

SECRET

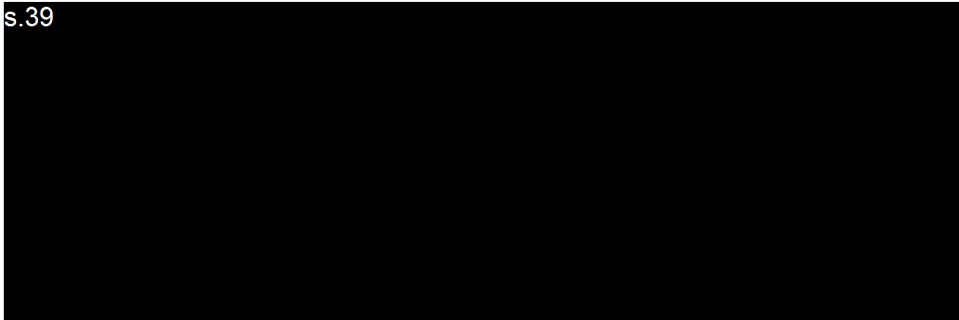
Confidence of the Queen's Privy Council

MEMORANDUM FOR THE PRIME MINISTER

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

(Decision Sought)

**SUMMARY**

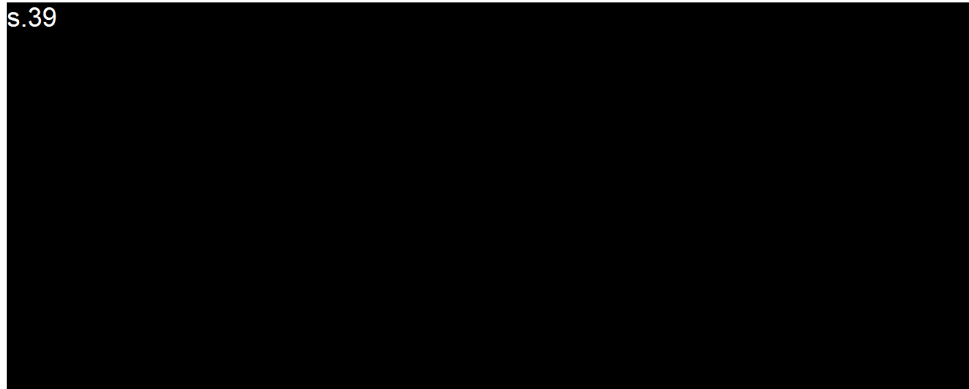
- s.39 
- The EA came into force in 1988, and is meant to be used as a measure of last resort. The Act authorizes action when one of four types of emergencies is declared – in this instance: a public order emergency which is an emergency that arises from threats to the security of Canada that is so serious as to be a national emergency. A national emergency is an urgent, temporary and critical situation that seriously endangers the health and safety of Canadians that cannot be effectively dealt with by the provinces or territories, or that seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada. It must be a situation that cannot be effectively dealt with by any other law of Canada. All measures taken under the EA must be exercised in accordance with the *Canadian Charter of Rights and Freedoms* (*Charter*) and should be carefully circumscribed to avoid being overbroad. Additional information on the EA is provided under **Tab B**.
- Since February 10, 2022, you have convened three Incident Response Group (IRG) meetings with key Ministers, including the Minister of Public Safety who, under the *Emergency Management Act*, is responsible for providing national leadership and coordination among

**SECRET**

Confidence of the Queen's  
Privy Council

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

o s.39



o While the demonstrations started out relatively peaceful, they have grown more complex and expanded into multiple locations in the country. The movement is considered to be highly organized, well financed, and is feeding a general sense of public unrest that could continue to escalate with severe risks to public security, economic stability and international relations. The economic impact to date is estimated at approximately 0.1 per cent of Canada's gross domestic product (GDP) per week, however the impact on important trade corridors and the risk to the reputation of Canada as a stable, predictable and reliable location for investment may be jeopardized if this continues. Solicitor-Client Priv.

Solicitor-Client Priv.

Solicitor-Client Priv.

A more detailed threat assessment is being provided under separate cover.

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

**SECRET**

Confidence of the Queen's  
Privy Council

s.39



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

**SECRET**

Confidence of the Queen's  
Privy Council

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

**Recommendation**

- PCO recommends you approve, s.39 [REDACTED] s.39 [REDACTED] declaring a public order emergency under the EA.

- s.39 [REDACTED]
- [REDACTED]

s.39 [REDACTED] These measures would be monitored closely, including through regular Deputy Ministers meetings and subsequent IRG meetings, as required. Regular updates would also be provided to you and your office as the situation evolves. Further advice will also follow on the required Parliamentary processes.

- **Do you agree?**

**Background**

- The “Freedom Convoy 2022” was the first manifestation of this growing movement. It began centered on anti-government sentiments related to the public health response to the COVID-19 pandemic. Trucker convoys began their journey from various points in the country, and the movement arrived in Ottawa on Friday, January 28, 2022. Since, the movement has

**SECRET**

Confidence of the Queen's  
Privy Council

only continued to gain momentum across the country, with significant increase in numbers in Ottawa as well as protests and blockades spreading in different locations, including strategic ports of entry (e.g., Ambassador Bridge, Ontario; Coutts, Alberta; and Emerson, Manitoba). Additional details are provided under **Tab D**.

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

*Initial Municipal and Provincial Responses*

- Municipal and provincial authorities have attempted to manage the different demonstrations under their existing authorities, with varying degrees of success. The Ottawa Police Service has publicly admitted that the situation in Ottawa has overwhelmed its officers, and has consistently sought additional resources to assist with enforcement of municipal bylaws. The City of Ottawa is planning on filing an injunction on February 14, 2022, and the Attorney General (AG) of Ontario and AG of Canada are expected to seek leave to intervene.
- On February 11, 2022, the Province of Ontario declared a province-wide state of emergency under its *Emergency Management and Civil Protection Act* (EMCPA), in response to the interference with transportation and other critical infrastructure throughout the province, which is preventing the movement of people and delivery of essential goods.
- Measures that have since been implemented under these emergency measures include: fines and possible imprisonment for protesters refusing to leave, with penalties of \$100,000 and up to one year of imprisonment for non-compliance.

**SECRET**

Confidence of the Queen's  
Privy Council

- On February 12, 2022, the Ontario Government also enacted legislation under the EMPCA (Ontario Regulation 71/22) making it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.
- Through ongoing bilateral discussions at the officials and ministerial levels, no other province has signaled its intent to take steps similar to Ontario. Alberta has indicated that its *Critical Infrastructure Defence Act* provides substantial measures for law enforcement to use.
- On February 14, you convened a First Ministers Meeting with Premiers of all provinces and territories (PTs). During this meeting, Premiers expressed a variety of views – those closest to the situation (e.g., the Premier of Ontario) were completely supportive of invoking the EA and moving forward with robust measures. A large number of other Premiers expressed concern about the need to act carefully to avoid enflaming the underlying sentiment they considered to lie behind the protest which they linked to public health measures including federal vaccine mandates. These Premiers were not seeing the local manifestations of this movement yet in their jurisdictions. The Premier of Quebec had a strong negative reaction to the proposal, saying that he would oppose the application of federal emergency legislation in Quebec.

*Federal Action*

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

**SECRET**

Confidence of the Queen's  
Privy Council

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

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

**Test for Declaring a Public Order Emergency**

- In order to declare a public order emergency, the EA requires that there be an emergency that arises from threats to the security of Canada that is so serious as to be a national emergency.
- Threats to the security of Canada does not include lawful advocacy protest or dissent, unless carried out in conjunction with any of the following activities:
  - espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
  - foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
  - activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
  - activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.
- A national emergency is an urgent, temporary and critical situation that seriously endangers the health and safety of Canadians that cannot be effectively dealt with uniquely by the provinces or territories, or that seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada. It must be a situation that cannot be effectively dealt with by any other law of Canada.

**PCO Comment**


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

**SECRET**

Confidence of the Queen's  
Privy Council

- Specifically, PCO is of the view that while municipal and provincial authorities have taken decisive action in key affected areas, such as law enforcement activity at the Ambassador Bridge in Windsor, considerable effort was necessary to restore access to the site and will be required to maintain access. The situation across the country remains concerning, volatile and unpredictable. While there is no current evidence of significant implications by extremist groups or international sponsors, PCO notes that the disturbance and public unrest is being felt across the country and beyond the Canadian borders, which may provide further momentum to the movement and lead to irremediable harms – including to social cohesion, national unity, and Canada's international reputation. In PCO's view, this fits within the statutory parameters defining threats to the security of Canada, though this conclusion may be vulnerable to challenge.
- In addition, PCO is of the view that this is a national emergency situation that is urgent, critical, temporary and seriously endangers the health and safety of Canadians that cannot be effectively dealt with uniquely by the provinces or territories.
- For these reasons, PCO is of the view that it is in the national interest to move ahead with declaring a public order emergency, pursuant to the EA.

Solicitor-Client Priv.

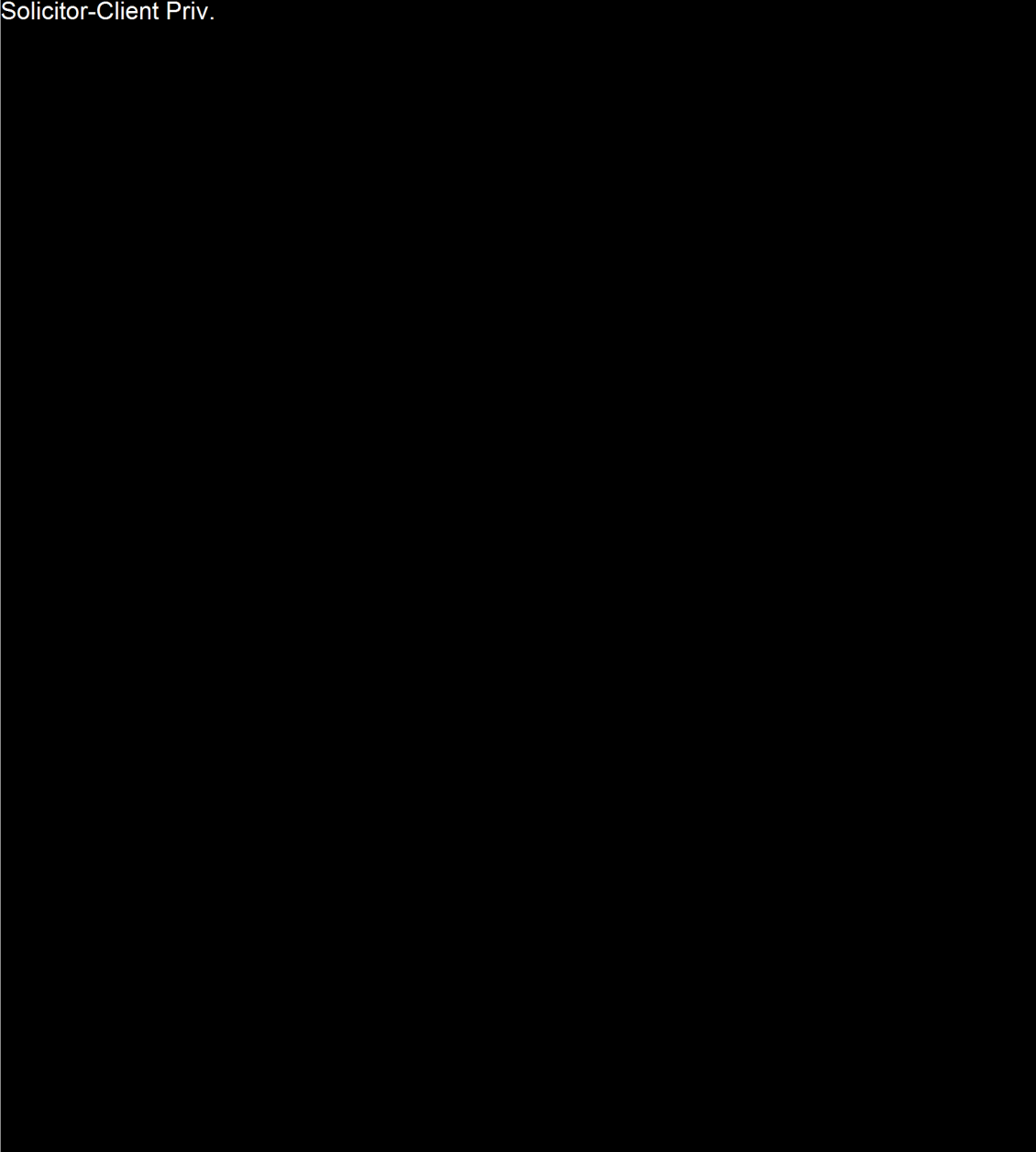




**SECRET**

Confidence of the Queen's  
Privy Council

Solicitor-Client Priv.



*Intergovernmental Considerations*

s.39



**SECRET**

Confidence of the Queen's  
Privy Council

s.39

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

*Parliamentary Strategy*

- A strong parliamentary strategy will be required to ensure support by Members of Parliament. A motion supporting the proclamation must be passed in both Houses of Parliament within seven days of the declaration.
- The House of Commons is sitting the week of February 14, 2022, and is adjourned the week of February 21, 2022. The Senate is adjourned the week of February 14, 2022, and is scheduled to return on February 22, 2022, for three days. Should an emergency be declared on February 14, 2022, a motion for the confirmation of the declaration would have to be tabled by March 2, 2022, in the House of Commons (but it could be tabled earlier).
- The motion is to be considered by each chamber the sitting day after it is tabled in each respective chamber, and is debated without interruption until the House is ready for the question, at which point a vote will take place. Should either the House or the Senate defeat the motion, the declaration is revoked immediately.

s.39

○

○

- There is no legal requirement to have both Houses deal with the motion concurrently.

**SECRET**

Confidence of the Queen's  
Privy Council

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

*Communications Strategy*

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

*Specific Measures*

s.39



**SECRET**

Confidence of the Queen's  
Privy Council

s.39



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

*Approved electronically by*

Janice Charette

Attachments

**Mainville/Proulx/Setlakwe/Tupper/Drouin**