursuant to the Rules of Standing and Funding; and
- “documents” is intended to have a broad meaning, and includes all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, social media content, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device.

## Guiding Principles

10. The Commission conducts its work in accordance with five guiding principles (the “Guiding Principles”). The conduct of the Public Hearings and these Rules are informed by the following Guiding Principles:
  - **Proportionality:** The Commission will allocate investigative and hearing time in proportion to the importance and relevance of the issue to the Commission’s mandate and the time available to fulfill that mandate so as to ensure that all relevant issues are fully addressed and reported on;
  - **Transparency:** The Commission proceedings and processes must be as open and available to the public as is reasonably possible, consistent with the requirements of national security and other applicable confidentiality and privileges;
  - **Fairness:** The Commission must balance the interests of the public to be informed with the rights of those involved to be treated fairly;
  - **Timeliness:** The Commission must proceed in a timely fashion to engender public confidence and ensure that its work remains relevant; and
  - **Expedition:** The Commission is operating under a strict statutory deadline and must conduct its work accordingly.
11. Parties and their legal representatives, as well as those otherwise taking part in the



Public Hearings shall conduct themselves, and discharge their responsibilities under the Rules, in accordance with the Guiding Principles.

### **Investigation**

12. The Inquiry will commence with a preliminary investigation by Commission counsel. The goal of the investigation is, in part, to identify the core or background facts that will form the basis of Overview Reports, as described below, and to identify witnesses.
13. The investigation will consist primarily of document review, engagement with interested persons, and interviews by Commission counsel and staff.

### **Document Production**

14. Subject to Rules 15, 16 and 20, within 10 days of receiving a summons or being granted standing, any Party or recipient of a summons by the Commission must produce copies of all documents in their possession or under their control relevant to the subject-matter of the Inquiry.
15. The Commission may request from a Party or require from a recipient of a summons to produce only certain categories or types of documents. In that case, the Party or summons recipient shall only provide the Commission with the categories or types of documents specifically requested, and these shall be organized and provided in batches according to document category or type, as set out in the Commission's request. The Party or recipient of a summons shall comply with the Commission's production request within 10 days.
16. The Commission may require a Party or recipient of a summons to first provide a list of categories or types of documents in that person's possession or control relevant to the subject-matter of the Inquiry prior to producing any documents. The Commission may then request some or all of the categories or types of documents for production. The Party or summons recipient shall only provide the Commission with the categories or types of documents specifically requested, and these shall be organized and provided in batches according to document category or type, as set out in the Commission's request. Where a Party or a recipient of a summons is required to first provide a list as set out above, it shall be produced within 5 days. The documents themselves outlined in the Commission's subsequent request shall be produced within 5 days of the request.
17. At the earliest opportunity, each Party or summons recipient must certify in writing that its document production obligations, as outlined in these Rules, have been complied with. If the Party or summons recipient is an organization, the person with authority to certify on behalf of the organization must certify in writing that the organization has complied with its document production obligations, as outlined in these Rules. Document production is an ongoing obligation. If additional documents are discovered or obtained subsequent to initial production, they must be disclosed as soon as possible after they are discovered or obtained.
18. Upon the request of Commission counsel, Parties and summons recipients shall



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

19. Production to the Commission will not be treated as a waiver of any claim to privilege that a Party may wish to assert.
20. Privileges and immunities under the *Canada Evidence Act* are subject to provisions addressed later in these Rules. In all other instances in which a Party or summons recipient objects to the production of any document, or part thereof, or to disclosure to Parties of any document, or part thereof, on the grounds of privilege, the following procedures will apply:
  - a. The Party or summons recipient shall deliver to Commission counsel a list setting out pertinent details of the document(s), or part thereof, over which claims for privilege are being asserted. This shall include the nature of the privilege, the date, author, recipient(s) and a brief description of the document(s), and may include additional material, such as an affidavit, to support its claims;
  - b. Commission counsel shall review the list and determine whether they intend to seek access to the information over which privilege is claimed;
  - c. If Commission counsel are not prepared to recommend to the Commissioner that he accept the claim for privilege, the list and any further material filed by the Party or summons recipient, including submissions, shall, if the Party claiming privilege consents, be submitted forthwith, together with written submissions on behalf of Commission counsel, to the Commissioner or, at the Commissioner's option, to another adjudicator designated by the Commissioner, for determination. If the Commissioner or designated adjudicator is unable to make a determination based on the record before them, they may require a copy of the disputed document(s) for inspection; and
  - d. If the claim for privilege is dismissed, the document(s) shall be produced to Commission counsel forthwith and, subject to relevance and any conditions imposed by the Commissioner or designated adjudicator, may be used by the Commission and Parties in the inquiry.
21. Except as agreed with Commission counsel, and subject to applicable privileges, documents shall be produced to the Commission in unredacted form. Persons producing documents will be given an opportunity to redact irrelevant personal information before the Commission shares those documents with Parties or the public.
- 21A Where a person producing a document has redacted personal information pursuant to Rule 21, and Commission counsel disagree that the information is irrelevant personal information, the following procedures will apply:
  - a. Commission counsel shall identify for the producing party the redaction or



- categories of redactions that it does not accept and direct them to produce a version of the document without that redaction or categories of redactions. Commission counsel may also explain the relevance of the redacted information;
- b. Within two days, the person producing the document shall either comply with the direction of Commission counsel by producing a new version of the document with the redactions identified by Commission counsel removed or else inform Commission counsel that they intend to challenge Commission Counsel's direction before the Commissioner
  - c. A party seeking to challenge a direction of Commission counsel shall, within three days of informing Commission counsel of this, bring an application to the Commissioner for an order under Rule 106(a) to redact irrelevant personal information in the document. The requirement under rules 72 and 73 for Parties to be provided with copies of applications and to have the right to respond do not apply to an application under this rule;
  - d. The application shall include both a redacted and unredacted version of the document at issue and, where the producing party is aware of it, the contact information of the person whose personal information is implicated by the redactions, or their counsel;
  - e. The Commissioner may notify a third-party of the application and permit them to file submissions;
  - f. The application shall be heard in writing unless the Commissioner directs otherwise;
  - g. With the agreement of the producing party, the application may be heard and determined by another adjudicator designated by the Commissioner.
- 21B A Party may bring an application to challenge a redaction to a document that has been made on the basis of irrelevant personal information. Rules 72 and 73 shall not apply to such an application unless the Commissioner directs otherwise. On receipt of an application, the Commissioner may make directions as to how the application shall be determined. The Commissioner may summarily dismiss an application under this rule if he is satisfied that redacted information is clearly irrelevant personal information.
22. Documents received from a Party or any other organization or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude Commission counsel from producing a document to a proposed witness prior to the witness giving his or her testimony, as part of the investigation being conducted, or pursuant to Rules 65 and 66, all subject to National Security Confidentiality, Specified Public Interest Immunity, Personal Confidentiality and any unresolved privilege claims.
23. Subject to National Security Confidentiality and Specified Public Interest



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

24. Legal representatives are entitled to provide those documents or information to their clients only on terms consistent with the undertakings given, and after the clients have entered into the written Confidentiality Undertaking at Appendix “B” to the same effect.
25. Subject to National Security Confidentiality and Specified Public Interest Immunity, Parties and witnesses who are unrepresented will be provided with documents and information, including statements of anticipated evidence, only upon entering into the written Confidentiality Undertaking at Appendix “C” to these Rules.
26. Each person who has entered into a written undertaking in the form set out at Appendix “A”, Appendix “B” or Appendix “C” shall comply with its terms. Failure to do so will be a breach of an order of the Commission and of these Rules.
27. These undertakings will be of no force regarding any document or information once it has become an exhibit. The Commissioner may, upon application, release any Party in whole or in part from the provisions of the undertaking in respect of any particular document or other information.
- 27A If a party believes that a document that has been shared with them pursuant to these rules contains either privileged information or irrelevant personal information that they believe should be redacted, they shall notify Commission counsel immediately. The Commissioner may make directions on how to address this issue, including but not limited to directing the notifying party to comply with the procedures set out in Rules 20 or 21A. A document that is subject to notice under this rule shall not be made public until the issue respecting privilege or personal information is resolved, unless the Commissioner directs otherwise.
28. The Commissioner may require documents provided to Parties, and all copies made, be returned to the Commission if not tendered in evidence. Alternatively, the Commission may require the destruction of those documents, and all copies made, such destruction to be proven by certificate of destruction. Any confidentiality undertaking or request for deletion provided for in these Rules is limited by any requirement to retain or disclose records and information as may be provided for by law.
29. The Commission may, at any time and at its discretion, request further disclosure from any Party or summons recipient and that request shall be complied with within the time specified by Commission counsel.

### **Witness Interviews**

30. Commission counsel may interview people who have information or documents relevant to the subject-matter of the Inquiry. People who are interviewed are



entitled, but not required, to have a legal representative present.

## Public Hearings

31. Public Hearings will be convened in Ottawa or elsewhere as the Commissioner may determine to address issues related to the Inquiry. Hearings may proceed virtually or in hybrid form, with details to follow.
32. The Commissioner will set the dates, hours and place of the Public Hearings.
33. The Commissioner may receive any evidence or information that he considers reliable and helpful in fulfilling his mandate whether or not such evidence or information might otherwise be admissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence at the Inquiry.
34. The Commission may rely on representative witnesses on behalf of institutions. A representative witness is typically a senior official of an institution, and/or an expert in the subject area and procedures, designated to appear on behalf of their institution.
35. Commission counsel may call witnesses or experts, who may, among other things, support, challenge, comment upon or supplement the Overview Reports described in Rules 41-45.
36. Parties may also propose witnesses or experts to be called to support, challenge, comment upon or supplement the Overview Reports in ways that are likely to significantly contribute to an understanding of the issues relevant to this Inquiry.
37. Evidence may be received at the Inquiry from one or more panels of expert witnesses.
38. Insofar as he needs to hear evidence, the Commissioner is committed to a process that is public to the greatest extent possible. However, at paragraph (a)(vi)(C), the Terms of Reference direct the Commissioner to take all steps necessary to prevent any disclosure of information to persons or bodies other than the Government of Canada that would be injurious to international relations, national defence or national security. In addition, at paragraph (a)(vi)(B), the Terms of Reference direct the Commissioner not to jeopardize any ongoing criminal investigation or proceeding or any other investigation. The procedure that will govern where *in camera* hearings may be necessary is addressed in the section on “Privileges and Immunities under the *Canada Evidence Act*”.
39. Applications may also be made for a grant of personal confidentiality. The procedure that will govern orders for a grant of personal confidentiality is addressed in the section on “Personal Confidentiality of Witnesses”.
40. Public Hearings will be webcast. A webcast of all Public Hearings will be posted to the Commission website and Public Hearings will be transcribed. Public Hearings will be accessible simultaneously in both official languages.





## Overview Reports

41. Commission counsel may prepare Overview Reports, which may contain summaries of core or background facts, together with attributed sources. The source documents may be appended to, and form part of, the Overview Reports. Overview Reports allow facts to be placed in evidence without requiring such core or background facts or relevant documents to be presented orally by a witness during a public hearing. Overview Reports may be presented by various methods, including audiovisual presentation. Overview Reports may include summaries or reproductions of a wide range of documents, including relevant statutory or regulatory provisions and frameworks, existing policies, procedures and practices, organizational charts and descriptions, chronologies, and any other information or documents within the definition of these Rules.
42. Commission counsel will provide an opportunity to the Parties, in advance of the filing of Overview Reports as evidence, to comment on the accuracy of the Overview Reports within a time specified by Commission counsel after consultation with the Parties, and Commission counsel may modify the Overview Reports in response.
43. The Overview Reports may be used to assist in identifying the issues that are relevant to this Inquiry, to make findings of fact and to enable recommendations to be made by the Commission.
44. Once final, Overview Reports can be entered into evidence without the necessity of being introduced into evidence through oral testimony of a witness.
45. After being entered into evidence, Overview Reports will be posted on the Commission website.

## Witness Evidence

46. Subject to applicable privileges and immunities, all Parties and persons shall cooperate fully with the Commission and shall make available all documents and witnesses relevant to the mandate of the Commission.
47. Witnesses who testify will give their evidence at a hearing under oath or upon affirmation, and may swear or affirm on an eagle feather.
48. Commission counsel may issue and serve a subpoena or summons upon each witness before he or she testifies. Witnesses may be called more than once.
49. Commission counsel and a witness or their legal representative may prepare an affidavit of the witness's evidence. A witness affidavit may include the witness's answers to written questions from Commission counsel. At the Commissioner's discretion, the affidavit can be admitted into evidence in place of part or all of the individual's oral testimony. ~~At the Commissioner's discretion, a witness's anticipated evidence statement or an interview summary may be admitted into evidence as part of the individual's oral testimony, if adopted by the witness as accurate.~~



50. At the Commissioner's discretion, all or part of a witness's interview transcript, a witness's interview summary or, if adopted by the witness as accurate, the statement of anticipated evidence may be admitted into evidence in lieu of that witness's oral evidence, ~~a statement of the witness's anticipated evidence or a witness interview summary~~. Parties may request that the witness be called for the purpose of cross-examination, however, the witness may not be cross-examined on the statement of anticipated evidence or their interview summary except with leave of the Commissioner, as provided in Rule 68. Commission counsel may also call the witness to testify, and may seek to supplement, ~~challenge~~ or have the witness comment upon the witness interview transcript, statement of anticipated evidence or interview summary.
51. At the request of Commission counsel, Parties may prepare Institutional Reports, which may be admitted into evidence if adopted by a representative witness as accurate and filed as evidence.
52. Witnesses who are not represented by the legal representative of a Party are entitled to have their own representative present while they testify, subject to National Security Confidentiality and Specified Public Interest Immunity. The legal representative for a witness will have standing for the purpose of that witness's testimony to make any objections considered appropriate and for other purposes set out in these Rules.
53. Parties are encouraged to advise Commission counsel of the names, addresses and telephone numbers of all witnesses they wish to have called and, if possible, to provide summaries of the information the witnesses may have.
54. If special arrangements are desired by a witness in order to facilitate their testimony, a request for accommodation shall be made to the Commission sufficiently in advance of the witness's scheduled appearance to reasonably facilitate such requests. While the Commission will make reasonable efforts to accommodate such requests, the Commissioner retains the ultimate discretion as to whether, and to what extent, such requests will be accommodated.

### **Rules of Examination**

55. In the ordinary course Commission counsel will call and question witnesses who testify at the Inquiry.
56. The legal representative for a Party may apply to the Commissioner to lead a particular witness's evidence in-chief. If the representative is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner. In addition, prior to that witness's evidence in chief, the witness's legal representative shall provide the Parties and Commission counsel with reasonable notice of the areas to be covered in the witness's anticipated evidence in chief and a list of the documents associated with that evidence.
57. Commission counsel have discretion to refuse to call or present evidence.



58. The order of examination in the ordinary course will be as follows:
- a. Commission counsel will lead the evidence from the witness. Except as otherwise directed by the Commissioner, Commission counsel are entitled to ask both leading and non-leading questions;
  - b. Parties will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination will be determined by the Parties and, if they are unable to reach agreement, by the Commissioner;
  - c. After cross-examinations, the legal representative for a witness may then examine the witness. Except as otherwise directed by the Commissioner, the legal representative for the witness may only ask non-leading questions;
  - d. Commission counsel will have the right to re-examine.
59. If a representative for a witness intends to adduce evidence in chief not adduced by Commission counsel, the representative will examine the witness immediately following Commission counsel, and then will have a right to re-examine the witness following questioning by the other Parties.
60. The Commissioner may direct any legal representative whose client shares a commonality of interest with the witness only to adduce evidence through non-leading questions.
61. After a witness has been sworn or affirmed at the commencement of giving evidence, no legal representative other than Commission counsel may speak to a witness about the evidence that he or she has given until the evidence of such witness is complete except with the permission of the Commissioner. Commission counsel may not speak to any witness about his or her evidence while the witness is being cross-examined by others but may speak to the witness after cross-examination and before any re-examination.
62. In keeping with the Commission's strict timeline and the principles of expedition and timeliness, the Commissioner will set time allocations for the conduct of examinations and cross-examinations.
63. When Commission counsel indicate that they have called the witnesses whom they intend to call in relation to a particular issue, a Party may then apply to the Commissioner for leave to call a witness whom the Party believes has evidence relevant to that issue. If the Commissioner is satisfied that the evidence of the witness should be received, Commission counsel shall call the witness, subject to Rules 55 and 56.
64. Subject to the Commissioner's discretion, Commission counsel may choose to call witnesses, whether on factual or policy issues, in panels, if doing so would not detract from the Commissioner's ability to make relevant findings of fact or policy recommendations.



## Use of Documents at Hearings

65. In advance of the testimony of a witness, Commission counsel shall provide the Parties, with reasonable notice, a list of the documents associated with the witness's anticipated evidence in chief. When possible, in advance of a witness's testimony, Commission counsel shall provide the Parties with an anticipated evidence statement, or a witness interview summary or affidavit.
66. Parties shall provide Commission counsel with any documents that they intend to file as exhibits or otherwise refer to during the hearings at the earliest opportunity, and in any event shall provide such documents to Commission counsel no later than two days before the document will be referred to or filed, other than those documents for which notice has previously been provided pursuant to Rule 65.
67. Before using a document for purposes of cross-examination, legal representatives shall provide a copy to the witness and to all Parties having an interest in the subject-matter of the proposed evidence not later than two days prior to the commencement of that witness's testimony.
68. Neither Parties nor Commission counsel will be entitled to cross-examine a witness on any "will-say statement" (anticipated evidence statement or witness interview summary) that may be provided except with leave of the Commissioner.
69. The Commissioner may grant the legal representative for a Party or witness leave to introduce a document to a witness at any point during the hearing upon such terms as are just and fair.
70. Commission counsel may introduce any document to a witness at any point during the hearing without the need for leave to do so.

## Applications

71. A person may apply to the Commissioner for an order by:
  1. Preparing an application in writing;
  2. Attaching to the application any supporting materials; and
  3. Delivering the application and supporting materials to the Commission by email at [parties@poec-cedu.gc.ca](mailto:parties@poec-cedu.gc.ca).
72. Unless the Commissioner otherwise directs, and subject to National Security Confidentiality and Specified Public Interest Immunity, the Commission shall promptly deliver the application and supporting materials to each other Party.
73. Parties are entitled to respond to an application if their grant of standing identifies them as having an interest in the subject matter of the application.
74. Commission counsel may provide the Commissioner with any submissions or materials Commission counsel consider relevant and necessary to the proper resolution of the application. Due to time constraints, if there is an oral hearing on the application, Commission counsel need not file responding materials prior to the



- hearing of the application but should, as much as is practicable, advise the Parties of Commission counsel's position on each application in advance of the hearing of the application.
75. The Commissioner will determine the schedule for the filing of submissions and materials and for the hearing of oral argument, if any. Applications will be dealt with primarily in writing.
  76. Commission counsel, and each Party authorized to do so, may make submissions to the Commissioner as permitted by the Commissioner.
  77. The Commissioner may make an order or direction based on the written material filed or, at his discretion, after hearing oral argument.
  78. Subject to any order from the Commissioner, submissions will be posted to the Commission website.
  79. All application materials shall be served by email.
  80. If a Party has a legal representative, service on the Party shall be by email to its legal representative. If a Party does not have a legal representative, service on the Party shall be by email to the Party's designated contact person.
  81. Application materials to be provided to, or served on, the Commission shall be delivered electronically no later than 8:00 p.m. Eastern Time on the specified date, to [parties@poec-cedu.gc.ca](mailto:parties@poec-cedu.gc.ca).

## **Privileges and Immunities under the *Canada Evidence Act***

### *Definitions*

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

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

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

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

### **(ii) National Security Confidentiality and Specified Public Interest Immunity**



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

*Production of Documents Raising Issues of NSC or SPII*

84. Without prejudice to claims of NSC or SPII, Government Parties or recipients of a summons or request for documents shall provide to the Commission a copy of all relevant documents without deletions or redactions, regardless of any NSC or SPII claims asserted, or to be asserted, by the Government.
85. Except if explicitly agreed with Commission counsel, in producing documents subject to an assertion of NSC or SPII, the Government shall identify the specific documents or portions of documents the Government believes are subject to NSC or SPII and shall provide an explanation for any such assertions.
86. The Commission expects the Government to take a considered, proportionate and reasonable approach in making assertions of NSC and SPII, consistent with the public interest in a transparent and thorough review of the circumstances that led to the declaration of a public order emergency.
87. Commission counsel or a designated counsel with clearance to access Top Secret information will review those documents (or portions thereof) identified as being subject to an assertion of NSC or SPII, and any explanations provided by the Government for the assertions.
88. Commission counsel will identify within the material provided by the Government, the documents and information it anticipates entering into evidence or disclosing to the Parties in advance of the hearings.
89. If appropriate, Commission counsel may provide the Government with proposed reconsideration requests, in respect of the assertions of NSC or SPII, to ensure sufficient information can be made available to the Parties to allow them to prepare and contribute in a meaningful way in the hearings.
90. When and if provided with a proposed reconsideration request, the Government will have 5 days to reassess its assertions of NSC or SPII and provide a redacted version of the documents over which it maintains a claim of NSC or SPII.
91. As an alternative to redaction, or if in the view of the Commissioner redaction fails to provide a sufficient body of publicly available evidence to permit meaningful public hearings, the Commission and the Government may work cooperatively and collaboratively to produce an agreed disclosable summary of the information in respect of which an NSC or SPII claim has been made. Commission counsel may prepare a disclosable summary for the consideration of the Government or request that the Government provide a disclosable summary of specified information. If Commission



counsel provides the Government with a proposed disclosable summary for consideration, the Government shall, within 5 days, reply either by concurring in the summary or by identifying and proposing disclosable summary wording for any NSC or SPII information that the Government assesses to be in the proposal. If Commission counsel requests that the Government prepare a disclosable summary of the information in question, the Government shall provide a proposal for the consideration of Commission counsel within 5 days.

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

#### *In Camera Hearings Regarding NSC or SPII Information*

93. *In camera* hearings to address assertions of NSC or SPII may be held, if and only as necessary, where discussion, assessments and reassessments of NSC or SPII claims, along with agreed summaries, do not produce a sufficient body of publicly available evidence to permit meaningful public hearings in relation to any issue relevant to the Commission's mandate.
94. The Commissioner may convene an *in camera* hearing in the absence of the Parties and their legal representatives:
- a. To consider the validity of claims of NSC or SPII where the Commissioner is concerned that the unredacted portions of the Government's documents, along with agreed summaries, are insufficient to enable meaningful public hearings to proceed in relation to a particular issue or factual question; or
  - b. To consider a request by the Government, or any other person, to have specific information received *in camera* and in the absence of the Parties and their legal representatives because of NSC or SPII and, if the request is granted, to receive that information, provided however that if the Commissioner, on receiving information pursuant to this Rule, determines that all or part of the information or a summary thereof should be disclosed to the public, he may so order.
95. The Government or the person seeking an *in camera* hearing in the absence of the Parties and their legal representatives shall bear the burden of establishing that it is necessary to have specific information received *in camera* and in the absence of parties and their legal representative because of NSC or SPII.
96. The Commissioner may appoint counsel with a background in security and intelligence and the requisite security clearance to act as an *amicus curiae* to appear in any Rule 94 hearing to make submissions and examine witnesses with respect to claims of NSC or SPII, or with respect to the request to have specific information received *in camera* and in the absence of the Parties and their legal representatives because of NSC or SPII.
97. Witnesses who provide evidence taken *in camera* and in the absence of the Parties and their legal representatives shall do so under oath or upon affirmation. Commission counsel or counsel appointed as *amicus curiae* will test the evidence heard *in camera* and in the absence of Parties and their legal representatives by examination in chief or by cross-examination if deemed appropriate.



98. Prior to attending a hearing in which information will be received *in camera* and in the absence of the Parties and their legal representatives because of an assertion of NSC or SPII, Commission counsel shall advise the Parties in general terms, of the type of the information and evidence that will be elicited at the *in camera* hearing. The Parties shall be invited to raise with Commission counsel specific areas for questioning. Commission counsel shall, following a hearing in which information was received *in camera* and in the absence of the Parties and their legal representative, advise Parties and their legal representatives whether those areas were covered. Commission counsel will consult with Government counsel as to the summary that is provided to the Parties before and after an *in camera* hearing.
99. Following an *in camera* hearing, the Commissioner shall provide his decision on any claims of NSC or SPII and shall provide reasons for that decision.
100. A decision issued pursuant to Rule 99 that rejects a claim of NSC in respect of information, or provides a public summary of information for which there was a claim of NSC, shall be given to the Government and shall constitute notice to the Government of the Commissioner's intention to disclose information in accordance with the terms of the decision, following which the Government shall decide whether or not to give notice to the Attorney General pursuant to section 38.01 of the *Canada Evidence Act* in respect of some or all of the information that would be disclosed as a result of the decision. If the Government objects to a decision issued pursuant to Rule 99 that rejects a claim of SPII, the Government shall provide certification to the Commission pursuant to section 37(1) of the *Canada Evidence Act*. In the case of decisions pertaining to either NSC or SPII, the Commissioner shall not disclose the information dealt with in the decision until a period of 10 days has elapsed after the decision is given to the Attorney General.

#### *NSC and SPII Information in the Commissioner's Report*

101. At the completion of all public hearings and *in camera* hearings, if any, the Commissioner will submit a report to the Governor in Council as directed in the Order in Council made on the basis of all evidence heard, including any evidence received during any *in camera* hearing. If the Final Report includes any information that has been designated as NSC or SPII information by the Government, the report shall not be made public until the Government is provided an opportunity for NSC and SPII information review. The Commissioner will inform the Governor in Council of the Government's position on the appropriateness of the disclosure of NSC and SPII information in the report.
102. If he considers it appropriate, the Commissioner will prepare a second, public version of the report containing only those findings of fact, conclusions and recommendations from the report referred to above in Rule 101 that, in the opinion of the Commissioner, will not disclose information that is subject to NSC or SPII.
103. If the Commissioner prepares a public version of the report it shall be provided to the Government 10 days in advance of the date on which it is delivered to the Governor in Council, which shall constitute notice to the Government of the Commissioner's intention to advise the Governor in Council that the public version of the report can be laid before Parliament and disclosed to the public without redaction.





104. If the Commissioner prepares a public version of the report and the Government gives the Attorney General notice pursuant to s. 38 of the *Canada Evidence Act*, or certifies pursuant to s. 37(1) of the *Canada Evidence Act*, with respect to any part thereof, the Government shall so advise the Commissioner and the public version of the report will be delivered to the Governor in Council with the identification of those parts of the report subject to the said s. 38 notice or s. 37 certification.

### **Personal Confidentiality of Witnesses**

105. In exceptional circumstances, a witness's personal private interests may require the Commissioner, in the exercise of his discretion, to deviate from the general principle that all information relating to that witness be disclosed to the public, either through testimony or through documents made available.
106. In the exercise of the Commissioner's discretion, he may, among other measures:
- a. Direct or permit the redaction of irrelevant personal information from otherwise public documents;
  - b. Direct that certain information be subject to a non-publication order, although otherwise contained in public documents;
  - c. Direct the extent to which such information should be referred to in testimony;
  - d. Direct that a witness not be identified in the public records and transcripts of the hearing except by non-identifying initials, and that the public transcripts and public documents be redacted to exclude any identifying details;
  - e. Permit a witness to swear an oath or affirm to tell the truth using non-identifying initials;
  - f. Use non-identifying initials and exclude any identifying details in his report; and
  - g. Hold an *in camera* hearing, as a last resort, in circumstances in which the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that hearings should be open to the public.
107. If the Commissioner has exercised his discretion pursuant to Rule 106d, no photographic or other reproduction of the witness that might lead to his or her identification shall be made at any time and there shall be no publication of information that might lead to the identification of the witness.
108. All media representatives shall be deemed to undertake to adhere to the rules respecting personal confidentiality as set out herein. A breach of these rules by a media representative shall be dealt with by the Commissioner as he sees fit.

### **Access to Evidence**

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



*camera* proceedings.

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



**APPENDIX “A”**

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

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

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

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

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

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

\_\_\_\_\_ Signature

\_\_\_\_\_ Witness

\_\_\_\_\_ Date

\_\_\_\_\_ Date



**APPENDIX “B”**

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

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

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

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

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

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

\_\_\_\_\_ Signature

\_\_\_\_\_ Witness

\_\_\_\_\_ Date

\_\_\_\_\_ Date



**APPENDIX “C”**

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

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

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

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

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

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

\_\_\_\_\_ Signature \_\_\_\_\_ Witness

\_\_\_\_\_ Date \_\_\_\_\_ Date