



Third Decision on Application to Compel Production of Unredacted Government of Canada Records

1. Freedom 2022 Human Rights and Freedoms not-for-profit corporation (“Freedom Corp.”), an organization that was granted joint standing with a group of convoy organizers in this Commission, brought an application on December 2, for relief under s. 4 of the *Inquiries Act*. Freedom Corp. requests orders that:

- a. all Government of Canada (“Canada”) records that are redacted on the basis of irrelevance be unredacted, and the unredacted records be produced to the parties;
- b. that all of Canada’s documents redacted on the basis of s. 39 of the *Canada Evidence Act* be produced unredacted where there is not a certificate from the Clerk of the Privy Council, and in particular, that the notes of Sarah Jackson be produced;
- c. that all of Canada’s documents redacted on the basis of solicitor-client privilege be produced unredacted, where there is no evidence “a lawyer was present,” and in particular, that the notes of Sarah Jackson be produced; and
- d. that the parties be permitted to rely on those unredacted records at (a), (b), and (c) in submissions, subject to Canada “successfully arguing that only redacted versions of same should be put into the public record on the basis of satisfying their onus at law.”

2. Commission Counsel circulated Freedom Corp.’s application to all parties and requested responding submissions by 5 p.m. on December 6.



3. The only submissions received were from Canada. Canada submits that the application should be denied for the following reasons:
 - a. the request for relief is out of time, as it comes after the close of the Commission's evidentiary phase;
 - b. the application seeks the production of an undefined number of Canada's documents, which Canada submits is contrary to the principle of proportionality; and
 - c. the legal basis for and propriety of the redactions to Sarah Jackson's notes (SSM.CAN.00007719) is *res judicata*, having been determined in the Commissioner's prior decisions dated November 22 ("First Redaction Decision") and December 1 ("Second Redaction Decision").
4. Freedom Corp. replied to Canada's submissions, and submits as follows:
 - a. that its application is not out of time because it was made during the evidentiary phase of the hearings and it has simply "renewed" its application for "reconsideration." Freedom Corp. also submits that the Commission retains jurisdiction under the *Inquiries Act*, even after the close of the evidentiary phase;
 - b. that on the issue of proportionality, it is the scope of Canada's redactions to its documents that is contrary to the principle of proportionality, and also contrary to the rule of law; and
 - c. that *res judicata* does not apply to Ms. Jackson's notes because (i) it does not apply to interlocutory procedural motions or orders, (ii) the prior



decisions were made without jurisdiction, and (iii) *res judicata* does not apply in circumstances where it would work an injustice, as here.

Background to the Application and Analysis

5. December 2 was the last day of the policy phase of the Commission's hearings, the factual phase having ended a week prior, on November 25.

6. As noted by Canada in its submissions, I previously ruled on certain redactions made by Canada in the First Redaction Decision, released on November 22, and the Second Redaction Decision, released on December 1. In the First Redaction Decision, I reviewed certain documents where redactions had been applied based on Cabinet confidence, irrelevance, and solicitor-client privilege. These documents included Sarah Jackson's notes. There is no basis for Freedom Corp. to again apply for the same relief in respect of the same document. I adopt the reasoning as expressed in the First Redaction Decision, in which I reviewed the redacted "irrelevant" information in Ms. Jackson's notes and concluded that this information was "entirely irrelevant" (para. 37).

7. More broadly, this application is Freedom Corp.'s third dealing with issues of irrelevance, and its second touching on issues of Cabinet confidence and solicitor-client privilege. It repeats the same or similar arguments as in prior applications, and seeks the same blanket relief that I declined to grant in the Second Redaction Decision.

8. I am not prepared to grant the blanket order requested, for the reasons set out in the First and Second Redaction Decisions, to which I add the following.

9. There is no basis to suggest that all redactions that Canada made are improper or were not made in good faith. In the absence of evidence to the contrary, this is a classic "fishing expedition" that is inconsistent with the Guiding Principles of the



Commission's Rules of Practice and Procedure, as set out in s. 10 of those Rules: proportionality, transparency, fairness, timeliness, and expedition. The order sought is neither proportionate nor fair.

10. Moreover, with respect to Ms. Jackson's notes, the order sought is also inconsistent with the First Redaction Decision, in which I ruled on all three bases for redaction in respect of that very document. I would dismiss this aspect of this application for that reason alone.

11. Freedom Corp.'s application states that the "oral sworn evidence" supports the relief sought in 1(b) and (c), above. However, this submission is made without reference to the transcripts or any specification of the evidence that is supposedly relevant to the relief sought. I cannot accept it.

[The timing of the Application](#)

12. I note once again that all parties were aware, prior to the hearings, that Canada had redacted documents. They were also aware of the basis for those redactions. Challenges to such redactions should have been made on a timely basis. Even then, it would be necessary for a party to specify the document(s) in issue and the basis for the challenge, so that parties could make appropriately tailored submissions and I could review the documents (with see-through redactions applied, if produced in that way to Commission Counsel) and determine the validity of the redaction.

13. The applicant has not tried to facilitate such a review on a timely basis. Other than identifying the notes of Sarah Jackson that have already been ruled on, the applicant has not identified any particular document or documents that are of concern. The applicant's blanket request is not reasonable, proportionate, or fair.



14. To be clear, I am satisfied that the production of all redacted documents in unredacted form is not required to fully investigate the matters relevant to the Commission's mandate. I have no doubt that based on the evidence adduced at the hearings, I will be able to provide the public with full and complete answers to the questions relevant to this Commission's mandate.

Disposition

15. For the reasons set out above, I would therefore dismiss Freedom Corp.'s application.

Signed

The Honourable Paul S. Rouleau
Commissioner

December 7, 2022