

Court File No.: T-316-22

FEDERAL COURT

B E T W E E N:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF ABIGAIL DESHMAN

I, **ABIGAIL DESHMAN**, of the City of Toronto, affirm and give evidence as follows:

1. I am the Director of the Criminal Justice Program at the Canadian Civil Liberties Association (“CCLA”). I have personal knowledge of the evidence affirmed in this affidavit except where otherwise stated to be based on information or belief. Where the information is stated on the basis of information or belief, I identify the source of that information and verily believe it to be true.
2. On February 14, 2022, the Governor in Council invoked the *Emergencies Act*, R.S.C., 1985, c. 22, declaring the existence of a nationwide public order emergency. On February 16, 2022, it tabled its explanation of the reasons for declaring this emergency in the House of Commons.
3. The House of Commons voted and approved a motion to confirm the emergency declaration on the evening of February 21, 2022. However, by that time the “Freedom Convoy” that

occupied the streets of downtown Ottawa — the declaration’s most substantial focus — had already been cleared by police forces, which began making arrests and towing vehicles the weekend before.

4. Two days later, on February 23, 2022, the Governor in Council revoked the declaration of a public order emergency.
5. The CCLA brings this application seeking judicial review of the federal government’s invocation of the *Emergencies Act*. In particular, the application alleges that the federal government failed to meet the high threshold necessary to invoke the *Act*. Further, the CCLA challenges certain orders and measures made under the *Act* as being contrary to the *Canadian Charter of Rights and Freedoms*.
6. In this affidavit, I provide the following:
 - a. Background on the expertise of the CCLA on constitutional rights and government accountability that make the CCLA a suitable public interest litigant;
 - b. Background on the invocation of the *Emergencies Act*;
 - c. The reaction to the invocation by the provincial governments; and
 - d. Evidence relating to the implementation of the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22.

I. The CCLA as a Public Interest Litigant

a. Background on the CCLA

7. In this section, I provide background on the CCLA. I then address the CCLA’s extensive experience advocating for the protection of *Charter* rights generally, as well as its specific

experience advocating for the protection of protest rights, and with regards to the use of emergency powers prior to and during the COVID-19 pandemic. Finally, I will address the CCLA's interest in this action, and our ability to pursue it.

8. Founded in 1964, the CCLA is a national, non-profit, independent, non-governmental organization dedicated to promoting respect for and observance of fundamental human rights and civil liberties in Canada. The CCLA's work, which includes research, advocacy, public education and engagement, aims to defend and ensure the protection and full exercise of those rights and liberties. The CCLA has thousands of supporters drawn from all walks of life in communities across Canada. A wide variety of persons, occupations, and interests are represented amongst the organization's supporters.
9. The CCLA was constituted to actively defend and promote the recognition of fundamental rights and freedoms and to extend and foster the observance of those rights. Our role necessarily includes holding government accountable and seeking to ensure that the rule of law is upheld. The CCLA fulfills this mission in several forums including the media, courts, provincial legislatures and Parliament, as well as through training in schools and universities. In every issue on which the CCLA advocates, we direct our attention to the critical balance between civil liberties and the competing public and private interests that are involved.
10. The CCLA has made vital contributions to civil liberties and *Charter* jurisprudence in a variety of areas, by intervening in cases before courts at many levels. The CCLA has also been granted standing to litigate issues in its own right as a public interest litigant. Two recent examples of this activity concerned constitutional challenges to Ontario's Federal Carbon

Tax Transparency Act, 2019 (the “Sticker Act”)¹ and to an injunction obtained by the government of Nova Scotia that prohibited protests and the promotion of “illegal public gatherings” during the COVID-19 pandemic (ongoing).²

11. Courts have recognized CCLA’s contribution to the development of the law in relation to civil liberties and constitutional rights. For instance, in *Canadian Newspapers v. Canada (Attorney General)* (1986), 55 O.R. (2d) 737 (H.C.) at p. 739, the Court stated of its decision to allow the CCLA’s intervention:

[The CCLA] ...had unique experience to bring to bear as a result of its role as watchdog of police powers and long and sustained consideration of the issues involved.

12. Likewise, in *Batty v. City of Toronto*, 2011 ONSC 6862, the Court stated, at para 22: “Let me say that I appreciate the assistance which counsel for the CCLA provided to me during the hearing. The CCLA acted as a true friend of the court.”
13. The CCLA has a distinct, unique awareness and understanding of many aspects of civil liberties, as a result of arguing for the rights of people across Canada for decades. As Associate Chief Justice O’Connor commented in *Tadros v. Peel Regional Police Service*, 2008 ONCA 775, at para. 3, the CCLA “has substantial experience in promoting and defending the civil liberties of Canadians.” That experience includes litigation of important civil liberties issues arising both prior to and under the *Canadian Charter of Rights and Freedoms*.

¹ Corporation of the Canadian Civil Liberties Association v Attorney General of Ontario, 2020 ONSC 4838.

² Attorney General of Nova Scotia v. Freedom Nova Scotia *et al.*, (SCNS-Hfx No.: 506040).

14. A recurring theme in the CCLA's submissions to courts, tribunals and government bodies is the need to develop principled approaches that balance competing interests engaged in complex civil liberties and constitutional rights cases.
15. In recognition of its important role and expertise, the CCLA has frequently been granted intervener status before courts and tribunals, including this Court, to present oral and written arguments. The CCLA has also been granted standing to litigate significant issues as a party.

b. The CCLA's Interest in Government Action Related to Emergency Measures
Prior to the COVID-19 Pandemic

16. The CCLA's engagement with the *Emergencies Act* (Bill C-77) dates back to its inception, when the association's staff contributed extensively and constructively to the public and political debates regarding its creation. This role is well documented in the Canadian Parliamentary Historical Resources under three titles which were provided to the Legislative Committee. I attach as **Exhibit "A"** a copy of the Appendix No 1 – Copy of CCLA Brief to the Minister, **Exhibit "B"** a copy of the Witness record: From the Canadian Civil Liberties Association: A. Alan Borovoy, General Counsel and as **Exhibit "C"** a copy of Appendix "C-77/2" – Submissions to the Legislative Committee on Bill C-77 (The Emergencies Act).
17. Many of the CCLA's concrete recommendations were taken into account during the legislative process (Bill C-77, 1-3-1988, pg, 3:A25- 3:A27). The CCLA further touched on a number of key issues that were the focal point of the Legislative Committee's deliberations, including the necessity of the government's powers being "tailored as narrowly as possible to emergencies that can be reasonably anticipated" and fashioning safeguards that "can deal as effectively as possible with abuse and excess" (Bill C-77, 1-3-1988, 3A:9).

18. One of the most important discussions during the legislative process over Bill C-77 in 1988 related to judicial review of the *Emergencies Act*. In their submissions, the CCLA emphasized the dangers to the democratic system that emergency powers would create and suggested that the Bill be amended “so that the courts can exercise the appropriate degree of supervision over compliance with the statute as well. If emergency declarations fail to comply with the statutory requirements, they should be subject to judicial revocation” (Bill C-77, 1-3-1988, 3A:13).
19. The CCLA’s concerns were later echoed by the Honourable Perrin Beatty, then Minister of Defence, who at the time said to the Legislative Committee:

Before the Government of Canada can issue declaration of emergency, the act requires that the government of any province directly affected by the declaration must be consulted about the declaration and about the emergency measures the Government of Canada proposes to take. The results of this consultation must be included in the government’s submission to Parliament.

Thus, under the bill, the grounds for declaring an emergency will be subject to comprehensive parliamentary scrutiny. The CCLA, has raised the very important question of whether this is enough. Whether, should there be any doubt or uncertainty about the government's justification for declaring emergency, the decisions should be subject to independent review outside the arena of politics. The natural place to seek such further objective review and confirmation will be in the judicial system” (Bill C-77, 23-2-1988, 1:14, Image 20)
20. The Honourable Perrin Beatty subsequently proposed amending Bill C-77 to “require that on reasonable grounds, the Governor in Council believes a national emergency exists or the measures are necessary,” which would result in “someone who wants to contest the government’s decision to invoke a declaration of a national emergency the ability to take us to court, if they believe it has been done frivolously” (Bill C-77, 23-2-1988, 1:15, Image 21).

21. As documented in *At the Barricades: A Memoir*, our former general counsel Alan A. Borovoy provided detailed submissions to the Minister and to the Legislative Committee tasked with studying Bill C-77. Indeed, the Honourable Perrin Beatty noted before the Legislative Committee that he was “particularly grateful for the thoughtful and constructive consideration of this bill given by the Canadian Civil Liberties Association” (page 1:12, 1540). He noted in particular the CCLA’s input on the use of the phrase “in the opinion of the Governor in Council” (1:13, page 1544) and the need for safeguards beyond Parliamentary scrutiny (1:14, page 1549).
22. The CCLA similarly played a significant role the last time a national emergency act was called upon. During the FLQ crisis in 1970, the CCLA took part in the public and parliamentary debates regarding then Prime Minister Pierre Trudeau’s use of the *War Measures Act*, the predecessor to the *Emergencies Act*. Then general counsel Alan Borovoy met with, and presented briefs to, the federal Minister of Justice regarding the use of that Act.

c. The CCLA’s Knowledge and Expertise in the Civil Liberties and Constitutional Rights Engaged by the Application

23. Through litigation as a public interest litigant or as an intervenor, the CCLA has gained knowledge and expertise in the civil liberties and constitutional rights engaged by the federal government’s invocation of the *Emergencies Act*, particularly in relation to free expression and assembly. CCLA has frequently been involved in litigation and policy debates that implicate the right to protest and consider the permissible nature and scope of state conduct in relation to protest activities.
24. The CCLA has litigated freedom of expression cases, for example:

- a. *CCLA v. Attorney General of Ontario*, 2020 ONSC 4838, concerning compelled speech and a provincial requirement to place certain political messaging on gasoline pumps;
 - b. *R. v. Breeden*, 2009 BCCA 463, concerning whether the constitutional right to freedom of expression applies in certain public and publicly accessible spaces;
 - c. *R v. Banks*, 2017 ONCA 19 concerning provincial legislation that prohibited solicitation for money on roadways; and
 - d. *Canada (Human Rights Commission) v. Taylor*, [1990] 3 SCR 892, concerning hate speech provisions in federal human rights legislation.
25. The CCLA has also litigated freedom of peaceful assembly cases, for example:
 - a. *Batty v. City of Toronto*, 2011 ONSC 6862, concerning municipal enforcement action against a group of persons engaged in “occupying” a park as a form of political protest; and
 - b. *CCLA v. Attorney General of Canada* (1998), 40 OR (3d) 489 (CA), concerning security and intelligence gathering directed at peaceful protestors;
 - c. *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208, regarding whether a roving police “stop and search” checkpoint targeting apparent protesters during the G20 Summit violated ss. 2 and 7 of the *Charter*;
 - d. *Fleming v. Ontario*, 2019 SCC 45, concerning the scope of police common law powers to arrest for an apprehended breach of the peace.
26. In addition to litigation, CCLA has played a role in many critical policy conversations focused on the right to protest. For example, CCLA was granted standing with respect to part

two of the Ipperwash Inquiry, which dealt with broad policy issues relating to the policing of protests. The Association was also heavily involved in advocacy efforts aimed at safeguarding the right to protest prior to, during, and following the 2010 G20 Summit in Toronto.

27. The cases outlined in paragraphs 24-25 are only a small selection of the CCLA's work. Since 1976, the CCLA has intervened in more than 280 cases across a wide range of civil liberties and human rights issues. A chronological listing of much of this work is attached and marked as **Exhibit "D"**.
28. The CCLA has also litigated significant civil liberties issues as a party in many cases. A chronological listing of many of these cases is also contained in **Exhibit "D"**.

**d. The CCLA's Interest in Government Action Related to the Emergency
Measures During the COVID-19 Pandemic**

29. The CCLA has a genuine interest in the issues raised in the Application as they are directly connected to the organization's mandate. The CCLA is engaged closely with these issues through its legal and policy advocacy, public education, and research.
30. As a long-time defender of the rule of law and government accountability, the CCLA has a particular interest in how governments across the country respond to the public health emergency that COVID-19 has presented. The CCLA has actively monitored and advocated for a rights-centred, evidence-based response to the COVID-19 pandemic by governments and state agencies. The CCLA has focused on the need for government to protect the health of vulnerable populations as well as refrain from unjustified infringements of civil liberties in the name of public health or public safety.

31. The CCLA has also initiated litigation as a public interest litigant in four matters directly related to the COVID-19 pandemic:

- a. On April 24, 2020, the CCLA and coalition partners brought an application in the Ontario Superior Court of Justice against the City of Toronto and Province of Ontario, challenging the constitutionality of the Toronto Shelter Standards and the Toronto 24-Hour Respite Site Standards on the basis that: they endanger those who use the shelter system because they require spacing between beds of only 2.5 feet, well under the 6 feet requirement being enforced during the pandemic; and have had the additional consequence of forcing countless others to set up tents and encampments outdoors, rather than risk going into spaces where there are already many people who have contracted the virus.
- b. On May 12, 2020, the CCLA and coalition partners initiated a challenge in the Federal Court, concerning the government's handling of the COVID-19 pandemic in federal correctional institutions. The challenge concerned the Correctional Service of Canada's failure to take reasonable steps to protect the lives and health of inmates and argues that this failure violates CSC's statutory and *Charter* duties.
- c. On May 20, 2020, the CCLA partnered with an individual to bring a challenge in the Supreme Court of Newfoundland and Labrador to two public health orders restricting the entry of people into the province.
- d. On June 4, 2021, the CCLA was granted public interest standing to seek a rehearing in the Supreme Court of Nova Scotia of an *ex parte quia timet* injunction obtained by the government of Nova Scotia that prohibited protests and the promotion of "illegal public gatherings" during the COVID-19 pandemic; after the application

for a rehearing was dismissed on the grounds of mootness, the CCLA appealed the initial decision granting the injunction.

32. The CCLA has also written more generally about the legal and appropriate use of emergency legislation and emergency powers during a public health crisis, and has written dozens more letters to public authorities across Canada expressing concerns and making recommendations about the balance between COVID-related public health restrictions and civil liberties while emergency acts have been in use across the country.

e. The CCLA's Interest in and Ability to Pursue this Action

33. The *Emergencies Act* was invoked by the federal government on February 14, 2022, through the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20. The Proclamation indicated that the Governor in Council anticipated that the following special temporary measures may be necessary:
 - a. measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure,
 - b. measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services

and the persons competent to render them and to provide reasonable compensation in respect of services so rendered,

- c. measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including measures to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade,
 - d. measures to authorize the Royal Canadian Mounted Police (RCMP) to enforce municipal and provincial laws by means of incorporation by reference,
 - e. the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*.
34. Measures further to the Proclamation were enacted through the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21, and the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22, both of which came into force on February 15, 2022.
35. On February 16, 2022, the Governor in Council tabled in the House of Commons an Explanation pursuant to section 58(1) of the *Emergencies Act* providing its justification for invoking the *Act* and declaring a Public Order Emergency under subsection 17(1). I attach as **Exhibit “E”** a copy of the Section 58(1) Explanation.
36. The Application raise serious justiciable issues of:

- a. Whether the declaration of a public order emergency has met the threshold set out in the *Emergencies Act* that there be an emergency that arises from threats to the security of Canada (as defined in the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23, s. 2) that are so serious as to constitute 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. Or, in the alternative, that the declaration, measures and orders should have had a limited geographic scope as required by the *Emergencies Act*.
 - b. Whether the *Emergency Measures Regulations* and *Emergency Economic Measures Order* proclaimed pursuant to the Declaration of Emergency infringe the *Charter* and whether the infringement is justified in a free and democratic society. In particular, the application challenges the orders that prohibit public assembly as a violation of section 2 of the *Charter* and the measures that direct the freezing of assets and the reporting of transactions as violations of section 8 of the *Charter*.
37. The impact of the resolution of these issues will extend well beyond the immediate interests of those parties impacted by the invocation of the *Emergencies Act*, and well beyond the context of the COVID-19 pandemic and the current protests giving rise to that invocation.
 38. Whether and how the government balances the rights and freedoms, in the context of an emergency are matters that fall within the core mandate of the CCLA. This case also raises significant issues with respect to rule of law and the maintenance of democratic processes in

an emergency. Our long-standing record of interventions and actions as detailed above all speak to our genuine interest in the issues raised.

39. In addition to its expertise, the CCLA has the resources to pursue this judicial review thoroughly, effectively, and expeditiously. The CCLA is being represented by able and experienced counsel with the capacity to manage litigation of this nature, and will present a robust record that will assist this Court in making the findings of fact necessary to resolve the legal questions regarding interpretation of the *Emergencies Act* thresholds and the constitutional issues that lie at the heart of this case.
40. The immediate effect and serious consequences of the government's decision to invoke the *Emergencies Act* on the rights and freedoms of people across Canada requires a similarly immediate consideration of the legality of that decision. It is reasonable and effective for the CCLA, with its decades of demonstrated interest in and established expertise regarding the issues raised in this application, to bring it forward in this timely manner.

II. The Context Surrounding the Declaration of a Public Order Emergency

a. The “Freedom Convoy” Protests in Ottawa, Ontario

41. The series of events leading to the invocation of the *Emergencies Act* began with the so-called “Freedom Convoy” driving to and arriving in Ottawa, Ontario. As the s. 58(1) Explanation indicates, the Freedom Convoy arrived in Ottawa on January 28, 2022.
42. The s. 58(1) Explanation generally details the nature of the protest in Ottawa. It involved demonstrations like honking vehicles' horns, blockading roadways, disrupting traffic, and occupying city streets. There were also some reported incidents of harassment, assault and intimidation. I attach as **Exhibit “F”** a copy of a news article by the Canadian Broadcasting

Corporation, which also outlines the nature of the protests, among other things. [Ottawa mayor would like protesters to move on, but organizers say they're not going anywhere](#) (CBC)

43. The protest in Ottawa was still ongoing when the nationwide public order emergency was declared on February 14, 2022.

b. Protests in Other Jurisdictions

44. Even prior to the Freedom Convoy arriving in Ottawa, related protests were taking place. For example, a convoy of trucks blocked traffic lanes and restricted border access at the New Brunswick and Nova Scotia border on January 23, 2022. The Royal Canadian Mounted Police were on the scene to monitor the situation and keep the peace, and traffic was able to move through the crossing. I attach as **Exhibit “G”** a copy of a news article by the CTV News that outlines these events. [Convoy of trucks gather at N.B./N.S. border to show frustration over vaccine mandates](#) (CTV News)
45. During the time that the Freedom Convoy protests were ongoing in Ottawa, smaller local protests sprang up in other parts of the country. These were managed and any issues resolved prior to the invocation of the *Emergencies Act*.
46. In Vancouver, Kelowna, and Victoria, British Columbia, protests conducted in solidarity with the Ottawa protest took place on February 5, 2022. The protest in Vancouver involved hundreds of vehicles entering the downtown core and causing significant congestion; it was generally peaceful and resolved with a handful of arrests. In Victoria, approximately 2,500 people gathered outside the provincial legislature, but the police confirmed the crowd thinned out and traffic was normal by the late afternoon. I attach as **Exhibit “H”** a copy of a news

article by Global News that outlines these events. Five arrested as anti-COVID-19 mandate convoys, rallies staged in British Columbia (Global News).

47. In Regina, Saskatchewan, a protest near the Saskatchewan Legislative Building took place on February 7, 2022. The Regina Police Service issued 30 parking tickets and two traffic safety tickets, and the last vehicle had moved out of the protest by the end of the weekend. I attach as **Exhibit “I”** a copy of a news article by the Canadian Broadcasting Corporation that details these events. Health mandate protesters near Sask. Legislature leave after police issue more than 30 tickets (CBC).
48. A similar protest took place in Calgary, Alberta, also on February 7, 2022. Among other things, this protest involved about 20 vehicles blocking lanes of traffic in front of city hall. Police noted that the demonstrations caused traffic disruptions and issued approximately 80 tickets to the owners of vehicles identified as participating in and committing an offence. I attach as **Exhibit “J”** a copy of a news article by CTV News that outlines these events. Dozens of convoy protest drivers ticketed by Calgary police (CTV News).
49. Toronto, Ontario, saw at least two large protests in February 2022. The first protest occurred on February 5, 2022, outside of the Ontario Legislature in downtown Toronto. At some point in the afternoon, demonstrators and their trucks blocked a particular intersection leading to the Legislature. By 7 p.m., the police began clearing the intersection. Although the protest resulted in traffic delays, police were able to maintain access to key areas of the downtown core, such as the hospitals close to the legislature. Overall, the police confirmed that the protest had been relatively peaceful. I attach as **Exhibit “K”** a copy of a news article by CTV News outlining these events. Toronto protest against vaccine mandates takes over some downtown streets (CTV).

50. The second Toronto protest occurred the following weekend. In anticipation of the protest coming to the city, the police publicly indicated on February 9, 2022, that they would pre-emptively closing key roadways. The protest arrived in Toronto on February 12, 2022. On that day, the police closed stretches of the Don Valley Parkway and Gardiner Expressway to prevent trucks from entering the downtown core; they also closed roads surrounding the Ontario legislature and Toronto's downtown hospitals. By the evening, most roads had reopened. Mayor John Tory indicated in a statement that the protest was "largely peaceful and respectful", and that the police "had a clear plan which was carried out capably and carefully". I attach as **Exhibit "L"** three documents: a copy of a news article by CTV News detailing the pre-emptive action police took; a copy of a news article by CTV News detailing the reopening of roads in Toronto; and a screengrab of the Twitter post containing Mayor John Tory's statement. Toronto police closing Queen's Park circle 'immediately' ahead of potential vehicle protest (CTV News); Roads in downtown Toronto reopen after another convoy protest (CTV News); John Tory statement (Twitter).
51. In Windsor, Ontario, demonstrations forced the closure of the Ambassador Bridge border crossing for almost a week before it was reopened on February 13, 2022. The police began arresting protestors following the issuance of a Superior Court injunction barring protestors from blocking the bridge. Once the bridge was clear, the police, including officers from Windsor, London, the Ontario Provincial Police, and the Royal Canadian Mounted Police, remained in the area, blocking off intersections close to the bridge. I attach as **Exhibit "M"** a copy of a news article from the Canadian Broadcasting Corporation outlining these events. Ambassador Bridge reopens after police clear protestors (CBC).

52. While the foregoing protests were all resolved prior to the declaration of a public order emergency on February 14, 2022, three key border protests remained ongoing at the time the declaration was made: the one in Emerson, Manitoba; the one in Coutts, Alberta; and the one at the Pacific Highway crossing in British Columbia. That said, two of these protests were fully resolved before the powers granted under the *Emergencies Act* came into effect (i.e., the powers granted by the coming into force of the *Emergency Measures Regulations* and *Emergency Economic Measures Order* on February 15, 2022). The remaining protest was resolved through negotiations and without arrests; it is unclear to what extent, if at all, the police relied on the powers extended by the regulations made pursuant to the declaration.
53. The protest in Emerson, Manitoba, began on February 10, 2022. Up to 75 vehicles were involved in the blockade, which did allow some cargo like medical supplies and livestock to pass through. According to RCMP spokesperson Sgt. Paul Manaire, the police “didn’t want to rush in” and issue tickets or make arrests. On February 15, the Mounties reached a resolution with the protestors and began coordinating the end of the blockade. Some trucks began pulling out that day, and the situation was resolved without injuries, arrests, charges, or anything being towed. The last protesters were escorted away by RCMP on February 16. I attach as **Exhibit “N”** a copy of a news article from the Canadian Broadcasting Corporation outlining these events. ‘A perfect solution’: Manitoba border blockade ends as RCMP escort protesters away (CBC).
54. The protest in Coutts, Alberta, began blockading the border crossing there on January 29, 2022. Early on February 14, 2022, RCMP officers raided two camper trailers and a mobile home in Coutts, seizing a cache of weapons and ultimately arresting 12 people. By that evening — the same day the *Emergencies Act* was invoked and before any specific powers

under the *Emergencies Act* had come into effect — the protestors abandoned their roadblock, and the last of them left the next morning. I attach as **Exhibit “O”** a copy of a news article by the Globe and Mail that details these events: “Last border blockade to be dismantled as protesters in Emerson, Man., agree to leave”.

55. Finally, a blockade at the Pacific Highway Crossing in British Columbia shut down the crossing on February 12, 2022. The next day, the police arrested four people for mischief. On evening of February 14, 2022, the police arrested 12 additional people, and the next morning the roads were clear. The border crossing closed again due to protests on February 19, 2022; however, by 8 p.m. that day the RCMP had cleared out the vast majority of protestors, and access to the border resumed. I attach as **Exhibit “P”** a copy of a news article by the Canadian Broadcasting Corporation and a copy of a news article by CTV News, which together detail these events. Pacific Highway border crossings resume after days of blocked access by pandemic protesters (CBC) Access to border crossing resumes in B.C. after weekend protest (CTV News).

III. The Provincial Reaction to the Declaration of a Public Order Emergency

a. Ontario

56. Ontario was one of two provinces that explicitly supported the declaration of the Public Order Emergency within its jurisdiction. On February 11, 2022, Ontario declared a state of emergency pursuant to the *Emergency Management and Civil Protection Act (EMPCA)*. The order under the *EMPCA* would allow the provincial government to enact orders protecting international border crossings, as well as highways, airports, bridges, ports and railways in the province, and to issue severe fines in the event of non-compliance.

57. On February 14, 2022, after the Federal Government declared a Public Order Emergency, the Premier of Ontario stated that he supported this decision.

"I support the federal government and any proposal they have to bring law and order back to our province, to make sure we stabilize our business and trade around the world," he told a news conference."

58. Premier Ford also stated that the measures should be targeted and time-limited, but that we need to do what it takes to restore law and order in our country.
59. Premier Doug Ford urged the federal government to take an "extremely targeted" approach to the newly invoked *Emergencies Act* and extinguish the ongoing occupation of the nation's capital in the next few days.
60. "I made it clear to the prime minister that any special powers need to be extremely targeted, only used for as long as necessary to resolve the situation and not one minute longer," Ford said while making an announcement in Hamilton on Tuesday.
61. "Cleaning up the situation needs to be our top priority. Right now, our police forces have every single tool they could possibly need to manage the situation, and I have confidence that they'll do that," Ford said.
62. The premier said he hopes the police will "get these people moving on" in the next few days or ideally, sooner. "They are hurting more people than the pandemic could ever hurt," Ford said.
63. I attach as **Exhibit "Q"** a copy of the news article from the Canadian Broadcasting Corporation and a news article from CTV News with the statements made by Premier Ford. Federal government invokes Emergencies Act for first time ever in response to protests,

blockades (CBC). Ford urges Trudeau to make ‘targeted’ use of Emergencies Act to clear protesters (CTV).

b. Newfoundland and Labrador

64. The only other province to support the broad use of the *Emergencies Act* was Newfoundland and Labrador. On February 14, 2022, the Premier of Newfoundland & Labrador Andrew Furey wrote on his Twitter page:

“As I said to PM @JustinTrudeau today, I support our federal government in invoking the Emergencies Act as laid out - with a time limit and to bolster response - to deal with unacceptable behaviour within blockades in our country, infringing on the rights of law-abiding Canadians.”

65. I attach as **Exhibit “R”** a screengrab of Premier Furey’s tweet. Provincial leaders mixed on Trudeau's invocation of the Emergencies Act (CTV).

c. Alberta

66. Premier Kenney disagreed that a Public Order Emergency was necessary in order to address the crisis caused by the Freedom Convoy. CBC News reported that Premier Kenney stated as follows:

"We have the legal powers that we need. We have the operational resources that we need to enforce, and I think at this point for the federal government to reach in over top of us without offering anything in particular would frankly be unhelpful," said Kenney.

"I am concerned that there's a certain kind of person that if the federal government proceeds with this, who will be further inflamed and that could lead to prolongation of some of these protests."

67. I attach as **Exhibit “S”** a copy of the news article from the Canadian Broadcasting Corporation with the statements made by Premier Kenney. Federal government invokes Emergencies Act for first time ever in response to protests, blockades (CBC).

68. Premier Kenney stated that the government's usage of the *Emergencies Act* was disproportionate and unjustified and urged Parliament to defeat the *Emergencies Act*, noting that the overreach creates a "dangerous precedent". I attach as **Exhibit "T"** a copy of Premier Kenney's Twitter post dated February 17, 2022.
69. On February 17, 2022, Premier Kenney reiterated his opposition to the proposed usage of the *Emergencies Act* in an open letter to Prime Minister Trudeau, which was posted on his Twitter account.
70. In his letter, Premier Kenney states that the Public Order Emergency was "done without adequate or meaningful consultation with the provinces, as required by section 25 of the *Emergencies Act*".
71. "Canadian and our economy must always be safeguarded, but invoking the *Act* is extraordinarily heavy-handed, outside our democratic norms, and disproportionate to the issues [...]The *Act* is not intended to address local and contained issues. Your government did nothing to attempt to de-escalate the situation outside Parliament Hill before invoking the *Act*," Premier Kenney wrote. I attach as **Exhibit "U"** a copy of the Twitter post and Premier Kenney's letter dated February 17, 2022.
72. On February 18, 2022, ahead of a vote in the House of Commons on whether to ratify the usage of the *Emergencies Act*, Premier Kenney stated that his government would challenge the use of the Act and potentially join as an intervener with the CCLA. CBC News reported that Premier Kenney stated as follows:

"That kind of extraordinary power I don't think is justified," Kenney told Barton in an interview that took place Friday, ahead of his announcement.

"I think they could have dealt with the situation in Ottawa using the same sort of laws they were using in Windsor and at Coutts," he said, referring to blockades of border crossings in Windsor, Ont., and Coutts, Alta.

73. I attach as **Exhibit “V”** a copy of a news article from the Canadian Broadcasting Company and a copy of a news article from CTV News with the statements made by Premier Kenney. Party lines drawn ahead of key Emergencies Act vote on Monday (CBC) Alberta to launch court challenge over Ottawa's use of the Emergencies Act”.

74. On February 21, 2022, after the Freedom Convoy was removed from Ottawa by law enforcement, Premier Kenney reiterated his continuing opposition to the usage of the *Emergencies Act*, tweeting:

“There was no compelling reason to invoke the Emergencies Act a week ago. The blockades at Windsor and Coutts had been resolved using ordinary legal means.

Now that order has been restored in Ottawa, the extension of these extraordinary powers is obviously massive over reach.

Unprecedented extrajudicial powers are being used for no compelling reason.

Parliament must vote down this arbitrary power grab by the Trudeau government.”

75. I attach as **Exhibit “W”** a screengrab of Premier’s Kenney Twitter page dated February 21, 2022.

d. Manitoba

76. On February 14, 2022, after the Public Emergency Order was declared, the Premier of Saskatchewan, Heather Stefanson, stated that she was “not satisfied” that invocation of the *Emergencies Act* was necessary and cautioned against federal overreach. In a Manitoba Government News Release, Premier Stefanson stated:

In my view, the sweeping effects and signals associated with the never-before-used *Emergencies Act* are not constructive here in Manitoba, where caution must be taken against overreach and unintended negative consequences. While the situation is very different in Ontario, this ultimate federal legislation should only be considered on a measured and proportional basis, in locations where it is truly needed.

In Manitoba, I have taken and will continue to take the advice of the law enforcement professionals in the RCMP and Winnipeg Police Service. I am being briefed on a daily basis by Manitoba Justice officials, who are in regular and ongoing communication with law enforcement. These agencies remain satisfied that they have all the tools necessary and they have full tactical control over operations.

77. I attach as **Exhibit “X”** a copy of the Manitoba Government News Release. Official Statement from Premier Heather Stefanson on Potential Use of the Federal *Emergencies Act*
78. When speaking to the media later that day, Premier Stefanson reiterated her concerns, saying that “the use of the *Emergencies Act* is very, very serious and needs to be considered very seriously before enacting something like that”. She further expressed her confidence in the RCMP and Winnipeg Police Service in handling the protests without resorting to the *Emergencies Act*, saying “I think law enforcement is doing very good work, and we need to let them do their jobs”.
79. I attach as **Exhibit “Y”** a copy of the CTV News article with the statements by Premier Stefanson. *Emergencies Act 'not necessary' in Manitoba: Premier Heather Stefanson.*

e. Saskatchewan

80. On February 14, 2022, shortly after the Federal Government announced the Public Order Emergency, the Premier of Saskatchewan, Scott Moe, announced that Saskatchewan did not support the Federal Government’s invocation of the *Emergencies Act* and said that he hoped

it would only be invoked in provinces requesting it. CBC News reported that Premier Moe stated as follows:

"The illegal blockades must end, but police already have sufficient tools to enforce the law and clear the blockades, as they did over the weekend in Windsor," Moe wrote.

"Therefore, Saskatchewan does not support the Trudeau government invoking the Emergencies Act. If the federal government does proceed with this measure, I would hope it would only be invoked in provinces that request it, as the legislation allows," Moe wrote.

81. I attach as **Exhibit "Z"** the CBC News article with the statements by Premier Moe. Sask. Premier says Emergencies Act should only be invoked in provinces that request it (CBC).
82. In a tweet dated February 16, 2022, Premier Moe further denounced the federal government's invocation of the *Emergencies Act* and wrote "Trudeau has gone too far by invoking the Emergencies Act. But Parliament can still stop this abuse of power. I am asking all parties in the House to allow their members to vote freely on this motion. Every Canadian should watch very closely - will your MP protect your rights or will your MP support Trudeau's unprecedented overreach?"
83. I attach as **Exhibit "AA"** a copy of Premier Moe's tweet dated February 16, 2022.
84. On February 21, 2022, Premier Moe announced that "Saskatchewan is carefully evaluating the impact of the unilateral invocation of the Emergencies Act, despite the province's clear opposition to its application in Saskatchewan during consultation [...] At this time, legal recourse is under consideration and has not been ruled out."
85. I attach as **Exhibit "BB"** a copy of the CTV Television Network news article with Premier Moe's statements. Legal action against use of Emergencies Act 'under consideration' by Sask. government (CTV).

f. British Columbia

86. On February 20, 2022, the Premier of British Columbia, John Horgan, expressed his concerns about federal overreach and the *Emergencies Act* in an interview with Rosemary Barton. He explained that during discussions with the Prime Minister in the preceding week, he and other premiers had raised the issue of how the invocation of the *Emergencies Act* could lead to intrusions into provincial jurisdiction. In particular, he said:

“I think the premiers agreed that the events in Ottawa were just not tenable and something had to be done. But at the same time, we all expressed our concerns about the intrusion into provincial jurisdiction. We all expressed a concern that it be locally focused, geographically focused.”

87. I attach as **Exhibit “CC”** a copy of the Canadian Broadcasting Company news article containing the statements by Premier Horgan. Party lines drawn ahead of key Emergencies Act vote on Monday (CBC).

g. Quebec

88. After being advised by Prime Minister Trudeau of his intention to invoke the *Emergencies Act* on February 14, 2022, Quebec Premier François Legault said that there was no need for the *Emergencies Act* to be invoked in Quebec, as police had been able to contain the protests. CBC reported Premier Legault as stating:

"I think that I was very clear with the prime minister that the federal Emergencies Act should not, must not apply in Quebec," Legault said.

"We don't have any problems in Quebec so far. The Sureté du Québec has everything under control," Legault said, referring to largely peaceful protests that unfolded in Montreal over the weekend and in Quebec City the previous weekend.

"I can understand that enough is enough in Ottawa. You can protest, but you can't do what they've been doing for two weeks," he said, referring to the ongoing demonstration there.

"I think that at this moment, it would not help the social climate. There's a lot of pressure right now, and I think we have to be careful," Legault said.

"We really don't need to throw oil on the fire," he said.

89. I attach as **Exhibit “DD”** a copy of the Canadian Broadcasting Company article and a copy of the CTV News article containing the statements by Premier Legault. François Legault says Trudeau's invoking of Emergencies Act 'not necessary' in Quebec (CBC); Provincial leaders mixed on Trudeau's invocation of the Emergencies Act (CTV).

h. New Brunswick

90. On February 14, 2022, shortly after the Public Emergency Order announcement, New Brunswick Premier Blaine Higgs expressed his disagreement with the Federal Government's invocation of the *Emergencies Act*.
91. “We have put in measures that allowed the police to do what they needed to do for the demonstrations that we've had here. And I think it worked very effectively,” he said.
92. Premier Higgs further said "I believe we're on the tail end now of the pandemic, as most do. And we've got opening plans as we start to move forward in living with COVID and going beyond. And people are seeing that, so one would question that, you know, that that would be a regressive move at this time.”
93. I attach as **Exhibit “EE”** a copy of the Canadian Broadcasting Corporation news article containing the statements by Premier Higgs. N.B. COVID-19 roundup: Higgs doesn't agree with invoking federal Emergencies Act (CBC).

i. Nova Scotia

94. On February 15, the Premier of Nova Scotia, John Houston, said that “given the nature of the protests to date in Nova Scotia -- which have generally been peaceful and within the law -- along with our two provincial government directives, which established significant fines to reinforce the message that Nova Scotia will not tolerate blockades. We did not need the federal government to enact the Emergencies Act in Nova Scotia at this time.”
95. I attach as **Exhibit “FF”** a copy of the CTV News article containing the statements made by Premier Houston. Maritime politicians don't believe the Emergencies Act is needed in the region (CTV).

j. Prince Edward Island

96. On February 15, 2022, the Premier of Prince Edward Island, Dennis King, echoed the sentiments of Premier Higgs and Premier Houston; specifically, that the protests in Prince Edward Island had been mostly peaceful and did not require the invocation of the *Emergencies Act*.
97. "I certainly expressed to the prime minister that, as one of the smaller jurisdictions, and while we recognize there are Islanders who wish to see a more rapid end to the public health protocols, those who have voiced that position in our province have done so democratically and peacefully, and what we are seeing in the rest of the country is not indicative of what we are seeing in P.E.I.," Premier King said, after a meeting with other premiers and the prime minister.

98. I attach as **Exhibit “GG”** a copy of the Canadian Broadcasting Corporation news article containing the statements made by Premier King. Emergencies Act might be needed elsewhere, not in P.E.I., says premier (CBC).

IV. Implementation of the *Emergency Economic Measures Order*

99. The *Emergency Economic Measures Order* mandates, among other things, that certain financial institutions and entities (e.g., banks) cease dealing in any property or making available any property owned, held, or controlled — directly or indirectly — by a “designated person” or a person acting on behalf of or at the direction of a designated person. A “designated person” means any individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*.
100. Following the coming into force of the *Emergency Economic Measures Order* on February 15, 2022, the police provided lists of persons they considered to be “designated persons” to financial institutions. On the basis of these lists, it appears that over 200 bank accounts worth nearly \$8 million were frozen using the powers set out in the Order. On February 22, 2022, the House of Commons Standing Committee on Finance heard that the accounts were beginning to be unfrozen. I attach as **Exhibit “HH”** a copy of a news article by the Canadian Broadcasting Corporation that outlines this sequence of events. Most bank accounts frozen under the Emergencies Act are being released, committee hears (CBC).
101. It is unclear what factual basis there was to identify the above persons as “designated persons” or to provide their personal information to financial institutions. There is no indication that there was any judicial oversight of either this process or the ultimate freezing of designated persons’ assets. From the testimony of an individual from the Canada Revenue Agency, Ms. Isabelle Jacques, it appears that financial institutions “relied heavily” on the

information provided to them by the police. The testimony also suggests that financial institutions using “algorithms” would identify individuals whose bank accounts might be required to be frozen of their own initiative. She was not aware of any mechanism to provide an opportunity for an individual to either be notified or make any representations to the financial institution or law enforcement prior to an account being frozen. She suggested that individuals who thought their accounts were frozen in error would have to follow up with their financial institution(s). The government did not provide financial institutions with any written guidelines as to what should be frozen or authorized; only verbal direction was provided. She also testified that it was quite probably that joint individuals’ joint accounts were suspended. I attach as **Exhibit “II”** a copy of the Hansard from the meeting of the House of Commons Standing Committee on Finance containing Ms. Jacques testimony. Hansard Record I attach as **Exhibit “JJ”** a copy of the Hansard debates relating to the motion for confirmation of the declaration of emergency, which also addresses the above aspects of the *Emergency Economic Measures Order*. Parliamentary Debates (February 17), Parliamentary Debates (February 19), Parliamentary Debates (February 20), Parliamentary Debates (February 21).

Affirmed remotely using videoconferencing technology by Abigail Deshman of Toronto, Ontario, before me at Toronto, ON, on March 4, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Brandon Chung
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Abigail Deshman