

**FEDERAL COURT**

B E T W E E N:

**CANADIAN CIVIL LIBERTIES ASSOCIATION**

Moving Party / Applicant

- and -

**ATTORNEY GENERAL OF CANADA**

Responding Party / Respondent

Application for Judicial Review under Sections 18 and 18.1 of the  
*Federal Courts Act*, R.S.C. 1985, c. F-7

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**MOTION RECORD THE MOVING PARTY, CANADIAN CIVIL LIBERTIES  
ASSOCIATION**

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June 28, 2022

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**INDEX**

<b>TAB</b>	<b>DOCUMENT</b>	<b>PAGE</b>
1	Notice of Motion	4
2	Notice of Application of the Canadian Civil Liberties Association (T-316-22)	16
3	Notice of Application of the Canadian Constitution Foundation (“CCF”) (T-347-22)	42

4	Notice of Application of the Canadian Frontline Nurses and Kristen Nagle (T-306-22)	66
5	Letter from the Attorney General of Canada (“AGC”) to CCF attaching Section 39 Certificate (April 1, 2022)	85
6	Affidavit of Steven Shragge (sworn April 4, 2022)	93
7	Direction to Attend to Steven Shragge (May 12, 2022)	136
8	Transcript of Cross-Examination of Steven Shragge (May 19, 2022)	138
9	Website of the Prime Minister entitled Cabinet Committee Mandate and Membership current as of December 3, 2021 (Cross-Examination of Steven Shragge, Exhibit #2)	184
10	Letter from AGC to CCLA re. Documents Requested in Direction to Attend to Steven Shragge (May 27, 2022)	191
11	Letter from AGC to CCLA re. Cross-Examination Questions Taken under Advisement (June 13, 2022)	195
12	Transcript of Continued Cross-Examination of Steven Shragge (June 15, 2022)	197
13	Privy Council Office, “A Drafter’s Guide to Cabinet Documents” (Continued Cross Examination of Steven Shragge, Exhibit #2)	243
14	Amended Notice of Motion of the CCF re. Rule 317 (April 11, 2022)	284
15	Excerpt of Written Representations of the AGC re. CCF Rule 317 Motion	290
16	Written Representations of the CCLA	302

Court File No.

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**NOTICE OF MOTION**

**TAKE NOTICE THAT** the Canadian Civil Liberties Association (“CCLA”) will make a motion to the Federal Court on July 5, 2022. The CCLA requests that this application be heard virtually.

**THE MOTION IS FOR:**

1. Rulings on the objections made by the Respondent, the Attorney General of Canada (“AGC”), to the document requests listed in the CCLA’s May 12, 2022, Direction to Attend to Steven Shragge, specifically that the following objections made on the basis of Cabinet confidences were invalid:
  - a. the AGC’s objection to the CCLA’s request for any document that lists the membership of the Incident Response Group for the meetings held on each of February 10, 2022, February 12, 2022, and February 13, 2022;



- b. the AGC's objection to the CCLA's request for any and all minutes of the February 10, 2022, Incident Response Group meeting;
  - c. the AGC's objection to the CCLA's request for any and all notes, including Mr. Shragge's, of the February 10, 2022, Incident Response Group meeting;
  - d. the AGC's objection to the CCLA's request for any and all minutes of the February 12, 2022, Incident Response Group meeting;
  - e. the AGC's objection to the CCLA's request for any and all notes, including Mr. Shragge's, of the February 12, 2022, Incident Response Group meeting;
  - f. the AGC's objection to the CCLA's request for any and all minutes of the February 13, 2022, Incident Response Group meeting; and
  - g. the AGC's objection to the CCLA's request for any and all notes, including Mr. Shragge's, of the February 13, 2022, Incident Response Group meeting.
2. Rulings on the objections made by the AGC during the Applicant's cross-examination of Steven Shragge on May 19, 2022, specifically that the following objections made on the basis of Cabinet confidences were invalid:
- a. the AGC's objection to the question of which ministers were members of the IRG in February 2022;
  - b. the AGC's objection to a request for the attendee list for each of the IRG meetings in February 10, 12, and 13, 2022;
  - c. the AGC's objection to the questions of whether there were documents prepared by the Privy Council Office ("PCO") for the Incident Response Group ("IRG") and whether, if so, those documents can be produced;
  - d. the AGC's objection to the question of whether the minutes of the IRG meetings on February 10, 12, and 13 were put before Cabinet;

- e. the AGC’s objection to the question of whether the minutes of the IRG meetings on February 10, 12, and 13 were put before the Governor in Council;
  - f. the AGC’s objection to the question of whether the documents that the IRG considered at its meetings on February 10, 12, and 13 were put before Cabinet; and
  - g. the AGC’s objection to the question of whether the documents that the IRG considered at its meetings on February 10, 12, and 13 were put before the Governor in Council.
3. a declaration that the AGC cannot rely on s. 39 of the *Canada Evidence Act* to support a claim of Cabinet confidences without a valid s. 39 certification;
  4. a declaration that the IRG is not a “committee of Cabinet” within the meaning of s. 39(3) of the *Canada Evidence Act*;
  5. an order that the AGC file, under seal and within 14 days, any documents over which public interest immunity may claimed;
  6. subject to this Court’s determination of whether any claim of public interest immunity is sustainable, an order that:
    - a. Mr. Shragge re-attend for cross-examination by the CCLA, at the AGC’s expense;
    - b. Mr. Shragge answer any question put to him during his cross-examination on May 19, 2022, that was not answered the basis of an invalid objection, as well as any proper question arising from his answer(s);
    - c. Mr. Shragge produce for inspection any document that was not produced on the basis of an invalid objection; and
  7. such further and other relief as the CCLA may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On February 18, 2022, the CCLA issued a Notice of Application for judicial review in respect of the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 [*Emergency Proclamation*], made pursuant to s. 17(1) of the *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.), and also in respect two regulations made pursuant to s. 19(1) of the *Emergencies Act*: the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21, and the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22.

***Parallel Proceedings and Rule 317 Requests***

2. On February 23, 2022, the Canadian Constitution Foundation (“CCF”) issued a parallel Notice of Application for Judicial Review (T-347-22) in respect of the same legal instruments. The CCF also made a request under Rule 317 of the *Federal Courts Rules*, SOR/98-106, seeking:
  - a. the record of materials before the Governor in Council in respect of the *Emergency Proclamation*;
  - b. the record of materials before the Governor in Council in respect of the *Emergency Measures Regulations*; and
  - c. the record of materials before the Governor in Council respect of the *Emergency Economic Measures Order*.
3. A similar request under Rule 317 was also made by the Canadian Frontline Nurses and Kristen Nagle in their judicial review proceedings (T-306-22).
4. The applications for judicial review brought by the CCLA, CCF, and the Canadian Frontline Nurses and Kristen Nagle are all being case managed together and are anticipated to be heard together, if not formally consolidated.
5. In response to the Rule 317 requests detailed above, the AGC delivered an affidavit sworn by Jeremy Adler, which attached a certificate signed by the Interim Clerk of the Privy Council and Secretary to the Cabinet on March 31, 2022. This certificate sets out the Interim

Clerk's determination that the following documents constitute confidences of the Queen's Privy Council for Canada and that they should be protected from disclosure under s. 39 of the *CEA*:

- a. three February 2022 submissions to the Governor in Council from the Honourable Marco Mendicino, Minister of Public Safety and Emergency Preparedness, concerning the Orders in Council proposed to be made pursuant to ss. 17(1) and 19(1) of the *Emergencies Act* (i.e., the *Emergency Proclamation*, the *Emergency Measures Regulations*, and the *Emergency Economic Measures Order*), which were determined to fall within s. 39(2)(a) of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 [*CEA*]; and
  - b. three records recording the decisions of Council concerning the Orders in Council described above, which were determined to fall within s. 39(2)(c) of the *CEA*.
6. On April 11, 2022, the CCF issued an Amended Notice of Motion seeking a declaration that the AGC's response to its Rule 317 request was incomplete. In particular, the CCF is seeking the minutes of the February 10, 12, and 13 meetings of the IRG, the minutes of the meeting of the Governor in Council on February 13, 2022, and electronic records reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy.
  7. On May 25, 2022, the AGC delivered its response to the CCF's motion. Among other things, the AGC maintains that the IRG-related documents the CCF seeks are not part of the Certified Tribunal Record and not producible under Rule 317. The AGC takes this position on the basis that the "Tribunal" that must respond to the CCF's Rule 317 request is only the Governor in Council. The AGC's position is that the IRG is distinguishable from the Governor in Council, as the IRG is "an *ad hoc* working group of ministers and other officials that has the mandate of coordinating the federal response to a given incident".

### ***Affidavit of Steven Shragge***

8. On April 4, 2022, Mr. Steven Shragge — a Senior Policy Advisor with the Privy Council Office, Security and Intelligence Secretariat — swore his first affidavit in these proceedings. The same day, the AGC served Mr. Shragge's affidavit on the CCLA, CCF, and CFN.

9. Mr. Shragge has sworn that he has “operational knowledge of the mandates, memberships, and practices of decision-making and coordination structures”, though he does not have “direct knowledge of Cabinet, council and ministerial deliberation and decision-making discussions during the days directly preceding the declaration of a public order emergency on February 14, 2022”.
10. Mr. Shragge indicates that the decision to issue the *Emergency Proclamation* was informed by “robust discussions” at the three IRG meetings in mid-February 2022.<sup>1</sup> Mr. Shragge holds significant knowledge regarding the IRG, including that:
  - a. the IRG is a “working group of ministers” whose membership “can vary based on the nature of the incident and include both Ministers and other officials as required”;
  - b. the IRG “serves as a dedicated emergency committee to advise the Prime Minister in the event of a national crisis”;
  - c. the IRG is a “coordination body responsible for promoting a prompt federal response to an incident to keep Canadians safe and secure, at home and abroad”; and
  - d. the IRG is “intended to provide advice to the Prime Minister, as well as support coordination and information exchange amongst Ministers and drive forward a whole-of-government response to incidents”.
11. Mr. Shragge attaches four documents to his affidavit, including the government’s “Explanation pursuant to subsection 58(1) of the *Emergencies Act*”. Like Mr. Shragge’s affidavit, the s. 58(1) Explanation indicates that the IRG’s “robust discussions” informed the decision at issue.

***Cross-Examination of Steven Shragge and the AGC’s Objections***

12. On May 12, 2022, the CCLA served the on the AGC a Direction to Attend to Mr. Shragge. This Direction to Attend included the following requests for documents relating to the IRG:

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<sup>1</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 5;

- a. any document that lists the membership of the IRG for the meetings held on February 10, 12, and 13, 2022;
  - b. any minutes of the IRG meetings of February 10, 12, and 13, 2022; and
  - c. any notes from the IRG meetings of February 10, 12, and 13, 2022.
13. The AGC has refused to produce these documents, mostly due to an assertion of Cabinet confidences.
14. Pursuant to the above Direction to Attend, the CCLA cross-examined Mr. Shragge on May 19, 2022. During that cross-examination, Mr. Shragge cast considerable doubt on the notion that the IRG is a Cabinet committee that attracts the protection of s. 39. Among other things, Mr. Shragge indicated that:
- a. there is “no formal link” between the IRG and Cabinet; and
  - b. as he has understood and observed the IRG and Cabinet, there is “a distinction between Cabinet and the Incident Response Group in that the Incident Response group is primarily a coordination and information sharing body intended to ensure that the Prime Minister is well informed and ministers are coordinating their activities within their respective mandates as compared to Cabinet, which is traditionally the official decision making body for passing policies which may result in bills and changes to law”.
15. During the cross-examination of Mr. Shragge, the AGC made a number of objections on the basis of Cabinet confidences. These included objections to the questions of:
- a. whether the PCO prepared any documents for the IRG;
  - b. whether the minutes from the February 10, 12, and 13 meetings of the IRG were put before either Cabinet or the Governor in Council; and
  - c. whether the documents that the IRG considered at those meetings were put before Cabinet or the Governor in Council.

***The IRG Is Not a Cabinet Committee***

16. In order for a claim of Cabinet confidences to IRG-related information, that information must fall within one of the subparagraphs of s. 39(2) of the *CEA*, the bulk of which relate to “Council”. Section 39(3) provides that “Council” means “the Queen’s Privy Council for Canada, committees of the Queen’s Privy Council for Canada, Cabinet and committees of Cabinet” (emphasis added).
17. Accordingly, in considering the Attorney General’s claim of Cabinet confidences, a key question will be whether the IRG is a part of “Council”. The IRG can only be a part of Council if it is a “committee of Cabinet” within the meaning of s. 39(3).
18. Relevant sources indicate that a committee of Cabinet is “composed of Ministers where some tradition of collective ministerial responsibility and Cabinet prerogative can be invoked to justify the application of this exemption” and are “in every sense a body of Cabinet, bear its collective responsibilities and are fundamentally not an amalgam of persons who do and do not hold Cabinet membership”. Essentially, a committee of Cabinet is a committee that is composed of members of the Cabinet.
19. In this case, the evidence that has emerged has made it clear that the IRG cannot properly be characterized as a Cabinet committee.
20. The IRG plainly stands on a distinct footing from the other Cabinet committees. While every Cabinet committee is composed *exclusively* of ministers of Cabinet, the IRG is a “working group” that “may consist of relevant ministers and senior government leadership”.
21. The AGC’s key affiant, Mr. Shragge, has gone to great lengths to maintain a sharp distinction between the IRG and Cabinet. Based on his practice and experience, the IRG is “primarily a coordination and information sharing body intended to ensure that the Prime Minister is well informed and ministers are coordinating their activities within their respective mandates as compared to Cabinet, which is traditionally the official decision making body for passing policies which may result in bills and changes to law”. Mr. Shragge confirmed that there is “no formal link” between the IRG and Cabinet. It follows that the IRG does not provide advice to Cabinet. Instead, the IRG is designed to provide advice to the Prime Minister.

22. It is apparent that the IRG has not served the function of Cabinet or advised the Governor in Council in making the decision to invoke the *Emergencies Act*. Not even the minutes of the IRG meetings on February 10, 12, and 13 were put before the Governor in Council.
23. The AGC's attempt to bring the IRG under the umbrella of Cabinet and its committees represents an expansion of confidentiality of which this Court should be extremely cautious. The substance of the AGC's claim of Cabinet confidentiality is also surprisingly expansive: it has claimed that this confidentiality applies to even the *membership* of the IRG.
24. Accordingly, the IRG is not a Cabinet committee and not a part of "Council" within the meaning of s. 39(3) of the *CEA*.

***Without a Section 39 Certificate, No Claim of Cabinet Confidences Is Sustainable***

25. To the extent that the AGC's objections are based on an assertion of Cabinet confidences, those objections require a valid s. 39 certification. A valid certification must: (1) be done by the Clerk of the Privy Council or a minister of the Crown; (2) relate to information within s. 39(2) of the *CEA*; (3) be done in a *bona fide* exercise of delegated power; and (4) be done to prevent the disclosure of hitherto confidential information. In making a certification, the Clerk must also determine that it is desirable that confidentiality be retained, taking into account the competing interests in disclosure and retaining confidentiality.
26. Although the AGC has provided a s. 39 certificate in relation to some materials put before the Governor in Council, it has not provided a certificate in relation to the objections regarding the May 12 Direction to Attend or those made during the May 19 cross-examination of Mr. Shragge. Nor has the AGC provided a s. 39 certificate that covers the IRG minutes and related documents sought in the CCF's Amended Notice of Motion.
27. Without a valid s. 39 certification, the AGC's objections on the basis of Cabinet confidences cannot stand. Certification is the trigger by which information becomes protected. Without a valid certification, this Court only has the AGC's assertion of Cabinet confidences — there is no independent determination or review of that assertion. Without a valid certification, the CCLA is not in a position to contest the AGC's assertion, as it lacks the particulars that are typically contained in a s. 39 certificate (e.g., the subparagraphs of s. 39(2) that apply).



***No Public Interest Immunity***

28. Without a valid s. 39 certification, this Court must revert to the common law of public interest immunity, should the AGC claim that immunity. This requires a determination of whether the public interest in confidentiality outweighs the public interest in disclosure. The burden is on the AGC to establish that a document should not be disclosed because of public interest immunity, which often involves specifying as precisely as possible the harm that would result from disclosure.
29. In this case, the balance weighs in favour of disclosure of the documents requested and the answers to the questions put to Mr. Shragge during his cross examination on May 19, 2022. This is especially the case for information that amounts to background explanations or information and does not reveal the deliberations between ministers. Additionally, although the decision-making process at issue occurred at a high level, the information sought relates to the IRG, which is not a part of Cabinet. The information sought also relates to a decision that has already been publicly announced and that information is vital to the sound adjudication of this judicial review application.

***Any Future Section 39 Certification Would Require Further Judicial Scrutiny***

30. In the event that the AGC produces a s. 39 certificate, the CCLA reserves the right to contest the validity of that certificate.
31. The CCLA brings this motion pursuant to Rules 97 and 359 of the *Federal Courts Rules*.
32. Such further and other grounds as the CCLA may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

1. Notice of Application of the Canadian Civil Liberties Association (T-316-22);
2. Notice of Application of the Canadian Constitution Foundation (T-347-22);

3. Notice of Application of the Canadian Frontline Nurses and Kristen Nagle (T-306-22);
4. Letter from the Attorney General of Canada (“AGC”) to CCF attaching Section 39 Certificate;
5. Affidavit of Steven Shragge (sworn April 4, 2022);
6. Direction to Attend to Steven Shragge (May 12, 2022);
7. Transcript of Cross-Examination of Steven Shragge (May 19, 2022);
8. Website of the Prime Minister entitled Cabinet Committee Mandate and Membership current as of December 3, 2021 (Cross-Examination of Steven Shragge, Exhibit #2);
9. Letter from AGC to CCLA re. Documents Requested in Direction to Attend to Steven Shragge (May 27, 2022);
10. Letter from AGC to CCLA re. Questions Taken under Advisement During Cross-Examination of Steven Shragge (June 13, 2022);
11. Transcript of Continued-Cross Examination of Steven Shragge (June 15, 2022);
12. Privy Council Office – Drafter’s Guide to Cabinet Documents (Continued Cross Examination of Steven Shragge, Exhibit #2);
13. Amended Notice of Motion of the CCF re. Rule 317;
14. Excerpts from Written Representations of the AGC re. CCF Rule 317 Motion;
15. Written representations of the CCLA; and
16. Such further and other evidence as the CCLA may advise and this Honourable Court may permit.

June 28, 2022




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Court File No. T-316-22

**FEDERAL COURT****CANADIAN CIVIL LIBERTIES ASSOCIATION**

Applicant

- and -

**ATTORNEY GENERAL OF CANADA**

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the  
*Federal Courts Act*, R.S.C. 1985, c. F-7

**NOTICE OF APPLICATION****TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the applicant. The relief claimed by the applicant appears below.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

February 18, 2022

Issued by: 'JACQUELINE SMITH' .....

Address of local office: 180 Queen Street West  
Suite 200  
Toronto, Ontario  
M5V 3L6

TO: **ATTORNEY GENERAL OF CANADA**  
Ontario Regional Office  
Department of Justice Canada  
120 Adelaide Street West  
Suite #400  
Toronto, Ontario M5H 1T1

## APPLICATION

This is an application for judicial review in respect of the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 [*Emergency Proclamation*], made pursuant to s. 17(1) of the *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.). This is also an application for judicial review in respect of the following regulations made pursuant to s. 19(1) of the *Emergencies Act*: the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21, and the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22.

### THE APPLICANT MAKES APPLICATION FOR:

1. an order quashing the *Emergency Proclamation*;
2. an order quashing the *Emergency Measures Regulations*;
3. in the alternative to (2),
  - (a) an order that ss. 2, 4, and 5 of the *Emergency Measures Regulations* are inconsistent with s. 2(b) of the *Canadian Charter of Rights and Freedoms* [*Charter*], and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Charter*, as well as an immediately effective declaration that these sections are of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
  - (b) an order that ss. 2 and 4 of the *Emergency Measures Regulations* are inconsistent with s. 2(c) and s. 2(d) of the *Charter*, and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to

- s. 1 of the *Charter*, as well as an immediately effective declaration that these sections are of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
- (c) an order that s. 10 of the *Emergency Measures Regulations* is inconsistent with s. 7 of the *Charter*, and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Charter*, as well as an immediately effective declaration that this section is of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
4. an order quashing the *Emergency Economic Measures Order*;
5. in the alternative to (4), an order that s. 5 of the *Emergency Economic Measures Order* is inconsistent with s. 8 of the *Charter*, and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Charter*, as well as an immediately effective declaration that this section is of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
6. a hearing of this matter on an expedited basis;
7. an order that there be no costs of this proceeding; and
8. such further and other relief as counsel may advise and as this Honourable Court may deem just.

## THE GROUNDS FOR THE APPLICATION ARE:

### *Overview*

1. This application arises out of the federal government's decision to invoke the *Emergencies Act* to quell protests centered in Ottawa, Ontario, and at various border crossings, as well as to pre-empt further action elsewhere.
2. The *Emergencies Act*, when properly invoked, grants an extraordinary amount of power to the executive branch of the federal government. The Act was intended to address situations of war, invasion, and other national emergencies that are so exigent and threatening that they cannot be dealt with under existing laws or through typical democratic processes.
3. Since the passage of the *Emergencies Act* in 1988, Canada has faced numerous national crises. There have been terrorist attacks, economic collapses, and a pandemic. All of these situations were dealt with using existing laws and normal democratic processes, or, when absolutely necessary, municipal or provincial emergency powers. There have also been national protest movements that occupied public spaces and city streets for months and blockaded critical infrastructure such as railways — essential democratic activity that frequently supports marginalized communities' struggles for equality and justice. These too have been responded to within the context of existing laws.
4. The federal government argues that the current situation is different — that the protests currently occurring in Canada are distinct from other previous national crises, so much



- so that they can justify resort to the federal *Emergencies Act* for the first time in Canadian history.
5. The *Emergencies Act*, however, contains stringent preconditions for its invocation. In recognition of the extreme nature of the powers that it grants and the risk of overreach and misuse, the legislative drafters included very high legal thresholds that had to be met before the powers under the Act could be used. Those thresholds have not been met. There is no nationwide public order emergency within the meaning of the Act. The protests can be, and in many cases already have been, managed under existing Canadian law. The government's proclamation of a national emergency on February 14, 2022, and the orders flowing from that proclamation, are therefore unlawful and unconstitutional.
  6. The protests at issue began in late January 2022 when, following the imposition of a COVID-19 vaccine mandate for truck drivers crossing the Canada-United States border, a convoy of vehicles began travelling from British Columbia to Ontario. This convoy has since become known as the "Freedom Convoy". By January 28, 2022, the Freedom Convoy had arrived in Ottawa, along with thousands of loosely affiliated and unaffiliated protestors. It is now apparent that the protests take aim at measures beyond the vaccine mandate for cross-border truck drivers and raise more general concerns about governmental and regulatory responses to the pandemic.
  7. As the protests in Ottawa continued into February, similar but smaller local protests sprang up in other parts of Canada, including in Winnipeg, Manitoba, and Enfield and Halifax, Nova Scotia. The most notable of these local protests included the blockading

- of ports of entry at the Ambassador Bridge in Windsor, Ontario, a provincial highway in Sarnia, Ontario, the Peace Bridge in Fort Erie, Ontario, and international border crossings at Emerson, Manitoba, and Coutts, Alberta.
8. Many individuals involved in these protests have been entirely law-abiding and peaceful. Many others have engaged in forms of non-violent disruptive action that have had a significant and at times harmful impact on local residents, including: blockading roadways; driving vehicles slowly, thereby disrupting traffic; chanting; marching; sitting-in on city streets; erecting structures in public space; and creating noise by honking horns. There have also been disturbing reports of individual protestors or small groups of people engaging in violent and discriminatory acts. In Coutts, Alberta, for example, the RCMP discovered a cache of guns, ammunition, and body armour which led to the immediate arrest of 13 individuals. In Ottawa, there have been reports that some of the protesters engaged in physical and verbal harassment, as well as intimidation on the basis of race and property destruction on the basis of homophobic bias. This has been deeply disturbing to residents of Ottawa and people across the country, and in particular has created fear amongst racialized and marginalized communities. There is no doubt that these incidents are more than disruptive — they are dangerous, harmful, and unacceptable.
  9. Given this context, it is no surprise that many municipal and provincial governments, along with local police services across the country, have actively worked to manage the situations in their respective jurisdictions. The government of Ontario has instituted a state of emergency and made it an offence to disrupt critical infrastructure, while Nova Scotia's government has issued an emergency directive prohibiting protestors

from blockading or disrupting traffic. Police across the country have been called in to prepare for and respond to protests in numerous cities, where they have successfully limited disruptions to essential services while still ensuring that protestors can exercise their peaceful assembly rights. The courts have also been active, issuing injunctive relief targeting some of the most disruptive and harmful behaviour.

10. In sum, the vast majority of protests across this country have been handled by local authorities using existing laws, and indeed several provinces have stated that resorting to the *Emergencies Act* is unnecessary. Despite this fact, the federal government nevertheless proclaimed the existence of a public order emergency throughout the country.
11. The legislative thresholds have not been met and, for that reason, the *Emergency Proclamation* is unreasonable and *ultra vires*.
12. Legal resort to these powers requires that the executive have a reasonable basis for believing that there is (a) a threat to the security of Canada and (b) that threat is serious enough to be a national emergency. This requires showing, among other things, that the lives, health, or safety of Canadians has been seriously endangered, and that neither the provinces nor existing law are capable of dealing with that danger. The extraordinary powers granted under the *Emergencies Act* are reserved for unforeseen circumstances that the numerous laws and regulations of this country cannot address. Protests and demonstrations — even loud and lengthy ones — do not fall within this category.

13. The government has failed to discharge its burden to establish either a threat to the security of Canada or a national emergency. The *Emergencies Act* does not permit the government to proclaim an emergency based on unspecified concerns about economic instability and international trade, a general sense of public unrest, or donations to a cause from people outside of Canada. Even the presence of a small number of dangerous individuals in specific locations, while deeply concerning and a proper priority for law enforcement officials, would not be enough to justify the proclamation of a *nation-wide* emergency. A proclamation of emergency cannot be grounded in nebulous or strained claims about unspecified danger.
14. Moreover, the provinces have shown that they are capable of dealing with the protests using existing law. The fact that some protests remained for longer than others, or were more disruptive than others, is not in and of itself an indication of a lack of capacity or legal powers. The most economically disruptive forms of protest, such as the blockades at ports of entry to Canada, were largely resolved with provincial powers and prior to the *Emergency Proclamation*. Likewise, the armed faction in Coutts was neutralized.
15. While the federal government and many Canadians may disagree with the nature and extent of the various municipal and provincial responses, this disagreement is no justification for resorting to the *Emergencies Act* to take control of provincial powers and blur the lines that federalism firmly draws.
16. The decision to invoke the *Emergencies Act* must also be scrutinized in light of the sweeping *Charter* implications of the regulations made in reliance on the *Emergency Proclamation* (i.e., the *Emergency Measures Regulations* and the *Emergency*

*Economic Measures Order*). These regulations inhibit protest in a manner that offends the fundamental freedoms of free expression, peaceful assembly, and association. Many protests, including those brought by communities who often have no other way of having their concerns heard, are both largely peaceful and intensely disruptive. Such protests are an essential part of life in a vibrant democracy. The regulations at issue here also undermine protest by conscripting certain institutions into funneling protestors' financial information to the RCMP and CSIS, contrary to the right to be free from unreasonable search and seizure. These regulations apply everywhere in Canada, despite the fact that the protests are focused in discrete areas.

17. Accordingly, the government's resort to its emergency powers cannot be justified in relation to the factual and legal constraints at play. Ultimately, the exercise of executive power here lacks the intelligibility and justification necessary to survive judicial review by this Court.

### ***The Emergencies Act***

18. The *Emergencies Act* empowers the Governor in Council to proclaim, among other things, a "public order emergency".
19. A public order emergency is defined in s. 16 of the *Emergencies Act* and arises where two objective threshold requirements are met.
20. First, there must be "threats to the security of Canada". This phrase has the meaning ascribed by s. 2 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23, which sets out four types of threats:

(a) 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,

(b) 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,

(c) 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

(d) 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.

21. However, “threats to the security of Canada” do *not* include “lawful advocacy, protest or dissent”, unless it involves any of the activities referred to above.
22. Second, the situation must be serious enough to constitute a “national emergency”, which is defined in s. 3 of the *Emergencies Act* as follows:

For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

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

and that cannot be effectively dealt with under any other law of Canada.

23. Section 17(1) of the *Emergencies Act* authorizes the Governor in Council to proclaim a public order emergency upon believing, on reasonable grounds, that such an emergency exists and necessitates the taking of special temporary measures. In the

event that the effects of the emergency do not extend to the whole of Canada, s. 17(2)(c) requires that the proclamation specify the area(s) of Canada to which the emergency extends.

24. While the proclamation of a public order emergency persists, s. 19(1) of the *Emergencies Act* supplies the Governor in Council with the power to make such orders or regulations as are believed to be necessary for dealing with the emergency. However, pursuant to s. 19(3), this power must be exercised or performed in a manner that will not unduly impair the ability of any province to take measures for dealing with an emergency in the province and with the view of achieving, to the extent possible, concerted action with each province.

### ***The Emergency Proclamation***

25. The *Emergency Proclamation* was issued on February 14, 2022, pursuant to s. 17(1) of the *Emergencies Act*. It proclaimed that a public order emergency exists throughout the entirety of Canada.
26. The proclamation specifies that the emergency is principally the result of “blockades”. In particular, it states that the emergency is constituted of:

(a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

(b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,

(c) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,

(d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

27. The proclamation also contemplates that certain special temporary measures may be necessary for dealing with the emergency, including “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”, “measures to authorize or direct any person to render essential services ... including services related to the removal, towing and storage of any vehicle ... that is part of a blockade”, and measures to authorize or direct any person to render essential services to relieve the impacts of the blockade”.
28. The *Emergency Proclamation* will remain in force for 30 days beginning February 14, 2022, unless it is revoked by a vote at the House of Commons or the Senate. From that point, it may be continued in accordance with the provisions of the *Emergencies Act*.



***The Emergency Measures Regulations and the Emergency Economic Measures Order***

29. On the basis that the *Emergency Proclamation* was effective, the *Emergency Measures Regulations* and the *Emergency Economic Measures Order* were enacted on February 15, 2022.
30. The *Emergency Measures Regulations* create four key prohibitions backed by the threat of conviction and imprisonment.
31. Section 2(1) prohibits participation in a public assembly that may be reasonably expected to lead to a breach of the peace by:
  - (a) the serious disruption of the movement of persons or goods or the serious interference with trade;
  - (b) the interference with the functioning of critical infrastructure; or
  - (c) the support of the threat or use of acts of serious violence against persons or property.
32. Section 3 prohibits foreign nationals from entering Canada with the intent to participate in or facilitate a s. 2 assembly.
33. Section 4(1) prohibits everyone from travelling to an area where a s. 2 assembly is taking place, subject to various exemptions (“Prohibition on Travel to an Assembly”).
34. Section 5 is perhaps the broadest prohibition of all, prohibiting anyone from directly or indirectly providing property to facilitate or participate in any s. 2 assembly or for the purpose of benefitting any person who is facilitating or participating in such an

- assembly (“Prohibition on the Provision of Property”). This provision also extends to similar use, collection, making available, or inviting a person to provide such property.
35. Section 10(2) creates penalties for failure to comply with the *Emergency Measures Regulations*:
- (2) In the case of a failure to comply with these Regulations, any peace officer may take the necessary measures to ensure the compliance and allow for the prosecution for that failure to comply
- (a) on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or
- (b) on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years or to both.
- (“Prosecution Provision”)
36. The *Emergency Economic Measures Order* contains provisions that compound the impact of the *Emergency Measures Regulations*. Most importantly, s. 2(1) requires banks, credit unions, insurance companies, securities dealers, money services businesses, crowd-funding platforms, and payment service providers to freeze the assets and accounts of “designated person[s]” (the “Freezing Measures”). Designated persons include any individual who is engaged, directly or indirectly, in an activity prohibited by ss. 2 to 5 of the *Emergency Measures Regulations*. This freezing must occur immediately upon the coming into force of the *Emergency Economic Measures Order*.
37. Pursuant to s. 3 of the *Emergency Economic Measures Order*, the above institutions also have a duty to determine, on a continuing basis, whether they are in possession or

control of property owned, held, or controlled by or on behalf of a designated person. If they are, the institutions must register with the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”), pursuant to s. 4(1). These entities must also disclose, without delay, to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service:

- (a) the existence of property in their possession or control that they have reason to believe is owned, held or controlled by or on behalf of a designated person; and
- (b) any information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

### ***The Emergency Proclamation Is Unreasonable and Ultra Vires***

38. As with any exercise of authority granted by a federal statute, the *Emergency Proclamation* must be consistent with the scope of the statutory mandate and meet the requirements of its enabling legislation. In this regard, it fails.
39. The *Emergency Proclamation* is not justified in light of the legal and factual constraints that bear upon it, most notably the governing statutory scheme and the powers it confers, which broadly impact individuals’ *Charter*-protected rights.

### **Governing Statutory Scheme**

40. The *Emergency Proclamation* fails to meet the two threshold requirements of the *Emergencies Act*: threats to the security of Canada and a national emergency.
41. The *Emergencies Act* requires that there be reasonable grounds to believe that these threshold requirements are met. This requires more than just speculation, suspicion,

- political pressure, or even apprehension — there must be an objectively reasonable belief based on compelling and credible evidence.
42. The first threshold requirement — that there be threats to the security of Canada — is not met. None of the four threats set out in the *Canadian Security Intelligence Service Act* are present. A public protest does not qualify as “espionage or sabotage”, as required by s. 2(a). Even if that protest were a “foreign influenced activity” simply because it is partly supported by crowdfunding from other countries, it is neither clandestine nor deceptive; it also does not, as a whole, involve a threat to any person, as required by s. 2(b). While it is true that the protest — like any protest — is designed to active to achieve a political objective, there is no compelling evidence that this objective is generally being pursued by acts of “serious violence”, as required by s. 2(c). And there is likewise no sustainable suggestion that the constitutionally established system of government in Canada is being imperilled by covert unlawful acts or an “overthrow by violence”, as required by s. 2(d).
  43. The second threshold requirement — that there be a “national emergency” — similarly is not met.
  44. How the protests and blockades seriously endanger the lives, health, or safety of Canadians, as required by the definition of “national emergency”, is not apparent from either the *Emergency Proclamation* or the explanation tabled pursuant to s. 58(1) of the *Emergencies Act*. Disruption does not meet this threshold, and the actions at issue have been generally peaceful. While the *Emergency Proclamation* refers to adverse effects on the Canadian economy, it fails to demonstrate any connection between those effects

and the lives, health, and safety of Canadians. Although the proclamation refers to a supply chain breakdown, there is no compelling evidence that Canadians will go without necessities in a way that would endanger them — particularly not now given that the situation at the Ambassador Bridge and those in Fort Erie, Ontario, and Coutts, Alberta, have been resolved. The same is true of the proclamation’s oblique reference to adverse effects on Canada’s “relationship with its trading partners”. Finally, while there is a reference to a potential violence and unrest, the government must have some basis — beyond a large gathering of dissenters — for considering this potential to be real and substantial. It does not.

45. Even if there were a basis for believing that certain of the protests cause sufficient danger, the federal government goes too far in suggesting that danger is present throughout the entirety of the country. At most, a few localities are facing the acute effects of the protests. The vast majority of the country is not affected, much less endangered, by the protests — and yet, every person in Canada is now living under a proclaimed public safety emergency, and is subject to the orders made on the basis of that emergency.
46. However serious or widespread the danger at issue truly is, it is unreasonable to contend that it “exceed[s] the capacity or authority of a province to deal with it”. The protests *can* be effectively dealt with under other laws of Canada. These are also essential elements of a “national emergency”.
47. Among other things, the criminal law is more than capable of addressing all of the federal government’s concerns, through specific offences like mischief, unlawful

- assembly, causing a disturbance, or nuisance, as well as the powers concomitant to arrest. Municipal by-laws also operate to similar effect.
48. As recent judicial orders have shown, injunctions are available to restrain the conduct said to be creating an emergency. Injunctions have a long history of being resorted to in order to deal with demonstrations or protests that cause economic harm. In relation to the current protests, injunctions have been granted to restrain the use of horns and vehicle idling, to enforce by-laws regarding the same, and to force protestors to leave the Ambassador Bridge. This latter injunction in particular has proved effective: the Bridge is now open, and it was opened before the proclamation of any federal emergency.
  49. All of the foregoing laws can also be bolstered by the imposition of a *provincial* state of emergency. This is the approach Ontario's government has taken. On February 11, 2022 — four days before the federal government's invocation of the *Emergencies Act* — an emergency was already declared in the Province of Ontario, pursuant to O. Reg. 69/22. The next day, O. Reg. 71/22 [*Critical Infrastructure and Highways Regulation*] was enacted. Among other things, this regulation enjoins individuals from impeding access to critical infrastructure and highways and extends to police officers the power to order individuals to do the same. The overlap of the *Critical Infrastructure and Highways Regulation* and the *Emergency Measures Regulations* belies the contention that the provinces did not have the capacity to address the protests at issue.
  50. Moreover, the *Critical Infrastructure and Highways Regulation* is backed by the force set out in the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s.

7.0.11, which creates substantial fines for the contravention of emergency orders or the obstruction of persons performing duties conferred by such orders:

### **Offences**

7.0.11 (1) Every person who fails to comply with an order under subsection 7.0.2 (4) or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by an order under that subsection is guilty of an offence and is liable on conviction,

(a) in the case of an individual, subject to clause (b), to a fine of not more than \$100,000 and for a term of imprisonment of not more than one year;

(b) in the case of an individual who is a director or officer of a corporation, to a fine of not more than \$500,000 and for a term of imprisonment of not more than one year; and

(c) in the case of a corporation, to a fine of not more than \$10,000,000.

### **Separate offence**

(2) A person is guilty of a separate offence on each day that an offence under subsection (1) occurs or continues.

51. To an extent, the Government's precipitous invocation of the *Emergencies Act* appears to have been motivated by its view that the provinces have not gone far enough in addressing intraprovincial protest. However, this does not mean that the provinces lack the *capacity* or *authority* to deal with the protests, nor does it mean that that the laws of Canada are *incapable* of dealing with them. To the contrary, the provinces have all the tools they need. The *Emergencies Act* was not intended to provide the federal government a pathway to arrogate provincial powers to itself in circumstances where the provinces do not exercise those powers in the way the federal government would

have. Use of the Act in this way strains the balance that federalism demands and exceeds the intention behind the *Emergencies Act*.

**Impact on Individuals' Charter-Protected Rights**

52. The reasonableness of the Government's resort to the *Emergencies Act* must also have regard to the substantial, *Charter*-infringing impacts of the regulations that the *Emergency Proclamation* has enabled under s. 19(1) of the *Emergencies Act*.
53. The prohibitions set out in the *Emergency Measures Regulations* — namely, the Prohibition on Public Assembly, the Prohibition on Travel to an Assembly, and the Prohibition on Providing Property — offend fundamental freedoms enshrined in the *Charter*. In so doing, they inhibit basic and essential forms of democratic participation.
54. Each of these Prohibitions infringes s. 2(b) of the *Charter*, which protects freedom of expression. All of the prohibited activities contain expressive content, thereby falling within the protected sphere of free expression. The prohibition of those activities, in both purpose and effect, infringes that protection.
55. The Prohibition on Public Assembly and the Prohibition on Travel to an Assembly infringes s. 2(c) of the *Charter*, which protects freedom of peaceful assembly, for similar reasons. The former prohibition captures any assembly that may be “reasonably expected” to lead to a breach of the peace. In this way, it prohibits assembly *before it occurs* and before it becomes an assembly that *might* fall outside the scope of s. 2(d). By prohibiting assemblies that are by definition peaceful — or that at least have



- not yet become non-peaceful — and by prohibiting individuals (and, effectively, their children) from travelling to attend such assemblies, these prohibitions infringe s. 2(c).
56. Also for similar reasons, the Prohibition on Public Assembly and the Prohibition on Travel to an Assembly infringe s. 2(d) of the *Charter*, which protects freedom of association. These prohibitions prohibit individuals from meeting and forming associations, discouraging the collective pursuit of common goals and striking at the heart of this freedom.
  57. The Prosecution Provision of the *Emergency Measures Regulations* creates an offence punishable by imprisonment for failure to comply, thereby engaging the liberty interests protected by s. 7 of the *Charter*. This offence is not consistent with the principles of fundamental justice of overbreadth and gross disproportionality, as it captures peaceful protest that goes far beyond the objective of the regulations.
  58. The *Emergency Economic Measures Order* likewise creates serious, *Charter*-infringing impacts. Among other things, this regulation requires a battery of financial institutions and businesses to freeze or suspend accounts held by “designated persons” (i.e., persons “engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*”). Moreover, s. 5 of the order conscripts financial institutions into disclosing — to the RCMP or CSIS — whether they are holding property that they believe is owned, held, or controlled by or on behalf of a designated person. As this section requires that the existence of this property and information related to it be delivered to the authorities without judicial authorization or

reasonable and probable grounds, it compels searches that are contrary to s. 8 of the *Charter*.

59. All of these measures are now in force and were also contemplated to varying degrees in the *Emergency Proclamation* itself.
60. The reasonableness of the federal government's decision to enact the *Emergency Proclamation* must have regard to these impacts on individuals' rights and interests. These concerns are central to the necessity of adequate justification — justification that is decidedly lacking here.
61. In light the above legal and factual constraints that bear upon it, the *Emergency Proclamation* is unreasonable and *ultra vires*.

***The Emergency Measures Regulations and the Emergency Economic Measures Order Are Inconsistent with the Charter***

62. On the basis set out above, each of the Prohibition on Public Assembly, the Prohibition on Travel to an Assembly, the Prohibition on Providing Property and the Prosecution Provision are inconsistent with various of s. 2(b), 2(c), and 2(d), and 7 of the *Charter*.
63. On the basis set out above, s. 5 of the *Emergency Economic Measures Order* is inconsistent with s. 8 of the *Charter*.
64. None of these infringements can be justified under s. 1. The pressing and substantial objective pursued by the regulations at play here must be to end the protests and the blockades and to address their impacts. However, particularly in light of the alternative

measures available and the application of these orders to the entirety of the country, the regulations cannot be said to be minimally impairing of the rights at issue, nor can they be said to be proportionate to their objective.

***The CCLA Meets the Test for Public Interest Standing***

65. The Applicant, the Canadian Civil Liberties Association (“CCLA”), brings this application on the basis of public interest standing.
66. The CCLA is an independent, non-profit, non-governmental organization that is dedicated to actively defending and promoting the recognition of fundamental human rights and civil liberties.
67. Since its inception in 1964, the CCLA has been holding governments accountable by ensuring those rights and freedoms are fostered and observed and that the rule of law is upheld. It advocates on behalf of all people in Canada to ensure that the critical balance between civil liberties and competing public and private interests are maintained.
68. 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. 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.

69. 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.
70. 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.
71. 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. It will present a complete 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 that lie at the heart of this case.
72. 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 an 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.
73. Such further and other grounds as counsel may advise.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

1. the Affidavit of Abby Deshman; and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

February 18, 2021




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Ewa Krajewska

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Lawyers for Applicant

Court File No.: T-347-22

**FEDERAL COURT**

BETWEEN:

**CANADIAN CONSTITUTION FOUNDATION**

Applicant

– and –

**ATTORNEY GENERAL OF CANADA**

Respondent



Application for Judicial Review under Sections 18 and 18.1 of the  
*Federal Courts Act*, R.S.C. 1985, c. F-7.

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**NOTICE OF APPLICATION**

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**TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the applicant. The relief claimed by the applicant appears below.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

**February 23, 2022**

Issued by:  Digitally signed by  
ahmed, imrana  
Date: 2022.02.23  
09:31:14 -05'00'

Imrana Ahmed, Registry Officer

Address of local office: 180 Queen Street West  
Suite 200  
Toronto, Ontario  
M5V 3L6

**TO: ATTORNEY GENERAL OF CANADA**  
Ontario Regional Office  
Department of Justice Canada  
120 Adelaide Street West  
Suite #400  
Toronto, Ontario M5H 1T1

## APPLICATION

This is an Application pursuant to section 18.1 of the *Federal Courts Act*, RSC c F-7 for judicial review of: (a) the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 (“*Emergency Proclamation*”), made pursuant to section 17(1) of the *Emergencies Act*, RSC 1985, c 22 4th Supp (“the *Emergencies Act*”); (b) the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21 (“*Emergency Measures*”), made pursuant to section 19(1) of the *Emergencies Act*; and (c) the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22 (“*Economic Measures*”), made pursuant to section 19(1) of the *Emergencies Act*.

### THE APPLICANT MAKES APPLICATION FOR:

1. An order declaring unlawful and quashing the *Emergency Proclamation*.
2. An order declaring unlawful and quashing the *Emergency Measures*.
3. An order declaring unlawful and quashing the *Economic Measures*.
4. An order pursuant to section 52(1) of the *Constitution Act, 1982*, declaring the *Emergency Measures* to be unconstitutional and of no force or effect.
5. An order pursuant to section 52(1) of the *Constitution Act, 1982*, declaring the *Economic Measures* to be unconstitutional and of no force or effect.
6. An order pursuant to Rule 383 of the *Federal Courts Rules*, SOR/98-106 assigning this proceeding to case management.
7. An order pursuant to Rule 306 of the *Federal Courts Rules* to admit the affidavit of Madeleine Ross.
8. An order pursuant to Rule 105 of the *Federal Court Rules* that this proceeding be joined with *Canadian Civil Liberties Association v. Attorney General of Canada*, Court File No. T-316-2.
9. An order directing the Respondent to deliver the Record to the Applicant on an urgent basis pursuant to Rule 317 of the *Federal Courts Rules*, because of the inherently time limited nature of a public order emergency.



10. An order directing the Respondent to deliver those portions of the record to the Applicant over which it asserts any privileges under Rule 318, including pursuant to sections 38 (national security) and 39 (cabinet confidences) of the *Canada Evidence Act*, RSC 1985, c C-5, on an urgent, counsel-only basis pursuant to a confidentiality undertaking, because of the inherently time limited nature of a public order emergency.
11. The hearing of this matter on an expedited basis, because of the inherently time limited nature of a public order emergency.
12. An order that there be no costs of this proceeding.
13. Such further and other relief as counsel may advise and as this Honourable Court may deem just.

#### **THE GROUNDS FOR THE APPLICATION ARE:**

##### **A. Overview**

1. This is an urgent Application for Judicial Review of the federal cabinet's decision to trigger and exercise the extraordinary powers contained in the *Emergencies Act* on February 14 and 15, 2022.
2. The *Emergencies Act* has a dark and troubled history in Canada. The *Emergencies Act* was originally enacted in 1988 to replace the *War Measures Act* ("WMA"), which was used during the Second World War to intern Japanese Canadians and Italian Canadians, and which was abused during the FLQ Crisis in Quebec in 1970. In direct response to this history, the *Emergencies Act* sets out a carefully crafted and demanding set of legally binding conditions that must be satisfied before it may be triggered, to ensure that it is used only as an absolute last resort, and for not a moment longer than necessary.
3. The *Emergencies Act* has never been invoked before. Over the decades since it was passed, Canada has weathered terrorist attacks, economic hardship, and an unprecedented global health pandemic without ever needing to resort to the incredible powers contained in the *Emergencies Act*.
4. The question on this Application is whether the strict legal requirements of the *Emergencies Act* were met before the federal cabinet issued the *Emergency Proclamation*, the

*Emergency Measures*, and the *Economic Measures*, in response to protests in Ottawa and border blockades.

5. We submit that the answer to that question is that those legal requirements were not met.

6. The *Emergencies Act* vests the federal cabinet with the extraordinary power to unilaterally proclaim a public order emergency. Such a proclamation serves *de facto* as a temporary constitutional amendment. Under the *Emergencies Act*, after the federal cabinet proclaims a public order emergency, vast legislative authority is delegated to the cabinet. This authority encompasses the power to create new criminal offences and police powers, without recourse to Parliament, advance notice or public debate. The *Emergencies Act* also grants the federal cabinet legislative power in core areas of provincial jurisdiction, such as property and civil rights, without any requirement for provincial consultation or consent.

7. Because of its profound effects on Canada's federal democracy, the grave risk of executive overreach, and the government's past abuse of emergency powers that this legislation was specifically intended to prevent, the courts should regard the *Emergencies Act* as a quasi-constitutional statute and interpret it strictly.

8. The federal cabinet did not have reasonable grounds for concluding there was a public order emergency that justified invoking the *Emergencies Act*, no matter how challenging and difficult it perceived the ongoing protests to be. Invoking the *Emergencies Act* was not absolutely necessary, as the law requires. Federal, provincial and municipal law enforcement already had all of the legal tools and authorities they needed to respond to the protests. Their perceived failure to respond effectively does not in itself authorize the government to invoke the *Emergencies Act*. The stringent conditions set by the *Emergencies Act* for declaring a public order emergency, and thus triggering the vast powers contemplated by the *Emergencies Act*, were not met.

9. In addition, the *Emergency Measures* and the *Economic Measures* violate the *Charter*. First, the prohibitions created by the *Emergency Measures* impose the threat of fine or imprisonment on a broad range of conduct, and, in so doing, risk a chilling effect on otherwise legitimate forms of expression. Second, the *Economic Measures* require banks to disclose otherwise private banking information to the police. Under the law, this amounts to a warrantless and unreasonable search of the private banking information of Canadian citizens. Both the

*Emergency Measures* and the *Economic Measures* create clear violations of sections 2, 7 and 8 of the *Charter*, and do not constitute reasonable limits that can be demonstrably justified in a free and democratic society.

**B. Chronology of Key Events Leading up to the invocation of the *Emergencies Act***

*i) Ottawa Protests: Before the Emergency Proclamation*

10. On January 28, 2022, the “Freedom Convoy 2022” (“Convoy”) arrived in Ottawa. The Convoy was comprised of people from across Canada who intended to protest Canada’s public health response to the COVID-19 pandemic and the new vaccination requirements for cross-border truckers.<sup>1</sup> The Convoy’s arrival in Ottawa was not a surprise. Its route to Ottawa was widely publicized.<sup>2</sup>

11. Over the ensuing days, the protests in Ottawa grew. The blocking of public roadways by protestors violated both the *Criminal Code* and the *Highway Traffic Act*, RSO 1990 c H.8. Mischief under section 430 of the *Criminal Code*, for example, makes it a criminal offence for someone to obstruct, interrupt or interfere with the lawful use, enjoyment, or operation of property.

12. On January 31, 2022, Prime Minister Trudeau spoke with Ottawa Mayor Jim Watson about the Convoy and its illegal occupation of the downtown core.

13. By February 5, 2022, the Royal Canadian Mounted Police (“RCMP”) had provided “fresh reinforcements” to the Ottawa Police Service (“OPS”) at its request, in the form of 257 officers, from its detachment in Ottawa.<sup>3</sup> The RCMP National Headquarters is also located in Ottawa.

14. The next day, on February 6, 2022, the City of Ottawa declared a state of emergency. Ontario Premier Doug Ford told the press that the provincial government was supporting Ottawa in whatever way it could, but that Ottawa had not asked the province to request military aid from the federal government.<sup>4</sup>

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<sup>1</sup> Exhibit A, Affidavit of Madeleine Ross.

<sup>2</sup> Exhibit B, Affidavit of Madeleine Ross.

<sup>3</sup> Exhibit C, Affidavit of Madeleine Ross.

<sup>4</sup> Exhibit D, Affidavit of Madeleine Ross.

15. On February 7, 2022, the first of several trilateral meetings took place between the federal government, Mayor Watson, and the Ottawa Police Chief.<sup>5</sup> Mayor Watson also wrote to the federal government asking for an additional 1800 RCMP and Ontario Provincial Police (“OPP”) officers.<sup>6</sup>

16. On February 12, 2022, the OPS announced the establishment of an enhanced “Integrated Command Centre” (ICC) that brought together the OPS, OPP and RCMP in response to the protests in Ottawa, “to coordinate enforcement” and “to make the most effective use of the additional resources our policing partners have provided us”, which “will result in a significantly enhanced ability of our police service to respond to the current situation in our city.”<sup>7</sup>

17. On February 15, 2022, Justice McWatt of the Ontario Superior Court of Justice issued an interlocutory injunction pursuant to s. 440 of the *Municipal Act*, RSO 1990, c M.45, in response to an application brought by the City of Ottawa, enjoining individuals from breaching the following By-laws of the City of Ottawa: Open Air Fire By-law 2004-163, Fireworks By-law 2003-237, Noise By-law 2017-255, Use and Care of Roads By-law 2003-498, and the Idling Control By-law 2007-266.<sup>8</sup>

18. Following the establishment of the ICC, and with the help of the additional resources provided by the OPP and the RCMP, the OPS began charging protestors. The charges include:

- (a) Tyson Billings: charged under the *Criminal Code* with mischief (section 430), counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464), obstruct police (section 129) and counselling to commit the offence of obstruct police (section 464).<sup>9</sup>
- (b) Patrick King: charged under the *Criminal Code* with mischief (section 430), counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464) and counselling to commit the offence of obstruct police (section 464).<sup>10</sup>
- (c) Tamara Lich: charged under the *Criminal Code* with counselling to commit the offence of mischief (section 464).<sup>11</sup>

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<sup>5</sup> Exhibit E, Affidavit of Madeleine Ross.

<sup>6</sup> Exhibit F, Affidavit of Madeleine Ross.

<sup>7</sup> Exhibit H, Affidavit of Madeleine Ross.

<sup>8</sup> Exhibit Z, Affidavit of Madeleine Ross.

<sup>9</sup> Exhibit G, Affidavit of Madeleine Ross.

<sup>10</sup> Exhibit I, Affidavit of Madeleine Ross.

<sup>11</sup> Exhibit J, Affidavit of Madeleine Ross.

- (d) John Barber: charged under the *Criminal Code* with counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464) and counselling to commit the offence of obstruct police (section 464).<sup>12</sup>

19. As of February 21, 2022, Ottawa police had arrested and charged 196 people pursuant to offences under the *Criminal Code* and had towed 115 trucks.<sup>13</sup> It is unclear whether even a single protester in Ottawa was charged with any offences created by the *Emergency Measures*.

ii) *Blockade of the Ambassador Bridge in Windsor, Ontario*

20. On February 7, 2022, protestors began a blockade at the Ambassador Bridge in Windsor. The bridge is Canada's busiest border crossing with the United States. Windsor Police responded immediately with a large police presence to monitor the demonstrations.

21. The next day, on February 8, 2022, Windsor Police issued a press release warning protesters that those "found committing crimes and acts of violence will be investigated and charges will be laid" and that steps taken would include "enforcement of traffic related offences and investigating any criminal acts."<sup>14</sup>

22. Two days later, the Windsor Police issued a press release explicitly outlining the various criminal offences that the protestors were potentially committing:

The Windsor Police Service wants to make demonstrators clearly aware that it is a criminal offence to obstruct, interrupt or interfere with the lawful use, enjoyment, or operation of property. The offence itself is known as mischief to property. The unlawful act of blocking streets at and near the Ambassador Bridge is resulting in people being denied the lawful use, enjoyment and operation of their property and causing businesses to close down. We are providing notice that anyone blocking streets or assisting others in the blocking of streets may be committing a criminal offence and must immediately cease further unlawful activity or you may face charges. You could be arrested if you are a party to the offence or assisting others in the direct or indirect commission of this offence. Vehicles or other property related to an offence may be seized. Once a vehicle is seized, it may be detained and, following a conviction, possibly forfeited.<sup>15</sup>

23. On February 10, 2022, Prime Minister Trudeau spoke with the Mayor of the City of Windsor and had another call with the Premier of Ontario Doug Ford. It is unclear what if any

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<sup>12</sup> Exhibit K, Affidavit of Madeleine Ross.

<sup>13</sup> Exhibit L, Affidavit of Madeleine Ross.

<sup>14</sup> Exhibit M, Affidavit of Madeleine Ross.

<sup>15</sup> Exhibit N, Affidavit of Madeleine Ross.

assistance Windsor sought from the federal government, and what the federal government's response was. That same day, auto industry groups with the support of the City of Windsor sought an injunction from the Ontario Superior Court of Justice to end the blockade.

24. On February 11, 2022, Chief Justice Morawetz granted the injunction, and ordered that the “Police or designated agents shall have authorization to remove any vehicles, personal property, equipment, structures, or other objects that impede or block access to the Ambassador Bridge and approaching roadways.”<sup>16</sup>

25. By February 13, 2022, without any resort to the *Emergencies Act*, the Ambassador Bridge was fully reopened.

26. According to the Windsor Police, from February 7 to 13, 2022, 90 people were arrested and charged. The charges were laid under existing *Criminal Code* offences and included: 43 people charged with breaching a court order (section 127); 43 people charged with mischief over \$5,000 (section 430); one person charged with obstructing justice (section 139); one person charged with failing to attend court (section 145); and one person charged with dangerous driving (section 320.13). One person is facing a *Highway Traffic Act* charge for failing to remain (section 200(1)(a)).<sup>17</sup>

### iii) Blockade in Coutts, Alberta

27. On January 29, 2022, a blockade began in Coutts, Alberta at the United States-Canada border. The Coutts protest was widely publicized. Alberta RCMP were aware of the planned blockade and had some time to plan their own response, which included having RCMP officers at the border for the duration of the blockade.<sup>18</sup>

28. On February 5, 2022, the Alberta Minister of Municipal Affairs, the Honourable Ric McIver, wrote a letter to the federal Minister of Public Safety, Marco Mendicino, and federal Minister of Emergency Preparedness, William Blair. Mr. McIver explained that Alberta's plan going forward was for the RCMP and partner law enforcement agencies to remove demonstrators and bystanders, which would allow for the removal of the vehicles and equipment obstructing the

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<sup>16</sup> Exhibit O, Affidavit of Madeleine Ross.

<sup>17</sup> Exhibit FF, Affidavit of Madeleine Ross.

<sup>18</sup> Exhibit P, Affidavit of Madeleine Ross.

highway. The only support that Mr. McIver sought from federal authorities was “provisions” in the form of equipment and personnel: “To support this approach, I am requesting federal assistance that includes the provision of equipment and personnel to move approximately 70 semi-tractor trailers and approximately 75 personal and recreational vehicles from the area.”<sup>19</sup> It is unclear whether and how the federal government responded to Mr. McIver’s request.

29. On February 14, 2022, the Alberta RCMP executed search warrants and arrested several people involved in the Coutts protest. The arrests all appear to have taken place under the authority of the *Criminal Code* or provincial legislation. That day, the Alberta RCMP cleared the blockade and restored the border crossing.

iv) *Blockade at Sarnia Blue Water Bridge, Ontario*

30. On February 8, 2022, two groups of protests blocked the provincial highway leading to and from the Sarnia Blue Water Bridge, a border crossing. However, ten hours later, the OPP was able to clear the blockade and restore access to the border.

31. On February 9, 2022, a group created a highway blockade approximately 30 kilometres east of Sarnia on the provincial highway. Five days later, on February 14, 2022, the blockade was stopped and access to the highway was restored.

v) *Blockade at Emerson, Manitoba*

32. On February 10, 2022, protesters began blocking the Canada-United States border at the port of entry at Emerson, Manitoba. The next day, Manitoba Premier Heather Stefanson wrote to Prime Minister Trudeau seeking immediate and effective federal action regarding the blockade. Premier Stefanson did not specify what the federal action should look like, but she did welcome discussion on potential “federal-provincial collaborative action”.<sup>20</sup>

33. By February 16, 2022, the blockade was completely cleared. In a press release, the RCMP explained that throughout the previous six days, officers used “open communication, and a measured approach to find a peaceful resolution to [the] situation” and said that because of these efforts, it had been able to coordinate and escort vehicles out of the area. The press release also

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<sup>19</sup> Exhibit Q, Affidavit of Madeleine Ross.

<sup>20</sup> Exhibit S, Affidavit of Madeleine Ross.



noted that in successfully clearing the blockade, the Manitoba RCMP worked collaboratively with the CBSA, US Customs and Border Protection, and Manitoba Transportation and Infrastructure.<sup>21</sup>

vi) *Blockade at the Peace Bridge at Fort Erie, Ontario*

34. On February 12, 2022, a protest targeted the Peace Bridge port entry at Fort Erie, Ontario. The protest disrupted inbound traffic at the border for part of that day, and then outbound traffic until February 14, 2022, by which date the Niagara Police cleared the blockade and restored access to the border.<sup>22</sup>

vii) *Blockade in Surrey, British Columbia*

35. On February 12, 2022, several vehicles broke through an RCMP barricade in Surrey, British Columbia on their way to the Pacific Highway port of entry. Protesters forced the highway to close at the Canada-United States border in Surrey. On February 13, 2022, the Surrey RCMP arrested four protesters for “mischief”.<sup>23</sup> By February 19, 2022, the border had reopened.<sup>24</sup>

viii) *Ontario Measures in Response to the Protests and Blockades*

36. On February 11, 2022, the Province of Ontario declared a state of emergency pursuant to O.Reg. 69/22 under the *Emergency Management and Civil Protection Act*, RSO 1990, c E9.<sup>25</sup> At a press conference, Premier Ford said that he would convene cabinet and “urgently enact orders that will make crystal clear it is illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.”<sup>26</sup> On February 12, 2022, the Ontario government confirmed the state of emergency (O. Reg. 70/22)<sup>27</sup> and promulgated O.Reg. 71/22, making it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.<sup>28</sup>

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<sup>21</sup> Exhibit R, Affidavit of Madeleine Ross.

<sup>22</sup> Exhibit A at p. 8, Affidavit of Madeleine Ross.

<sup>23</sup> Exhibit T, Affidavit of Madeleine Ross.

<sup>24</sup> Exhibit U, Affidavit of Madeleine Ross.

<sup>25</sup> Exhibit AA, Affidavit of Madeleine Ross.

<sup>26</sup> Exhibit V, Affidavit of Madeleine Ross.

<sup>27</sup> Exhibit DD, Affidavit of Madeleine Ross.

<sup>28</sup> Exhibit EE, Affidavit of Madeleine Ross.



37. On February 20, 2022, the Province of Ontario brought an application in the Superior Court of Justice for an order pursuant to section 490.8 of the *Criminal Code*. The Court issued the order, which prohibited people from disposing, or otherwise dealing with, donations made through the Freedom Convoy and Adopt-a-Trucker campaign pages on the “GiveSendGo” online fundraising platform.<sup>29</sup>

ix) *Nova Scotia Measures in Response to the Blockades*

38. On January 28, 2022, the Nova Scotia Minister of Municipal Affairs and Housing issued Direction 22-003 (road blockade ban) pursuant to section 14 of the *Emergency Management Act*, SNS 1990, c 8, prohibiting protests from blockading a highway near the Nova Scotia-New Brunswick border. Failure to comply with the Direction could result in a summary conviction with fines between \$3000 and \$10 000 for individuals.<sup>30</sup>

39. On February 4, 2022, the Nova Scotia Attorney General and Minister of Justice promulgated N.S. Reg. 16/2022, pursuant to section 8 of the *Summary Proceedings Act*, RNS, c 450, to make the prohibitions in Direction 22-003 (road blockade ban) summary conviction offences.<sup>31</sup>

x) *The Deputy Director of FINTRAC Testifies at the House of Commons Regarding the Protests and Blockades*

40. On February 10, 2022, Barry McKillop, the Deputy Director of Intelligence of the Financial Transactions and Reports Analysis Centre (“FINTRAC”), testified at the House of Commons Public Safety and National Security Committee about the protests taking place across the country, and the concerns about how these protests were being funded.

41. Mr. McKillop explained that while crowdfunding sites are not a regulated money service business (“MSB”) under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, when those sites transact with or through businesses that are MSBs, e.g., payment processing platforms such as Stripe or PayPal, those MSBs would be able to submit reports identifying transactions that are suspicious and would submit such reports to FINTRAC.<sup>32</sup> Mr.

<sup>29</sup>Exhibit W, Affidavit of Madeleine Ross. See also Exhibit GG, Affidavit of Madeleine Ross.

<sup>30</sup> Exhibit BB, Affidavit of Madeleine Ross.

<sup>31</sup> Exhibit CC, Affidavit of Madeleine Ross.

<sup>32</sup> Exhibit X, Affidavit of Madeleine Ross, at 13:43:18 to 13:43:50.

McKillop testified that to date, FINTRAC had not seen a spike in suspicious transaction reporting in relation to the Ottawa protests.<sup>33</sup>

### C. The History of the *Emergencies Act*

42. The exercise of emergency powers by the federal cabinet has been deeply troubled throughout Canada's history. The *War Measures Act* was the direct predecessor to the *Emergencies Act* and was in force between 1914 and 1988.<sup>34</sup> During that time, Canada spent close to two decades under federal emergency legislation.

43. Professor Patricia Peppin of Queen's University's Faculty of Law describes that the *War Measures Act* "superseded all existing laws, provided overarching powers for cabinet to govern through regulation, and permitted overriding the normal operation of the federal system." Ultimately, the act was used to support censorship and to permit internment:

The *War Measures Act* was used to impose censorship, to outlaw socially unacceptable organizations, to legalize retroactively the actions taken by the military during the Quebec City conscription riots, to impose preventive detention, to allow the deportation of Canadian-born people of Japanese ancestry, to permit the internment of thousands of Japanese Canadians, to authorize the confiscation of Japanese Canadians' property under the guise of expropriation for compensation, the registration and internment of alien enemies in both World Wars, and the detention of persons who belonged to 'unlawful associations' like the Communist Party.<sup>35</sup>

44. The *Emergencies Act* was drafted to ensure these abuses never happened again by protecting parliamentary democracy, federalism, and individual rights. The overarching principle behind the specific provisions of the *Emergencies Act* is proportionality. Every provision of the Act is designed with the intent of limiting the federal cabinet's power to declare an emergency to only those situations where it is absolutely necessary, to grant to the cabinet only the powers it needs to deal with the particular emergency, and for the powers to exist for only as long as the emergency exists.

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<sup>33</sup> Exhibit X, Affidavit of Madeleine Ross, at 13:54:00 to 13:54:36.

<sup>34</sup> The *War Measures Act* was in fact a series of statutes – the *War Measures Act, 1914*, SC 1915; *War Measures Act*, R.S.C. 1927, c 206; *National Emergency Transitional Powers Act, 1945*, SC 1945; *National Emergency Transitional Powers Act, 1945*, SC 1945; *Emergency Powers Act*, SC 1951, c 5 and SC 1952-53, c 33; *War Measures Act*, RSC 1970, c W-2; and the *Public Order (Temporary Measures) Act 1970*, SC 1970-72, c 2.

<sup>35</sup> Exhibit Y, Affidavit of Madeleine Ross.

45. The Act defines a “national emergency” as “an urgent and critical situation of a temporary nature that”:

- (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it; or
- (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada”; and
- (c) “cannot be effectively dealt with under any other law of Canada”.

46. The Act creates four different kinds of national emergencies: public welfare emergencies, public order emergencies, international emergencies, and war emergencies. Each type of emergency must satisfy additional conditions before the federal cabinet can proclaim it. Each type of emergency confers different powers on the federal cabinet.

47. In this case, federal cabinet has proclaimed a public order emergency. A public order emergency is “an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency” (section 16). “Threats to the security of Canada”, in turn, are defined by the *Canadian Security Intelligence Security Act*, RSC 1985, c C-23, section 2 as:

- (a) 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;
- (b) 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,
- (c) 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
- (d) 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.

48. The federal cabinet may declare a public order emergency if it “believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency” (section 17).

49. When a declaration of public order emergency is in effect, the federal cabinet may make “orders or regulations” on the following matters if it “believes, on reasonable grounds” that such measures “are necessary for dealing with the emergency” (section 19(1)):

- (a) the regulation or prohibition of:

- (i) any public assembly that may reasonably be expected to lead to a breach of the peace,
  - (ii) travel to, from or within any specified area, or
  - (iii) the use of specified property;
- (b) the designation and securing of protected places;
- (c) the assumption of the control, and the restoration and maintenance, of public utilities and services;
- (d) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered; and
- (e) the imposition:
  - (i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or
  - (ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment,

for contravention of any order or regulation made under this section.

**D. The *Emergency Proclamation*, *Emergency Measures*, and *Economic Measures***

50. The federal government issued the *Emergency Proclamation* on February 14, 2022. The Proclamation declared that a public order emergency exists “throughout Canada” and “necessitates” the taking of special temporary measures for dealing with the emergency.

51. The *Emergency Proclamation* describes the “emergency” as consisting of five elements:

- (a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada;
- (b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings;
- (c) the adverse effects resulting from the impacts of the blockades on Canada’s relationship with its trading partners, including the United States, that are detrimental to the interests of Canada;

- (d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number; and
- (e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

52. The *Emergency Proclamation* goes on to describe the special temporary measures as consisting of:

- (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 the provision of 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 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 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*; and
- (f) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

53. The House of Commons confirmed the *Emergency Proclamation* on February 21, 2022.

54. The *Emergency Measures* and the *Economic Measures* were promulgated on February 15, 2022. Together, they set out the prohibitions and powers created by the invocation of the *Emergencies Act*.

55. The *Emergency Measures* creates four prohibitions:

- (a) A person must not participate in a public assembly that may reasonably lead to a breach of peace or causing a person under the age of 18 to participate in such an assembly, by the serious disruption of the movement of persons or goods or the serious interference with trade the interference with the functioning of critical infrastructure, or the support of the threat or use of acts of serious violence against persons or property (section 2);
- (b) A foreign national must not enter Canada with the intent to participate in or facilitate such an assembly (section 3);
- (c) A person must not travel to or within an area where such an assembly is taking place, or causing a person under the age of 18 to travel to, or within 500 metres of such an assembly (section 4); and
- (d) A person must not, directly or indirectly, use collect, provide, make available or invite a person to provide property to facilitate or participate in such an assembly, or for the purpose of benefiting any person who is facilitating or participating in such an assembly (sections 5).

56. The *Emergency Measures* also direct people, in exchange for fair compensation, to assist the Minister of Public Safety and Emergency Preparedness, the Commissioner of the RCMP, or anyone acting on their behalf, with removing, towing and storing any objects that are part of a blockade (sections 7, 8 and 9).

57. A failure to comply with the *Emergency Measures* allows for prosecution on summary conviction or by indictment. Summary prosecution carries a possible punishment of a fine not exceeding \$5,000 or imprisonment not exceeding 6 months. Prosecution by indictment carries a possible punishment of a fine not exceeding \$5000 or a term of imprisonment not exceeding 5 years (section 10(2)).

58. The *Economic Measures* require financial “entities” listed therein (section 3) to cease dealing in any property that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of a “designated person”; cease facilitating any related transactions; cease making available property (including funds or virtual currency); and cease providing any financial or related services to or for the benefit of a designated person (section 2). A designated person is someone who is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures* (section 1).

59. The *Economic Measures* also require entities to determine on a continuing basis whether they are in possession or control of property that is owned, held or controlled by or on behalf of a



“designated person” (section 3). Entities are required to register with FINTRAC and to report every suspicious financial transaction (section 4), and to disclose to the Commissioner of the RCMP the existence of property in their possession or control that they have “reason to believe” is owned, held or controlled by or on behalf of a designated person and any information about a transaction or proposed transaction in relation to this property (section 5). The *Economic Measures* offer no guidance on how the entities should interpret the phrase “reason to believe”. They immunize the entities from civil liability when complying with the *Economic Measures*.

**E. The *Emergency Proclamation*, *Emergencies Measures*, and *Economic Measures* are unlawful**

60. The *Emergency Proclamation* and *Emergencies Measures* are unlawful because they do not meet the key requirement of necessity in the *Emergencies Act*. It simply cannot be established that the situation that the invocation of the *Emergencies Act* was intended to address could not have been handled effectively under existing Canadian law.

61. One of the key justifications for invoking the *Emergencies Act* was the impact that border blockades were having on international trade and international relations. But in reality, the border blockades at the Ambassador Bridge, Coutts, Emerson, the Peace Bridge, Sarnia, and Surrey were cleared by police using existing provisions under the *Criminal Code* and provincial laws, including *Highway Traffic Act* legislation. The blockades were all effectively resolved without recourse to the powers granted by the *Emergencies Measures*, and there are currently no border blockades.

62. In clearing the border blockades, every single charge the police have laid thus far has been under the *Criminal Code* and existing provincial legislation, and not a single charge has been laid using the allegedly indispensable new offences created under the *Emergencies Act*.

63. Future border blockades can be effectively addressed in the same way, through the use of existing legislation and the exercise of existing federal and provincial authority. Recourse to the extraordinary powers granted by the *Emergencies Measures* is simply not necessary.

64. Similarly, to address the protests in Ottawa, the federal government already had the power to provide officers to the Ottawa Police Service and to establish a joint command with the OPS and OPP in Ottawa, and it in fact did exercise these powers prior to the *Emergency Proclamation*. In addition, section 129(b) of the *Criminal Code* makes it an offence for a person, without

reasonable excuse, to refuse to assist a police officer in the execution of their duty. This could apply to tow truck drivers who refuse to assist police by making their vehicles available as needed to preserve the peace.

65. Again, the efficacy of existing legislation and authority in addressing the protests in Ottawa is made clear by the fact that every single charge that was laid when the police moved in to end the blockades was laid under existing *Criminal Code* provisions. Not a single charge has been laid pursuant to the *Emergency Measures*.

66. The federal and provincial government also already had the ability to take steps to limit the financing of future illegal protests. The existing authority of FINTRAC over payment processing platforms already requires these platforms to report suspicious transfers to and from crowdfunding sites. In addition, the Attorney General already has the power to make an application for a restraint order under section 490.8 of the *Criminal Code*, which would prevent a person from disposing of, or otherwise dealing with, any interest in offence-related property.

67. When Parliament passed the *Emergencies Act* in 1988, it did so in full recognition of this country's dark history of abuse under the *War Measures Act*. It specifically sought to make sure the *Emergencies Act* would not be used unless it was absolutely necessary, and it stipulated that the powers under the *Emergencies Act* should never be invoked unless existing law was truly incapable of dealing with the problem. There is simply no evidence that this standard was met in this case. In fact, the way in which the protests were actually dealt with and resolved gives us every reason to believe that resort to the *Emergencies Act* was unnecessary.

#### **F. The *Emergency Proclamation*, *Emergencies Measures*, and *Economic Measures* Violate the *Charter***

68. One of the reasons why emergency powers ought to be invoked only in extraordinarily rare circumstances is that emergency powers often lead to abuses of individual rights. Canada's history under the *War Measures Act* provides ample evidence of that. In this case, the reasonableness of the Government's invocation of the *Emergencies Act* must take into account whether the *Emergency Measures* and the *Economic Measures* violate the *Charter*. Both sets of measures create serious violations of core democratic rights and other freedoms, under sections 2, 7, and 8 of the *Charter*.



i) *Section 2 of the Charter*

69. Sections 2, 4 and 5 of the *Emergency Measures*, and section 2 of the *Economic Measures*, all violate the core democratic rights to freedom of expression, association, and assembly guaranteed by sections 2(b), (c), and (d) of the *Charter*.

70. The rights to expression, assembly, and association created by section 2 of the *Charter* have been interpreted purposively, in the broadest possible terms. The *Emergency Measures*' prohibitions on attending assemblies and engaging in fundraising — as either a donor or a solicitor of donations — amount to clear cut violations of these rights. Similarly, section 2 of the *Economic Measures* is designed to discourage and prevent participation in these constitutionally protected activities, which also amounts to a violation of these rights. It will therefore fall to the government to justify these violations under section 1 of the *Charter*.

71. Under section 1, these prohibitions will fail because they are not minimally impairing, and their deleterious effects outweigh their salutary benefits. Section 2 of the *Emergency Measures* criminalizes participation in a demonstration that *might* — in the future — “reasonably be expected to lead to a breach of the peace.” The *Emergency Measures* provide no guidance on how to determine whether a breach of the peace can be “reasonably expected.”

72. It is clear that these measures have been invoked in response to protests against government measures taken in response to the COVID-19 pandemic — and in particular the use of illegal blockades during these protests. Going forward, however, it is entirely unclear how the government will enforce the *Emergency Measures* and *Economic Measures*, and what evidence or intelligence will be used to satisfy a reasonable belief that a breach of the peace might occur. For example, if protests were organized in response to the government's invocation of the *Emergencies Act*, would it be possible for the government and the police to conclude there is a reasonable expectation that a breach of the peace might occur at these protests, given what has just taken place in the previous protests? Reasoning along these lines is not far-fetched, and it risks chilling legitimate speech and demonstration by instilling fear in those who might otherwise wish to participate in lawful demonstrations against government actions.

73. It also seems clear from the wording of the *Emergency Measures* that someone could be charged and convicted of an offence under this section for participating in a demonstration that

never actually resulted in a breach of the peace. This is because the provision does not merely criminalize or prohibit participation in a demonstration where a breach of the peace actually occurs, . Rather, it targets situations where it is reasonably believed such a breach might occur.

74. Similarly, the section draws no distinction between those protestors who actually participate in a breach of the peace, and those who do not. The only intent required by the prohibition is an intention to participate in the public assembly as a whole — and not the actual breach of the peace that *might* possibly occur. In other words, if someone attends a public demonstration with the sole intention of standing on the front lawn of Parliament holding up a sign expressing their opinion, they would be guilty of a criminal offence if other protestors decided to block the roads in a way that offended the prohibition. Similarly, they would be guilty of an offence if it could simply be reasonably expected that an event might occur, even if it does not actually occur, and even if they had no intention of participating in such an event did it occur.

75. This prohibition is not minimally impairing because it goes further than necessary. Instead of targeting actually unlawful conduct that constitutes a breach of the peace, it prohibits any participation — even peaceful participation — in a protest where state officials “reasonably believe” a breach of the peace might occur.

76. Sections 4 and 5 of the *Emergency Measures*, and section 2 of the *Economic Measures*, rely on the same definition of unlawful assembly, and similarly fail to minimally impair *Charter* rights as a result.

ii) *Section 7 of the Charter*

77. Sections 2, 4 and 5 of the *Emergency Measures* violate section 7 of the *Charter*. These prohibitions are deprivations of the right to liberty because they carry with them the threat of significant jail sentences. These deprivations are not in accordance with the principles of fundamental justice, because they are overbroad and/or have effects that are grossly disproportionate to the objectives of the prohibition.

iii) *Section 8 of the Charter*

78. Sections 4 and 5 of the *Economic Measures* violate section 8 of the *Charter*. Section 4 requires financial institutions to register with FINTRAC if they are in possession of property that

is owned by or held on behalf of a person who has participated in an unlawful assembly (i.e. a “designated person” under the *Economic Measures*) and to report to FINTRAC if they have reasonable grounds to suspect that a transaction has been conducted relating to the commission of a money laundering or terrorism related offence. Section 5 requires financial institutions to report to the RCMP and to CSIS “the existence of property in their possession or control” that they have reason to believe is owned, held or controlled by or on behalf of a person who is participating in an unlawful assembly.

79. Canadian citizens and permanent residents enjoy a reasonable expectation of privacy over the information that banks hold about them, including the details of the accounts that they hold, the funds they possess, and the ways they spend their money. By requiring financial institutions to provide such information to CSIS and to the RCMP, these provisions of the *Economic Measures* constitute a search.

80. These search provisions violate section 8 of the *Charter* because they do not comply with the Supreme Court’s decision in *Hunter v. Southam*, [1984] 2 SCR 145. *Hunter v. Southam* held that for a statutory provision authorizing a search to be reasonable under the *Charter*, it must require prior judicial authorization based on reasonable grounds. Sections 4 and 5 of the *Economic Measures* do not make any provision for prior judicial authorization before the search takes place, nor do they define the standard upon which a financial institution must satisfy itself that it is dealing with a “designated person” before turning that person’s financial information over to CSIS and the RCMP.

### **G. The Canadian Constitution Foundation Meets the Test for Public Interest Standing**

81. The Canadian Constitution Foundation (CCF) brings this application on the basis of public interest standing. The federal government’s invocation of the *Emergencies Act* has a serious effect on the constitutional rights and freedoms of Canadians across the country.

82. Founded in 2002, the CCF is an independent, national, and non-partisan registered charity whose mission is to protect constitutional freedoms. The CCF furthers this mission through education, communication, and litigation.

83. In keeping with its mandate, the CCF has accumulated significant public interest litigation experience. The CCF has appeared before all levels of court in Ontario and Canada and has made

significant contributions to constitutional law jurisprudence. The CCF has been granted intervener status by the Supreme Court of Canada in 13 cases.

84. The CCF has also been granted standing to litigate issues in its own right as a public interest litigant. Just last year, the CCF was the applicant on a successful constitutional challenge to various provisions of the *Elections Act*, in *Canadian Constitution Foundation v. Canada (Attorney General)*, 2021 ONSC 1224.

85. The CCF has a genuine interest in this Application because it is directly connected to the organization's protective mandate. The CCF also has the experience and expertise needed to efficiently and effectively conduct the litigation surrounding this judicial review. The CCF has started similar actions before, knows what will be involved, and has the resources to pursue this Application.

86. The invocation of the *Emergencies Act* and its impact on the constitutional rights of all Canadians creates an urgent need for this Application and a consideration of the legality of the underlying decision. The CCF will use its expertise and experience to ensure the issues are raised and resolved through expeditious proceedings.

#### **THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL**

70. Affidavit of Joanna Baron dated February 22, 2022;

71. Affidavit of Madeleine Ross dated February 22, 2022;

72. Such further and additional materials as the Applicant may advise and this Honourable Court may allow.

**Rule 317 Request:** The Applicant requests that the Respondent send certified copies of the following materials that are not in the possession of the Applicant, but are in the possession of the Respondent, to the Applicant and the Registry:

1. The record of materials before the Governor in Council in respect of the *Emergency Proclamation*.
2. The record of materials before the Governor in Council in respect of the *Emergency Measures*.

3. The record of materials before the Governor in Council respect of the *Economic Measures*.

February 22, 2022



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Counsel for the Applicant



Court File No.: T-306-22

**FEDERAL COURT**

**CANADIAN FRONTLINE NURSES AND KRISTEN NAGLE**

Applicants

and

**ATTORNEY GENERAL OF CANADA**

Respondent

APPLICATION UNDER SECTIONS 18 AND 18.1 OF THE *FEDERAL COURTS ACT*

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

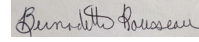
THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Suite 200, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 18, 2022



Rousseau, Bernadette  
2022.02.18 10:15:52 -  
05'00'

Issued by: \_\_\_\_\_

Address of local office:

180 Queen Street West, Suite 200  
Toronto, ON M5V 3L6

TO: **THE ADMINISTRATOR**  
Federal Court

AND TO: **THE ATTORNEY GENERAL OF CANADA**  
Ontario Regional Office  
Department of Justice Canada  
120 Adelaide Street West, Suite 400  
Toronto, Ontario M5H 1T1

Telephone: 416-973-0942

Fax: 416-954-8982

Email: AGC\_PGC\_TORONTO.LEAD-DCECJ@JUSTICE.GC.CA

(service to be effected by filing with the Registry pursuant to s. 133 of the *Federal Court Rules* and s. 48 of the *Federal Courts Act*)

### Application

1. This is an application for judicial review in respect of the Order in Council PC Number: 2022-106 proclamation of a public order emergency issued February 14, 2022 (the “Public Order Emergency Proclamation”) pursuant to subsection 17(1) of the *Emergencies Act*, RSC 1985, c 22 (4th Supp) (the “*Emergencies Act*”).

**The applicant makes application for:**

2. An Order, pursuant to Rule 317 of the *Federal Courts Rules* for production of all Orders in Council, minutes of meetings, cabinet submissions, memoranda, agreements and constituting documents relating to the Public Order Emergency Proclamation.
3. A declaration that the Respondent acted without jurisdiction or acted beyond its jurisdiction in issuing the Public Order Emergency Proclamation.
4. A declaration that the Public Order Emergency Proclamation violates the *Canadian Bill of Rights*, SC 1960, c 44 (the “*Canadian Bill of Rights*”), including the right of enjoyment of property and the right not to be deprived thereof except by due process of law.
5. A declaration, pursuant to section 52 of the *Constitution Act 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11 (the “*Constitution Act 1982*”), that the Public Order Emergency Proclamation is inconsistent with section 2 of the *Charter of Rights and Freedoms* and not justified under section 1 of *Charter*.
6. A declaration that the Public Order Emergency Proclamation is unlawful and/or invalid.



7. An interim stay of the Public Order Emergency Proclamation and any regulations, orders or other measures issued or implemented pursuant to the Public Order Emergency Proclamation until this Application is heard on its merits.
8. An Order quashing the Public Order Emergency Proclamation and any regulations, orders, or other measures issued or implemented pursuant to the Public Order Emergency Proclamation.
9. Leave or an Order pursuant to Rule 302, if required, for this application for judicial review to include any regulations, orders, or other measures issued or implemented pursuant to the Public Order Emergency Proclamation, including, but not limited to, P.C. 2022-107, the *Emergency Measures Regulations* and P.C. 2022-108, the *Emergency Economic Measures Order*.
10. A writ of prohibition prohibiting the Respondent from issuing further public order emergency proclamations in the absence of a “public order emergency” as defined in the *Emergencies Act*, which definition is not met in the current circumstances.
11. Costs of this Application on a substantial indemnity basis or in an amount that provides full indemnity.
12. Such further and other relief as this Honourable Court deems just.

**The grounds for the application are:**

***The parties to this Application***

13. The Applicant, Canadian Frontline Nurses (“CFN”), is a not-for-profit corporation duly incorporated under the *Canada Not-for-profit Corporations Act*. CFN is a proud advocate of medical freedom and its mission is to unite nurses across Canada, educate the public and ensure that Canadian healthcare reflects the highest ethical standards.
14. The Applicant, Kristen Nagle (“Nagle”) is a Canadian citizen residing in Ontario.
15. Nagle is a registered nurse and a member and director of CFN.
16. CFN and Nagle are opposed to unreasonable COVID-19 related mandates and restrictions that have been implemented by various levels of Canadian governments.
17. The Respondents are the Governor in Council, the Privy Council, and Her Excellency the Governor General in Council, all acting on behalf of Her Majesty the Queen (in right of Canada), and all represented by the named Respondent, the Attorney General of Canada.

***Background: The Applicants’ Participation in The Freedom Convoy 2022 Protests in Ottawa***

18. Starting on January 22, 2022, convoys of vehicles began to form and travel towards Ottawa. Ultimately, several convoys across Canada formed and thousands of vehicles converged on Ottawa on or about January 28, 2022, and the days that followed in support of what has been described and known as the “Freedom Convoy 2022 Protest”.

19. The Freedom Convoy 2022 Protest in Ottawa was ongoing as of the date of the Public Order Emergency Proclamation and continues as of the date of this Application.
20. The Freedom Convoy 2022 Protest in Ottawa is a peaceful demonstration based on the principles of unity and respect for all Canadians. One of the goals of the Freedom Convoy 2022 movement in Ottawa is to increase public awareness of the issues related to various levels of Canadian government implementation of COVID-19 mandates and restrictions, as well as to encourage these governments to repeal the divisive and unreasonable COVID-19 related mandates and restrictions.
21. The organizers of the Freedom Convoy 2022 movement have also called on the political class to refrain from indiscriminately labelling Canadian citizens with pejoratives, including allegations of racism and terrorism, given that this behaviour hinders open and respectful dialogue relating to the important issues which the Freedom Convoy 2022 Protest in Ottawa has raised. The objective of the Freedom Convoy 2022 is to end not only the divisiveness of the mandates and restrictions, but also the divisiveness which is engendered by the use of this type of language.
22. The Freedom Convoy 2022 Protest has increased the Canadian public's awareness with respect to the unreasonableness of government COVID-19 mandates and restrictions. It has shown other Canadians that there is a significant, dedicated movement of Canadians who oppose these measures. There has recently been a dramatic change in Canadian public opinion towards these mandates and restrictions as reflected in a January 31 Angus Reid poll that indicates that 54% of all Canadians want all COVID-19 restrictions to end. The Freedom Convoy 2022 Protest has played an instrumental role in changing Canadian public

opinion against the policies of the Trudeau government. The federal government, unlike the vast majority of jurisdictions both in Canada and around the world, has refused to commit to a timetable to eliminate restrictions and mandates and, in fact, has indicated an intention to impose even more. Recently, The Right Honourable Prime Minister of Canada, Justin Trudeau's ("Trudeau")("Prime Minister") approval ratings have dropped to near all-time lows.

23. CFN and Nagle support the right of all Canadians to assemble and engage in peaceful protest as a means of expressing their thoughts, beliefs, and opinions in a free and democratic society.

24. CFN is a participating group in the Freedom Convoy 2022. CFN and Nagle both support the Freedom Convoy 2022 Protest in Ottawa and its objectives. Nagle, as a representative of CFN, has given speeches in support of the Freedom Convoy 2022 Protest in Ottawa. CFN and Nagle have been and intend to continue to be peaceful participants and supporters of the Freedom Convoy 2022 Protest in Ottawa.

25. CFN and Nagle unequivocally do not support violence. CFN and Nagle denounce violence and do not view violence as a legitimate means of expression or as a means of achieving one's political ends. CFN and Nagle are not aware of any violence in connection with the Freedom Convoy 2022 Protest in Ottawa, nor is there any intention on the part of the Freedom Convoy 2022 for there to be any. The repeatedly stated goal of the Freedom Convoy 2022 Protest is for it to be peaceful and to ensure that it remains that way.

***The Respondent Invokes the Emergencies Act to Suppress Political Dissent***

26. The Prime Minister does not support the Freedom Convoy 2022 Protests or its goals and has decried its supporters. On January 26, 2022, Prime Minister Trudeau made the following statement:

We know that the way through this pandemic is by getting everyone vaccinated and the overwhelming majority close to ninety percent of Canadians have done exactly that. **The small fringe minority of people who are on their way to Ottawa, or who are holding unacceptable views that they're expressing, do not represent the views of Canadians** who have been there for each other who know that following the science and stepping up to protect each other is the best way to continue to ensure our freedoms, our rights, our values as a country. *[emphasis added]*

27. Prime Minister Trudeau has previously referred to individuals who choose not to get vaccinated as often being racist and misogynistic extremists. He has rhetorically asked whether these people “should be tolerated.”

28. On February 16, 2022 during question period, Prime Minister Trudeau, in response to a question by a Jewish MP and descendant of Holocaust survivors, accused the Conservatives of “standing with people who wave swastikas” because of their opposition to the invocation of the *Emergencies Act*.

29. The invocation of the *Emergencies Act* is improperly motivated by a design to target, threaten and punish individuals who have different views from that of the Prime Minister with respect to COVID-19 mandates and restrictions. The political emergency that the Prime Minister is subjectively experiencing because of the Freedom Convoy 2022 Protest’s effectiveness in reducing support for his government’s non-science based COVID-19

mandates and restrictions falls far short of constituting an actual national emergency as defined in the *Emergencies Act*.

30. The invocation of the *Emergencies Act* now threatens Freedom Convoy 2022 Protestors and their supporters (those who hold differing views from the Prime Minister with respect to COVID-19 restrictions and mandates which the Prime Minister has stated are “unacceptable”) with deprivation of the use of their financial assets without due process of law.
31. The Honourable David Lametti, Minister of Justice and Attorney General of Canada, labelled some of those who support the Freedom Convoy 2022 Protestors as members of “a pro-Trump movement” that are donating “hundreds of thousands and millions of dollars to this kind of thing”. The Minister of Justice has said such supporters “ought to be worried” about the bank freezing their accounts. The freezing of financial property without due process contrary to the *Canadian Bill of Rights* has already occurred.
32. The freezing of financial assets of those who hold differing viewpoints from that of the government in power is a hallmark of undemocratic, totalitarian regimes. The federal government’s actions in purporting to invoke the *Emergencies Act* have caused worldwide respect for Canadian democracy and freedom to be greatly diminished. They have reflected poorly on Canada’s stature in the international community and will undoubtedly call into question Canada’s ability to be a positive influence for Human Rights in the international community. The President of El Salvador has suggested that the Canadian government’s credibility with respect to democracy and freedom is now worth “zero.”

News reports and comedians in the United States and around the world have mocked the undemocratic and totalitarian steps the Trudeau government has taken to punish Canadians who hold views contrary to those of the Prime Minister. It is clear that the invocation of the *Emergencies Act* has much more to do with crushing and intimidating dissent than dealing with any “emergency”.

***The Respondent Invokes the Emergencies Act***

33. On February 14, 2022, the Governor General in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, directed that a proclamation be issued directing that a public order emergency exists throughout Canada and necessitates the taking of special temporary measures for dealing with the emergency.

34. The Public Order Emergency Proclamation specifies the nature of the state of affairs constituting the alleged emergency as follows:

(i) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

(ii) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,

(iii) the adverse effects resulting from the impacts of the blockades on Canada’s relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,

(iv) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(v) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians

35. On February 15, 2022, the Governor General in Council issued P.C. 2022-107, the *Emergency Measures Regulations* and P.C. 2022-108, the *Emergency Economic Measures Order*, pursuant to the Public Order Emergency Proclamation.

36. Sections 2, 4, and 5 of *Emergency Measures Regulations* prohibit persons from, amongst other things:

- (a) Participating in or travelling to or within an area where “a public assembly that may reasonably be expected to lead to a breach of the peace” by causing a “serious disruption of the movement of persons or goods or the serious interference with trade”; and
- (b) Directly or indirectly, using, collecting, providing, making available or inviting a person to provide property to facilitate or participate in a public assembly that may reasonably be expected to lead to a breach of the peace by causing a serious disruption of the movement of persons or goods or the serious interference with trade.

37. The *Emergency Economic Measures Order* defines an individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations* as a “designated person”. The *Emergency Economic Measures Order* requires financial institutions and entities to cease from:



- (a) dealing in any property, wherever situated, that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of that designated person;
- (b) facilitating any transaction related to a dealing referred to in paragraph (a);
- (c) making available any property, including funds or virtual currency, to or for the benefit of a designated person or to a person acting on behalf of or at the direction of a designated person; or
- (d) providing any financial or related services to or for the benefit of any designated person or acquire any such services from or for the benefit of any such person or entity.

38. On February 15, 2022, members of the Ottawa Police Service distributed leaflets titled “Ottawa Police Service Notice to Demonstration Participants” to participants in the Freedom Convoy 2022 Protest in Ottawa which set out, amongst other things, that:

You must leave the area now. Anyone blocking streets, or assisting others in the blocking streets, are committing a criminal offence and you may be arrested. You must immediately cease further unlawful activity or you will face charges.

...

The Federal Emergencies Act allows for the regulation or prohibition of travel to, from or within any specified area. This means that anyone coming to Ottawa for the purpose of joining the ongoing demonstration is breaking the law.

***The Public Order Emergency Proclamation is Ultra Vires and Unreasonable***

39. The state of affairs set out in the Public Order Emergency Proclamation does not constitute a national emergency or a public order emergency; the issuing of the Public Order Emergency Proclamation is unreasonable in the circumstances.

40. In issuing the Public Order Emergency Proclamation without satisfying the conditions set out in the *Emergencies Act*, the Respondent has acted beyond its lawful jurisdiction.

***There is No National Emergency***

41. Section 3 of the *Emergencies Act* defines a “national emergency” as:

an urgent and critical situation of a temporary nature that

- (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
- (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

42. Section 16 of the *Emergencies Act* defines a “public order emergency” as meaning:

an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency

43. Section 16 of the *Emergencies Act* defines “threats to the security of Canada” as having the meaning assigned by section 2 of the *Canadian Security Intelligence Service Act*.  
Section 2 of the *Canadian Security Intelligence Service Act* defines “threats to the security of Canada” as:

- (a) 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,
- (b) 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,
- (c) 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
- (d) 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,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).

44. There are no reasonable grounds to believe that an urgent and critical situation that seriously endangers the lives, health or safety of Canadians exists as a result of the Freedom Convoy 2022 Protest in Ottawa.
45. Even if there are reasonable grounds to believe that an urgent and critical situation that seriously endangers the lives, health or safety of Canadians exists, which there are not, the provinces are capable and have the authority to deal with such a situation.
46. There is no urgent or critical situation that seriously endangers the lives, health or safety of Canadians that cannot be effectively dealt with under the laws of Canada that were in force prior to the Public Order Emergency Proclamation.
47. At least seven Provincial premiers have expressed that they do not view the invocation of the *Emergencies Act* as being necessary and/or were not in favour of invoking the *Emergencies Act*, namely: Alberta Premier Jason Kenney, Saskatchewan Premier Scott Moe, Quebec Premier François Legault, Manitoba Premier Heather Stefanson, Nova Scotia Premier Tim Houston, New Brunswick Premier Blaine Higgs, and Prince Edward Island Premier Dennis King,
48. The situation at the Ambassador Bridge and the situation at the border near Coutts, Alberta, were effectively resolved prior to the Public Order Emergency Proclamation. CFN nor Nagle had a connection with those protests.

49. The Freedom Convoy 2022 Protest in Ottawa is a peaceful expression of dissent and does not constitute “a threat to the security of Canada” as defined in the *Canadian Security Intelligence Service Act*.

50. There are no reasonable grounds to believe that an urgent and critical situation that threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada exists. It does not appear that the Respondent asserts any.

***The Public Order Emergency Proclamation is Inconsistent with the legislative intent of the Emergencies Act, the Bill of Rights and the Charter of Rights and Freedoms***

51. The Public Order Emergency Proclamation is inconsistent with the scheme of the *Emergencies Act*, the object of the *Emergencies Act*, and the intention of Parliament at the time of the *Emergencies Act*'s drafting.

52. The *Emergencies Act* is expressly subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, “particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency.”

53. There are specific provisions contained within the *Emergency Economic Measures Order* which require financial institutions to deprive participants or supporters of those in the Freedom Convoy 2022 Protest of their property with a complete disregard for due process of law.

54. The Public Order Emergency Proclamation, and the regulations and orders that have been made pursuant thereto, are inconsistent with the *Canadian Bill of Rights*. In particular the

Public Order Emergency Proclamation, and the regulations and order that have flowed from same, infringe on the following fundamental rights and freedoms set out in the *Canadian Bill of Rights*:

- (a) the right of individuals not be deprived of enjoyment of property except by due process of law;
- (b) freedom of speech; and
- (c) freedom of assembly and association.

55. Section 2 of the *Canadian Bill of Rights* provides that the rights and freedoms recognized in the *Canadian Bill of Rights* are not to be abrogated, abridged or infringed in a law of Canada unless expressly declared by an Act of Parliament. The *Emergencies Act* does not contain a declaration that it shall be applied and construed to abrogate, abridge or infringe on the rights and freedoms recognized and declared in the *Canadian Bill of Rights*. Rather, it declares the opposite: the *Emergencies Act* is expressly subject to the rights and freedoms set out in the *Canadian Bill of Rights*.

56. The Public Order Emergency Proclamation, and the regulations and order that have been made pursuant thereto, also infringe upon individuals' rights to freedom of thought, belief, opinion and expression; freedom of peaceful assembly; and freedom of association guaranteed under section 2 of the *Charter of Rights and Freedoms*.

57. The Public Order Emergency Proclamation and the regulations and order that have made pursuant to this Proclamation are not reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

58. The Public Order Emergency Proclamation is aimed at dealing with what the Prime Minister primarily perceives to be a political emergency by unlawfully attempting to suppress and intimidate the expression of dissenting thoughts, beliefs and opinions of a segment of the Canadian population that the Prime Minister has declared to hold “unacceptable” views. The Proclamation is unlawful and *ultra vires* because there is no “national emergency” nor is there a “public order emergency.” It is also unlawful and *ultra vires* because, *inter alia*, it is a clear breach of the Bill of Rights because it purports to allow Canadians to be deprived of the enjoyment of their property without due process of law.

### ***Rules and Legislation Relied Upon***

59. The Applicants rely on the following statutory provisions and rules:

- (a) The *Emergencies Act*;
- (b) The *Canadian Security Intelligence Service Act*;
- (c) Paragraphs 1 (a), (b), (d), and (e) of the *Canadian Bill of Rights*;
- (d) Section 2 of the *Charter of Rights and Freedoms*;
- (e) Section 52 of the *Constitution Act 1982*;
- (f) Sections 18 through 18.4 of the *Federal Courts Act*, RSC 1985, c F-7;
- (g) Rules 3, 300-319, 334.1-334.40 of the *Federal Court Rules*, SOR/98-106; and
- (h) Such further and other statutory provisions and rules as counsel may advise.

**This application will be supported by the following material:**

- 60. The Affidavit of Kristen Nagle, to be sworn;
- 61. Hansard relating to the *Emergencies Act* R.S.C., 1985, c. 22 (4th Supp.); and
- 62. Such further and other material as counsel may advise and this Honourable Court may permit.

February 17, 2022



Alexander Boissonneau-Lehner

**JOHNSTONE & COWLING LLP**

441 Jarvis Street  
Toronto, Ontario  
M4Y 2G8

Tel: 416-546-2103  
Fax: 416-546-2104

Email: [alehner@johnstonecowling.com](mailto:alehner@johnstonecowling.com)

Solicitors for the Applicants

SOR/2021-151, s. 22

**Court File No.:**

**FEDERAL COURT**

BETWEEN:

**CANADIAN FRONTLINE NURSES  
and KRISTEN NAGLE**

APPLICANTS

- and -

**ATTORNEY GENERAL OF CANADA**

RESPONDENT

---

**NOTICE OF APPLICATION**  
(APPLICATION UNDER SECTIONS 18 AND 18.1  
OF THE *FEDERAL COURTS ACT*)

---

Alexander Boissonneau-Lehner

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Solicitors for the Applicants





**Department of Justice  
Canada**

**Ministère de la Justice  
Canada**

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National Litigation Sector  
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Région de l'Ontario  
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Telephone/Téléphone: (647) 256-0784  
Fax /Télécopieur: (416) 954-8982  
Email/Courriel: John.Provart@justice.gc.ca

Via FC Portal

Our File Number: LEX-500081599

April 1, 2022

Federal Court  
180 Queen Street West  
Toronto, Ontario  
M5V 1Z4

**Re: *Canadian Constitution Foundation v Attorney General of Canada*  
Court File No: T-347-22**

---

Please deliver this letter to the attention of Prothonotary Milczynski concerning this proceeding.

Please find enclosed the affidavit of Jeremy Adler, which attaches the certificate signed by the Interim Clerk of the Privy Council and Secretary to the Cabinet on March 31, 2022, concerning the application of section 39 of the *Canada Evidence Act* in relation to the above-noted litigation. This has been served on the applicants in this matter.

Yours truly,

**Provart,  
John**

Digitally signed by Provart, John  
DN: C=CA, O=GC, OU=Jus-Jus, CN="Provart, John"  
Reason: I am approving this document  
with my legally binding signature  
Location: Toronto, Ontario  
Date: 2022.04.01 17:21:02-04'00'  
Foxit PhantomPDF Version: 10.1.1

John Provart  
Senior Counsel  
National Litigation sector

**Canada**

Court File No.: T-347-22

**FEDERAL COURT**

BETWEEN:

**CANADIAN CONSTITUTION FOUNDATION**

Applicant

- and -

**ATTORNEY GENERAL OF CANADA**

Respondent

**AFFIDAVIT**

I, Jeremy Adler, residing in the City of Ottawa, in the Province of Ontario,  
declare and say as follows:

1. I am the Chief of Staff in the office of the Clerk of the Privy Council and  
Secretary to the Cabinet.

2. I know Janice Charette to be the Interim Clerk of the Privy Council and Secretary to the Cabinet.

3. On the 31<sup>st</sup> day of March 2022, I witnessed Janice Charette sign the certificate attached hereto as Exhibit "A" dated the 31<sup>st</sup> day of March 2022, and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE ME at the )  
 City of Ottawa in the )  
 Province of Ontario this )  
 1<sup>st</sup> day of April 2022 )

  
 A Commissioner, etc.  
 LSO 63497W

  
 Jeremy Adler

Court File No.: T-347-22

**FEDERAL COURT**

BETWEEN:

**CANADIAN CONSTITUTION FOUNDATION**

Applicant

- and -

**ATTORNEY GENERAL OF CANADA**

Respondent

This is Exhibit " A " referred  
to in the declaration of

Jeremy Allen  
Declared before me this 7<sup>th</sup>  
day of April A.D. 20 22

[Signature] LSO 63497W  
A Commissioner, etc.

Ceci est la pièce \_\_\_\_\_ à

La déclaration solennelle de

déclarée devant moi ce \_\_\_\_\_  
jour de \_\_\_\_\_ 20 \_\_\_\_\_

Commissaire, etc.

**CERTIFICATE**

I, the undersigned, Janice Charette, residing in the City of Ottawa, in the

Province of Ontario, do certify and say:

1. I am the Interim Clerk of the Privy Council and Secretary to the Cabinet.

2. I have examined the information described in the Schedule attached hereto for the purpose of determining whether it constitutes a confidence of the Queen's Privy Council for Canada and whether it should be protected from disclosure under section 39 of the *Canada Evidence Act*, R.S.C. 1985, C-5.

3. I certify that under subsections 39(1) and (2) of the *Canada Evidence Act*, the information referred to in the said Schedule is a confidence of the Queen's Privy Council for Canada for the reasons set out in the Schedule attached hereto, and I object to the disclosure of the information.

4. I further certify that paragraph 39(4)(a) of the *Canada Evidence Act* does not apply in respect of the information as it has not been in existence for more than twenty years and that paragraph 39(4)(b) of the said Act does not apply in respect of the information in question.

5. If oral evidence were sought to be given on the content of the information the disclosure of which I have in this certificate objected to, I would object to such evidence on the same grounds as described above in relation to the information in question.

DATED AT OTTAWA, in the Province of Ontario, this 31 day of March 2022.



---

Janice Charette  
Interim Clerk of the Privy Council  
and Secretary to the Cabinet

**SCHEDULE TO THE CERTIFICATE OF JANICE CHARETTE**  
**dated 31 march , 2022, in the matter of**  
***Canadian Constitution Foundation v Attorney General of Canada***  
**Court File No.: T-347-22**

1. Submission to the Governor in Council, February 2022, in English and in French, from the Honourable Marco Mendicino, Minister of Public Safety and Emergency Preparedness, regarding the proposed Order in Council directing that a proclamation be issued pursuant to subsection 17(1) of the *Emergencies Act*, including the signed Ministerial recommendation, a draft Order in Council regarding a proposed proclamation, a draft proclamation, and accompanying materials.

This information, including all its attachments in their entirety, which are integral parts of the document, constitutes a memorandum the purpose of which is to present proposals or recommendations to Council. Therefore, the information is within paragraph 39(2)(a) of the *Canada Evidence Act* (Act).

2. The record recording the decision of Council concerning a proclamation, February 2022, signed by Council.

This information constitutes a record recording deliberations or decisions of Council. The information is therefore within paragraph 39(2)(c) of the Act, as constituting an agenda of Council or a record recording deliberations or decisions of Council

3. Submission to the Governor in Council, February 2022, in English and in French, from the Honourable Marco Mendicino, Minister of Public Safety and Emergency Preparedness, regarding the proposed Order in Council pursuant to subsection 19(1) of the *Emergencies Act* and concerning emergency measures regulations, including the signed Ministerial recommendation, a draft Order in Council regarding proposed emergency measures regulations, draft regulations, and accompanying materials.

This information, including all its attachments in their entirety, which are integral parts of the document, constitutes a memorandum the purpose of which is to present proposals or recommendations to Council. Therefore, the information is within paragraph 39(2)(a) of the Act.

4. The record recording the decision of Council concerning emergency measures regulations, February 2022, signed by Council.

This information constitutes a record recording deliberations or decisions of Council. The information is therefore within paragraph 39(2)(c) of the Act, as constituting an agenda of Council or a record recording deliberations or decisions of Council.



5. Submission to the Governor in Council, February 2022, in English and in French, from the Honourable Marco Mendicino, Minister of Public Safety and Emergency Preparedness, regarding the proposed Order in Council pursuant to subsection 19(1) of the *Emergencies Act* and concerning an emergency economic measures order, including the signed Ministerial recommendation, a draft Order in Council regarding a proposed emergency economic measures order, a draft order, and accompanying materials.

This information, including all its attachments in their entirety, which are integral parts of the document, constitutes a memorandum the purpose of which is to present proposals or recommendations to Council. Therefore, the information is within paragraph 39(2)(a) of the Act.

6. The record recording the decision of Council concerning an emergency economic measures order, February 2022, signed by Council.

This information constitutes a record recording deliberations or decisions of Council. The information is therefore within paragraph 39(2)(c) of the Act, as constituting an agenda of Council or a record recording deliberations or decisions of Council.



Court File No.: T-306-22

**FEDERAL COURT**

**B E T W E E N:**

**CANADIAN FRONTLINE NURSES AND KRISTEN NAGLE**

Applicants

and

**ATTORNEY GENERAL OF CANADA**

Respondent

---

**AFFIDAVIT OF STEVEN SHRAGGE**

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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 STEVEN SHRAGGE**

---

Court File No.: T-347-22

**FEDERAL COURT**

**B E T W E E N:**

**CANADIAN CONSTITUTION FOUNDATION**

Applicant

and

**ATTORNEY GENERAL OF CANADA**

Respondent

---

**AFFIDAVIT OF STEVEN SHRAGGE**

---

Court File No. T-382-22

**FEDERAL COURT**

**B E T W E E N:**

**JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS, and HAROLD  
RISTAU**

Applicants

and

**GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA,  
ATTORNEY GENERAL OF CANADA, and MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

Respondents

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**AFFIDAVIT OF STEVEN SHRAGGE**

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I, Steven Shragge, of the City of Ottawa in the Province of Ontario, AFFIRM THAT:

1. I am a Senior Policy Advisor with the Privy Council Office, Security and Intelligence Secretariat. I have held this role since June 2021. My duties include monitoring and coordinating operational and policy issues related to national security in consultation with security departments and agencies, providing advice and support to the National Security and Intelligence Advisor to the Prime Minister, and supporting the Cabinet Process for files within my purview. I have worked in various government departments over the last 20 years and have been employed at the Privy Council Office (PCO) since October 2020 in national security-related functions.
2. I have operational knowledge of the mandates, memberships, and practices of decision-making and coordination structures. I do not have direct knowledge of Cabinet, council and ministerial deliberation and decision-making discussions during the days directly preceding the declaration of a public order emergency on February 14, 2022.
3. I have personal knowledge of all matters hereinafter deposed to, except where I have stated that my knowledge is on information and belief, in which case I have identified the source of my information and believe it to be true.
4. A report to the Houses of Parliament entitled “February 14, 2022 Declaration of Public Order Emergency Explanation pursuant to subsection 58(1) of the *Emergencies Act*” (“the Section 58 Explanation”) was prepared by the Government and tabled in the House of Commons on February 16, 2022 and in the Senate on February 21, 2022. As stated in the *Emergencies Act* (the Act), the s. 58 Explanation contains an explanation of the reasons for issuing the declaration. At the same time and pursuant to the Act, the Report to the Houses of Parliament: *Emergencies Act* Consultations was also tabled in the House of Commons and in the Senate. Attached hereto and marked as **Exhibit “A”** is a copy of the Section 58 Explanation. Attached hereto and marked as **Exhibit “B”** is a copy of the Report to the Houses of Parliament: *Emergencies Act* Consultations, dated February 16, 2022.

5. The Section 58 Explanation states that the decision to issue the declaration was informed by robust discussions at three meetings of the Incident Response Group (IRG) on February 10, 12 and 13, 2022. The IRG serves as a dedicated emergency committee to advise the Prime Minister in the event of a national crisis or during incidents elsewhere that have major implications for Canada. The IRG is a coordination body responsible for promoting a prompt federal response to an incident to keep Canadians safe and secure, at home and abroad. The IRG is intended to provide advice to the Prime Minister, as well as help support coordination and information exchange amongst Ministers and drive forward a whole-of-government response to incidents.
6. The IRG is a working group of ministers. Membership can vary based on the nature of the incident and include both Ministers and other officials as required. Incidents are diverse and can include natural disasters, global security events, and the illegal blockades.
7. On February 10, 2022, Prime Minister Justin Trudeau convened the IRG on the ongoing illegal blockades taking place across the country. Prime Minister Trudeau was joined by ministers and senior officials who were actively engaged and working closely with provincial and municipal governments, and who were assessing the requirements and deploying all federal resources necessary to help them get the situation under control.
8. The IRG subsequently met on February 12 and 13, 2022, leading up to the Proclamation Declaring a Public Order Emergency. Those meetings also included Prime Minister Trudeau, Ministers and senior officials.
9. In addition, I am aware that Cabinet met on February 13, 2022.
10. On February 14, 2022, the Governor in Council declared a public order emergency under the *Emergencies Act* in respect of the illegal blockades occurring nationally.
11. Cabinet met again on February 15, 2022 at a regular meeting of Cabinet.

12. The *Emergency Measures Regulations*, SOR/2022-0021, and the *Emergency Economic Measures Order*, SOR/2022-22, were enacted on February 15, 2022.


13. On February 16, 2022, the Honourable Marco Mendicino brought a motion that, pursuant to section 58 of the Act, the House of Commons confirm the declaration of a public order emergency proclaimed on February 14, 2022. The motion was presented together with the Section 58 Explanation and the Report to the Houses of Parliament: *Emergencies Act* Consultations. Attached hereto and marked as **Exhibit "C"** is a copy of the Motion dated February 16, 2022.

14. On February 21, 2022, the motion passed with 185 votes in favour and 151 votes against. Attached hereto and marked as **Exhibit "D"** is a copy of the House of Commons Journals dated February 21, 2022.

15. On February 23, 2022, the declaration of a public order emergency under the *Emergencies Act* was revoked.

16. I make this affidavit in response to the applications for judicial review in court file numbers T-306-22, T-347-22, T-316-22, and T-382-22 and for no other or improper purpose.

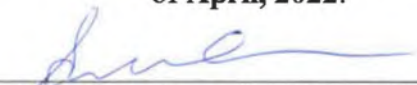
AFFIRMED BEFORE ME at the City of )  
Ottawa, in the Province of Ontario )  
this 4<sup>th</sup> day of April, 2022 )  
)  
)  
)  
)  
)  
)

  
Commissioner for Taking Affidavit

LSO: 639974

  
STEVEN SHRAGGE

This is **Exhibit "A"** referred to  
in the affidavit of  
**Steven Shragge**  
Affirmed before me this 4<sup>th</sup> day  
of **April, 2022**.



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A Commissioner for taking affidavits

LSO 63497W



**February 14, 2022 Declaration of Public Order Emergency**

**Explanation pursuant to subsection 58(1) of the *Emergencies Act***

**Declaration of Public Order Emergency**

On February 14, 2022, the Governor in Council directed that a proclamation be issued pursuant to subsection 17(1) of the *Emergencies Act* declaring that a public order emergency exists throughout Canada that necessitates the taking of special temporary measures for dealing with the emergency.

In order to declare a public order emergency, the *Emergencies Act* requires that there be an emergency that arises from threats to the security of Canada that are so serious as to be a national emergency. Threats to the security of Canada include the threat or use of acts of serious violence against persons or property for the purpose of achieving a political or ideological objective. 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. Any measures taken under the *Act* must be exercised in accordance with the *Canadian Charter of Rights and Freedoms* and should be carefully tailored to limit any impact on *Charter* rights to what is reasonable and proportionate in the circumstances.

The *Proclamation Declaring a Public Order Emergency* made on February 14, 2022 specified that the public order emergency is constituted of:

- (i) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,
- (ii) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,
- (iii) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States (U.S.), that are detrimental to the interests of Canada,

(iv) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(v) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

The proclamation specifies six types of temporary measures that may be necessary to deal with the public order emergency:

(i) 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,

(ii) 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,

(iii) 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,

(iv) measures to authorize the Royal Canadian Mounted Police (RCMP) to enforce municipal and provincial laws by means of incorporation by reference,

(v) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and

(vi) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

These measures have been implemented by the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*.

Section 58(1) of the *Emergencies Act* requires that a motion for confirmation of a declaration of emergency, signed by a Minister of the Crown, together with an explanation of the reasons for

issuing the declaration and a report on any consultation with the lieutenant governors in council of the provinces with respect to the declaration, be laid before each House of Parliament within seven sitting days after the declaration is issued.

### **Background leading to the declaration of emergency**

The “Freedom Convoy 2022” was the first manifestation of this growing movement 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 then, the movement has 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).

Participants of these activities have adopted a number of tactics that are threatening, causing fear, disrupting the peace, impacting the Canadian economy, and feeding a general sense of public unrest – either in favour or against the movement. This has included harassing and berating citizens and members of the media, slow roll activity, slowing down traffic and creating traffic jams, in particular near ports of entry, as well as reports of protesters bringing children to protest sites to limit the level and types of law enforcement intervention. The movement has moved beyond a peaceful protest, and there is significant evidence of illegal activity underway. Regular citizens, municipalities and the province of Ontario have all participated in court proceedings seeking injunctive relief to manage the threats and impacts caused by the convoy’s activities, and a proposed class-action has been filed on behalf of residents of Ottawa.

Anecdotal reports of donations from outside Canada to support the protesters were given credence when, on February 13, 2022, hackers of the crowdfunding website, GiveSendGo.com, released hacked data that revealed information about donors and the amount of donations directed to the protesters. According to the Canadian Broadcasting Corporation’s February 14, 2022 analysis of the data, 55.7% of the 92,844 donations made public were made by donors in the U.S., compared to 39% of donors located in Canada. The remaining donors were in other countries, with the U.K. being the most common. The amount donated by U.S. donors totaled \$3.6 million (USD). Many of the donations were made anonymously.

### *Requests for Assistance and Consultations*

The federal government has been in contact with its provincial counterparts throughout this situation. Some requests for federal support to deal with the blockades were from:

- the City of Ottawa for policing services;
- the Province of Ontario with respect to the Ambassador Bridge in Windsor, Ontario; and

- the Province of Alberta with respect to tow truck capacity at the Coutts port of entry.

For further details on the consultations, please see the Report to the Houses of Parliament: *Emergencies Act Consultations*.

#### *Emergency Measures Taken by Ontario and other provinces*

On February 11, 2022, the Province of Ontario declared a province-wide state of emergency under its *Emergency Management and Civil Protection Act*, 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.

On February 12, 2022, the Ontario Government also enacted legislation under the *Emergency Management and Civil Protection Act*, (Ontario Regulation 71/22) making it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure. New Brunswick has announced that it will update its *Emergency Act* to prohibit stopping or parking a vehicle or otherwise contributing to the interruption of the normal flow of vehicle traffic on any road or highway. Nova Scotia similarly issued a directive under its *Emergency Management Act* prohibiting protests from blockading a highway near the Nova Scotia-New Brunswick border.

No other province has signaled its intent to take similar steps.

As detailed in the Reasons below, the convoy activities have led to an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency.

#### **Reasons for Public Order Emergency**

The situation across the country remains concerning, volatile and unpredictable. The decision to issue the declaration was informed by an assessment of the overall, national situation and robust discussions at three meetings of the Incident Response Group on February 10, 12 and 13, 2022.

The intent of these measures is to supplement provincial and territorial authorities to address the blockades and occupation and to restore public order, the rule of law and confidence in Canada's institutions. These time-limited measures will be used only where needed depending on the nature of the threat and its evolution and would not displace or replace provincial and territorial authorities, nor would they derogate provinces and territories' authority to direct their police

forces. The convoy activities and their impact constituting the reasons for the emergency as set out in the *Proclamation Declaring a Public Order Emergency* are detailed below:

- i. **the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada;**

The protests have become a rallying point for anti-government and anti-authority, anti-vaccination, conspiracy theory and white supremacist groups throughout Canada and other Western countries. The protesters have varying ideological grievances, with demands ranging from an end to all public health restrictions to the overthrow of the elected government. As one example, protest organizers have suggested forming a coalition government with opposition parties and the involvement of Governor General Mary Simon. This suggestion appears to be an evolution of a previous proposal from a widely circulated “memorandum of understanding” from a group called “Canada Unity” that is taking part in the convoy. The “memorandum of understanding” proposed that the Senate and Governor General could agree to join them in forming a committee to order the revocation of COVID-19 restrictions and vaccine mandates.

Tactics adopted by protesters in support of these aims include slow roll activity, slowing down traffic and creating traffic jams, in particular near ports of entry, as well as reports of protesters bringing children to protest sites to limit the level and types of law enforcement intervention. The intent of the protestors at ports of entry was to impede the importation and exportation of goods across the Canada-U.S. border in order to achieve a change in the Government of Canada’s COVID health measures in addition to other government policies.

Trucks and personal vehicles in the National Capital Region continue to disrupt daily life in Ottawa and have caused retail and other businesses to shutter. Local tow truck drivers have refused to work with governments to remove trucks in the blockade. The Chief of the Ottawa Police Service resigned on February 15, 2022 in response to criticism of the police’s response to the protests.

Convoy supporters formerly employed in law enforcement and the military have appeared alongside organizers and may be providing them with logistical and security advice, which may pose operational challenges for law enforcement should policing techniques and tactics be revealed to convoy participants. There is evidence of coordination between the various convoys and blockades.



Violent incidents and threats of violence and arrests related to the protests have been reported across Canada. The RCMP's recent seizure of a cache of firearms with a large quantity of ammunition in Coutts, Alberta, indicated that there are elements within the protests that have intentions to engage in violence. Ideologically motivated violent extremism adherents may feel empowered by the level of disorder resulting from the protests. Violent online rhetoric, increased threats against public officials and the physical presence of ideological extremists at protests also indicate that there is a risk of serious violence and the potential for lone actor attackers to conduct terrorism attacks.

To help manage these blockades and their significant adverse impacts, the *Emergency Measures Regulations* prohibit certain types of public assemblies ("prohibited assemblies") that may reasonably be expected to lead to a breach of the peace by: (i) the serious disruption of the movement of persons or goods or the serious interference with trade; (ii) interference with the functioning of critical infrastructure; or (iii) the support the threat or use of acts of serious violence against persons or property. They also prohibit individuals from (i) participating or causing minors to participate in prohibited assemblies; (ii) travelling to or within an area where prohibited assemblies are taking place, or causing minors to travel to or within 500 metres of a prohibited assembly, subject to certain exceptions; and (iii) directly or indirectly using, collecting, providing, making available or soliciting property to facilitate or participate in a prohibited assembly or to benefit any person who is facilitating or participating in a prohibited assembly. Foreign nationals are also prohibited from entering Canada with the intent to participate or facilitate a prohibited public assembly, subject to certain exceptions.

The *Emergency Management Regulations* also designate certain places as protected and provide that they may be secured, including Parliament Hill and the parliamentary precinct, critical infrastructures, official residences, government and defence buildings, and war memorials.

- ii. **the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings**

Trade and transportation within Canada and between Canada and the U.S. is highly integrated. Border crossing, railway lines, airports and ports of entry are integrated and are adversely affected where one or more of the components is blockaded or prevented from operating under normal capacity.

Trade between Canada and the U.S. is crucial to the economy and the lives and welfare of all Canadians. Approximately 75% of Canadian exports go to the U.S., generating approximately \$2 billion in imports/exports per day and \$774 billion in total trade between the two countries in 2021.

Blockades and protests at numerous points along the Canada–U.S. border have already had a severe impact on Canada’s economy. Protests at the major ports of entry at the Ambassador Bridge in Windsor, Ontario; Emerson, Manitoba; Coutts Alberta; and, Pacific Highway in British Columbia, each of which is critical to the international movement of people and goods, required the Canada Border Services Agency (CBSA) to suspend services.

An essential trading corridor, the Ambassador Bridge is Canada’s busiest crossing, handling over \$140 billion in merchandise trade in 2021. It accounted for 26% of the country’s exports moved by road in 2021 (\$63 billion out of \$242 billion) and 33% of the country’s imports (\$80 billion out of \$240 billion). Since the blockades began at the Ambassador Bridge, over \$390 million in trade each day with Canada’s most important trading partner, the U.S., has been affected, resulting in the loss of employee wages, reduced automotive processing capacity and overall production loss in an industry already hampered by the supply shortage of critical electronic components. This bridge supports 30% of all trade by road between Canada and the U.S. The blockades in Coutts, Alberta, and Emerson, Manitoba, have affected approximately \$48 million and \$73 million in trade each day, respectively. These recent events targeting Canada’s high volume commercial ports of entry have irreparably harmed the confidence that our trading partners have in Canada’s ability to effectively contribute to the global economy and will result in manufacturers reassessing their manufacturing investments in Canada, impacting the health and welfare of thousands of Canadians.

In addition, throughout the week leading up to February 14, 2022, there were 12 additional protests that directly impacted port of entry operations. At two locations, Pacific Highway and Fort Erie, protestors had breached the confines of the CBSA plaza resulting in CBSA officers locking down the office to prevent additional protestors from gaining entry.

More specifically, disruptions at strategic ports of entry in Alberta, British Columbia, Manitoba and Ontario prior to the declaration of the emergency included:

- Ambassador Bridge, Windsor, Ontario: The busiest crossing along the Canada-U.S. border had been blocked since February 7, 2022. After an injunction was issued on February 11, 2022, law enforcement started to disperse protesters. On February 13, 2022, police enforcement action continued with reports of arrests being made and vehicles towed. As of the evening of February 13, 2022, the Ambassador Bridge has been fully reopened, and no delays at the border crossing are being reported, but efforts continue to ensure that the bridge remains open.

- Sarnia, Ontario: On February 8, 2022, two large groups of protestors conducted a blockade of the provincial highway leading to and from the Sarnia Blue Water Bridge. This port of entry is Canada's second busiest border crossing with imports and exports serving the oil and gas, perishable foods, livestock and automotive sectors. The protest resulted in the suspension of all outbound movement of commercial and traveller vehicles to the U.S. along with reduced inbound capacity for incoming conveyances. The Ontario Provincial Police (OPP) were able to restore order to the immediate area of the port of entry after ten hours of border disruption. On February 9, 2022, members of one of the protest groups established a highway blockade approximately 30 kilometres east of Sarnia on the provincial highway, resulting in the diversion of international traffic to emergency detour routes to gain access to the border. This activity continued until February 14, 2022 when access to the portion of the highway was restored.
- Fort Erie, Ontario: On February 12, 2022, a large protest targeted the CBSA Peace Bridge port of entry at Fort Erie, Ontario. This port of entry is Canada's third busiest land border crossing responsible for millions of dollars in international trade each day of perishable goods, manufacturing components and courier shipments of personal and business goods being imported and exported. The protest disrupted inbound traffic for a portion of the day on February 12, 2022 and resulted in the blockade of outbound traffic until February 14, 2022 when the OPP and Niagara Regional Police were able to restore security of the trade corridor linking the provincial highway to the border crossing.
- Emerson, Manitoba: As of February 13, 2022, vehicles of the blockade remain north of the port of entry. Some local traveller traffic was able to enter Canada, however commercial shipments are unable to use the highway North of Emerson resulting in disruptions to live animal, perishable and manufactured goods shipments into Canada and exports to the U.S. The protesters have allowed some live animal shipments to proceed through the blockade for export to the U.S.
- Coutts, Alberta: The blockade began on January 29, 2022, resulting in the disruption of Canada and U.S. border traffic. This port of entry is a critical commercial border point for the movement of live animals, oil and gas, perishable and manufactured goods destined for Alberta and western Saskatchewan. As of February 14, 2022, the RCMP, who is the police of jurisdiction pursuant to the provincial Police Service Agreement, have arrested 11 individuals and seized a cache of weapons and ammunition. Four of these individuals were charged with conspiracy to commit murder, in addition to other offences. The RCMP restored access to the provincial highway North of Coutts on February 15, 2022 and border services were fully restored, but efforts continue to ensure that it remains open.



- Vancouver, British Columbia (BC), and Metro area: On February 12, 2022, several vehicles including a military-style vehicle broke through an RCMP barricade in south Surrey, BC, on their way to the Pacific Highway port of entry. Protesters forced the highway closure at the Canada-U.S. border in Surrey.

In addition, on February 12, 2022, police in Cornwall, Ontario warned of potential border delays and blockages due to protests.

These blockades and protests directly threaten the security of Canada's borders, with the potential to endanger the ability of Canada to manage the flow of goods and people across the border and the safety of CBSA officers and to undermine the trust and coordination between CBSA officials and their American partners. Additional blockades are anticipated. While Ontario's *Emergency Management and Civil Protection Act* authorizes persons to provide assistance, it specifically does not compel them to do so. Tow truck operators remain free to decline requests to tow vehicles that were part of the blockades and they have refused to render assistance to the government of Ontario. It was beyond the capacity of the province of Ontario to ensure in a timely manner that tow trucks could be used to clear vehicles. The emergency measures now allow the federal Minister of Public Safety and Emergency Preparedness or any other person acting on their behalf to immediately compel individuals to provide and render essential goods and services for the removal, towing or storage of any vehicle or other object that is part of a blockade and provides that reasonable compensation will be payable. Individuals who suffer loss or damage because of actions taken under these Regulations may apply for compensation.

Threats were also made to block railway lines, which would result in significant disruptions. Canada's freight rail industry transports more than \$310 billion worth of goods each year on a network that runs from coast to coast. Canada's freight railways serve customers in almost every part of the Canadian economy: from manufacturing to the agricultural, natural resource, wholesale and retail sectors. In addition, freight railways have Canadian operating revenues of more than \$16 billion a year.

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 disruptions continue. The current federal and provincial financial systems are ill-equipped to mitigate the adverse effects of the economic impact without additional measures. The *Emergency Economic Measures Order* requires a comprehensive list of financial service providers to determine whether any of the property in their possession or control belong to protesters participating in the illegal blockades and to cease dealing with those protesters. Financial service providers who would otherwise be outside federal jurisdiction are subject to the Order. Given the ability to move financial resources between financial service providers without regard to their geographic location or whether they are provincially- or federally-regulated, it is essential that all financial service providers be subject to the Order if protesters are to be prevented from accessing financial services. The importance of

this measure is highlighted by the Canadian Broadcasting Corporation's recent reporting about the crowdfunding website, GiveSendGo.com, which indicated that the majority of the donations to the protests were made by donors outside of Canada.

Before the new measures, in respect of insurance, provinces would only be able to cancel or suspend policies for vehicles registered in that province. Protestors from different provinces would not be subject to, for example, the Government of Ontario's powers under its declaration of a state of emergency to cancel licenses of vehicles participating in blockades or prohibited assemblies. The emergency measures now require insurance companies to cancel or suspend the insurance of any vehicle or person while that person or vehicle is taking part in a prohibited assembly as defined under the new *Emergency Measures Regulations*.

**iii. the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the U.S., that are detrimental to the interests of Canada**

The U.S. has expressed concerns related to the economic impacts of blockades at the borders, as well as possible impacts on violent extremist movements. During a call with President Joe Biden on February 11, 2022, the critical importance of resolving access to the Ambassador Bridge and other ports of entry as quickly as possible was discussed, given their role as vital bilateral trade corridors, and as essential to the extensive interconnections between our two countries.

Disruptions at ports of entry have significant impacts on trade with U.S. partners and the already fragile supply chain, and have resulted in temporary closures of manufacturing sites, job loss, and loss of revenues. One week of the Ambassador Bridge blockade alone is estimated to have caused a total economic loss of \$51 million for U.S. working people and businesses in the automotive and transportation industry. Consequently, the protests have been the cause of significant criticism and concern from U.S. political, industry and labour leaders.

The Governor of Michigan has issued several statements expressing her frustration with the ongoing protests and blockade and the damage they are doing to her state and constituents. Similar frustrations have been voiced by the General President of the International Brotherhood of Teamsters and the Canada-U.S. Business Association. The blockades and protests are of such concern to the U.S. government that the Department of Homeland Security Secretary has offered its assistance in ending the protests.

More generally, the protests and blockades are eroding confidence in Canada as a place to invest and do business. Politicians in Michigan have already speculated that disruptions in cross border trade may lead them to seek domestic, as opposed to Canadian, suppliers for automotive parts.

**iv. the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number**

Canada has a uniquely vulnerable trade and transportation system. Relative to global competitors, Canadian products travel significantly further, through challenging geography and climate conditions. Moreover, trade and transport within Canada, and between Canada and the U.S. is highly integrated.

The closure of, and threats against, crucial ports of entry along the Canada-U.S. border has not only had an adverse impact on Canada's economy, it has also imperiled the welfare of Canadians by disrupting the transport of crucial goods, medical supplies, food, and fuel across the U.S.-Canada border. A failure to keep international crossings open could result in a shortage of crucial medicine, food and fuel.

In addition to the blockades along the border, protesters attempted to impede access to the MacDonald-Cartier International Airport in Ottawa and threatened to blockade railway lines. The result of a railway blockade would be significant. As noted above, Canada's freight rail industry transports more than \$310 billion worth of goods each year on a network that runs from coast to coast. Canada's freight railways serve customers in almost every part of the Canadian economy: from manufacturing, to the agricultural, natural resource, wholesale and retail sectors.

**v. the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians**

The protests and blockades pose severe risks to public safety. 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.

There is significant evidence of illegal activity to date and the situation across the country remains concerning, volatile and unpredictable. The Freedom Convoy could also lead to an increase in the number of individuals who support ideologically motivated violent extremism (IMVE) and the prospect for serious violence. Proponents of IMVE are driven by a range of influences rather than a singular belief system. IMVE radicalization is more often caused by a combination of ideas and grievances resulting in a personalized worldview. The resulting worldview often centres on the willingness to incite, enable or mobilize violence.

On February 14, 2022, the RCMP arrested numerous individuals in Coutts, Alberta associated with a known IMVE group who had been engaged with the protests and seized a cache of firearms with a large quantity of ammunition, which indicates that there are elements within this movement that intend to engage in violence. Four of these individuals were charged with conspiracy to commit murder, in addition to other offences.

Since the convoy began, there has been a significant increase in the number and duration of incidents involving criminality associated with public order events related to anti-public health measures and there have been serious threats of violence assessed to be politically or ideologically motivated. Two bomb threats were made to Vancouver hospitals and numerous suspicious packages containing rhetoric that references the hanging of politicians and potentially noxious substances were sent to offices of Members of Parliament in Nova Scotia. While a link to the convoy has not yet been established in either case, these threats are consistent with an overall uptick in threats made against public officials and health care workers. A number of threats were noted regarding the Nova Scotia-New Brunswick border demonstration set for February 12, 2022, including a call to bring “arms” to respond to police if necessary. An Ottawa tow truck operator reported that he received death threats from protest supporters who mistakenly believed he provided assistance to the police.

The Sûreté du Québec (SQ) has been dealing with multiple threats arising from the protests. In early February, 2022, the SQ was called in to provide protection to the National Assembly in response to the convoy protests in Quebec City. Some individuals associated with the protests had threatened to take up arms and attack the National Assembly. This led to all parties at the National Assembly strongly denouncing all threats of violence. While that protest was not accompanied by violence, the threat has not ended; the protesters have stated that they plan to return on February 19, 2022. At the same time, the SQ is also dealing with threats of protests and blockades along Quebec’s border with New York State. This requires the SQ to deploy resources to establish checkpoints and ensure that crucial ports of entry remain open.

Other incidents which have occurred during the course of the blockades point to efforts by U.S.-based supporters of IMVE to join protests in Canada, or to conduct sympathetic disruptive blockades on the U.S. side of ports of entry. In some cases, individuals were openly carrying weapons. U.S.-based individuals, some openly espousing violent extremist rhetoric, have employed a variety of social media and other methods to express support for the ongoing blockades, to advocate for further disruptions, and to make threats of serious violence against Canadian law enforcement and the Government of Canada.

Several individuals with U.S. status have attempted to enter Canada with the stated purpose of joining the blockades. One high profile individual is known to have openly expressed opposition to COVID-19-related health measures, including vaccine mandates and has attempted to import



materials to Canada for the express purpose of supporting individuals participating in the blockades.

As of February 14, 2022, approximately 500 vehicles, most of them commercial trucks, were parked in Ottawa's downtown core. There have been reports of protesters engaging in hate crimes, breaking into businesses and residences, and threatening law enforcement and Ottawa residents.

Protesters have refused to comply with injunctions covering downtown Ottawa and the Ambassador Bridge and recent legislation enacted by the Ontario Government under the *Emergency Management and Civil Protection Act* (Ontario Regulation 71/22), which makes it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure. In Ottawa, the Ottawa Police Service has been unable to enforce the rule of law in the downtown core due to the overwhelming volume of protesters and the Police's ability to respond to other emergencies has been hampered by the flooding of Ottawa's 911 hotline, including by individuals from outside Canada. The occupation of the downtown core has also hindered the ability of emergency medical responders to attend medical emergencies in a timely way and has led to the cancellation of many medical appointments.

The inability of municipal and provincial authorities to enforce the law or control the protests may lead to a further reduction in public confidence in police and other Canadian institutions.

The situation in downtown Ottawa also impedes the proper functioning of the federal government and the ability of federal government officials and other workers to enter their workplaces in the downtown core safely.

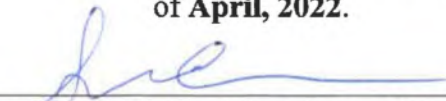
Furthermore, the protests jeopardize Canada's ability to fulfil its obligations under the *Vienna Convention on Diplomatic Relations* as a host of the diplomatic community and pose risks to foreign embassies, their staff and their access to their diplomatic premises.

## **Conclusion**

The ongoing Freedom Convoy 2022 has created a critical, urgent, temporary situation that is national in scope and cannot effectively be dealt with under any other law of Canada. The blockades of the ports of entry have disrupted the transportation of crucial medicine, goods, fuel and food to Canadians and are causing significant adverse effects on Canada's economy, relationship with trading partners and supply chains. These trade disruptions, the increase in criminal activity, the occupation of downtown Ottawa and the threats of violence and presence of firearms at protests – along with the other reasons detailed above – constitute a public order emergency, an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency. The types of measures set out in the February 14, 2022 *Proclamation Declaring a Public Order Emergency* are necessary in order to supplement

provincial and territorial authorities to address the blockades and occupation and to restore public order, the rule of law and confidence in Canada's institutions. The measures have been carefully tailored such that any potential effects on rights protected under the *Canadian Charter of Rights and Freedoms* are reasonable and proportionate in the circumstances.

This is **Exhibit "B"** referred to  
in the affidavit of  
**Steven Shragge**  
Affirmed before me this 4<sup>th</sup> day  
of **April, 2022**.

  
\_\_\_\_\_  
A Commissioner for taking affidavits

CSB: 63497W

Minister of Public Safety



Ministre de la Sécurité publique

# Report to the Houses of Parliament: *Emergencies Act* Consultations

February 16, 2022



## Report to the Houses of Parliament: *Emergencies Act* Consultations

### Background and the Requirement to Consult

On February 14, 2022, the Governor in Council declared a public order emergency under the *Emergencies Act*. Section 25 of the Act requires the Governor in Council to consult the Lieutenant Governor in Council of each province with respect to a proposal to declare a public order emergency. A report of these consultations must be laid before each House of Parliament within seven sitting days after the declaration is issued, in accordance with section 58 of the Act.

### Engagement

Since the crisis began in late January, federal ministers and officials have continuously engaged provinces and territories, municipalities, and law enforcement agencies to assess the situation and to offer the support and assistance of the Government of Canada. Staff in the Prime Minister's Office and in various Minister's offices had ongoing communications with Premiers' offices and related ministers' offices throughout this period. Examples of engagement with provincial, municipal, and international partners include the following:

- There has been regular engagement with the City of Ottawa in relation to requests for federal support. This includes the request from the City of Ottawa for policing services (February 7, 2022 letter to the Prime Minister from the Ottawa Mayor and the Chair of the Ottawa Police Services Board).
  - The Prime Minister spoke to the Mayor of Ottawa on January 31 and February 8, 2022 about the illegal occupation in Ottawa.
  - Trilateral meetings took place on February 7, 8, and 10, 2022 with the President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness, the Minister of Public Safety, the Mayor of Ottawa, the City Manager of Ottawa, and the Chief of Ottawa Police Services. The Minister also spoke with the Solicitor General of Ontario on February 7, 2022 to discuss the work of the tripartite table.
  - Staff from the Office of the President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness have been in regular contact with the Office of the Premier of Ontario, as well as the Deputy Mayor of Ottawa.
  - The President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness also spoke with the President of the Canadian Association of Chiefs of Police on February 3 and 13, 2022 on support for the Ottawa Police Service.

- The President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness also spoke with the President of the Federation of Canadian Municipalities on February 3, 2022 about the situation in Ottawa.
- There has also been regular engagement with municipal and provincial officials concerning the Ambassador Bridge, including on a request for assistance received from the City of Windsor on February 9, 2022.
  - The Prime Minister spoke with the Premier of Ontario on February 9, 2022, and the Minister of Intergovernmental Affairs, Infrastructure and Communities spoke with the Premier of Ontario (February 10 and 11, 2022) regarding measures being taken by the Province in relation to the Ambassador Bridge.
  - The Prime Minister spoke to the Mayor of Windsor on February 10, 2022 about the blockade at the Ambassador Bridge.
  - The Prime Minister spoke with the President of the United States on February 11, 2022. The leaders discussed the critical importance of resolving access to the Ambassador Bridge and other ports of entry as quickly as possible.
  - The Minister of Transport spoke with Ontario's Minister of Transportation on February 9, 2022 about the blockades at border crossings. The Minister also spoke with the Mayor of Windsor on February 11, 2022 concerning the Ambassador Bridge.
  - Staff from the Office of the President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness and the Office of the Minister of Intergovernmental Affairs, Infrastructure and Communities have also been in regular contact with the City of Windsor.
- The Minister of Public Safety engaged the Premier of Ontario on February 9, 2022. The Minister has also been in regular contact with the Mayor of Ottawa and the Mayor of Windsor, including through the tripartite discussions. His staff have also engaged with both Mayors' offices. The Office of the Minister of Intergovernmental Affairs, Infrastructure and Communities engaged the Office of the Minister of Transportation of Ontario on February 7, 2022, and was in regular contact with the Office of the Premier of Ontario.
- The Office of the Prime Minister has also had ongoing discussions with the Office of the Premier of Ontario regarding the Ottawa, Windsor, and Sarnia blockades in the weeks leading up to the declaration. These conversations made it clear that more federal support was needed.

- There has been regular engagement with provincial officials concerning the Coutts port of entry, including the Province's request for assistance in relation to tow truck capacity (February 5, 2022 letter to Ministers of Public Safety and Emergency Preparedness from the Alberta Minister of Municipal Affairs).
  - The Minister of Public Safety engaged with the Premier of Alberta on February 2 and 9, 2022, and with the Premier and the Acting Minister of Justice and Solicitor General of Alberta on February 7, 2022. The Minister also engaged the Acting Minister of Justice and Solicitor General of Alberta on February 1, 5, and 9, 2022.
  - The Minister of Transport spoke with Alberta's Minister of Transportation on February 5 and 9, 2022.
  - The Minister of Intergovernmental Affairs, Infrastructure and Communities communicated with the Premier of Alberta on February 10 and 11, 2022.
- Ministers also engaged counterparts in other provinces:
  - The Minister of Transport spoke with Manitoba's Minister of Transportation and Infrastructure on February 12, 2022 concerning the Emerson port of entry.
  - The President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness spoke with the Minister of Public Safety and Solicitor General and Deputy Premier of British Columbia on February 5 and 13, 2022 to discuss protests in Victoria and how the federal government could assist if circumstances required, including mutual emergency legislation.
  - In support of his Cabinet colleagues and on behalf of the Prime Minister, the Minister of Intergovernmental Affairs, Infrastructure and Communities also communicated with the premiers of Nova Scotia (February 12, 2022), New Brunswick (February 12, 2022), Newfoundland and Labrador (February 12, 2022), and British Columbia (February 13, 2022) to ask about the current status and to offer federal support to help the provinces respond to the disruption and blockades.

Federal, provincial, and territorial (FPT) officials have also met on a multilateral and bilateral basis, including the following:

- Public Safety Canada officials shared information on the ongoing situation and the use of authorities. This included:

- The FPT Crime Prevention and Policing Committee (CPPC) held an ad hoc meeting on February 7, 2022 at the deputy minister level.
  - The FPT CPPC Committee met at the assistant deputy minister level on February 1 and 11, 2022.
  - Discussions took place with assistant deputy ministers from Ontario, Manitoba, and Alberta on February 13, 2022, and with Ontario and Manitoba on February 14, 2022.
- Transport Canada officials gathered and shared information with PT transport ministries on PT tools/actions being considered to manage the convoys, including potential infraction and enforcement regimes under the respective jurisdictions' motor vehicle safety legislation. This included:
    - The ADM-level table of the Council of Ministers Responsible for Transportation and Highway Safety met twice, on February 4 and 8, 2022.
    - Calls took place with Alberta and Ontario on February 5, 2022, with Ontario on February 6 and 7, 2022, and with Alberta on February 7, 2022.

The Government of Canada also engaged Indigenous leaders regarding the blockades. For example, the Minister of Crown-Indigenous Relations spoke with the National Chief of the Assembly of First Nations, the President of the Inuit Tapiriit Kanatami, the President of the Métis National Council, the Grand Chief of Akwesasne, and the Grand Chief of the Manitoba Southern Chief's Organization.

The decisions on next steps and to consult premiers on the *Emergencies Act* was informed by all of the federal ministerial and senior official engagement with provinces since the onset of the crisis.

### **Consultations on the Emergencies Act with First Ministers**

The Prime Minister convened a First Ministers' Meeting on February 14, 2022, to consult premiers on whether to declare a public order emergency under the *Emergencies Act*. The Prime Minister was joined by the Minister of Intergovernmental Affairs, Infrastructure and Communities, the Minister of Justice and Attorney General of Canada, and the Minister of Public Safety. All premiers participated.

The Prime Minister explained why the declaration of a public order emergency might be necessary and formally consulted premiers. The Minister of Justice outlined potential measures the Government of Canada was contemplating to take under the *Emergencies Act* to supplement the measures in the provinces' jurisdiction and respond to the urgent and

unprecedented situation. The Prime Minister asked what measures could be supplemented through the *Emergencies Act* by using proportional, time-limited authorities.

Each premier was given the opportunity to provide his/her perspectives on the current situation – both nationally and in their own jurisdiction – and whether a declaration of public order emergency should be issued. A variety of views and perspectives were shared at the meeting. Some premiers indicated support for the proposed measures as necessary to resolve the current situation, noting they would be focused on targeted areas, time-limited, and would be subject to ongoing engagement. Other premiers did not feel the *Emergencies Act* was needed at this time, arguing that provincial and municipal governments have sufficient authority to address the situation in their respective jurisdictions. Some premiers expressed caution that invoking the *Emergencies Act* could escalate the situation.

While the views expressed at the First Ministers' Meeting were shared in confidence, premiers provided their perspectives in public statements following the First Ministers' Meeting.

- The Premier of Ontario said he supports the federal government's decision to provide additional tools to help police resolve the situation in the nation's capital. He said he expressed to the Prime Minister that these measures should be targeted and time-limited.
- The Premier of Newfoundland and Labrador said that he supports invoking the *Emergencies Act* on a time limited basis to bolster the response to deal with unacceptable behaviour within blockades, infringing on the rights of law-abiding Canadians.
- British Columbia's Minister of Public Safety and Solicitor General and Deputy Premier also said that the Province supported the use of the *Emergencies Act*, according to media reports.
- The Premier of Quebec said that he opposed the application of the *Emergencies Act* in Quebec, stating that municipal police and the Sûreté du Québec have control of the situation, and arguing that the use of the Act would be divisive.
- The Premier of Alberta tweeted that Alberta's Government is opposed to the invocation of the *Emergencies Act*, arguing that Alberta has all the legal tools and operational resources required to maintain order. He also expressed concern that invocation of the *Emergencies Act* could escalate a tense situation.
- The Premier of Saskatchewan issued the following tweet: "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. 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.”

- The Premier of Manitoba issued a statement in which she noted that the situation in each province and territory is very different and she is not currently satisfied the *Emergencies Act* should be applied in Manitoba. She said that in her view, the sweeping effects and signals associated with the never-before-used *Emergencies Act* are not constructive in Manitoba, where caution must be taken against overreach and unintended negative consequences.
- The Premier of New Brunswick, the Premier of Nova Scotia, and the Premier of Prince Edward Island have also commented that they do not believe the *Emergencies Act* is necessary in their respective provinces, stating that policing services have sufficient authority to enforce the law.
- The premiers of Yukon, the Northwest Territories, and Nunavut provided feedback during the First Ministers' Meeting, although have not issued public statements.

During the First Ministers' Meeting, the Prime Minister emphasized that a final decision had not yet been made, and that the discussion amongst First Ministers would inform the Government of Canada's decision.

There was further engagement with provinces following the First Ministers' Meeting and prior to the Government of Canada's decision to declare a public order emergency on February 14, 2022:

- The Office of the Prime Minister spoke with the Office of the Premier of British Columbia, as Chair of the Council of the Federation, before the Government of Canada's decision was made on February 14, 2022 to offer briefings to premiers' offices, and to explain the role of provinces and territories under the *Emergencies Act*.
- The Minister of Intergovernmental Affairs, Infrastructure and Communities communicated with his Quebec counterpart on the *Emergencies Act*. The Minister of Canadian Heritage and Quebec Lieutenant also connected with Quebec's Deputy Premier and Minister of Public Safety and Quebec's Minister of Finance, and officials from the Prime Minister's Office engaged with the Office of the Premier of Quebec.
- The Minister of Intergovernmental Affairs, Infrastructure and Communities also engaged the Premier of Ontario and received feedback from the Premier of Saskatchewan.

- The Office of the Prime Minister spoke with the Office of the Premier of Ontario and the Office of the Premier of Newfoundland and Labrador on February 14, 2022 to explain the rationale and implementation of the *Emergencies Act*.

The Prime Minister considered all of the comments shared at the First Ministers' Meeting, as well as the many other sources of information and intelligence. He announced his intention to invoke the *Emergencies Act* with targeted, time-limited measures that would complement provincial and municipal authorities late in the day on February 14, 2022.

On February 15, 2022 the Prime Minister wrote to all premiers, outlining the reasons why the Government of Canada decided to declare a public order emergency and described the types of measures that would be available under the Act. The letter responded to issues raised during the discussion, particularly on whether the declaration of a public order emergency should apply nationally. For example, the letter emphasized that the measures would be applied to targeted areas; that measures would supplement, rather than replace, provincial and municipal authorities; that these are tools that could be employed by police of local jurisdiction, at their discretion; and that the Royal Canadian Mounted Police would be engaged only when requested by local authorities. The letter also emphasized the Government of Canada's strong interest in further engagement and collaboration with provinces and territories on these issues.

### **Next Steps**

Consistent with the *Emergencies Act's* requirements, the Government of Canada is committed to ongoing consultation and collaboration with the provinces and territories to ensure that the federal response complements the efforts of their governments. Ongoing consultation will also be necessary should there be a need to modify or extend existing orders under the *Emergencies Act*.

Supported by their officials, Ministers engaged with their counterparts following the First Ministers' Meeting, and will continue to engage provinces and territories on an ongoing basis. They will be available to quickly respond to specific issues or situations, as they arise. More recent engagement includes:

- The Minister of Justice and Attorney General of Canada spoke with his Quebec counterpart on February 14, 2022 about the *Emergencies Act*.
- The Minister of Transport spoke with British Columbia's Minister of Transportation and Infrastructure on February 14, 2022 about blockades at border crossings. The Ministers discussed how the *Emergencies Act* can assist law enforcement.

- The Minister of Transport spoke with Nova Scotia's Minister of Public Works on February 15, 2022 and provided an overview of the emergency measures being taken under the *Emergencies Act*.
- On February 15, 2022, representatives from the Justice Minister's Office spoke with the Mayor of Winnipeg about the *Emergencies Act*. In a statement on February 15, 2022, the Mayor said he is grateful the federal government is "taking action to make additional tools available to assist with the quick and peaceful end to the unlawful occupations."
- A briefing for PT Deputy Ministers of Intergovernmental Affairs took place on February 15, 2022. A follow-up meeting is scheduled for February 17, 2022. FPT Deputy Ministers of Intergovernmental Affairs will continue to engage on these issues through regular and ongoing communications.
- A briefing is planned for February 16, 2022 for Assistant Deputy Ministers in provincial and territorial ministries of Public Safety, Transportation, the Solicitor General, and Intergovernmental Affairs.
- Collaboration through policing services will also continue. On February 15, 2022, the Interim Chief of the Ottawa Police Service stated that with new resources from policing partners and tools from both the provincial and federal governments, the Ottawa Police Service believe they now have the resources and power to bring a safe end to this occupation. Ottawa's Deputy Police Chief further commented that there is collaboration on the application of the *Emergencies Act* in Ottawa.
- There will be weekly engagement by the Minister of Public Safety with his provincial and territorial counterparts.

The Government of Canada will continue to gather and assess feedback through these ongoing engagements to assess the orders and regulations under the *Emergencies Act* and to ensure a coordinated and effective response on behalf of Canadians.

#### **Annex:**

- Letter from the Prime Minister to premiers



## **Annex: Letter from the Prime Minister to premiers**

Dear Premier:

I would like to thank you for the productive conversation we had at the First Ministers' Meeting on February 14, 2022, where we consulted you on the declaration of a public order emergency under the *Emergencies Act*.

I recognize many Canadians, including myself, are frustrated with the pandemic, and with having our lives disrupted for two years. However, while some protestors have participated to demonstrate their fatigue and frustration with public health measures, this is no longer the motivation of many of the participants and organizers. We are seeing activity that is a threat to our democracy and that is undermining the public's trust in our institutions.

The Government of Canada believes firmly in the right to peaceful protest. But as we discussed, the activities taking place across the country have gone well beyond peaceful protest. These are organized events, and the situation is very volatile. While this may have started in Ottawa, we are seeing flare-ups in almost every jurisdiction.

We are facing significant economic disruptions, with the breakdown of supply chains. This is costing Canadians their jobs and undermining our economic and national security, with potentially significant impacts on the health and safety of Canadians. It is affecting Canada's reputation internationally, hurting trade and commerce, and undermining confidence and trust in our institutions.

Given that this situation is escalating, we each have to look at all possible measures to resolve the current challenges as quickly as possible. We believe that we have reached the point where there is a national emergency arising from threats to Canada's security. That is why the Government of Canada has determined it is necessary to take action to protect Canadians and safeguard our economy by declaring a public order emergency under the *Emergencies Act*.

The declaration of a public order emergency serves as authority for Canada to enact measures under paragraph 19(1) of the *Emergencies Act*. During our

- 2 -

call, Minister Lametti highlighted six types of temporary, time-limited measures that could be adopted under the *Emergencies Act*:

**1. Regulation and prohibition of public assemblies that lead to a breach of the peace other than lawful advocacy, protest, or dissent**

What we are seeing in Ottawa and at the Ambassador Bridge are not lawful protests. Examples of measures could include: prohibiting minors from participating in an unlawful activity; prohibiting foreign nationals from entering Canada to participate in an illegal gathering; removing foreign nationals from Canada when appropriate; and adding to the list of offences that qualify as inadmissible criteria for entry into Canada.

**2. Designating and securing places where blockades are to be prohibited**

This could include geographically limited application at borders, approaches to borders, other critical infrastructure, or the City of Ottawa.

**3. Directing persons to render essential services to relieve impacts of blockades on Canada's economy**

This could include tow trucks and their drivers, for compensation.

**4. Authorizing or directing financial institutions to render essential services to relieve impact of blockades**

This could include regulating and prohibiting the use of property to fund or support the blockades.

**5. Measures enabling the RCMP to enforce municipal by laws and provincial offences where required, and if asked by local authorities**

All measures enacted pursuant to the *Emergencies Act* would be enforceable by municipal and provincial police services; the RCMP can contribute if asked to do so.

**6. The imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act***

Our Government recognizes the importance of coordinating with provinces, territories, and municipalities to ensure the safety and security of Canadians.

- 3 -

Targeted, time-limited, and proportional measures under the *Emergencies Act* would provide further support to police within your jurisdiction. This is not about displacing provincial or territorial jurisdiction, or superseding measures you have in place. This is about supplementing measures in your jurisdiction with additional legal authorities to give local law enforcement the maximum leverage to be able to uphold the rule of law and deal with the situation we are facing. We are not proposing to have the RCMP or any other authority supplant local law enforcement; rather, we wish to expand the range of tools available to law enforcement at all levels. We want to ensure that the federal response complements the efforts that your governments and municipalities continue to make to bring stability to the nation. The federal government continues to stand by to assist with resource asks, if and when required, to deal with the current situation.

I appreciate the views you shared yesterday on our call and I can assure you that they have been taken into account in the approaches we are taking, and will also inform the consultation report which will be tabled with the motion confirming the declaration. In addition to our discussions to date, briefings and discussions amongst officials in the coming days will also be useful. Consultation and coordination will continue to be essential on implementation which is consistent with the requirements of the *Emergencies Act* for consultations.

I would like to thank you, once again, for the discussion we have had on the *Emergencies Act* and I look forward to continue to get your perspective through this ongoing, consultative process. The federal government will continuously monitor and assess the implementation of the powers and authorities under the *Emergencies Act*, and stands ready to be able to respond to any need that emerges from premiers. The Minister of Public Safety will also have regular updates with his counterparts. Please follow up with me, or with Ministers Lametti, Mendicino, or LeBlanc, should you wish to discuss these matters further.

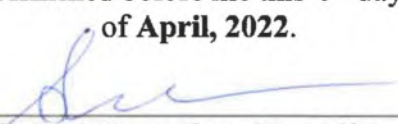
I am forwarding, for their information, a copy of this letter to David Lametti, Minister of Justice and Attorney General of Canada; Chrystia Freeland, Deputy Prime Minister and Minister of Finance; William Sterling Blair,

- 4 -

President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness; Marco E. L. Mendicino, Minister of Public Safety; and Dominic LeBlanc, Minister of Intergovernmental Affairs, Infrastructure and Communities.

Sincerely,

This is **Exhibit "C"** referred to  
in the affidavit of  
**Steven Shragge**  
Affirmed before me this 4<sup>th</sup> day  
of **April, 2022**.



---

A Commissioner for taking affidavits

LSO 63497W


**Motion for Confirmation of a Declaration of Emergency**

That, pursuant to section 58 of the *Emergencies Act*, this House confirm the declaration of a public order emergency proclaimed on February 14, 2022.

**Motion de ratification de la déclaration de situation de crise**

Que, conformément à l'article 58 de la *Loi sur les mesures d'urgence*, cette Chambre ratifie la déclaration d'état d'urgence proclamée le 14 février 2022.

This is **Exhibit "D"** referred to  
in the affidavit of  
**Steven Shragge**  
Affirmed before me this 4<sup>th</sup> day  
of **April, 2022**.



---

A Commissioner for taking affidavits

LSO: 63497W



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

44th PARLIAMENT, 1st SESSION

44<sup>e</sup> LÉGISLATURE, 1<sup>re</sup> SESSION

## JOURNALS

**No. 36**

Monday, February 21, 2022

7:00 a.m.

## JOURNAUX

**N° 36**

Le lundi 21 février 2022

7 heures

The clerk informed the House of the unavoidable absence of the Speaker.

Whereupon, Mrs. Hughes (Algoma—Manitoulin—Kapusking), Assistant Deputy Speaker and Deputy Chair of Committees of the Whole, took the chair, pursuant to Standing Order 8.

### PRAYER

### STATUTORY ORDER

The House resumed consideration of the motion of Mr. Mendicino (Minister of Public Safety), seconded by Mr. Trudeau (Prime Minister), — That, pursuant to section 58 of the Emergencies Act, this House confirm the declaration of a public order emergency proclaimed on February 14, 2022.

The debate continued.

### STATEMENTS BY MEMBERS

Pursuant to Standing Order 31, members made statements.

### ORAL QUESTIONS

Pursuant to Standing Order 30(5), the House proceeded to Oral Questions.

### DAILY ROUTINE OF BUSINESS

Tabling of Documents

Pursuant to Standing Order 32(2), Ms. Dabrusin (Parliamentary Secretary to the Minister of Natural Resources and to the Minister of Environment and Climate Change) laid upon the table, — Document entitled "Green Municipal Fund Annual Report 2020-2021". — Sessional Paper No. 8525-441-8.

Le greffier informe la Chambre de l'absence inévitable du Président.

Sur ce, M<sup>me</sup> Hughes (Algoma—Manitoulin—Kapusking), vice-présidente adjointe de la Chambre et vice-présidente des comités pléniers, assume la présidence, conformément à l'article 8 du Règlement.

### PRIÈRE

### ORDRE LÉGAL

La Chambre reprend l'étude de la motion de M. Mendicino (ministre de la Sécurité publique), appuyé par M. Trudeau (premier ministre), — Que, conformément à l'article 58 de la Loi sur les mesures d'urgence, cette Chambre ratifie la déclaration d'état d'urgence proclamée le 14 février 2022.

Le débat se poursuit.

### DÉCLARATIONS DE DÉPUTÉS

Conformément à l'article 31 du Règlement, des députés font des déclarations.

### QUESTIONS ORALES

Conformément à l'article 30(5) du Règlement, la Chambre procède à la période de questions orales.

### AFFAIRES COURANTES ORDINAIRES

Dépôt de documents

Conformément à l'article 32(2) du Règlement, M<sup>me</sup> Dabrusin (secrétaire parlementaire du ministre des Ressources naturelles et du ministre de l'Environnement et du Changement climatique) dépose sur le bureau, — Document intitulé « Rapport annuel 2020-2021 du Fonds municipal vert ». — Document parlementaire n° 8525-441-8.



## Presenting Reports from Committees

Ms. Chagger (Waterloo), from the Standing Committee on Procedure and House Affairs, presented the third report of the committee (items to remain votable). — Sessional Paper No. 8510-441-23.

Pursuant to Standing Order 91.1(2), the report was deemed concurred in.

## STATUTORY ORDER

The House resumed consideration of the motion of Mr. Mendicino (Minister of Public Safety), seconded by Mr. Trudeau (Prime Minister), — That, pursuant to section 58 of the Emergencies Act, this House confirm the declaration of a public order emergency proclaimed on February 14, 2022.

The debate continued.

At 7:30 p.m., pursuant to order made Thursday, February 17, 2022, the Assistant Deputy Speaker interrupted the proceedings.

The question was put on the motion and it was agreed to on the following division:

(Division No. 32 — Vote n° 32)

YEAS: 185, NAYS: 151

POUR : 185, CONTRE : 151

## YEAS — POUR

Aldag  
Anandasangaree  
Ashton  
Bains  
Beech  
Bittle  
Blois  
Brière  
Chagger  
Chen  
  
Cormier  
Davies  
Diab  
Duclos  
Ehsassi  
Fillmore  
Fragiskatos  
Gaheer  
Gerretsen  
Hajdu  
Holland  
Hutchings  
Jaczek  
Jowhari  
Khalid  
Kwan  
Lamoureux  
LeBlanc  
Longfield  
MacGregor  
Masse  
McDonald (Avalon)

Alghabra  
Angus  
Atwin  
Baker  
Bendayan  
Blaikie  
Boissonnault  
Cannings  
Chahal  
Chiang  
  
Coteau  
Desjarlais  
Dong  
Duguid  
El-Khoury  
Fisher  
Fraser  
Garneau  
Gould  
Hanley  
Housefather  
Iacono  
Johns  
Julian  
Khera  
Lalonde  
Lapointe  
Lebouthillier  
Louis (Kitchener—Conestoga)  
MacKinnon (Gatineau)  
Mathysen  
McGuinty

Ali  
Arseneault  
Bachrach  
Barron  
Bennett  
Blair  
Boulerice  
Carr  
Champagne  
Collins (Hamilton East—Stoney Creek)  
Dabrusin  
Dhaliwal  
Drouin  
Duncan (Etobicoke North)  
Erskine-Smith  
Fonseca  
Freeland  
Garrison  
Green  
Hardie  
Hughes  
Idlout  
Joly  
Kayabaga  
Koutrakis  
Lambropoulos  
Lattanzio  
Lightbound  
MacAulay (Cardigan)  
Maloney  
May (Cambridge)  
McKay

Anand  
Arya  
Badawey  
Battiste  
Bibeau  
Blaney  
Bradford  
Casey  
Chatel  
Collins (Victoria)  
  
Damoff  
Dhillon  
Dubourg  
Dzerowicz  
Fergus  
Fortier  
Fry  
Gazan  
Guilbeault  
Hepfner  
Hussen  
Ien  
Jones  
Kelloway  
Kusmierczyk  
Lametti  
Lauzon  
Long  
MacDonald (Malpeque)  
Martinez Ferrada  
May (Saanich—Gulf Islands)  
McKinnon (Coquitlam—Port Coquitlam)

## Présentation de rapports de comités

M<sup>me</sup> Chagger (Waterloo), du Comité permanent de la procédure et des affaires de la Chambre, présente le troisième rapport du Comité (affaires qui demeurent votables). — Document parlementaire n° 8510-441-23.

Conformément à l'article 91.1(2) du Règlement, le rapport est réputé adopté.

## ORDRE LÉGAL

La Chambre reprend l'étude de la motion de M. Mendicino (ministre de la Sécurité publique), appuyé par M. Trudeau (premier ministre), — Que, conformément à l'article 58 de la Loi sur les mesures d'urgence, cette Chambre ratifie la déclaration d'état d'urgence proclamée le 14 février 2022.

Le débat se poursuit.

À 19 h 30, conformément à l'ordre adopté le jeudi 17 février 2022, la vice-présidente adjointe interrompt les délibérations.

La motion, mise aux voix, est agréée par le vote suivant :

McLeod	McPherson	Mendès	Mendicino
Miao	Miller	Morrissey	Murray
Naqvi	Ng	Noormohamed	O'Connell
Oliphant	O'Regan	Petitpas Taylor	Powlowski
Qualtrough	Robillard	Rodriguez	Rogers
Romanado	Sahota	Sajjan	Saks
Samson	Sarai	Scarpaleggia	Schiefke
Serré	Sgro	Shanahan	Sheehan
Sidhu (Brampton East)	Sidhu (Brampton South)	Singh	Sorbara
Spengemann	St-Onge	Sudds	Tassi
Taylor Roy	Thompson	Trudeau	Turnbull
Valdez	Van Bynen	van Koeverden	Vandal
Vandenbeld	Virani	Vuong	Weiler
Wilkinson	Yip	Zahid	Zarrillo
Zuberi — 185			

## NAYS — CONTRE

Abouttaif	Aitchison	Albas	Allison
Arnold	Baldinelli	Barlow	Barrett
Barsalou-Duval	Beaulieu	Benzen	Bergen
Bergeron	Berthold	Bérubé	Bezan
Blanchet	Blanchette-Joncas	Block	Bragdon
Brassard	Brock	Brunelle-Duceppe	Calkins
Caputo	Carrie	Chabot	Chambers
Champoux	Chong	Cooper	Dalton
Dancho	Davidson	DeBellefeuille	Deltell
Desbiens	Desilets	Doherty	Dowdall
Dreeshen	Duncan (Stormont—Dundas— South Glengarry)	Ellis	Epp
Falk (Battlefords—Lloydminster)	Falk (Provencher)	Fast	Ferreri
Findlay	Fortin	Gallant	Garon
Gaudreau	Généreux	Genuis	Gill
Gladu	Godin	Goodridge	Gourde
Gray	Hallan	Hoback	Jeneroux
Kelly	Kitchen	Kmiec	Kram
Kramp-Neuman	Kurek	Kusie	Lake
Lantsman	Larouche	Lawrence	Lehoux
Lemire	Lewis (Essex)	Lewis (Haldimand—Norfolk)	Liepert
Lloyd	Lobb	MacKenzie	Maguire
Martel	Mazier	McCauley (Edmonton West)	McLean
Melillo	Michaud	Moore	Morantz
Morrice	Morrison	Motz	Muys
Nater	Normandin	O'Toole	Patzer
Paul-Hus	Pauzé	Perkins	Perron
Plamondon	Poillievre	Rayes	Redekopp
Reid	Rempel Garner	Richards	Roberts
Rood	Ruff	Savard-Tremblay	Scheer
Schmale	Seeback	Shields	Shipley
Simard	Sinclair-Desgagné	Small	Soroka
Steinley	Ste-Marie	Stewart	Strahl
Stubbs	Thériault	Therrien	Thomas
Tochor	Tolmie	Trudel	Uppal
Van Popta	Vecchio	Vidal	Vien
Viersen	Vignola	Villemure	Vis
Wagantall	Warkentin	Waugh	Webber
Williams	Williamson	Zimmer — 151	

## PAIRED — PAIRÉS

Nil—Aucun

## RETURNS AND REPORTS DEPOSITED WITH THE CLERK OF THE HOUSE

Pursuant to Standing Order 32(1), papers deposited with the Clerk of the House were laid upon the table as follows:

— by Mr. Champagne (Minister of Innovation, Science and Industry) — List of Commissions issued for the year 2021, pursuant to the Public Officers Act, R.S. 1985, c. P-31, s. 4. — Sessional Paper No. 8560-441-413-01. (*Pursuant to Standing Order 32(5), permanently referred to the Standing Committee on Industry and Technology*)

— by Mr. Wilkinson (Minister of Natural Resources) — Report on the administration and enforcement of the Energy Efficiency Act for the fiscal year ended March 31, 2021, pursuant to the Energy Efficiency Act, S.C. 1992, c. 36, s. 36. — Sessional Paper No. 8560-441-375-01. (*Pursuant to Standing Order 32(5), permanently referred to the Standing Committee on Natural Resources*)

## ADJOURNMENT

At 8:23 p.m., pursuant to order made Thursday, February 17, 2022, the Assistant Deputy Speaker adjourned the House until Monday, February 28, 2022, at 11:00 a.m., pursuant to order made Thursday, February 17, 2022.

## ÉTATS ET RAPPORTS DÉPOSÉS AUPRÈS DU GREFFIER DE LA CHAMBRE

Conformément à l'article 32(1) du Règlement, des documents remis au greffier de la Chambre sont déposés sur le bureau de la Chambre comme suit :

— par M. Champagne (ministre de l'Innovation, des Sciences et de l'Industrie) — Liste des commissions émises durant l'année 2021, conformément à la Loi sur les fonctionnaires publics, L.R. 1985, ch. P-31, art. 4. — Document parlementaire n° 8560-441-413-01. (*Conformément à l'article 32(5) du Règlement, renvoi en permanence au Comité permanent de l'industrie et de la technologie*)

— par M. Wilkinson (ministre des Ressources naturelles) — Rapport sur l'administration et l'application de la Loi sur l'efficacité énergétique pour l'exercice terminé le 31 mars 2021, conformément à la Loi sur l'efficacité énergétique, L.C. 1992, ch. 36, art. 36. — Document parlementaire n° 8560-441-375-01. (*Conformément à l'article 32(5) du Règlement, renvoi en permanence au Comité permanent des ressources naturelles*)

## AJOURNEMENT

À 20 h 23, conformément à l'ordre adopté le jeudi 17 février 2022, la vice-présidente adjointe ajourne la Chambre jusqu'au lundi 28 février 2022, à 11 heures, conformément à l'ordre adopté le jeudi 17 février 2022.

**FEDERAL COURT**

B E T W E E N:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

And

ATTORNEY GENERAL OF CANADA

Respondent

**DIRECTION TO ATTEND****TO: STEVEN SHRAGGE**

**YOU ARE REQUIRED TO ATTEND A CROSS-EXAMINATION** on your affidavit sworn April 4, 2022 on Thursday, May 19, 2022 at 1:30 pm EST via zoom videoconference.

**YOU ARE ALSO REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things:**

1. Any document that lists the membership of the Incident Response Group for the meetings held on each of February 10, 2022, February 12, 2022, and February 13, 2022 as referenced at paragraph 2 and paragraph 6 of your April 4, 2022 affidavit (the "Shragge Affidavit");
2. Any document that provides the mandate of the Incident Response Group as described at paragraphs 2, 5, and 6 of the Affidavit;
3. Any document that provides the describes the practices of decision-making and coordination structures of the Incident Response Group described at paragraph 2 of the Affidavit;
4. Any and all minutes of the February 10, 2022 Incident Response Group meeting;
5. Any and all notes, including yours, of the February 10, 2022 Incident Response Group meeting;
6. Any and all minutes of the February 12, 2022 Incident Response Group meeting;
7. Any and all notes, including yours, of the February 12, 2022, Incident Response Group meeting;
8. Any and all minutes of the February 13, 2022 Incident Response Group meeting;
9. Any and all notes, including yours, of the February 13, 2022 Incident Response Group meeting.

**THE EXAMINATION WILL BE CONDUCTED IN ENGLISH.** If you prefer to be examined in the other official language, an interpreter may be required and you must immediately advise the solicitor for the party conducting the examination.

**IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.**

**INQUIRIES CONCERNING THIS DIRECTION** may be directed to Ewa Krajewska.

May 12, 2022

A handwritten signature in blue ink, appearing to read 'E. Krajewska', is positioned above a horizontal line.

---

**Ewa Krajewska**  
**Henein Hutchison LLP**  
235 King Street East  
Toronto, ON M5A 1J9

Court File No. T-316-22

FEDERAL COURT

BETWEEN:

CANADIAN CIVIL LIBERTIES ASSOCIATION  
Applicant

- and -

ATTORNEY GENERAL OF CANADA  
Respondent

CROSS-EXAMINATION OF STEVEN SHRAGGE  
on his Affidavit dated April 4, 2022  
held via Arbitration Place Virtual  
on Thursday, May 19, 2022 at 1:30 p.m.

APPEARANCES:

Ewa Krajewska  
Brandon Chung  
For the Applicant

Jeff Anderson  
Beth Tait  
Nathan Joyal  
ALSO PRESENT:  
For the Defendants

Rebecca Coleman  
David Cowling  
Matthew Gourlay  
MacKenzie Campbell  
Abby Dushman

Arbitration Place © 2022  
940-100 Queen Street  
Ottawa, Ontario K1P 1J9  
(613) 564-2727  
900-333 Bay Street  
Toronto, Ontario M5H 2R2  
(416) 861-8720

## INDEX

	Page
AFFIRMED: STEVEN SHRAGGE	4
EXAMINATION BY MS. KRAJEWSKA	4

LIST OF UNDER ADVISEMENTS  
& OBJECTIONS

Under Advisements (U/A) found at pages: 34, 37.

Objections (O) found at pages: 15, 19, 21, 31, 39,  
40.

## LIST OF EXHIBITS

NO.	DESCRIPTION	PAGE
1	Direction to Attend to Mr. Anderson dated May 12, 2022.	5
2	Website of the Prime Minister entitled Cabinet Cabinet Committee Mandate and Membership, current as of December 3, 2021.	21



1 Arbitration Place Virtual

2 --- Upon commencing on Thursday, May 19, 2022

3 at 1:30 p.m.

4 AFFIRMED: STEVEN SHRAGGE

5 EXAMINATION BY MS. KRAJEWSKA

6 1 Q. Good afternoon, Mr. Shragge.

7 A. Good afternoon.

8 2 Q. My name is Ewa Krajewska and I'm  
9 here with my co-counsel Brandon Chung and we're  
10 counsel to the Canadian Civil Liberties Association.

11 Can you hear me?

12 A. Yes, I can; loud and clear.

13 3 Q. Perfect.

14 So Mr. Shragge, if at any point you  
15 can't hear me or there's some kind of a disruption,  
16 please just make it known. I will contact  
17 Mr. Anderson and we'll try to reconnect.  
18 Hopefully we've been doing this Zoom stuff for long  
19 enough that things will go smoothly.

20 Mr. Shragge, you have sworn an  
21 affidavit in this proceeding dated April 4, 2021, and  
22 it's the same affidavit in our proceeding 2316-22 of  
23 the three related pleadings.

24 Do you have a copy of that affidavit?

25 A. Yes, I do.

1     4                   Q.   Mr. Shragge, you're attending  
2           this examination pursuant to a Direction to Attend  
3           dated May 12, 2022. Do you have a copy of that  
4           direction?

5                   A.   Yes, I do.

6                   MS. KRAJEWSKA: Mr. Anderson, can we  
7           mark that Direction to Attend as an exhibit, please?

8                   MR. ANDERSON: Yes. There's no  
9           concerns about that. Thank you.

10                   MS. KRAJEWSKA: That will be Exhibit  
11     1.

12                   EXHIBIT NO. 1: Direction to  
13           Attend to Mr. Anderson dated  
14           May 12, 2022.

15                   BY MS. KRAJEWSKA:

16     5                   Q.   Mr. Shragge, I understand that  
17           you are a senior policy advisor with the Privy Council  
18           Office Security and Intelligence Secretariat; that's  
19           correct?

20                   A.   Yes, ma'am, that's correct.

21     6                   Q.   And you've been in that role  
22           since June of 2021?

23                   A.   Yes, that's correct.

24     7                   Q.   And in what role were you  
25           previously?

1                   A.    Previous to that I was in the  
2           same level, also within the National Security and  
3           Intelligence Advisor's branch of the Privy Council  
4           Office.

5    8                   Q.    So you were not a senior policy  
6           advisor, or what was different before June of 2021?

7                   A.    Yeah. I was still a senior  
8           policy advisor; I was just in a different functional  
9           area working on other national security issues.

10   9                  Q.    Okay. So what's the distinction  
11           between the national security issues that you work on  
12           currently?

13                  A.    So now I'm in the Security  
14           Intelligence Secretariat with a set of files which I'm  
15           responsible for. Previously, when I was working on a  
16           task force that was run out of the National Security  
17           Intelligence Advisor, I was working on different  
18           issues at that time.

19   10                 Q.    For how long have you been  
20           working with the government of Canada?

21                  A.    For approximately 20 years.

22   11                  Q.    And what is your educational  
23           background?

24                  A.    I have a bachelor of arts in  
25           political science as well as a master of political

1 science, both from the University of Guelph.

2 12 Q. Mr. Shragge, at paragraph 1 of  
3 your affidavit you say that part of your duties  
4 include supporting the Cabinet Process -- and Cabinet  
5 Process is in capital letters -- for files within your  
6 purview. So what does "files within your purview"  
7 mean?

8 A. So generally within the Security  
9 and Intelligence Secretariat each analyst would have a  
10 security file that they're responsible for monitoring  
11 and tracking and coordinating with the lead  
12 department, and I'm responsible generally for files  
13 related to ideologically motivated violent extremism,  
14 as well as other files.

15 13 Q. And how are those files assigned  
16 to you?

17 A. They're assigned to me by my  
18 direct manager.

19 14 Q. And is that the file that you  
20 were working on in February of 2022?

21 A. Yes, it was one of the files that  
22 I was working on, yes.

23 15 Q. And the files that are within  
24 your purview, did that include the offence that led to  
25 the Declaration of the Emergency that is the subject

1 of these applications?

2 A. Sorry; could you repeat the  
3 question?

4 16 Q. Okay. So in your affidavit you  
5 say that you support the Cabinet process for files  
6 within your purview, and you gave as an example of the  
7 files within your purview being violent extremism. Do  
8 the files within your purview also include the offence  
9 that led to the Declaration of Emergency?

10 MR. ANDERSON: I'm going to intercede  
11 here only in the sense that I want to make sure it's  
12 clear that any discussion that Mr. Shragge has about  
13 what he does for a Cabinet decision or Cabinet process  
14 we would be claiming section 39 protection over, and I  
15 think that's important. I have no problem with you  
16 asking Mr. Shragge what specific files he worked on in  
17 his role at the NSIA, but I would be concerned about  
18 the linkage between those files and any particular  
19 actual Cabinet process.

20 MS. KRAJEWSKA: Well, we're not there  
21 yet.

22 MR. ANDERSON: Thank you.

23 MS. KRAJEWSKA: So you can make that  
24 objection when it comes, Mr. Anderson.

25 BY MS. KRAJEWSKA:

1 17 Q. Do you understand the question  
2 now, Mr. Shragge? Is that helpful?

3 A. So if I understand, the question  
4 is what files was I working on in the lead-up to the  
5 declaration of an emergency?

6 18 Q. Let's start with that question,  
7 yes.

8 A. Okay. So specific to the issues  
9 surrounding the declaration of an emergency and the  
10 incidents that were ongoing across the country at that  
11 time period, I was part of a team within the Security  
12 Intelligence Secretariat that was monitoring the  
13 situation from a threat perspective, from a  
14 situational awareness perspective, from a federal  
15 activity perspective, in consultation with the  
16 security and intelligence community.

17 19 Q. Okay. So would it be fair to say  
18 that the events that led to the Declaration of  
19 Emergency were part of the files that were part of  
20 your purview at the time and you were involved in the  
21 analysis and observation of those events?

22 A. I was involved so much as -- at  
23 my working level. I exchanged with, obviously, my  
24 colleagues in the security intelligence community  
25 specific to the issues surrounding the events in

1 Ottawa and across the country at ports of entry.

2 My primary specialty was violent

3 extremism, so that was the core kind of exchange point

4 for me personally, but obviously, given the dynamic

5 nature and the scope of the issues, I obviously wasn't

6 the only interlocutory with our partners. Officials

7 at all levels were engaged.

8 20 Q. Okay. And when you say you were

9 supporting the Cabinet process, can you just speak

10 generally as to what that means? Not anything

11 specific, but what does "supporting the Cabinet

12 process" mean?

13 A. Sure. From like a general

14 procedural perspective, a Privy Council analyst will

15 be, again, responsible for a given file. If that file

16 raises to the level where it warrants a conversation

17 amongst ministers, that analyst will help to develop

18 material, if warranted, to brief officials, coordinate

19 with other government departments to identify

20 strategic issues. That's, generally speaking, the

21 role of a PCO analyst in terms of supporting a general

22 Cabinet discussion on an issue.

23 21 Q. So you do research?

24 A. Some research, but it's primarily

25 a coordination and collaboration exercise with other

1 counterparts, especially counterparts who are the lead  
2 minister in bringing something forward to Cabinet for  
3 discussion with his or her colleagues.

4 (OFF THE RECORD)

5 BY MS. KRAJEWSKA:

6     22                    Q.     Mr. Shragge, I was going to ask  
7                    you, when you say counterparts to the Privy Council  
8                    Office, are you referring to the counterparts being  
9                    the ministers of Cabinet or do you also mean other  
10                   government departments as well?

11                   A.    I guess it depends on the  
12                   context.  When I talk about my interactions or a PCO  
13                   analyst's interactions in the context of supporting  
14                   Cabinet, traditionally it would be departmental  
15                   counterparts.

16     23                     Q.     So other members of the federal  
17           civil service and seeking their information and  
18           output, and then I guess collating that for the  
19           responsible minister?

20 A. Collating that for advice to the  
21 Cabinet process, not necessarily the minister.

22     24                                Q.     And then would that usually  
23     produce a document that would then go to Cabinet?

24                                   A.    It would produce -- it may  
25    produce briefing material that would go to officials



1 or the chair of a various Cabinet committee.

2 25 Q. Okay. So I understand the chair  
3 of a Cabinet committee, but who would be an official?

4 A. An official may be, for instance,  
5 the National Security and Intelligence Advisor, who  
6 may, given an issue, also attend a meeting.

7 26 Q. So it may be an official who was  
8 part of the federal Public Service?

9 A. Correct.

10 27 Q. Okay. Mr. Shragge, you append to  
11 your affidavit the section 58 justification. You're  
12 familiar with that document?

13 A. Yes, I am.

14 28 Q. Were you involved in preparing  
15 the section 58 justification?

16 A. No, I was not.

17 29 Q. On what basis then do you say  
18 that the section 58 explanation was informed by robust  
19 discussions at three meetings of the IRG group?

20 A. When I include that in my  
21 affidavit, I believe that I am quoting the explanation  
22 itself.

23 30 Q. So you're quoting from the  
24 section 58 explanation itself, and if I just situate  
25 that for you, that's at page 4 of the section 58

1 document, the second paragraph from the bottom?

2 A. Sorry; just give me one second.

3 I'm flipping here.

4 31 Q. Yes, take your time.

5 A. That's correct.

6 32 Q. Okay. And is there any other  
7 source of information, knowledge or belief that you  
8 have that the IRG group discussions informed the  
9 section 58 explanation? Is there any other source for  
10 that?

11 MR. ANDERSON: I have to be careful  
12 with that. We're getting into IRG, which is subject  
13 to Cabinet confidence. Sorry, counsel. I think that  
14 as long as it's generic and doesn't go into specifics.  
15 It's getting really close; that's my only concern.

16 MS. KRAJEWSKA: I'm not there yet; I'm  
17 just asking. I'm not there yet.

18 MR. ANDERSON: I don't mean to jump  
19 the gun.

20 BY MS. KRAJEWSKA:

21 33 Q. I'm just asking; the statement at  
22 paragraph 5 of your affidavit that states that the  
23 decision to issue the declaration was informed by the  
24 robust discussions, if the only source of that  
25 information in your affidavit is the section 58

1 documents itself or is there some other source for  
2 that statement in your affidavit.

3 A. Understood. So I have knowledge  
4 that the IRG met on the dates in question, so the  
5 10th, 12th and the 13th. There are the public  
6 read-outs that were posted on the Prime Minister's  
7 website that outline in some detail the discussion of  
8 the illegal blockade and the conditions across the  
9 country and the nature of those discussions. So I'm  
10 aware of those meetings in the prelude to the  
11 proclamation.

12 34 Q. Mr. Shragge, you said you were  
13 not involved in preparing the section 58 explanation.  
14 Do you know who was involved in preparing the section  
15 58 explanation?

16 A. Not in any specific way, no.

17 35 Q. Do you know whether it was the  
18 Privy Council Office who was involved in preparing  
19 that?

20 A. I can't say definitively. I  
21 believe so in a general sense. I also know it was  
22 tabled by the Minister of Public Safety and, as such,  
23 I would expect his officials were intimately involved,  
24 but as I said, I wasn't involved in it specifically so  
25 I can't say for certain.

1     36                             Q.    Is there someone at the Privy  
2             Council Office who would have knowledge as to who was  
3             involved in drafting the section 58 explanation?

4                             A.    Yes, there would be, but I am not  
5             in a position to direct you to who that may be.

6     37                             Q.    Could you make inquiries to find  
7             out who was involved in drafting the section 58  
8             declaration?

9             (O)                   MR. ANDERSON:     Sorry, counsel, I  
10            don't want to be difficult but we won't do that.  
11            Mr. Shragge is here as a witness speaking to what he  
12            knows, and we're not going to make inquiries as to who  
13            else has drafted it. He's not required to go back and  
14            get further and better particulars.

15                            MS. KRAJEWSKA:   That's fine, I have  
16            your refusal, Mr. Anderson, although in my view he has  
17            attached the section 58 document to his affidavit and  
18            in my view it is relevant. It's the basis for the  
19            decision and it is relevant who prepared that  
20            document.

21                            MR. ANDERSON:   Thank you.

22                            BY MS. KRAJEWSKA:

23     38                             Q.    Mr. Shragge, if we go back to  
24             paragraph 2 of your affidavit, you state that you have  
25             operational knowledge of the mandate, membership and

1 practices of decision making and coordination  
2 structures. Do you see that?

3 A. Yes, I do.

4 39 Q. Does your knowledge include the  
5 membership of the Incident Response Group?

6 A. Yes, in a general sense, but  
7 also, as I've outlined in the affidavit and it occurs  
8 on the Prime Minister's website, the membership of the  
9 Incident Response Group can vary based on the nature  
10 of an incident.

11 40 Q. Does your knowledge include the  
12 mandate of the Incident Response Group?

13 A. Yes, so much as it is stated on  
14 the website publicly.

15 41 Q. Does your knowledge include the  
16 practices of decision making of the Incident Response  
17 Group?

18 A. Yes. Again, so much as I've  
19 interacted with it personally or have knowledge of how  
20 it works, yes.

21 42 Q. Okay. Does it include the  
22 coordination structures of the Incident Response  
23 Group?

24 A. The coordination structures  
25 themselves, the reference there was to draw a

1           distinction between the Incident Response Group and  
2           Cabinet itself, and the coordination, if there is any,  
3           between those functions. That was the objective  
4           there.

5    43                           Q.    Okay.

6                           A.    That being said, there's also  
7           other coordination structures at the officials level.

8    44                           Q.    At the officials level, like the  
9           senior leadership officials level; is that what you  
10          mean?

11                           A.    Correct.

12   45                           Q.    Outside of the Incident Response  
13          Group?

14                           A.    Correct.

15   46                           Q.    And I understand that the  
16          Incident Response Group was created on August 28,  
17          2018. Does that sound correct to you?

18                           A.    Generally speaking that sounds  
19          accurate.

20   47                           Q.    In your affidavit at paragraph 6  
21          you describe the Incident Response Group as a working  
22          group. What do you mean exactly by a "working group"?

23                           A.    Generally speaking it's a group  
24          that brings together -- it's chaired by the Prime  
25          Minister -- it brings together ministers as well as

1       senior officials as required to coordinate, to share  
2       information, to maintain situational awareness and to  
3       work towards resolving issues of national  
4       significance.

5       48                   Q.    Okay.  Is there a reason that  
6       it's called a working group instead of a committee or  
7       a subcommittee?

8                   A.    I don't know specifically.  I  
9       can't say for certain, but what I would say is there's  
10      a distinction between Cabinet and the Incident  
11      Response Group in that the Incident Response Group is  
12      primarily a coordination and information sharing body  
13      intended to ensure that the Prime Minister is well  
14      informed and ministers are coordinating their  
15      activities within their respective mandates as  
16      compared to Cabinet, which is traditionally the  
17      official decision making body for passing policies  
18      which may result in bills and changes to law, for  
19      example.  So that's the distinction as I have  
20      understood it and observed.

21      49                   Q.    Okay.  And does that distinction  
22      apply with some nuance to -- I understand that there  
23      are various standing committees of Cabinet, whether it  
24      be Finance or the Treasury Board, et cetera.  So is  
25      there also a distinction between those committees and

1 the Incident Response Group that it's not called a  
2 committee?

3 A. It is not -- again, it's not a  
4 decision making body like a Cabinet committee would  
5 be, so yes, that's the distinction.

6 50 Q. Okay. Thank you.

7 And you've said this before and you  
8 say it in your affidavit, that the membership of the  
9 Incident Response Group can vary based on the nature  
10 of the incident and include both ministers and other  
11 officials as required. Yes?

12 A. Correct.

13 51 Q. Okay. Can you tell us who were  
14 the ministers who were members of the Incident  
15 Response Group in February of 2022?

16 (O) MR. ANDERSON: Object. Sorry,  
17 counsel, that would fall within the purview of section  
18 39. This is a group of ministers that consult  
19 together and therefore fits within several of the  
20 subparagraphs of 39. I think that there may be some  
21 information limited that's out there in public that  
22 Mr. Shragge can speak to, but to specifically  
23 enumerate the ministers themselves, we would object to  
24 that on the basis of section 39.

25 MS. KRAJEWSKA: Okay. Brandon, can



1           you pull up the Cabinet committee mandate and  
2           membership list, please?

3                               BY MS. KRAJEWSKA:

4    52                       Q.    We're going to share our screen  
5           with you, Mr. Shragge.

6                               Are you familiar with this website,  
7           Mr. Shragge?

8                               A.    Yes, ma'am, I am.

9    53                       Q.    So this is a Government of Canada  
10          website. It's the website of the Prime Minister and  
11          the title is Cabinet Committee Mandate and Membership.  
12          It's current as of December 3, 2021 and it lists, I  
13          believe, all of the committees of Cabinet plus the  
14          Incident Response Group. Is that fair?

15                              A.    Yes, I believe that's accurate.

16                              MS. KRAJEWSKA: Mr. Anderson, could we  
17          mark this website as Exhibit 2? We will create a pdf  
18          of it and circulate it.

19                              MR. ANDERSON: Yes. I'm prepared to  
20          do that, counsel, but can you cycle to the bottom of  
21          whatever it is you want to rely on just so I  
22          understand what it is we're making an exhibit? I  
23          don't necessarily see an issue. I think that  
24          Mr. Shragge has advised that he's aware of this  
25          particular website page.

1 MS. KRAJEWSKA: Sure. So go ahead.  
2 We're going to scroll all the way down. It just goes  
3 through all the different Cabinet committees. If you  
4 print it as a pdf, it ends up being seven pages. If  
5 he goes all the way down, the last item is the  
6 Incident Response Group.

7 MR. ANDERSON: That's acceptable.  
8 Thank you. It's one of the difficulties of doing  
9 things remotely, is you don't have the whole document  
10 tabled there in paper in front of you. That's fine.

11 EXHIBIT NO. 2: Website of  
12 the Prime Minister entitled  
13 Cabinet Committee Mandate  
14 and Membership, current as  
15 of December 3, 2021.

16 BY MS. KRAJEWSKA:

17 54 Q. Mr. Shragge, you'll notice that  
18 for each of the Cabinet committees, except for the  
19 Incident Response Group, the chair and vice-chair and  
20 the members of each committee are listed publicly on  
21 the website. Do you agree?

22 A. Yes, I do.

23 55 Q. Okay. So on what basis is it  
24 that the membership of the Incident Response Group  
25 remains clandestine?

1           (O)                   MR. ANDERSON:     Sorry, counsel, I  
2           think that's a question about the basis of our  
3           objection, and the basis of our objection is, unlike  
4           these committees which are set, the participation of  
5           ministers or officials from those departments with  
6           ministers disclose the nature of the briefings and  
7           disclose the nature of the discussions with the IRG,  
8           which is necessarily ad hoc. As a result, it does  
9           fall within the provisions of 39 in a way that the  
10          Cabinet committees do; the membership is always there.

11                               That is the position. We continue to  
12          think about that. Certainly it will come up next week  
13          probably in the motion, but that is the rationale for  
14          the objection at this stage.

15                           MS. KRAJEWSKA:   Okay. Just to be  
16          clear, I'm not asking for the membership of the  
17          Incident Response Group as it existed at any other  
18          point in time other than at the meetings held on  
19          February 10th, February 12th and February 13th of  
20          2022.

21                           MR. ANDERSON:   Understood. I think  
22          that Mr. Shragge can give you some limited information  
23          because it's publicly available. Anything further  
24          than that, we maintain our objection. It's up to you.  
25          Obviously you can ask him what you want, but I know

1           that he can help you with some of that.

2                           MS. KRAJEWSKA:   Okay.   So we'll get  
3           that.

4                           BY MS. KRAJEWSKA:

5    56                   Q.   Mr. Shragge, this document and  
6           your affidavit also provide that the Incident Response  
7           Group will also include senior government leadership.  
8           Can you please describe to me; what does "senior  
9           government leadership" mean?

10                       A.   It means, traditionally, the  
11           deputy minister level.

12   57                   Q.   Okay.   Now, I have not worked in  
13           the Public Service, but I understand that below the  
14           deputy minister there's also the assistant deputy  
15           minister and there's a whole ladder of people  
16           underneath it.   Does it also include the people  
17           underneath the deputy minister level?

18                       A.   So are you asking me in a general  
19           sense?

20   58                   Q.   In a general sense, yes.   Would  
21           senior leadership also include that?

22                       A.   Traditionally it will vary, in my  
23           experience.   Normally it's limited to the deputy  
24           minister.   Occasionally there will be officials from  
25           those same ministers' offices, and then there's

1 generally also senior officials from the Privy Council  
2 Office who support the IRG process.

3 59 Q. Okay. So that was going to be my  
4 next question. Does senior leadership also include  
5 members of the Privy Council Office, and your answer  
6 is yes?

7 A. Correct.

8 60 Q. Okay. And is senior leadership  
9 limited to the Public Service?

10 A. Again, this is a general  
11 question?

12 61 Q. Yes.

13 A. Generally speaking my  
14 understanding of how the IRG can operate is anybody  
15 could be brought as an attendee should they have  
16 information relevant to the group's discussions.

17 62 Q. Okay. And can senior leadership  
18 also include members of the Prime Minister's Office?

19 A. Yes.

20 63 Q. So it could also include  
21 political appointees?

22 A. Yes. As I stated, it can include  
23 individuals from offices from ministers or the Prime  
24 Minister in attendance.

25 64 Q. Okay. Were you a member of the

1 Incident Response Group on February 10th, 12th or  
2 13th?

3 A. No, I was not.

4 65 Q. So that means that you did not  
5 attend those meetings?

6 A. That's correct, I did not attend  
7 those meetings.

8 66 Q. What is it that you can tell me  
9 about the Incident Response Group's membership at this  
10 time?

11 A. Again, to clarify, is that  
12 question specific to the dates in question, the 10th,  
13 the 12th and 13th?

14 67 Q. Yes, to the dates in question.  
15 Thank you.

16 A. Okay. All I can say is that the  
17 Prime Minister chaired the meetings. There was  
18 ministers as well as their staff present, and there  
19 was senior PCO officials that support the Incident  
20 Response Group present. Beyond that, I can't say  
21 anything in addition.

22 68 Q. Okay. When you say there were  
23 ministers present and their staff, that's staff from  
24 their respective offices; that does not include the  
25 deputy ministers or assistant deputy ministers,

1 correct?

2 A. My understanding is that  
3 ministers were -- deputy ministers attended with their  
4 respective ministers.

5 69 Q. Okay. With respect to the  
6 practices of decision making of the Incident Response  
7 Group, you've already told us that the IRG makes  
8 recommendations to the Prime Minister, correct?

9 A. The IRG facilitates information  
10 exchange and coordination amongst participants, yes.

11 70 Q. But does it come out with a  
12 recommendation at the end of the meeting to the Prime  
13 Minister?

14 A. I can't speak to that  
15 specifically -- definitively.

16 71 Q. Okay. So your affidavit says "is  
17 intended to provide advice to the Prime Minister." Do  
18 you know if the IRG group would come to a consensus on  
19 an issue before providing that advice?

20 A. Sorry; can you repeat the  
21 question, please?

22 72 Q. Okay. So in your affidavit at  
23 paragraph 5, the last sentence, you say "the IRG is  
24 intended to provide advice to the Prime Minister."

25 As part of its practice of decision

1 making will it come to a consensus before it provides  
2 that advice to the Prime Minister?

3 A. So I would reiterate the IRG in  
4 and of itself is not an official decision making body;  
5 it's an information exchange and coordination body as  
6 compared to the Cabinet. So there's that distinction  
7 that is worth highlighting.

8 It encourages a free and frank  
9 exchange of information amongst ministers in  
10 supporting the Prime Minister in exercising his  
11 prerogative as well as supporting ministers in  
12 exercising their specific authorities in a more  
13 coordinated way, but in terms of did it make  
14 recommendations and consensus, I would say as a  
15 practice it would vary depending on the situation. I  
16 don't think I can say something definitively in terms  
17 of how it always operates.

18 73 Q. Okay. So it's not a group where  
19 a decision would go to a vote and the group would vote  
20 on a course of action?

21 A. I'm uncomfortable. I feel that  
22 we may be straying a bit into Cabinet confidence  
23 territory in terms of how decisions are made  
24 precisely.

25 74 Q. Okay. Is there a document that



1 outlines or memorializes how the Incident Response  
2 Group is meant to operate?

3 A. No, not to my knowledge, there's  
4 no official document.

5 75 Q. And is the Prime Minister the  
6 person who chaired each of the meetings on February  
7 10th, 12th and 13th?

8 A. Yes. As stated in the read-out,  
9 the Prime Minister chaired those meetings.

10 76 Q. And will the Incident Response  
11 Group also coordinate with other structures of  
12 government or does it just kind of collate and receive  
13 information?

14 A. Generally speaking ministers  
15 would then coordinate either with their counterparts  
16 or with other kind of coordination bodies, as would  
17 officials.

18 77 Q. Okay. So the Incident Response  
19 Group, as you said earlier, does not have kind of  
20 decision making authority to direct others to do  
21 things based on its deliberations. It's the ministers  
22 who then go out and exercise their authority as  
23 required?

24 A. Correct. That's my  
25 understanding.

1     78                             Q.    Mr. Shragge, the first relevant  
2             meeting of the Incident Response Group is the one of  
3             February 10, 2022 and, as you mentioned, the Prime  
4             Minister's Office issued a public statement of that  
5             meeting, which continues to be available online and is  
6             also available in the record at Exhibit 000 of  
7             Ms. Coleman's affidavit.

8                             I assume you have that handy  
9             somewhere?

10                            A.    I do not.

11     79                             Q.    Okay.  Let's post it.  
12                             Can you see that, Mr. Shragge?

13                            A.    Yes, ma'am, I can.

14                            MS. KRAJEWSKA:  Mr. Anderson, this is,  
15             I think, the same document that's attached to  
16             Ms. Coleman's affidavit, so I'm not going to mark it  
17             as an exhibit, but it is Exhibit 000 of Ms. Coleman's  
18             affidavit.  All right?

19                            MR. ANDERSON:  That's fine with me.  
20             Thank you.

21                            BY MS. KRAJEWSKA:

22     80                            Q.    Mr. Shragge, I know you may have  
23             already said some of these things.  So you were not in  
24             attendance at this meeting?

25                            A.    No, I was not.

1     81                     Q.    And the only information you have  
2           about this meeting is what is stated in this public  
3           statement from the Prime Minister's Office?

4                     A.    Correct. This is the only  
5           information I have on the substance of the meeting.

6     82                     Q.    Okay. Do you have information  
7           about the ministers and the officials who attended  
8           this meeting?

9                     A.    Not in my possession, no.

10    83                    Q.    So even absent any claim of  
11          Cabinet confidence that the government may make, you  
12          do not, sitting here today, know who attended that  
13          meeting?

14                    A.    I have a general awareness of who  
15          attended that meeting based, again, on my role and  
16          collaboration with colleagues who supported it, but I  
17          don't have in my possession a detailed account of  
18          precisely who was there.

19    84                    Q.    Okay. But I assume that, subject  
20          to the section 39 issues, you could obtain that  
21          information if necessary?

22                    A.    Sorry; can you clarify the  
23          distinction? Are you saying if there was not a  
24          Cabinet confidence issue could I obtain that  
25          information?

1 85 Q. Yes.

2 A. Yes, I could. As an order of  
3 practice attendee lists are kept.

4 86 Q. So an attendee list is kept. Is  
5 it kept by the Privy Council Office?

6 A. Yes, it is.

7 MS. KRAJEWSKA: Mr. Anderson, I'd like  
8 to request a copy of the attendee list for each of the  
9 meetings of February 10th, 12th and 13th, 2022 of the  
10 Incident Response Group.

11 (O) MR. ANDERSON: We will object to  
12 providing those lists on the basis of Cabinet  
13 confidence, as we've stated. That's where we are  
14 today. We'll see where we are after the motion next  
15 week.

16 BY MS. KRAJEWSKA:

17 87 Q. Just based on your general  
18 knowledge of the workings of this group, Mr. Shragge,  
19 do you know whether minutes are kept of these  
20 meetings?

21 A. Yes. As a general practice  
22 minutes are kept for IRG meetings and also held in  
23 Cabinet confidence by the Privy Council Office.

24 88 Q. So they're deposited with the  
25 Privy Council Office?

1 A. That's correct.

2 89 Q. And is there kind of a designated  
3 employee of the Public Service who maintains those  
4 minutes then?

5 A. I don't know of an individual,  
6 but it's Cabinet Papers System Unit within the Privy  
7 Council office.

8 90 Q. And if anyone who attended that  
9 meeting also took notes, would they keep those notes  
10 in their personal possession?

11 A. I'm speculating. I would expect  
12 yes, if they retained them, but I can't say for  
13 certain.

14 91 Q. So they wouldn't necessarily  
15 deposit them or they wouldn't be under an obligation  
16 to deposit them with the Cabinet Pages Systems Unit?

17 A. Correct. There's no practice to  
18 provide those notes, should you make them, to that  
19 unit.

20 MR. ANDERSON: I think it's the  
21 Cabinet Papers System Unit. Right?

22 MS. KRAJEWSKA: Thank you. This is  
23 what happens when I write a little too quickly. Thank  
24 you.

25 MR. ANDERSON: You're welcome.

1 BY MS. KRAJEWSKA:

2 92 Q. Mr. Shragge, the next meeting was  
3 on February 12, and again you were not in attendance  
4 at this meeting?

5 A. No, I was not.

6 93 Q. Okay. And is your only knowledge  
7 of this meeting the public statement issued by the  
8 Prime Minister's Office that's available online?

9 A. Again, like the last meeting,  
10 that's the most detailed knowledge again, although I  
11 had colleagues who supported the process as well.

12 94 Q. Right. So you had colleagues  
13 from the Privy Council Office who supported the  
14 process, and when you say that do you mean by first  
15 attending the meeting? Is that fair?

16 A. I don't know that I'm able to say  
17 that, based on Cabinet confidence.

18 95 Q. But it's possible that members of  
19 the Privy Council Office attended the IRG meeting?

20 A. Yes. As I stated previously,  
21 generally senior PCO officials that support the IRG  
22 attend the meeting.

23 96 Q. And Privy Council officials could  
24 have also supported the meeting by providing briefings  
25 or documents to the members of the IRG committee?

1 A. Yes. Yes, as a practice that is  
2 known to occur.

3 97 Q. Okay. Do you know if it occurred  
4 in this case?

5 A. For which meeting in question?

6 98 Q. February 12, 2022.

7 A. I can't recall in that specific  
8 instance if there was material prepared. I wouldn't  
9 want to speak out of turn.

10 99 Q. Okay. Is there someone who you  
11 could ask to know whether material was provided?

12 A. Yes.

13 100 Q. Can you please ask that person to  
14 inquire as to whether material was provided from the  
15 PCO to the IRG working group?

16 (U/A) MR. ANDERSON: Counsel, I don't want  
17 to be difficult, so we'll take it under advisement. I  
18 don't know whether I would call that a Cabinet  
19 confidence. Technically we're asking him to further  
20 and better inform himself, but I'm prepared to take  
21 that under advisement. We'll see what we can come up  
22 with.

23 MS. KRAJEWSKA: Thank you,  
24 Mr. Anderson. And I'll ask the same question for the  
25 record, because I don't think I did, for the February

1 10th meeting.

2 (U/A) MR. ANDERSON: Yes, we will take  
3 that under advisement as well. It may be that we can  
4 advise whether someone was briefed or not. I just  
5 don't know.

6 MS. KRAJEWSKA: Okay.

7 BY MS. KRAJEWSKA:

8 101 Q. And I assume, Mr. Shragge, that,  
9 similar to the February 10th meeting, if there are  
10 minutes, those minutes would have been deposited with  
11 the Cabinet Papers Systems Unit?

12 A. Yes, that's correct.

13 102 Q. Mr. Shragge, there was a third  
14 meeting on February 13th of the Incident Response  
15 Group. I assume again you were not in attendance?

16 A. Yes, that's correct, I was not.

17 103 Q. And there actually is not a  
18 printout of this meeting on the Prime Minister's  
19 official statement or itineraries. Do you know that,  
20 that there is no official statement regarding this  
21 meeting?

22 A. I believe there's a statement  
23 that he convened Cabinet on the 13th, if I'm not  
24 mistaken.

25 104 Q. That's correct.



1                                 Sorry; go ahead.

2                                 A.    Sorry.  I was going to say, you  
3       were saying there's no public statement on his  
4       itinerary that he in fact met on the 13th, or there  
5       was no meeting convened?

6    105                         Q.    Correct.

7                                 A.    So the question is, am I aware --  
8       do I have any other information?

9    106                         Q.    So let's get there.  Similar to  
10       the February 10th summaries that were prepared by the  
11       Prime Minister's Office of the February 10th and  
12       February 12th meetings, there is no similar summary  
13       provided publicly of the February 13th meeting.  
14       There's no read-out.

15                                Is there otherwise a publicly  
16       available document summarizing what was discussed at  
17       that meeting on February 13?

18                                A.    No, not to my knowledge.

19    107                         Q.    Okay.  Is there a reason why  
20       there was no public read-out made available of the  
21       February 13th meeting of the IRG group?

22                                A.    I'm not aware of any reason it  
23       was not released.

24    108                         Q.    And similarly, if there are  
25       minutes, those minutes would be kept by the Cabinet

1 Papers Systems Unit of the February 13th meeting?

2 A. That's correct.

3 MS. KRAJEWSKA: And similarly,

4 Mr. Anderson, if there were documents prepared by the  
5 Privy Council Office for the February 13th IRG  
6 meeting, I would ask that those be produced.

7 (U/A) MR. ANDERSON: We'll take that under  
8 advisement. So I'm clear, the documents will not be  
9 produced. We will be claiming Cabinet confidence over  
10 those for sure. There's no question in my mind about  
11 that.

12 If it's like the other two advisements  
13 to determine whether one of Mr. Shragge's colleagues  
14 produced briefing materials for that IRG as well,  
15 we're prepared to take that under advisement and maybe  
16 I will tell you yes or no on that.

17 MS. KRAJEWSKA: Just to make it clear,  
18 for all three sets of meetings I'd like to know if  
19 there are documents that were prepared by the PCO for  
20 the IRG meetings, and if there are those documents, to  
21 produce them. So that's two questions.

22 MR. ANDERSON: Just writing that down.

23 (U/A) We will take it under advisement for  
24 three meetings whether the documents were prepared by  
25 a PCO official for the IRG meeting.

1                   In terms of production, if they do  
2           exist, we will be objecting, but obviously I'll  
3           confirm that once I confirm whether they exist, if  
4           that's all right.

5                   MS. KRAJEWSKA: Yes, that makes sense.  
6           Thank you.

7                   MR. ANDERSON: Thank you.

8                   BY MS. KRAJEWSKA:

9    109           Q.   Mr. Shragge, we've discussed a  
10           little bit of this. You've talked about how the IRG  
11           will provide advice and information to the Prime  
12           Minister. Does the IRG also provide advice or  
13           recommendations to Cabinet as a whole?

14                   A.   I'd say as a general practice  
15           there's no formal link between the IRG and Cabinet.  
16           That being said, in a general sense, often those  
17           ministers may be the same, so you can naturally expect  
18           that discussions and awareness will flow between one  
19           and the other, but there's no formal link per se  
20           between the two that I'm aware of.

21   110           Q.   Okay. And is your answer the  
22           same with respect to whether the IRG makes  
23           recommendations to the Governor-in-Council?

24                   A.   To my knowledge, there is no link  
25           between those two, but to be very honest I'm outside

1 my area of expertise with respect to the relationship  
2 with the Governor-in-Council, so I don't want to delve  
3 too far into the details there as I'm not confident in  
4 my response.

5 111 Q. Okay. Do you know whether the  
6 minutes of the IRG working group were put before  
7 Cabinet?

8 (O) MR. ANDERSON: Objection. Assuming  
9 there are minutes, which there probably are, whether  
10 or not they were put to Cabinet would most certainly  
11 garner a section 39 objection. They would fall within  
12 the provisions of that part of the Canada Evidence Act  
13 and we would simply object to even acknowledgment that  
14 they were provided.

15 MS. KRAJEWSKA: Okay. We'll have a  
16 fight about those objections one day, Mr. Anderson.

17 MR. ANDERSON: Certainly, certainly.  
18 I'm sure we will.

19 BY MS. KRAJEWSKA:

20 112 Q. Were the minutes of the IRG  
21 working group put before the Governor-in-Council?

22 (O) MR. ANDERSON: Objection, for the  
23 same reason.

24 BY MS. KRAJEWSKA:

25 113 Q. And when I'm referring to the

1 minutes, I'm referring to the minutes of February  
2 10th, 12th and 13th; I'm not referring to ones from  
3 other periods of time.

4 Were any of the documents that the  
5 Incident Response Group considered at its meetings on  
6 February 10th, 12th and 13th put before Cabinet?

7 (O) MR. ANDERSON: Objection.

8 BY MS. KRAJEWSKA:

9 114 Q. Were any of the documents that  
10 the Incident Response Group considered between  
11 February 10th, 12th and 13th put before the  
12 Governor-in-Council?

13 (O) MR. ANDERSON: Objection, for the  
14 same reason, section 39, for now. Again, we'll see  
15 where we go after the 27th.

16 BY MS. KRAJEWSKA:

17 115 Q. Mr. Shragge, you state at  
18 paragraph 2, the second sentence, that you do not have  
19 direct knowledge of Cabinet counsel and ministerial  
20 deliberation and decision making discussions during  
21 the days directly preceding the declaration of a  
22 public order emergency on February 14th.

23 When you use the words "direct  
24 knowledge", is that because you were not in attendance  
25 at the Cabinet or Governor-in-Council or the ministry

1 or the deliberation? Is that why you used "direct  
2 knowledge"?

3 A. Yes, that's correct.

4 116 Q. What indirect knowledge would you  
5 have about these incidents then?

6 A. Nothing substantive. I was not  
7 engaged on the deliberations themselves or the  
8 preparation of material for them, should they exist.  
9 So as far as having indirect knowledge, I'm aware of  
10 the general discussions -- I'm aware of discussions  
11 occurring, but in terms of the nature of those  
12 discussions, I have no visibility on those issues.

13 117 Q. Okay.

14 Mr. Anderson, if I go back to the  
15 Direction to Attend, I think we have most likely  
16 covered the documents that I've asked Mr. Shragge to  
17 produce at this examination, through my questions, but  
18 I assume that Mr. Shragge has not brought any of his  
19 documents that have been listed. Is that correct?

20 MR. ANDERSON: I believe that  
21 Mr. Shragge has brought some publicly available links,  
22 which he's discussed and that he's prepared to provide  
23 to you. Of course you could ask him yourself, but I  
24 think he has them with respect to just confirming the  
25 PM's membership and the link to the IRG's discussion

1           about its mandate. I can let him answer that.

2                           In terms of the more specific, I think  
3           you're right. We've covered off -- I'm just looking  
4           here -- you've not technically asked for other  
5           people's notes, but of course if they exist and  
6           Mr. Shragge has the power, possession or control to  
7           get them, we would certainly be relying on a Cabinet  
8           exception, but I don't know that -- I mean, you can  
9           ask him that question, but that would be with respect  
10          to your paras 4, 5, 6, 7, 8 and 9, and just sort of a  
11          reiteration of the same request for the 10th, 12th and  
12          13th IRGs.

13                       MS. KRAJEWSKA: So it may be easier to  
14          simply do this if you just wanted to respond to these  
15          in writing, Mr. Anderson, or I could go through each  
16          one of them with him now.

17                       MR. ANDERSON: It's up to you. I'm  
18          happy to simply give you a response. I think a lot of  
19          it is covered by our objection but we're happy to  
20          provide something in writing after if you'll find it  
21          helpful and it gives you more time. We're moving on  
22          into the next hour, so it's up to you. If that will  
23          help you, I'm happy to provide a written response.

24                       MS. KRAJEWSKA: Okay.

25                       Let's just take a five-minute break.

1           We can go off the record and I'll just go on mute and  
2           turn off my camera.

3           --- Upon recessing at 2:35 p.m.

4           --- Upon resuming at 2:41 p.m.

5                           BY MS. KRAJEWSKA:

6   118                   Q.   Mr. Shragge, just a couple of  
7           more questions.

8                           We talked about the read-out from the  
9           Prime Minister's Office of February 10th and 12th of  
10          the IRG meeting that's available publicly. What is  
11          your understanding as to who decides what to make  
12          available publicly from the Prime Minister's  
13          itinerary?

14                          A.   So what's my understanding of how  
15          the PM's itinerary gets published, or who decides what  
16          gets published? To be honest, it's not something I  
17          have a great amount of visibility on. Generally  
18          speaking, I would expect that it's a decision that's  
19          made by the Prime Minister in consultation with his  
20          office.

21   119                   Q.   Okay. Thank you.

22                          Sorry; our Internet connection is  
23          unstable. I just heard the tail end of your answer,  
24          which is that you expect that that it is a decision  
25          made by the Prime Minister's Office; is that correct?



1 MR. ANDERSON: Sorry; can we just make  
2 sure that the court reporter got the entire answer,  
3 because it would not come out the same way if it  
4 didn't all get recorded.

5 COURT REPORTER: I could hear  
6 perfectly. Thank you.

7 MS. KRAJEWSKA: This will be a reason  
8 for me to order the transcript, I guess.

9 BY MS. KRAJEWSKA:

10 120 Q. Sorry, Mr. Shragge, can you just  
11 repeat that for my benefit?

12 A. Sure. As I said, I don't have a  
13 detailed or direct understanding of how the  
14 itineraries and the read-outs get published.  
15 Generally speaking, I would expect the Prime  
16 Minister's Office, in consultation with the Prime  
17 Minister, arrives at those kinds of determinations.

18 121 Q. And is it your understanding that  
19 that's not necessarily a decision that resides with  
20 the Incident Response Group, the working group itself?

21 A. Not to the best of my knowledge,  
22 but again, I don't have the greatest visibility in  
23 terms of how those decisions are made. But as it's on  
24 the Prime Minister's website, I would assume that him  
25 and his office are the ones making that call.

1 MS. KRAJEWSKA: Mr. Anderson, I think  
2 we're going to adjourn Mr. Shragge's cross-examination  
3 here, subject to two issues. One, if you could  
4 provide your position on each of the items listed in  
5 the Direction to Attend, whether (a), this is  
6 something that is within the power, possession or  
7 control of Mr. Shragge, and (b), whether there is any  
8 objection on the basis of privilege and what that  
9 basis is.

10 And item two; Mr. Shragge, we are  
11 adjourning your cross-examination, which would  
12 normally mean that you're going to continue to be  
13 subject to cross-examination, but we have agreed among  
14 counsel that you can discuss with Mr. Anderson your  
15 answers to prepare your answers in the Jost  
16 application.

17 I think that's it for today. Thank  
18 you very much for making yourself available.

19 THE WITNESS: Thank you.

20 MR. ANDERSON: Yes, we'll make sure  
21 that we respond on the two points on the documents  
22 requested and the Direction to Attend. If I don't get  
23 that to you by Friday, I'll certainly get it out early  
24 next week. I just have to find the time to do it.  
25 Tomorrow is getting a little busy right now.

1 MS. KRAJEWSKA: Thank you,  
2 Mr. Anderson.

3 --- Upon adjourning at 2:46 p.m.

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Current as of December 3, 2021

Cabinet committees carry out most of the day-to-day work of the Cabinet. Committees have their own members and areas of responsibility, which are set by the Prime Minister. The Treasury Board is the exception, as its mandate and membership are established in law. The current Cabinet committees include:

- Cabinet Committee on Agenda, Results and Communications ([/en/cabinet-committee-mandate-and-membership#agenda-results-communications](#))
- Sub-Committee on Intergovernmental Coordination ([/en/cabinet-committee-mandate-and-membership#intergovernmental-coordination](#))
- Treasury Board ([/en/cabinet-committee-mandate-and-membership#treasury-board](#))
- Cabinet Committee on Operations ([/en/cabinet-committee-mandate-and-membership#operations](#))
- Sub-Committee on Litigation Management ([/en/cabinet-committee-mandate-and-membership#litigation-management](#))
- Cabinet Committee on Reconciliation ([/en/cabinet-committee-mandate-and-membership#reconciliation](#))
- Cabinet Committee on Economy, Inclusion and Climate “A” ([/en/cabinet-committee-mandate-and-membership#climate-a](#))
- Cabinet Committee on Economy, Inclusion and Climate “B” ([/en/cabinet-committee-mandate-and-membership#climate-b](#))
- Cabinet Committee on Canada and the World ([/en/cabinet-committee-mandate-and-membership#canada-world](#))
- Cabinet Committee on Safety, Security and Emergencies ([/en/cabinet-committee-mandate-and-membership#security](#))
- Sub-Committee on the federal response to the Coronavirus disease (COVID-19) ([/en/cabinet-committee-mandate-and-membership#covid-19](#))
- Incident Response Group ([/en/cabinet-committee-mandate-and-membership#incident-response](#))

The Deputy Prime Minister and Minister of Finance is an ex-officio member of all Committees where she is not shown as a standing member.

Cabinet Committee on Agenda, Results and Communications

Manages the government's overall strategic agenda and priority setting, and tracks implementation. It also undertakes focused and deep analysis of key priority issues and themes, and their strategic implications.

**Chair:** The Rt. Hon. Justin P. J. Trudeau

**Vice-Chair:** The Hon. Chrystia Freeland

### **Members**

The Hon. William Sterling Blair

The Hon. Ahmed D. Hussen

The Hon. Mélanie Joly

The Hon. Dominic LeBlanc

The Hon. Mary F.Y. Ng

The Hon. Carla Qualtrough

The Hon. Pablo Rodriguez

## Sub-Committee on Intergovernmental Coordination

Considers the intergovernmental dimensions of key priority issues as well as the ongoing health of the federation.

**Chair:** The Hon. Dominic LeBlanc

**Vice-Chair:** The Hon. Chrystia Freeland

### **Members**

The Hon. Randy Boissonnault

The Hon. Karina Gould

The Hon. Marco E. L. Mendicino

The Hon. Carla Qualtrough

The Hon. Pablo Rodriguez

The Hon. Daniel Vandal

## Treasury Board

Acts as the government's management board. Provides oversight of the government's financial management and spending, as well as oversight on human resources issues and digital transformation initiatives. Is the employer for the public service, and establishes policies and common standards for administrative, personnel, financial, and organizational practices across government. Fulfills the role of the Committee of Council in approving regulatory policies and regulations, and most orders-in-council.

**Chair:** The Hon. Mona Fortier

**Vice-Chair:** The Hon. Helena Jaczek

**Members**

The Hon. Chrystia Freeland  
The Hon. Ahmed D. Hussen  
The Hon. Diane Lebouthillier  
The Hon. Joyce Murray

**Alternates**

The Hon. Randy Boissonnault  
The Hon. Jean-Yves Duclos  
The Hon. Sean Fraser  
The Hon. Gudie Hutchings  
The Hon. Mary F.Y. Ng  
The Hon. Carla Qualtrough  
The Hon. Daniel Vandal  
The Hon. Jonathan Wilkinson

## Cabinet Committee on Operations

Addresses urgent issues and tactical communications while providing day-to-day coordination of parliamentary planning and Cabinet Committee business.

**Chair:** The Hon. Dominic LeBlanc

**Vice-Chair:** The Hon. Ginette Petitpas Taylor

**Members**

The Hon. Jean-Yves Duclos  
The Hon. Mona Fortier  
The Hon. Karina Gould  
The Hon. Mark Holland  
The Hon. Helena Jaczek  
The Hon. David Lametti  
The Hon. Marco E. L. Mendicino  
The Hon. Carla Qualtrough  
The Hon. Pablo Rodriguez  
The Hon. Jonathan Wilkinson

## Sub-Committee on Litigation Management

A sub-committee of the Cabinet Committee on Operations, it considers the policy, financial, legal, and societal implications of complex litigation involving the Government of Canada as well as the government's overall litigation strategy.

**Chair:** The Hon. Anita Anand

**Vice-Chair:** The Hon. Marco E. L. Mendicino

**Members**

The Hon. Mona Fortier

The Hon. Sean Fraser

The Hon. David Lametti

The Hon. Dominic LeBlanc

The Hon. Carla Qualtrough

The Hon. Daniel Vandal

## Cabinet Committee on Reconciliation

Considers issues related to renewing the nation-to-nation, Inuit-Crown, and government-to-government relationship with First Nations, Inuit, and the Métis Nation. It examines initiatives designed to advance reconciliation and strengthen the relationship with Indigenous peoples.

**Chair:** The Hon. Daniel Vandal

**Vice-Chair:** The Hon. Helena Jaczek

**Members**

The Hon. Steven Guilbeault

The Hon. Patricia Hajdu

The Hon. Gudie Hutchings

The Hon. David Lametti

The Hon. Marc Miller

The Hon. Joyce Murray

The Hon. Jonathan Wilkinson

## Cabinet Committee on Economy, Inclusion and Climate “A”

Considers such issues as sustainable and inclusive social and economic development, post-pandemic recovery, decarbonization, and the environment as well as improving the health and quality of life of Canadians.

**Chair:** The Hon. Carla Qualtrough

**Vice-Chair:** The Hon. Pablo Rodriguez

**Members**

The Hon. Omar Alghabra

The Hon. Marie-Claude Bibeau

The Hon. Jean-Yves Duclos

The Hon. Patricia Hajdu  
The Hon. Marci Ien  
The Hon. Helena Jaczek  
The Hon. Kamal Khera  
The Hon. Seamus O'Regan Jr.  
The Hon. Ginette Petitpas Taylor  
The Hon. Filomena Tassi  
The Hon. Jonathan Wilkinson  
The Hon. Daniel Vandal

## Cabinet Committee on Economy, Inclusion and Climate “B”

Considers such issues as sustainable and inclusive social and economic development, post-pandemic recovery, decarbonization, and the environment and improving the health and quality of life of Canadians.

**Chair:** The Hon. François-Philippe Champagne

**Vice-Chair:** The Hon. Ahmed D. Hussen

### Members

The Hon. Carolyn Bennett  
The Hon. Randy Boissonnault  
The Hon. Sean Fraser  
The Hon. Steven Guilbeault  
The Hon. Mark Holland  
The Hon. Gudie Hutchings  
The Hon. Dominic LeBlanc  
The Hon. Diane Lebouthillier  
The Hon. Marc Miller  
The Hon. Joyce Murray  
The Hon. Mary F.Y. Ng  
The Hon. Pascale St-Onge

## Cabinet Committee on Canada and the World

Considers issues concerning Canada's engagement with, and participation in, the international community, including trade promotion and national defence.

**Chair:** The Hon. Karina Gould

**Vice-Chair:** The Hon. David Lametti



**Members**

The Hon. Omar Alghabra  
The Hon. Anita Anand  
The Hon. William Sterling Blair  
The Hon. Mona Fortier  
The Hon. Mélanie Joly  
The Hon. Lawrence MacAulay  
The Hon. Marco E. L. Mendicino  
The Hon. Mary F.Y. Ng  
The Hon. Harjit Singh Sajjan  
The Hon. Pascale St-Onge

## Cabinet Committee on Safety, Security and Emergencies

Considers threats and risks to the safety and security of Canada and Canadians, manages ongoing emergencies, and ensures strategic, integrated, and forward-looking leadership for emergency management (mitigation, preparedness, response, and recovery).

**Chair:** The Hon. William Sterling Blair

**Vice-Chair:** The Hon. Patricia Hajdu

**Members**

The Hon. Omar Alghabra  
The Hon. Anita Anand  
The Hon. Marie-Claude Bibeau  
The Hon. Jean-Yves Duclos  
The Hon. Lawrence MacAulay  
The Hon. Marco E. L. Mendicino  
The Hon. Joyce Murray  
The Hon. Harjit Singh Sajjan

## Sub-Committee on the federal response to the Coronavirus disease (COVID-19)

A sub-committee of the Cabinet Committee on Safety, Security and Emergencies, it provides whole-of-government leadership, coordination, and preparedness for a response to, and recovery from, COVID-19.

**Chair:** The Hon. Dominic LeBlanc

**Vice-Chair:** The Hon. Filomena Tassi

**Members**

The Hon. Omar Alghabra

The Hon. Carolyn Bennett

The Hon. Marie-Claude Bibeau

The Hon. William Sterling Blair

The Hon. François-Philippe Champagne

The Hon. Jean-Yves Duclos

The Hon. Patricia Hajdu

The Hon. Marci Ien

The Hon. Kamal Khera

The Hon. Seamus O'Regan Jr.

The Hon. Daniel Vandal

## Incident Response Group

Serves as a dedicated emergency committee in the event of a national crisis or during incidents elsewhere that have major implications for Canada. Responsible for coordinating a prompt federal response to an incident, and making fast, effective decisions to keep Canadians safe and secure, at home and abroad.

**Members**

The Incident Response Group is a working group of ministers. Membership of the Group may consist of relevant ministers and senior government leadership, as needed, based on the nature of the incident.

**STEVEN SHRAGGE CROSS-EXAMINATION**  
**AGC Response to document requests listed in the CCLA's May 12, 2022, Direction to Attend**

Request	AGC Response
<p>1. Any document that lists the membership of the Incident Response Group for the meetings held on each of February 10, 2022, February 12, 2022, and February 13 2022 as referenced at paragraph 2 and paragraph 6 of April 4, 2022 affidavit.</p>	<p><b>OBJECTION – Cabinet Confidentiality</b></p> <p>There is no fixed membership for the IRG. An attendance list for each of the February 10, 12, and 13, 2022 IRG meetings is maintained by the Cabinet Papers System Unit and come within the definition of confidences of the Queen's Privy Council for Canada or Cabinet confidences as defined in s. 39(2) of the <i>CEA</i>. The AGC objects to their production on that basis</p>
<p>2. Any document that provides the mandate of the Incident Response Group as described at paragraphs 2, 5 and 6 of the affidavit.</p>	<p>The document marked as Exhibit 2 to the Cross-Examination of Steven Shragge on May 19, 2022 is the only document that describes the mandate of the IRG.</p> <p>A link is attached: <a href="https://pm.gc.ca/CabinetCommitteeMandateandMembership">Cabinet Committee Mandate and Membership (pm.gc.ca)</a></p>
<p>3. Any document that describes the practices of decision-making and coordination structures of the Incident Response Group described at paragraph 2 of the affidavit.</p>	<p>There is no document setting out the practices of decision-making and coordination structures of the IRG.</p>

Request	AGC Response
<p>4. Any and all minutes of the February 10, 2022 Incident Response Group meeting.</p>	<p><b>OBJECTION – Cabinet Confidentiality</b></p> <p>Any minutes for the IRG meetings are held by the Cabinet Papers System Unit at the Privy Council Office and come within the definition of confidences of the Queen’s Privy Council for Canada or Cabinet confidences as defined in s. 39(2) of the <i>CEA</i>. The AGC objects to their production on that basis.</p>
<p>5. Any and all notes, including yours, of the February 10, 2022 Incident Response Group meeting.</p>	<p>Mr. Shragge does not have any notes from the IRG meeting on February 10, 2022. Mr. Shragge is aware that there may be one individual who may have retained personal notes but he does not have access to those notes.</p> <p><b>OBJECTION – Cabinet Confidentiality</b></p> <p>Additionally, any notes for the IRG meetings come within the definition of confidences of the Queen’s Privy Council for Canada or Cabinet confidences as defined in s. 39(2) of the <i>CEA</i>. The AGC objects to their production on that basis.</p>

Request	AGC Response
<p>6. Any and all minutes of the February 12, 2022 Incident Response Group meeting.</p>	<p><b>OBJECTION – Cabinet Confidentiality</b></p> <p>Any minutes for the IRG meetings are held by the Cabinet Papers System Unit at the Privy Council Office and come within the definition of confidences of the Queen’s Privy Council for Canada or Cabinet confidences as defined in s. 39(2) of the <i>CEA</i>. The AGC objects to their production on that basis.</p>
<p>7. Any and all notes, including yours, of the February 12, 2022 Incident Response Group meeting.</p>	<p>Mr. Shragge does not have any notes from the IRG meeting on February 12, 2022. Mr. Shragge is aware that there may be one individual who may have retained notes but he does not have access to those notes.</p> <p><b>OBJECTION – Cabinet Confidentiality</b></p> <p>Additionally, any notes for the IRG meetings come within the definition of confidences of the Queen’s Privy Council for Canada or Cabinet confidences as defined in s. 39(2) of the <i>CEA</i>. The AGC objects to their production on that basis.</p>

Request	AGC Response
8. Any and all minutes of the February 13, 2022 Incident Response Group meeting.	<p><b>OBJECTION – Cabinet Confidentiality</b></p> <p>Any minutes for the IRG meetings are held by the Cabinet Papers System Unit at the Privy Council Office and come within the definition of confidences of the Queen’s Privy Council for Canada or Cabinet confidences as defined in s. 39(2) of the <i>CEA</i>. The AGC objects to their production on that basis.</p>
9. Any and all notes, including yours, of the February 13, 2022 Incident Response Group meeting.	<p>Mr. Shragge does not have any notes from the IRG meeting on February 13, 2022. Mr. Shragge is aware that there may be one individual who may have retained notes but he does not have access to those notes.</p> <p><b>OBJECTION – Cabinet Confidentiality</b></p> <p>Additionally, any notes for the IRG meetings come within the definition of confidences of the Queen’s Privy Council for Canada or Cabinet confidences as defined in s. 39(2) of the <i>CEA</i>. The AGC objects to their production on that basis.</p>



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By E-Mail

Our File Number: LEX-500081877

June 13, 2022

Ewa Krajewska (for CCLA)  
HENEIN HUTCHISON LLP |  
BARRISTERS  
235 KING STREET EAST, FIRST FLOOR  
TORONTO, ONTARIO  
M5A 1J9

**Re: CCLA v. AGC, T-316-22 Response to Questions 100 & 108 Taken Under Advisement during S. Shragge Cross-Examination, April 19, 2022.**

Dear Ms. Krajewska,

I write to confirm that, subject to Mr. Shragge's knowledge and any claims regarding Cabinet confidentiality or other privileges and immunities, we are prepared to allow Mr. Shragge to answer the two questions (# 100 and # 108) we took under advisement with respect to whether PCO had prepared any documents for the IRG meetings on February 10, 12, and 13, 2022.

For the sake of clarity, however, we have not asked, nor do we believe it to be a requirement, that Mr. Shragge seek to further inform himself as to the existence of any other material that is not already known to him.

Mr. Shragge's answer is set out below:

With respect to my knowledge, aside from the agenda, I do not have a clear and definite understanding of what material was shared with all IRG participants for the Feb 10, 12, 13 meetings. I was not directly involved in the IRG support process at the time so I did not have complete visibility.

My understanding is that, as a matter practice, PCO would have prepared material to support the Chair of the IRG for the February 10, 12, and 13, 2022 IRG meetings. I also have some material that PCO prepared to support a senior official participating in the Sunday, February 13, 2022 IRG meeting.

I could have access to the agendas and the material to support the Chair of the IRG for the February 10, 12, and 13, 2022 IRG meetings, assuming that this practice was followed.

I have been advised by my counsel, however, that the Attorney General of Canada objects to the production of all of these records on basis of Cabinet confidentiality.

I hope you find this helpful. Please feel free to call or write if you would like to discuss the response from Mr. Shragge further.

Sincerely,

*R. Jeff Anderson*

R. Jeff Anderson  
General Counsel

cc. Counsel for CCF (T-347-22) & CNFA(T-306-22)



Court File No. T-316-22

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

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--- This is the Continued Cross-Examination of  
STEVEN SHRAGGE, upon his affidavit sworn April 4, 2022,  
taken via Neesons, A Veritext Company's virtual  
platform, on the 15th day of June, 2022.

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REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

A P P E A R A N C E S :

Ewa Krajewska, Esq.,

Brandon Chung, Esq.,

for the Applicant,

Canadian Civil Liberties.

Alexander Boissonneau-Lehner, Esq.,

David Cowling, Esq.,

Mackenzie Campbell, Esq.,

for the Applicants,

Canadian Frontline

Nurses.

Jeff Anderson, Esq.,

for the Defendant,

Attorney General of

Canada.

ALSO PRESENT:

Erin Merrill, Justice Canada

Joshua Ginter, Henein Hutchison

Abby Deshman, Canadian Civil Liberty

I N D E X

WITNESS: STEVEN SHRAGGE

PAGE

CROSS-EXAMINATION BY MS. KRAJEWSKA (cont'd).... 52

\* \* \* The following list of undertakings,  
advisements and refusals is meant as a guide only  
for the assistance of counsel and no other purpose \* \* \*

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T  
and appear on the following pages: 63:14, 83:3

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are  
noted by U/A and appear on the following pages:  
61:24, 63:12, 64:15

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and  
appear on the following pages: 66:7, 67:17, 69:13,  
80:9, 82:20

INDEX OF EXHIBITS

NUMBER/DESCRIPTION	PAGE NO.
--------------------	----------

1: Section 3 of Roles and Responsibilities of Central Agencies dated (revised) April 22, 2015, by Alex Smith.....	58
---	----

2: Drafter's Guide to Cabinet Documents, Privy Council Office 2013.....	84
--	----

1           -- Upon commencing at 2:03 p.m.

3                           STEVEN SHRAGGE; PREVIOUSLY AFFIRMED.

4                           CROSS-EXAMINATION BY MS. KRAJEWSKA (CONT'D):

5    122                   Q.    Good afternoon, Mr. Shragge.

6                           A.    Good afternoon.

7    123                   Q.    So this is the continuation of  
8                   your cross-examination on your affidavit.

9                           I just wanted to remind you that you  
10                   remain under oath today, even though you haven't  
11                   been reaffirmed?

12                          A.    Duly noted.

13   124                   Q.    Okay.  So Mr. Shragge, if at any  
14                   point you do not hear me, please let me know, or if  
15                   my questions become choppy.

16                          So I want to start off first to go back  
17                   to the role of the Privy Council Office, where you  
18                   are currently employed.

19                          So would you agree that the Privy  
20                   Council Office is both the Cabinet Secretariat and  
21                   the Prime Minister's source of public service  
22                   advice; it serves both of those functions, both the  
23                   Cabinet and the Prime Minister.

24                          A.    Yes.  I would say that generally  
25                   speaking, the role of the Privy Council Office is

1 to support the operations of Cabinet and its  
2 committees. Also, it provides advice and  
3 information to the Prime Minister in its role.

4 125 Q. Okay. And Mr. Shragge, I'm going  
5 to share my screen with you and show you this paper  
6 that you may or may not be familiar with. Do you  
7 see it?

8 A. Yes, I do.

9 126 Q. It's a paper from the library of  
10 Parliament, it's a background paper on the "Roles  
11 and Responsibilities of Central Agencies."

12 It was originally published April 23,  
13 2009 and revised April 22, 2015. And it's authored  
14 by Alex Smith.

15 Are you familiar with this paper?

16 A. No, this is the first that I've  
17 seen it.

18 127 Q. Okay. I just want to take you  
19 through some of the information contained in this  
20 paper about the role of the Privy Council.

21 So it talks about the role of three  
22 central agencies, the Privy Council Office, the  
23 Treasury Board and the Department of Finance. I  
24 only really want to focus on Section 3, which is  
25 the Privy Council Office.

1 And so when we go to Section 3 about  
2 the Privy Council Office, the paper provides, as  
3 you said, that:

4 "The Privy Council Office is  
5 sometimes called the 'prime  
6 minister's department' because it  
7 reports directly to the Prime  
8 Minister. It is staffed by public  
9 servants who offer non-partisan  
10 politically sensitive service and  
11 advice. The PCO is headed by the  
12 Clerk of Privy Council and Secretary  
13 to the Cabinet". [As read]

14 Do you agree with this description?

15 A. Yes, that's a summary description  
16 that's accurate based on my understanding.

17 128 Q. Under Section 3.2 it talks about  
18 how "The PCO has three main roles, each of which  
19 will be discussed in turn:"

20 The first is:

21 "To provide non-partisan advice  
22 to minister and ministers whose  
23 function rely within the Prime  
24 Minister's portfolio;

25 "To support the Cabinet

1 decision-making process."

2 And third:

3 "To act as the principal link  
4 between the Prime Minister and the  
5 public service."

6 Do you generally agree with that  
7 description of responsibilities?

8 A. Yeah, likewise, that's a fair  
9 summary.

10 129 Q. And with respect to the support of  
11 Cabinet -- I'm not going to read it, because it's a  
12 bit annoying if I just read it.

13 If you want to just take your time.  
14 You might see it, small, I can make it bigger for  
15 you.

16 A. A little bit bigger would be good,  
17 thank you.

18 130 Q. Okay. Here we go. Is that  
19 better?

20 A. Yes, it is, thank you.

21 131 Q. So if you could just read 3.2.2  
22 "Support to Cabinet" and let me know if you agree  
23 with the description of the role the PCO plays with  
24 respect to Cabinet and Cabinet committees.

25 A. Okay. (Witness reviews document).



1                               Okay, I've finished.

2           132                   Q.    Okay.  Do you agree generally with  
3                               this description of the PCO's role?

4                               A.    Generally with respect to Cabinet,  
5                               I think it's a fair summary of PCO's role and  
6                               activities.

7                               Based on my experience, the final  
8                               paragraph, perhaps is not quite as accurate.  In my  
9                               experience, PCO does engage other government  
10                              departments on a regular basis outside of the  
11                              Cabinet process, as part of maintaining awareness  
12                              and playing its proper role in coordinating  
13                              government departments.

14           133                   Q.    So the fourth last sentence where  
15                              it says:

16                              "[...] the PCO is not  
17                              responsible for ensuring  
18                              coordination and collaboration among  
19                              the many government related programs  
20                              [...]"

21                              You disagree with that phrase and say  
22                              part of its role is ensuring that coordination?

23                              A.    Based on my experience, PCO does  
24                              play a role in coordinating and maintaining  
25                              awareness of issues of national relevance and

1 consult with departments or agencies.

2 134 Q. Right. And so you'd also agree  
3 that the PCO also ensures that once Cabinet has  
4 made a decision, that that decision is properly  
5 communicated to the various ministries and  
6 departments that are meant to implement that  
7 decision as well?

8 A. Yes. Generally speaking, that  
9 would be my understanding.

10 135 Q. Okay. And some of this paragraph  
11 dealt with the role that the PCO plays in  
12 supporting Cabinet and Cabinet committees.

13 Did the PCO play a similar role in  
14 supporting the IRG working group that's described  
15 in your affidavit?

16 A. Yes, yes. PCO acts as a  
17 secretariat function for the IRGs.

18 136 Q. Okay, thank you.

19 MS. KRAJEWSKA: Mr. Anderson, could I  
20 mark this document as an exhibit? And I'd only put  
21 to the Court the parts that I took Mr. Shragge to,  
22 which is Part 3.

23 MR. ANDERSON: Yes, I'm okay with that.  
24 That's fine, Counsel.

25 MS. KRAJEWSKA: Thank you.

1 MR. ANDERSON: You're welcome.

2 EXHIBIT NO. 1: Section 3 of Roles and  
3 Responsibilities of Central Agencies  
4 dated (revised) April 22, 2015, by  
5 Alex Smith.

6 BY MS. KRAJEWSKA:

7 137 Q. Mr. Shragge, I'm going to show  
8 another document. This is very small, I'll blow it  
9 up for you in a second.

10 This is from the Government of Canada  
11 website, it is the "Organizational Structure of the  
12 Privy Council" as at May 28, 2022. And there's a  
13 PDF version that I'm going to click on.

14 Okay, I'm trying to make it bigger.

15 So we talked about your role within --  
16 Mr. Anderson is squinting his eyes, that's okay.

17 I hope this won't be a complicated  
18 question, but Mr. Shragge, we talked about your  
19 role within the Privy Council today. And I just  
20 wanted some assistance in situating your role on  
21 this organizational chart.

22 I don't think your name appears on this  
23 organizational chart, but if you can just help by  
24 telling us under which person or sector you fall  
25 under in this chart.

1                   A.    Okay.  So I think you need to  
2                   scroll down and to the left, if I'm not mistaken.  
3                   My left, I don't know if it's your left as well.

4                   So I'm under "Jody Thomas", the  
5                   National Security and Intelligence Advisor to the  
6                   Prime Minister.

7       138           Q.    So top right-hand corner we have  
8                   "Jody Thomas, National Security National  
9                   Intelligence to the Prime Minister", yes?

10                  A.    And I believe --

11       139           Q.    And then there's four people that  
12                  report to her, yeah.

13                  A.    And I can only see two on my  
14                  screen.  So I think you need to scroll to the left  
15                  so I can see.

16       140           Q.    Let me get a PDF of this, because  
17                  I actually can't blow it up anymore on this, hold  
18                  on.

19                  (Brief pause in the proceedings).

20                  MR. CHUNG:  I can share it if you'd  
21                  like.

22                  MS. KRAJEWSKA:  Yes, if you can share  
23                  the PDF, Brandon, that would be awesome.

24                  THE WITNESS:  Perfect, okay.

25                  So I'm under "Mike MacDonald", who is

1 the Assistant Secretary to the Cabinet For Security  
2 and Intelligence.

3 BY MS. KRAJEWSKA:

4 141 Q. Are you directly underneath him  
5 then?

6 A. No, I have a director who I report  
7 to.

8 142 Q. So there is one other box below  
9 Mr. MacDonald, and then you're under that box?

10 A. That's correct.

11 143 Q. Okay. And who's the person that  
12 you report to?

13 A. I report to David MacGillivray,  
14 he's the Director of Operations for Security and  
15 Intelligence.

16 144 Q. All right. Thank you, Mr. Shragge.

17 MS. KRAJEWSKA: You can stop sharing  
18 your screen, Mr. Chung. Thank you for your  
19 assistance.

20 BY MS. KRAJEWSKA:

21 145 Q. I'm going to move on to another  
22 area, Mr. Shragge. I assume that you are familiar  
23 with Orders in Council?

24 A. Generally speaking, I am. I  
25 haven't had a lot of personal experience dealing

1 with them.

2 146 Q. And you're familiar that it's the  
3 government and council who issues Orders in  
4 Council?

5 A. Yes, I am familiar with that.

6 147 Q. Okay. And, Mr. Shragge, are you  
7 familiar with the fact that some Orders in Council  
8 are not published publicly?

9 A. Yes, I am.

10 148 Q. That these Orders in Council  
11 remain secret and the public is unaware of them?

12 A. Yes, I believe that to be true.

13 149 Q. Okay. And earlier in June, there  
14 was a CBC News article that suggested that there  
15 were two -- I'll call it "secret Orders in Council"  
16 that were adopted between January 28th and around  
17 the time of the Freedom Convoy as is referred to in  
18 these proceedings. Are you aware of that?

19 A. No, sorry, I'm not.

20 150 Q. Okay. So I would like you to  
21 inform yourself as to whether there have been --  
22 there were two OICs that were issued in that time  
23 period, between January 28th and February 18th.

24 U/A MR. ANDERSON: First of all, before I  
25 straight up object, Counsel, perhaps you can

1 explain to me the relevance of the question.

2 If there are two Orders in Council and  
3 they have nothing to do with the Emergencies Act, I  
4 simply will object to anything.

5 If the question is, are there two that  
6 relate to the Emergency Act, I'll take it under  
7 advisement.

8 MS. KRAJEWSKA: Yes. Well my  
9 question -- obviously, they're secret. So I don't  
10 know if they're related to the Emergencies Act. If  
11 I knew that, it would be easier.

12 BY MS. KRAJEWSKA:

13 151 Q. I would like to know whether the  
14 Orders in Council, there were two -- there were at  
15 least two that were adopted before February 18th,  
16 between January 28th and February 18th, that have  
17 not been published.

18 I would like to know whether those two  
19 Orders in Council had anything to do with the  
20 Emergencies Act. And I do not -- just to be  
21 specific. I do not mean that they were issued  
22 pursuant to the statutory authority of the  
23 Emergencies Act; my question is broader than that:  
24 Whether they were issued in response to anything  
25 with respect to the Freedom Convoy.

1                   So whether they were issued under a  
2                   financial statute, any other statute that they were  
3                   issued in response to what was happening in Ottawa  
4                   or in Canada.

5                   MR. ANDERSON: Okay. So two parts then.

6                   I will maintain the general objection  
7                   that Mr. Shragge is not required to further inform  
8                   himself as an affiant, fact witness.

9                   That said, I know that the issue has  
10                  been put to us informally by the CCF, and I believe  
11                  we've answered.

12                U/A            So I'll take the content of the  
13                  question under advisement.

14                U/T            And I'll see whether in fact we can  
15                  confirm that the -- either of these two were issued  
16                  or not issued in relation to the Freedom Convoy  
17                  matters under anything, not just the Emergencies  
18                  Act.

19                                So you'll either get an answer from me  
20                                that is, I can't tell you. Or, hopefully, the  
21                                answer will be, it's not related. Because I  
22                                believe that's informally what we've advised the  
23                                CCF with respect to questions from it.

24                                MS. KRAJEWSKA: Correct. And I have a  
25                                copy of that e-mail, Mr. Anderson, that your



1 colleague, Mr. Provart sent to Mr. Chaudhry,  
2 informing him that the two OICs did not pertain to  
3 the invocation of the Public Emergency Order.

4 And I think it would be best if that  
5 question was answered on the record. And if they  
6 were issued pursuant to -- if they were issued in  
7 response to any of the issues that gave rise to the  
8 Freedom Convoy, then I would ask the following  
9 follow-up questions:

10 152 Q. Under what statutes were the OICs  
11 adopted? On what basis are they secret? To whom  
12 were they directed? And to produce copies of the  
13 OICs.

14 Those are my follow ups.

15 U/A MR. ANDERSON: That they are. I'll  
16 certainly take that under advisement.

17 I think that they are relevant to the  
18 Freedom Convoy, you'll probably get some clear  
19 objections back on why, and we'll deal with that  
20 then in writing for you.

21 MS. KRAJEWSKA: Thank you.

22 BY MS. KRAJEWSKA:

23 153 Q. Mr. Shragge, the last time you  
24 were examined, we talked about the -- who are the  
25 members of the IRG, and the attendees at the

1           IRG meetings. And you provided general information  
2           about the composition of those meetings on  
3           February 10th, 12th and 13th. I have a few  
4           follow-up questions on that.

5                     On those meetings of the IRG on  
6           February 10th, 12th and 13th, did anyone attend  
7           that meeting who was a member of a Provincial  
8           Government?

9                     MR. ANDERSON: I think the first  
10          question is.

11                    [Court Reporter intervenes for  
12          clarification]

13                    MR. ANDERSON: I don't know -- I think  
14          the first question has to be whether he's aware of  
15          anything, of that kind of attendance.

16                    Obviously, we've objected to giving  
17          information about who else was in attendance, and  
18          we'd be maintaining that objection.

19                    MS. KRAJEWSKA: I'm not asking for the  
20          specific name of the person who's in attendance.

21                    Just generally speaking, whether it was  
22          someone who is a member of a provincial government.

23                    THE WITNESS: I'm not aware of whether  
24          or not a provincial government official attended  
25          those meetings.

1 BY MS. KRAJEWSKA:

2 154 Q. Okay. Well then I would ask you  
3 to inform yourself from the members of the PCO who  
4 were at the meeting, about whether a member of any  
5 Provincial Government attended any of those  
6 meetings.

7 R/F MR. ANDERSON: Well, we'll object to  
8 that question.

9 It's no surprise, I know. As a  
10 witness, Mr. Shragge is not required to inform  
11 himself as to who else attended.

12 MS. KRAJEWSKA: I disagree with that  
13 characterization.

14 He is an affiant that you have put  
15 forward from the Privy Council Office who supported --  
16 the PCO supported the IRG meetings, and I think  
17 it's inappropriate to then put forward an affiant  
18 who is not even able to inform himself as to who  
19 was in attendance at those meetings.

20 MR. ANDERSON: I understand your  
21 position.

22 BY MS. KRAJEWSKA:

23 155 Q. My second question is: For those  
24 IRG meetings on February 10th, 12th and 13th, are  
25 you aware of any member of a municipal government

1 attended those meetings?

2 A. To the best of my knowledge, I'm  
3 not aware that a municipal government official  
4 attended those meetings.

5 156 Q. So you're not aware one way or the  
6 other? Or, you don't think one attended,  
7 Mr. Shragge? I just want to understand your  
8 answer.

9 A. Fair. I don't know to be certain,  
10 because I never saw an official attendee list.

11 157 Q. Okay. Then I am going to ask the  
12 same question, that you inform yourself from one of  
13 your colleagues from the PCO, who attended the  
14 meeting. Or, by reviewing the minutes of those  
15 meetings, to inform yourself whether a member of a  
16 municipal government attended those meetings?

17 R/F MR. ANDERSON: We will maintain the  
18 same objection.

19 Mr. Shragge as a witness is not  
20 required to inform himself. His evidence is in his  
21 affidavit.

22 BY MS. KRAJEWSKA:

23 158 Q. And my next question is: Was  
24 there anyone at the February 10th, 12th, or 13th  
25 meeting, who was not a member of the federal

1 government or the federal public service?

2 A. To the best of my knowledge,  
3 participants at those meetings included ministers,  
4 exempt staff and deputies.

5 159 Q. And can you please explain for the  
6 record, what is an "exempt staff"?

7 A. Staff from a minister's office.

8 160 Q. So they are still members of the  
9 public service, or are they political staff?

10 A. They would be political staff, I  
11 believe.

12 161 Q. All right. Mr. Shragge, I would  
13 now like to move on to a different document. I'm  
14 going to share my screen with you again.

15 All right. This is a document  
16 entitled, "Drafter's Guide to Cabinet Documents".  
17 It's on the Government of Canada website, it's  
18 published by the Privy Council Office in 2013.

19 Are you familiar with this document?

20 A. I'm familiar with it, generally.  
21 I think it's a dated version, but yes.

22 162 Q. Yes, it is a dated version, you're  
23 right.

24 Okay. So to your knowledge, is this  
25 document still in use?

1                   A.    To my knowledge, there's a more  
2                   recent version of that same document.

3       163               Q.    Okay.  And when we try to find a  
4                   more recent version of that document, what we get  
5                   -- sorry, this is way too big.

6                   We get this answer from the government.  
7                   Do you see that it's a -- it says:  "Please consult  
8                   your Departmental Cabinet Affairs Unit for access  
9                   to relevant templates [...]"

10                  A.    Yes.

11       164               Q.    Can you produce the current  
12                   version of a "Drafter's Guide to Cabinet Documents"?

13       R/F               MR. ANDERSON:  Objection.

14                   Again, I'm not quite sure how it fits  
15                   in.

16                   Two, you haven't asked for it in any  
17                   direction to attendant.

18                   And three, I'm not sure that he's  
19                   required to go off and find it.

20                   If you want to ask questions about the  
21                   content of this document, and whether he has  
22                   different views and what is in it, as you did with  
23                   the first document, Counsel, I certainly think that  
24                   that can make some sense.  But we're not going to  
25                   go fishing for other documents.

1 MS. KRAJEWSKA: Well, I think it is  
2 relevant to the way in which the Attorney General  
3 has claimed Cabinet confidences.

4 And so I am going to take Mr. Shragge  
5 through this document, and if he needs to correct  
6 his evidence based on the current version of this  
7 document, which is unfortunately not available  
8 publicly, then he can do so.

9 BY MS. KRAJEWSKA:

10 165 Q. So first, Mr. Shragge, are you  
11 familiar with a document known as a "Memorandum to  
12 Cabinet"?

13 A. Yes, I am.

14 166 Q. Okay. And a Memorandum to Cabinet  
15 is prepared when a minister is seeking a Cabinet  
16 decision on a proposal?

17 A. Yes, it is traditionally the  
18 vehicle to seek a decision from Cabinet.

19 167 Q. And does the Memorandum to Cabinet  
20 typically contain a standard set of sections?

21 A. Yes, it does.

22 168 Q. So it would contain sections that  
23 are called "Background Analysis"?

24 A. Generally, yes.

25 169 Q. And a section called, "Ministerial

1 Recommendations"?

2 A. Yes.

3 170 Q. And does a Ministerial  
4 Recommendation typically contain a standard set of  
5 sections?

6 A. Yes, it does.

7 171 Q. And do those sections include a  
8 section called "Issue"?

9 A. I believe so. But, again, without  
10 the current version of the document in front of me,  
11 I'm hesitant to say "yes" categorically.

12 MS. KRAJEWSKA: Right. And  
13 Mr. Anderson, I'm really not trying to trick  
14 Mr. Shragge, I'm not trying to make this a memory  
15 test.

16 I think it would be helpful if  
17 Mr. Shragge produced what the current version of  
18 the document is.

19 MR. ANDERSON: Yeah, no, I maintain my  
20 objection.

21 BY MS. KRAJEWSKA:

22 172 Q. All right. Would it contain a  
23 section called "Recommendations"?

24 A. Yes, I believe so.

25 173 Q. A section called "Rationale"?



1 A. I believe so.

2 174 Q. A section called "Proposed  
3 Approach" or, "Proposed Approach and Options"?

4 A. Yes. Generally speaking, yes.

5 175 Q. A section called "Considerations"?

6 A. Yes.

7 176 Q. A section called "Due Diligence"?

8 A. I think so.

9 But again, without the list of titles,  
10 those general themes would be covered in one way,  
11 shape or form, perhaps under different titles.

12 177 Q. Okay. And how easy is it for you  
13 to obtain a copy of this document, Mr. Shragge, a  
14 Drafter's Guide?

15 A. I believe I have one in my  
16 possession. That being said, I'm not entirely sure  
17 what the security classification of it is.

18 178 Q. Okay. But you have one in your  
19 possession, it's easily obtained by you?

20 A. I believe so, yes.

21 179 Q. Okay. Would the section,  
22 "Ministerial Recommendation" usually have an  
23 appendix or an annex known as an "Implementation  
24 Plan"?

25 A. Yes.

1           180                   Q.    An annex known as a "Strategic  
2                                   Communications Plan"?

3                                   A.    Yes, that's normally a feature of  
4                                   MCs.

5           181                   Q.    And an annex known as a  
6                                   "Parliamentary Plan"?

7                                   A.    Also, yes.

8           182                   Q.    The next document that I want to  
9                                   ask you about whether you're familiar with is a  
10                                  document known as a "Presentation" or "Deck"?

11                                  A.    Yup, I am familiar with decks.

12           183                   Q.    And that is usually, typically  
13                                  used in conjunction with a Memorandum to Cabinet?

14                                  A.    Yes, it can or cannot be. But  
15                                  often MCs will include an MC when presented -- or a  
16                                  deck when presented, rather.

17           184                   Q.    Or it could be used as a separate  
18                                  document?

19                                  A.    That is a practice, yes.

20           185                   Q.    And does a deck usually support a  
21                                  strategic discussion about policy area, a  
22                                  communication strategy or another specific issue?

23                                  A.    Yes, that's a fair representation.

24           186                   Q.    Okay. And will the sections  
25                                  usually include a title page?

1 A. Yes, there is always a title page.

2 187 Q. Always a title page, that's good.

3 A section called "Key Outcome/  
4 Recommendations"?

5 A. In my experience, decks are less  
6 structured. So it may vary in terms of their style  
7 and their actual structure, as compared to  
8 Memorandums to Cabinet.

9 188 Q. Okay. A section called "Context  
10 Or Analysis"?

11 A. Again, same response. It would  
12 depend on the deck. And the issue ministers are  
13 free to position the deck as they feel appropriate  
14 in terms of, what's the best way to communicate the  
15 issue to their colleagues.

16 189 Q. Okay. So different ministers will  
17 have different preferences as to how to structure a  
18 deck?

19 A. Potentially, yes.

20 190 Q. Okay. A section called "Summary"?

21 A. As a normal practice, that type of  
22 issue would be covered, yes.

23 191 Q. Okay. And the other type of  
24 document that's often prepared, is prepared as  
25 well, as a discussion paper when a Minister is

1 seeking policy development or input is an  
2 aide-memoire; are you familiar with that?

3 A. I am. In my own personal  
4 experience, I have not been exposed to it, an  
5 aide-memoire going to Cabinet.

6 192 Q. In your own personal experience,  
7 you have not seen an aide-memoire going to Cabinet?

8 A. Yes.

9 193 Q. But it is a practice that you know  
10 otherwise exists?

11 A. To be honest, I can't say with  
12 confidence that it is.

13 194 Q. Okay. I'm just going to take you  
14 back to this 2013 paper.

15 This is page 6 of the Drafter's Guide  
16 to Cabinet documents from 2013. And it mentions a  
17 "Memorandum to Cabinet", which we already  
18 discussed, a "Presentation Deck", and then lastly  
19 an "Aide-Memoire".

20 And so is it your experience that an  
21 aide-memoire is not as frequently used as it may  
22 have been in 2013?

23 A. To be honest, I'm not really  
24 familiar with what the Cabinet processes were in  
25 2013, so I couldn't make that comparison.

1 I just know in my personal experience  
2 working with S&I over the last year or so, I have  
3 not encountered an aide-memoire. So I can't speak  
4 with confidence in terms of how it may or may not  
5 be involved at Cabinet.

6 195 Q. Okay. And are you generally  
7 familiar with what an aide-memoire would look like?

8 A. I've never seen a template or  
9 something to that effect, no.

10 196 Q. Okay. Would you be able to answer  
11 whether an aide-memoire is used as a discussion  
12 paper when a minister is seeking policy development  
13 input on a complex issue, or in support of a  
14 proposal set out in a Memorandum to Cabinet?

15 A. No, I couldn't say that for  
16 certain, I'm just not familiar enough.

17 197 Q. Okay. Are you aware at all  
18 whether an aide-memoire can be prepared without a  
19 Memorandum to Cabinet?

20 A. I am not.

21 198 Q. Okay. So other than these three  
22 types of documents that we spoke about, are there  
23 any other types of documents that the PCO prepares  
24 for Cabinet or Cabinet committees?

25 A. No, not that I am aware.

1           199                   Q.    Okay.  And when we last spoke,  
2                               your counsel provided your answer with respect to  
3                               the types of documents that -- sorry.

4                               Your counsel provided your response in  
5                               a question that they took under advisement, that  
6                               the PCO prepared materials to support senior  
7                               officials who are participating in the IRG  
8                               meetings, right?  You remember that?

9                               A.    Yes.

10          200                   Q.    Okay.  And now the materials that  
11                               the PCO prepared to support those IRG meetings,  
12                               would they be characterized as one of these types  
13                               of document?  Would they be characterized as a  
14                               Memorandum to Cabinet?

15                               A.    I don't believe I am allowed to  
16                               disclose the nature of the actual products  
17                               themselves.

18          201                   Q.    Not even the form it went to?  
19                               Like the type of product?

20                               A.    That's what I've been told by  
21                               legal counsel.

22          202                   Q.    Okay.  So you are not able to  
23                               answer whether it was a Memorandum to Cabinet.

24                               Are you able to answer whether the  
25                               material was a presentation or a deck?

1                   A.   Likewise, I don't believe that I'm  
2                   able to disclose that.

3                   MR. ANDERSON:   Counsel, if I may, I'll  
4                   just direct you to my letter of June 13th and our  
5                   specific answer to that.

6                   It sets out the description of the  
7                   material to the extent it can be described.   And  
8                   then generally refers to material, and then we  
9                   register our objection to that in that letter.

10                  BY MS. KRAJEWSKA:

11                  203               Q.   That's fine.   I mean, that letter  
12                  provided that the PCO would have prepared material  
13                  to support the Chair of the IRG meetings.

14                  And I am just asking about the nature  
15                  of that material, whether it was:   A) a Memorandum  
16                  to Cabinet; B) a presentation or deck; or, C) an  
17                  aide-memoire.   And I just want to know the answer  
18                  to that question.

19                  MR. ANDERSON:   I think Mr. Shragge's  
20                  response is that the description of that material  
21                  is something that we feel would be protected, and  
22                  whatever the material it is being gathered for the  
23                  purpose of the certificate.

24                  MS. KRAJEWSKA:   Okay.   So you're not  
25                  able to say today -- what is the basis on which

1           you're objecting to describe -- what's the basis of  
2           the objection that you cannot describe the nature,  
3           the form of the material that was provided?

4                   MR. ANDERSON: Well, I think it goes to  
5           briefings on the --

6                   [Court Reporter intervenes for  
7           clarification].

8                   MR. ANDERSON: It's either going to be  
9           32 (d) or (e). Somebody has to turn their mind to  
10          that specifically in the package that would be  
11          provided to the clerk.

12                  MS. KRAJEWSKA: So you're claiming  
13          Cabinet Confidence on the description of the type  
14          of material that was submitted to the  
15          IRG Committee. Not the contents, I already have  
16          your objection about the contents, you're talking  
17          about the form.

18                  MR. ANDERSON: Yeah. At this point,  
19          there may well be a description in the certificate.  
20          But at this point, that's what I'm claiming.

21                  MS. KRAJEWSKA: All right. I just  
22          wanted to understand that.

23                  MR. ANDERSON: If it changes, we can do  
24          that, we can certainly provide that to you. But  
25          that's my understanding.



1 I also don't know that Mr. Shragge has  
2 all that material, so...

3 MS. KRAJEWSKA: That's fine.

4 BY MS. KRAJEWSKA:

5 204 Q. Mr. Shragge, are you aware of any  
6 other government entity, other than the PCO,  
7 submitted documents to the IRG Committee for those  
8 meetings, February 10th, 12th and 13th?

9 R/F MR. ANDERSON: Objection.

10 I think that getting into what  
11 government entity gets into whose briefing,  
12 depending on he described the entity.

13 So I'm going to ask my client not to  
14 answer that question today. I think that that  
15 falls under 39.2.

16 BY MS. KRAJEWSKA:

17 205 Q. Okay. My follow up question to  
18 that is: Whether he is aware if any entity outside  
19 the federal government, so provincial government,  
20 municipal government, or private citizen submitted  
21 any documents to the IRG that were considered on  
22 those days.

23 MR. ANDERSON: Well, we've kind of got  
24 back over his answer on that, because he's told you  
25 that he wasn't aware.

1                   So if he becomes aware, I think we  
2                   would have to object.

3                   MS. KRAJEWSKA: It's a different  
4                   question, though.

5                   My earlier question is whether somebody  
6                   from those -- someone outside the federal  
7                   government attended those meetings.

8                   This question is whether someone  
9                   submitted documents from outside of the federal  
10                  government to those meetings.

11                  MR. ANDERSON: Okay. Without getting  
12                  into identification of who that might be, I'm  
13                  prepared to at least let Mr. Shragge consider and  
14                  advise whether he knows.

15                  I mean, I think just generally whether  
16                  outside or inside, I think that that's fair.

17                  Sorry, I don't mean to interrupt your  
18                  cross like this.

19                  MS. KRAJEWSKA: No, I think it's good  
20                  that we get the specific question on the record.

21                  THE WITNESS: With respect to the  
22                  question, actually, can you just repeat the  
23                  question? And I'm happy to answer it, just so I'm  
24                  clear.

25

1 BY MS. KRAJEWSKA:

2 206 Q. Yes. Are you aware if anyone  
3 outside of the federal government, so from a  
4 provincial government, municipal government, or a  
5 private citizen, submitted documents to the  
6 IRG meetings at issue?

7 A. I'm not aware of any information  
8 or documents that may have been submitted directly  
9 to the IRG. But again, I don't have complete  
10 visibility on that, on those meetings.

11 207 Q. Right. But someone at the PCO  
12 would have visibility on those meetings and would  
13 know what was submitted to them?

14 A. Yes. Yes. As I've mentioned  
15 previously, there's a secretariat that manages the  
16 IRGs and manages that information, if it was  
17 included.

18 208 Q. Right. So you could inform  
19 yourself from that secretariat?

20 R/F MR. ANDERSON: He could. But I'll  
21 object to having him do that, as you will have  
22 anticipated.

23 But I do object. I'll note that I  
24 believe we are looking at the material that would  
25 have been submitted to the IRG as part of the

1 certificate. So whatever was there, would be  
2 included.

3 U/T I'll double check on that, and they  
4 can't see it any other way. So if there was  
5 something there, it would be in the certificate,  
6 you know, and there may be a description, I don't  
7 know. But I'll double check on that.

8 MS. KRAJEWSKA: Okay, that's fair.

9 BY MS. KRAJEWSKA:

10 209 Q. Mr. Shragge, sorry. Just to  
11 educate me about this. When you say "the  
12 secretariat", that is both a function, someone who  
13 holds that function at the PCO, and that is also a  
14 person?

15 A. Sorry. When I mentioned that, I'm  
16 referring to the Cabinet Paper System Unit, which I  
17 believe I mentioned in the previous cross-examination.

18 210 Q. Yes. So they are responsible for  
19 collecting all of the documents and minutes and  
20 properly cataloging them?

21 A. Correct.

22 211 Q. Okay.

23 MS. KRAJEWSKA: If we can go off the  
24 record, please.

25 -- OFF THE RECORD DISCUSSION --

1 -- RECESS TAKEN AT 2:41 --

2 -- UPON RESUMING AT 2:48 --

3 MS. KRAJEWSKA: Mr. Anderson, I'd like  
4 to mark a Drafter's Guide to Cabinet Documents from  
5 2013 as Exhibit 2. Mr. Shragge said he was  
6 familiar with it.

7 MR. ANDERSON: Yeah, sure. I'm okay  
8 with that.

9 EXHIBIT NO. 2: Drafter's Guide to  
10 Cabinet Documents, Privy Council Office  
11 2013.

12 BY MS. KRAJEWSKA:

13 212 Q. Mr. Shragge, we talked about the  
14 three types of documents that are described in that  
15 Drafter's Guide being the Memorandum to Cabinet,  
16 the Deck and the Aide-Memoire.

17 And I'd ask that you could produce the  
18 current version of the Drafter's Guide, and we have  
19 your counsel's position on that.

20 Can you tell us, at least, whether the  
21 aide-memoire is one of the types of documents  
22 that's described in the current version of the  
23 Drafter's Guide?

24 A. To the best of my recollection, it  
25 does not include an aide-memoire. It speaks

1 specifically to Memorandums to Cabinet.

2 213 Q. It doesn't describe an  
3 aide-memoire as a type of -- as a document to be  
4 considered by Cabinet?

5 A. Not to my memory, it does not.

6 214 Q. Okay.

7 BY MS. KRAJEWSKA:

8 215 Q. So Mr. Anderson, I'd again  
9 reiterate my request for the production of that  
10 document.

11 MR. ANDERSON: We still have our  
12 objection, thanks. Sorry, I don't mean to be  
13 difficult.

14 MS. KRAJEWSKA: So that concludes --  
15 sorry.

16 BY MS. KRAJEWSKA:

17 216 Q. I will ask the follow-up question  
18 as to when is it that the aide-memoire got cut out  
19 or removed from the Drafter's Guide to Cabinet  
20 Documents? Are you able to help with that,  
21 Mr. Shragge?

22 A. Not specifically. The only thing  
23 that I can offer is, you know, to the best of my  
24 recollection, the most recent guide that I'm  
25 familiar with was revised in the last two to

1                   three years. But whether the aide-memoire was part  
2                   of that revision, I do not know.

3           217                   Q.    Okay. All right, thank you.

4                   MS. KRAJEWSKA: So that concludes --  
5                   subject to the answers taken under advisement and  
6                   refused, that concludes my cross-examination.

7                   I'm going to pass the mic to  
8                   Mr. Cowling or Mr. Bouissonneau-Lehner and I'll  
9                   turn off my video.

10                  MR. BOUISSONNEAU-LEHNER: Thank you.

11                  MR. ANDERSON: Thank you.

12  
13                  -- Examination was concluded at 2:55 p.m.

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REPORTER'S CERTIFICATE

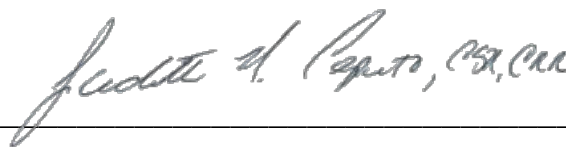
I, JUDITH M. CAPUTO, RPR, CSR, CRR,  
Certified Shorthand Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness was put under oath  
by me;

That the testimony of the witness  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
correct transcript of my shorthand notes so taken.

Dated this 27th day of June, 2022.



NEESONS, A VERITEXT COMPANY

PER: JUDITH M. CAPUTO, RPR, CSR, CRR



**WORD INDEX**

**< 1 >**

**1** 51:4 58:2  
**10th** 65:3, 6  
 66:24 67:24  
 80:8  
**122** 52:5  
**123** 52:7  
**124** 52:13  
**125** 53:4  
**126** 53:9  
**127** 53:18  
**128** 54:17  
**129** 55:10  
**12th** 65:3, 6  
 66:24 67:24  
 80:8  
**130** 55:18  
**131** 55:21  
**132** 56:2  
**133** 56:14  
**134** 57:2  
**135** 57:10  
**136** 57:18  
**137** 58:7  
**138** 59:7  
**139** 59:11  
**13th** 65:3, 6  
 66:24 67:24  
 78:4 80:8  
**140** 59:16  
**141** 60:4  
**142** 60:8  
**143** 60:11  
**144** 60:16  
**145** 60:21  
**146** 61:2  
**147** 61:6  
**148** 61:10  
**149** 61:13  
**150** 61:20  
**151** 62:13  
**152** 64:10  
**153** 64:23  
**154** 66:2  
**155** 66:23  
**156** 67:5  
**157** 67:11  
**158** 67:23  
**159** 68:5  
**15th** 48:21  
**160** 68:8  
**161** 68:12

**162** 68:22  
**163** 69:3  
**164** 69:11  
**165** 70:10  
**166** 70:14  
**167** 70:19  
**168** 70:22  
**169** 70:25  
**170** 71:3  
**171** 71:7  
**172** 71:22  
**173** 71:25  
**174** 72:2  
**175** 72:5  
**176** 72:7  
**177** 72:12  
**178** 72:18  
**179** 72:21  
**180** 73:1  
**181** 73:5  
**182** 73:8  
**183** 73:12  
**184** 73:17  
**185** 73:20  
**186** 73:24  
**187** 74:2  
**188** 74:9  
**189** 74:16  
**18th** 61:23  
 62:15, 16  
**190** 74:20  
**191** 74:23  
**192** 75:6  
**193** 75:9  
**194** 75:13  
**195** 76:6  
**196** 76:10  
**197** 76:17  
**198** 76:21  
**199** 77:1  
  
**< 2 >**  
**2** 51:7 84:5, 9  
**2:03** 52:1  
**2:41** 84:1  
**2:48** 84:2  
**2:55** 86:13  
**200** 77:10  
**2009** 53:13  
**201** 77:18  
**2013** 51:8  
 68:18 75:14, 16,  
 22, 25 84:5, 11  
**2015** 51:6

53:13 58:4  
**202** 77:22  
**2022** 48:19, 21  
 58:12 87:16  
**203** 78:11  
**204** 80:5  
**205** 80:17  
**206** 82:2  
**207** 82:11  
**208** 82:18  
**209** 83:10  
**210** 83:18  
**211** 83:22  
**212** 84:13  
**213** 85:2  
**214** 85:6  
**215** 85:8  
**216** 85:17  
**217** 86:3  
**22** 51:6 53:13  
 58:4  
**23** 53:12  
**27th** 87:16  
**28** 58:12  
**28th** 61:16, 23  
 62:16  
  
**< 3 >**  
**3** 51:4 53:24  
 54:1 57:22 58:2  
**3.2** 54:17  
**3.2.2** 55:21  
**32** 79:9  
**39.2** 80:15  
  
**< 4 >**  
**4** 48:19  
  
**< 5 >**  
**52** 50:5  
**58** 51:6  
  
**< 6 >**  
**6** 75:15  
**61:24** 50:20  
**63:12** 50:20  
**63:14** 50:15  
**64:15** 50:20  
**66:7** 50:24  
**67:17** 50:24  
**69:13** 50:24  
  
**< 8 >**  
**80:9** 50:25

**82:20** 50:25  
**83:3** 50:15  
**84** 51:8  
  
**< A >**  
**Abby** 49:23  
**access** 69:8  
**accurate** 54:16  
 56:8  
**act** 55:3 62:3,  
 6, 10, 20, 23  
 63:18  
**activities** 56:6  
**acts** 57:16  
**actual** 74:7  
 77:16  
**adopted** 61:16  
 62:15 64:11  
**advice** 52:22  
 53:2 54:11, 21  
**advise** 81:14  
**advised** 63:22  
**advisement**  
 50:18 62:7  
 63:13 64:16  
 77:5 86:5  
**advisements**  
 50:10, 17  
**Advisor** 59:5  
**Affairs** 69:8  
**affiant** 63:8  
 66:14, 17  
**affidavit** 48:19  
 52:8 57:15  
 67:21  
**AFFIRMED** 52:3  
**afternoon** 52:5,  
 6  
**Agencies** 51:5  
 53:11, 22 57:1  
 58:3  
**agree** 52:19  
 54:14 55:6, 22  
 56:2 57:2  
**aide-memoire**  
 75:2, 5, 7, 19, 21  
 76:3, 7, 11, 18  
 78:17 84:16, 21,  
 25 85:3, 18 86:1  
**Alex** 51:6  
 53:14 58:5  
**Alexander** 49:7  
**allowed** 77:15  
**Analysis** 70:23  
 74:10

**Anderson** 49:13  
 57:19, 23 58:1,  
 16 61:24 63:5,  
 25 64:15 65:9,  
 13 66:7, 20  
 67:17 69:13  
 71:13, 19 78:3,  
 19 79:4, 8, 18,  
 23 80:9, 23  
 81:11 82:20  
 84:3, 7 85:8, 11  
 86:11  
**annex** 72:23  
 73:1, 5  
**annoying** 55:12  
**answered** 63:11  
 64:5  
**answers** 86:5  
**anticipated**  
 82:22  
**anymore** 59:17  
**appear** 50:15,  
 19, 24  
**appears** 58:22  
**appendix** 72:23  
**Applicant** 49:4  
**Applicants**  
 48:10 49:9  
**Approach** 72:3  
**appropriate**  
 74:13  
**April** 48:19  
 51:6 53:12, 13  
 58:4  
**area** 60:22  
 73:21  
**article** 61:14  
**asked** 69:16  
**asking** 65:19  
 78:14  
**assistance**  
 50:11 58:20  
 60:19  
**Assistant** 60:1  
**ASSOCIATION**  
 48:8  
**assume** 60:22  
**attend** 65:6  
**attendance**  
 65:15, 17, 20  
 66:19  
**attendant** 69:17  
**attended** 65:24  
 66:5, 11 67:1, 4,

6, 13, 16 81:7  
**attendee** 67:10  
**attendees** 64:25  
**ATTORNEY**  
 48:13 49:14  
 70:2  
**authored** 53:13  
**authority** 62:22  
**available** 70:7  
**aware** 61:18  
 65:14, 23 66:25  
 67:3, 5 76:17,  
 25 80:5, 18, 25  
 81:1 82:2, 7  
**awareness**  
 56:11, 25  
**awesome** 59:23  
  
**< B >**  
**back** 52:16  
 64:19 75:14  
 80:24  
**background**  
 53:10 70:23  
**based** 54:16  
 56:7, 23 70:6  
**basis** 56:10  
 64:11 78:25  
 79:1  
**believe** 59:10  
 61:12 63:10, 22  
 68:11 71:9, 24  
 72:1, 15, 20  
 77:15 78:1  
 82:24 83:17  
**best** 64:4 67:2  
 68:2 74:14  
 84:24 85:23  
**better** 55:19  
**big** 69:5  
**bigger** 55:14, 16  
 58:14  
**bit** 55:12, 16  
**blow** 58:8  
 59:17  
**Board** 53:23  
**Boissonneau-**  
**Lehner** 49:7  
**Bouissonneau-**  
**Lehner** 86:8, 10  
**box** 60:8, 9  
**Brandon** 49:4  
 59:23  
**Brief** 59:19

**briefing** 80:11  
**briefings** 79:5  
**broader** 62:23  
  
**< C >**  
**Cabinet** 51:7  
 52:20, 23 53:1  
 54:13, 25 55:11,  
 22, 24 56:4, 11  
 57:3, 12 60:1  
 68:16 69:8, 12  
 70:3, 12, 14, 15,  
 18, 19 73:13  
 74:8 75:5, 7, 16,  
 17, 24 76:5, 14,  
 19, 24 77:14, 23  
 78:16 79:13  
 83:16 84:4, 10,  
 15 85:1, 4, 19  
**call** 61:15  
**called** 54:5  
 70:23, 25 71:8,  
 23, 25 72:2, 5, 7  
 74:3, 9, 20  
**Campbell** 49:9  
**CANADA** 48:13  
 49:15, 21 58:10  
 63:4 68:17  
**CANADIAN**  
 48:8 49:5, 10, 23  
**Caputo** 48:25  
 87:3, 21  
**cataloging** 83:20  
**categorically**  
 71:11  
**CBC** 61:14  
**CCF** 63:10, 23  
**Central** 51:5  
 53:11, 22 58:3  
**certain** 67:9  
 76:16  
**certainly** 64:16  
 69:23 79:24  
**certificate** 78:23  
 79:19 83:1, 5  
 87:1  
**Certified** 87:4  
**certify** 87:4  
**Chair** 78:13  
**changes** 79:23  
**characterization**  
 66:13  
**characterized**  
 77:12, 13

**chart** 58:21, 23,  
 25  
**Chaudhry** 64:1  
**check** 83:3, 7  
**choppy** 52:15  
**Chung** 49:4  
 59:20 60:18  
**citizen** 80:20  
 82:5  
**CIVIL** 48:8  
 49:5, 23  
**claimed** 70:3  
**claiming** 79:12,  
 20  
**clarification**  
 65:12 79:7  
**classification**  
 72:17  
**clear** 64:18  
 81:24  
**Clerk** 54:12  
 79:11  
**click** 58:13  
**client** 80:13  
**collaboration**  
 56:18  
**colleague** 64:1  
**colleagues**  
 67:13 74:15  
**collecting** 83:19  
**commencing**  
 52:1  
**Committee**  
 79:15 80:7  
**committees**  
 53:2 55:24  
 57:12 76:24  
**communicate**  
 74:14  
**communicated**  
 57:5  
**communication**  
 73:22  
  
**Communications**  
 73:2  
**COMPANY**  
 87:20  
**Company's**  
 48:20  
**compared** 74:7  
**comparison**  
 75:25  
**complete** 82:9  
**complex** 76:13

**complicated**  
 58:17  
**composition**  
 65:2  
**concluded** 86:13  
**concludes**  
 85:14 86:4, 6  
**confidence**  
 75:12 76:4  
 79:13  
**confidences**  
 70:3  
**confirm** 63:15  
**conjunction**  
 73:13  
**consider** 81:13  
**Considerations**  
 72:5  
**considered**  
 80:21 85:4  
**consult** 57:1  
 69:7  
**contain** 70:20,  
 22 71:4, 22  
**contained** 53:19  
**cont'd** 50:5  
 52:4  
**content** 63:12  
 69:21  
**contents** 79:15,  
 16  
**Context** 74:9  
**continuation**  
 52:7  
**Continued** 48:18  
**Convoy** 61:17  
 62:25 63:16  
 64:8, 18  
**coordinating**  
 56:12, 24  
**coordination**  
 56:18, 22  
**copies** 64:12  
**copy** 63:25  
 72:13  
**corner** 59:7  
**correct** 60:10  
 63:24 70:5  
 83:21 87:14  
**Council** 51:8  
 52:17, 20, 25  
 53:20, 22, 25  
 54:2, 4, 12  
 58:12, 19 60:23  
 61:3, 4, 7, 10, 15

62:2, 14, 19  
 66:15 68:18  
 84:10  
**counsel** 50:11  
 57:24 61:25  
 69:23 77:2, 4,  
 21 78:3  
**counsel's** 84:19  
**Court** 48:1, 3  
 57:21 65:11  
 79:6  
**covered** 72:10  
 74:22  
**Cowling** 49:8  
 86:8  
**cross** 81:18  
**Cross-**  
**Examination**  
 48:18 50:5  
 52:4, 8 83:17  
 86:6  
**CRR** 48:25  
 87:3, 21  
**CSR** 48:25  
 87:3, 21  
**current** 69:11  
 70:6 71:10, 17  
 84:18, 22  
**currently** 52:18  
**cut** 85:18  
  
**< D >**  
**dated** 51:5  
 58:4 68:21, 22  
 87:16  
**David** 49:8  
 60:13  
**day** 48:21  
 87:16  
**days** 80:22  
**deal** 64:19  
**dealing** 60:25  
**dealt** 57:11  
**decision** 57:4, 7  
 70:16, 18  
**decision-making**  
 55:1  
**Deck** 73:10, 16,  
 20 74:12, 13, 18  
 75:18 77:25  
 78:16 84:16  
**decks** 73:11  
 74:5  
**Defendant** 49:13

<p><b>Department</b> 53:23 54:6</p> <p><b>Departmental</b> 69:8</p> <p><b>departments</b> 56:10, 13 57:1, 6</p> <p><b>depend</b> 74:12</p> <p><b>depending</b> 80:12</p> <p><b>deputies</b> 68:4</p> <p><b>describe</b> 79:1, 2 85:2</p> <p><b>described</b> 57:14 78:7 80:12 84:14, 22</p> <p><b>description</b> 54:14, 15 55:7, 23 56:3 78:6, 20 79:13, 19 83:6</p> <p><b>Deshman</b> 49:23</p> <p><b>development</b> 75:1 76:12</p> <p><b>different</b> 68:13 69:22 72:11 74:16, 17 81:3</p> <p><b>difficult</b> 85:13</p> <p><b>Diligence</b> 72:7</p> <p><b>direct</b> 78:4</p> <p><b>directed</b> 64:12</p> <p><b>direction</b> 69:17</p> <p><b>directly</b> 54:7 60:4 82:8</p> <p><b>director</b> 60:6, 14</p> <p><b>disagree</b> 56:21 66:12</p> <p><b>disclose</b> 77:16 78:2</p> <p><b>discussed</b> 54:19 75:18</p> <p><b>discussion</b> 73:21 74:25 76:11 83:25</p> <p><b>document</b> 55:25 57:20 58:8 68:13, 15, 19, 25 69:2, 4, 21, 23 70:5, 7, 11 71:10, 18 72:13 73:8, 10, 18 74:24 77:13 85:3, 10</p> <p><b>Documents</b> 51:7 68:16 69:12, 25 75:16</p>	<p>76:22, 23 77:3 80:7, 21 81:9 82:5, 8 83:19 84:4, 10, 14, 21 85:20</p> <p><b>double</b> 83:3, 7</p> <p><b>Drafter's</b> 51:7 68:16 69:12 72:14 75:15 84:4, 9, 15, 18, 23 85:19</p> <p><b>Due</b> 72:7</p> <p><b>Duly</b> 52:12</p> <p><b>&lt; E &gt;</b></p> <p><b>earlier</b> 61:13 81:5</p> <p><b>easier</b> 62:11</p> <p><b>easily</b> 72:19</p> <p><b>easy</b> 72:12</p> <p><b>educate</b> 83:11</p> <p><b>effect</b> 76:9</p> <p><b>e-mail</b> 63:25</p> <p><b>Emergencies</b> 62:3, 10, 20, 23 63:17</p> <p><b>Emergency</b> 62:6 64:3</p> <p><b>employed</b> 52:18</p> <p><b>encountered</b> 76:3</p> <p><b>engage</b> 56:9</p> <p><b>ensures</b> 57:3</p> <p><b>ensuring</b> 56:17, 22</p> <p><b>entirely</b> 72:16</p> <p><b>entitled</b> 68:16</p> <p><b>entity</b> 80:6, 11, 12, 18</p> <p><b>Erin</b> 49:21</p> <p><b>Esq</b> 49:3, 4, 7, 8, 9, 13</p> <p><b>evidence</b> 67:20 70:6</p> <p><b>Ewa</b> 49:3</p> <p><b>Examination</b> 86:13 87:11</p> <p><b>examined</b> 64:24</p> <p><b>exempt</b> 68:4, 6</p> <p><b>exhibit</b> 57:20 58:2 84:5, 9</p> <p><b>EXHIBITS</b> 51:1</p> <p><b>exists</b> 75:10</p> <p><b>experience</b> 56:7, 9, 23 60:25</p>	<p>74:5 75:4, 6, 20 76:1</p> <p><b>explain</b> 62:1 68:5</p> <p><b>exposed</b> 75:4</p> <p><b>extent</b> 78:7</p> <p><b>eyes</b> 58:16</p> <p><b>&lt; F &gt;</b></p> <p><b>fact</b> 61:7 63:8, 14</p> <p><b>fair</b> 55:8 56:5 67:9 73:23 81:16 83:8</p> <p><b>fall</b> 58:24</p> <p><b>falls</b> 80:15</p> <p><b>familiar</b> 53:6, 15 60:22 61:2, 5, 7 68:19, 20 70:11 73:9, 11 75:2, 24 76:7, 16 84:6 85:25</p> <p><b>feature</b> 73:3</p> <p><b>February</b> 61:23 62:15, 16 65:3, 6 66:24 67:24 80:8</p> <p><b>federal</b> 67:25 68:1 80:19 81:6, 9 82:3</p> <p><b>feel</b> 74:13 78:21</p> <p><b>File</b> 48:1</p> <p><b>final</b> 56:7</p> <p><b>Finance</b> 53:23</p> <p><b>financial</b> 63:2</p> <p><b>find</b> 69:3, 19</p> <p><b>fine</b> 57:24 78:11 80:3</p> <p><b>finished</b> 56:1</p> <p><b>fishing</b> 69:25</p> <p><b>fits</b> 69:14</p> <p><b>focus</b> 53:24</p> <p><b>follow</b> 64:14 80:17</p> <p><b>following</b> 50:9, 15, 19, 24 64:8</p> <p><b>follow-up</b> 64:9 65:4 85:17</p> <p><b>foregoing</b> 87:5, 13</p> <p><b>form</b> 72:11 77:18 79:3, 17</p> <p><b>forth</b> 87:7</p>	<p><b>forward</b> 66:15, 17</p> <p><b>fourth</b> 56:14</p> <p><b>free</b> 74:13</p> <p><b>Freedom</b> 61:17 62:25 63:16 64:8, 18</p> <p><b>frequently</b> 75:21</p> <p><b>front</b> 71:10</p> <p><b>Frontline</b> 49:10</p> <p><b>function</b> 54:23 57:17 83:12, 13</p> <p><b>functions</b> 52:22</p> <p><b>&lt; G &gt;</b></p> <p><b>gathered</b> 78:22</p> <p><b>GENERAL</b> 48:13 49:14 63:6 65:1 70:2 72:10</p> <p><b>generally</b> 52:24 55:6 56:2, 4 57:8 60:24 65:21 68:20 70:24 72:4 76:6 78:8 81:15</p> <p><b>Ginter</b> 49:22</p> <p><b>giving</b> 65:16</p> <p><b>Good</b> 52:5, 6 55:16 74:2 81:19</p> <p><b>government</b> 56:9, 13, 19 58:10 61:3 65:8, 22, 24 66:5, 25 67:3, 16 68:1, 17 69:6 80:6, 11, 19, 20 81:7, 10 82:3, 4</p> <p><b>group</b> 57:14</p> <p><b>guide</b> 50:10 51:7 68:16 69:12 72:14 75:15 84:4, 9, 15, 18, 23 85:19, 24</p> <p><b>&lt; H &gt;</b></p> <p><b>happening</b> 63:3</p> <p><b>happy</b> 81:23</p> <p><b>headed</b> 54:11</p> <p><b>hear</b> 52:14</p> <p><b>help</b> 58:23</p>	<p>85:20</p> <p><b>helpful</b> 71:16</p> <p><b>Henein</b> 49:22</p> <p><b>hesitant</b> 71:11</p> <p><b>hold</b> 59:17</p> <p><b>holds</b> 83:13</p> <p><b>honest</b> 75:11, 23</p> <p><b>hope</b> 58:17</p> <p><b>hopefully</b> 63:20</p> <p><b>Hutchison</b> 49:22</p> <p><b>&lt; I &gt;</b></p> <p><b>identification</b> 81:12</p> <p><b>implement</b> 57:6</p> <p><b>Implementation</b> 72:23</p> <p><b>inappropriate</b> 66:17</p> <p><b>include</b> 71:7 73:15, 25 84:25</p> <p><b>included</b> 68:3 82:17 83:2</p> <p><b>INDEX</b> 50:13, 17, 22 51:1</p> <p><b>inform</b> 61:21 63:7 66:3, 10, 18 67:12, 15, 20 82:18</p> <p><b>informally</b> 63:10, 22</p> <p><b>information</b> 53:3, 19 65:1, 17 82:7, 16</p> <p><b>informing</b> 64:2</p> <p><b>input</b> 75:1 76:13</p> <p><b>inside</b> 81:16</p> <p><b>Intelligence</b> 59:5, 9 60:2, 15</p> <p><b>interrupt</b> 81:17</p> <p><b>intervenes</b> 65:11 79:6</p> <p><b>invocation</b> 64:3</p> <p><b>involved</b> 76:5</p> <p><b>IRG</b> 57:14 64:25 65:1, 5 66:16, 24 77:7, 11 78:13 79:15 80:7, 21 82:6, 9, 25</p> <p><b>IRGs</b> 57:17 82:16</p> <p><b>issue</b> 63:9 71:8 73:22</p>
--	--	--	--	--

<p>74:12, 15, 22 76:13 82:6 <b>issued</b> 61:22 62:21, 24 63:1, 3, 15, 16 64:6 <b>issues</b> 56:25 61:3 64:7</p> <p><b>&lt; J &gt;</b> <b>January</b> 61:16, 23 62:16 <b>Jeff</b> 49:13 <b>Jody</b> 59:4, 8 <b>Joshua</b> 49:22 <b>Judith</b> 48:25 87:3, 21 <b>June</b> 48:21 61:13 78:4 87:16 <b>JUSTICE</b> 48:3 49:21</p> <p><b>&lt; K &gt;</b> <b>Key</b> 74:3 <b>kind</b> 65:15 80:23 <b>knew</b> 62:11 <b>knowledge</b> 67:2 68:2, 24 69:1 <b>known</b> 70:11 72:23 73:1, 5, 10 <b>knows</b> 81:14 <b>Krajewska</b> 49:3 50:5 52:4 57:19, 25 58:6 59:22 60:3, 17, 20 62:8, 12 63:24 64:21, 22 65:19 66:1, 12, 22 67:22 70:1, 9 71:12, 21 78:10, 24 79:12, 21 80:3, 4, 16 81:3, 19 82:1 83:8, 9, 23 84:3, 12 85:7, 14, 16 86:4</p> <p><b>&lt; L &gt;</b> <b>lastly</b> 75:18 <b>left</b> 59:2, 3, 14 <b>legal</b> 77:21 <b>letter</b> 78:4, 9, 11 <b>LIBERTIES</b> 48:8</p>	<p>49:5 <b>Liberty</b> 49:23 <b>library</b> 53:9 <b>likewise</b> 55:8 78:1 <b>link</b> 55:3 <b>looking</b> 82:24 <b>lot</b> 60:25</p> <p><b>&lt; M &gt;</b> <b>MacDonald</b> 59:25 60:9 <b>MacGillivray</b> 60:13 <b>Mackenzie</b> 49:9 <b>made</b> 57:4 87:10 <b>main</b> 54:18 <b>maintain</b> 63:6 67:17 71:19 <b>maintaining</b> 56:11, 24 65:18 <b>manages</b> 82:15, 16 <b>mark</b> 57:20 84:4 <b>material</b> 77:25 78:7, 8, 12, 15, 20, 22 79:3, 14 80:2 82:24 <b>materials</b> 77:6, 10 <b>matters</b> 63:17 <b>MC</b> 73:15 <b>MCs</b> 73:4, 15 <b>meant</b> 50:10 57:6 <b>meeting</b> 65:7 66:4 67:14, 25 <b>meetings</b> 65:1, 2, 5, 25 66:6, 16, 19, 24 67:1, 4, 15, 16 68:3 77:8, 11 78:13 80:8 81:7, 10 82:6, 10, 12 <b>member</b> 65:7, 22 66:4, 25 67:15, 25 <b>members</b> 64:25 66:3 68:8 <b>Memorandum</b> 70:11, 14, 19 73:13 75:17</p>	<p>76:14, 19 77:14, 23 78:15 84:15 <b>Memorandums</b> 74:8 85:1 <b>memory</b> 71:14 85:5 <b>mentioned</b> 82:14 83:15, 17 <b>mentions</b> 75:16 <b>Merrill</b> 49:21 <b>mic</b> 86:7 <b>Mike</b> 59:25 <b>mind</b> 79:9 <b>Minister</b> 52:23 53:3 54:8, 22 55:4 59:6, 9 70:15 74:25 76:12 <b>Ministerial</b> 70:25 71:3 72:22 <b>ministers</b> 54:22 68:3 74:12, 16 <b>Minister's</b> 52:21 54:6, 24 68:7 <b>ministries</b> 57:5 <b>minutes</b> 67:14 83:19 <b>mistaken</b> 59:2 <b>move</b> 60:21 68:13 <b>municipal</b> 66:25 67:3, 16 80:20 82:4</p> <p><b>&lt; N &gt;</b> <b>national</b> 56:25 59:5, 8 <b>nature</b> 77:16 78:14 79:2 <b>needs</b> 70:5 <b>Neesons</b> 48:20 87:20 <b>News</b> 61:14 <b>non-partisan</b> 54:9, 21 <b>normal</b> 74:21 <b>normally</b> 73:3 <b>note</b> 82:23 <b>noted</b> 50:14, 19, 23 52:12 <b>notes</b> 87:14 <b>NUMBER/DESCR</b> <b>IPTION</b> 51:3</p>	<p><b>Nurses</b> 49:11</p> <p><b>&lt; O &gt;</b> <b>object</b> 61:25 62:4 66:7 81:2 82:21, 23 <b>objected</b> 65:16 <b>objecting</b> 79:1 <b>objection</b> 63:6 65:18 67:18 69:13 71:20 78:9 79:2, 16 80:9 85:12 <b>objections</b> 64:19 87:10 <b>obtain</b> 72:13 <b>obtained</b> 72:19 <b>offer</b> 54:9 85:23 <b>Office</b> 51:8 52:17, 20, 25 53:22, 25 54:2, 4 66:15 68:7, 18 84:10 <b>official</b> 65:24 67:3, 10 <b>officials</b> 77:7 <b>OICs</b> 61:22 64:2, 10, 13 <b>ONTARIO</b> 48:2 <b>operations</b> 53:1 60:14 <b>Options</b> 72:3 <b>Order</b> 64:3 <b>Orders</b> 60:23 61:3, 7, 10, 15 62:2, 14, 19 <b>Organizational</b> 58:11, 21, 23 <b>originally</b> 53:12 <b>Ottawa</b> 63:3 <b>Outcome</b> 74:3 <b>outside</b> 56:10 80:18 81:6, 9, 16 82:3</p> <p><b>&lt; P &gt;</b> <b>p.m</b> 52:1 86:13 <b>package</b> 79:10 <b>pages</b> 50:15, 19, 24 <b>paper</b> 53:5, 9, 10, 15, 20 54:2 74:25 75:14 76:12 83:16</p>	<p><b>paragraph</b> 56:8 57:10 <b>Parliament</b> 53:10 <b>Parliamentary</b> 73:6 <b>part</b> 56:11, 22 57:22 82:25 86:1 <b>participants</b> 68:3 <b>participating</b> 77:7 <b>parts</b> 57:21 63:5 <b>pass</b> 86:7 <b>pause</b> 59:19 <b>PCO</b> 54:11, 18 55:23 56:9, 16, 23 57:3, 11, 13, 16 66:3, 16 67:13 76:23 77:6, 11 78:12 80:6 82:11 83:13 <b>PCO's</b> 56:3, 5 <b>PDF</b> 58:13 59:16, 23 <b>people</b> 59:11 <b>Perfect</b> 59:24 <b>period</b> 61:23 <b>person</b> 58:24 60:11 65:20 83:14 <b>personal</b> 60:25 75:3, 6 76:1 <b>pertain</b> 64:2 <b>phrase</b> 56:21 <b>place</b> 87:6 <b>Plan</b> 72:24 73:2, 6 <b>platform</b> 48:21 <b>play</b> 56:24 57:13 <b>playing</b> 56:12 <b>plays</b> 55:23 57:11 <b>point</b> 52:14 79:18, 20 <b>policy</b> 73:21 75:1 76:12 <b>political</b> 68:9, 10 <b>politically</b> 54:10 <b>portfolio</b> 54:24</p>
---	--	---	---	--

<p><b>position</b> 66:21 74:13 84:19</p> <p><b>possession</b> 72:16, 19</p> <p><b>Potentially</b> 74:19</p> <p><b>practice</b> 73:19 74:21 75:9</p> <p><b>preferences</b> 74:17</p> <p><b>prepared</b> 70:15 74:24 76:18 77:6, 11 78:12 81:13</p> <p><b>prepares</b> 76:23</p> <p><b>PRESENT</b> 49:19</p> <p><b>Presentation</b> 73:10 75:18 77:25 78:16</p> <p><b>presented</b> 73:15, 16</p> <p><b>previous</b> 83:17</p> <p><b>PREVIOUSLY</b> 52:3 82:15</p> <p><b>Prime</b> 52:21, 23 53:3 54:5, 7, 23 55:4 59:6, 9</p> <p><b>principal</b> 55:3</p> <p><b>private</b> 80:20 82:5</p> <p><b>Privy</b> 51:8 52:17, 19, 25 53:20, 22, 25 54:2, 4, 12 58:12, 19 66:15 68:18 84:10</p> <p><b>proceedings</b> 59:19 61:18 87:5</p> <p><b>process</b> 55:1 56:11</p> <p><b>processes</b> 75:24</p> <p><b>produce</b> 64:12 69:11 84:17</p> <p><b>produced</b> 71:17</p> <p><b>product</b> 77:19</p> <p><b>production</b> 85:9</p> <p><b>products</b> 77:16</p> <p><b>programs</b> 56:19</p> <p><b>proper</b> 56:12</p> <p><b>properly</b> 57:4 83:20</p> <p><b>proposal</b> 70:16 76:14</p>	<p><b>Proposed</b> 72:2, 3</p> <p><b>protected</b> 78:21</p> <p><b>Provart</b> 64:1</p> <p><b>provide</b> 54:21 79:24</p> <p><b>provided</b> 65:1 77:2, 4 78:12 79:3, 11</p> <p><b>provides</b> 53:2 54:2</p> <p><b>Provincial</b> 65:7, 22, 24 66:5 80:19 82:4</p> <p><b>public</b> 52:21 54:8 55:5 61:11 64:3 68:1, 9</p> <p><b>publicly</b> 61:8 70:8</p> <p><b>published</b> 53:12 61:8 62:17 68:18</p> <p><b>purpose</b> 50:11 78:23</p> <p><b>pursuant</b> 62:22 64:6</p> <p><b>put</b> 57:20 63:10 66:14, 17 87:7</p> <p><b>&lt; Q &gt;</b></p> <p><b>question</b> 58:18 62:1, 5, 9, 23 63:13 64:5 65:10, 14 66:8, 23 67:12, 23 77:5 78:18 80:14, 17 81:4, 5, 8, 20, 22, 23 85:17</p> <p><b>questions</b> 52:15 63:23 64:9 65:4 69:20</p> <p><b>questions/reques ts</b> 50:14, 18, 23</p> <p><b>quite</b> 56:8 69:14</p> <p><b>&lt; R &gt;</b></p> <p><b>R/F</b> 50:23 66:7 67:17 69:13 80:9 82:20</p> <p><b>Rationale</b> 71:25</p>	<p><b>read</b> 54:13 55:11, 12, 21</p> <p><b>reaffirmed</b> 52:11</p> <p><b>really</b> 53:24 71:13 75:23</p> <p><b>RECESS</b> 84:1</p> <p><b>recollection</b> 84:24 85:24</p> <p><b>Recommendatio n</b> 71:4 72:22</p> <p><b>Recommendatio ns</b> 71:1, 23 74:4</p> <p><b>record</b> 64:5 68:6 81:20 83:24, 25</p> <p><b>recorded</b> 87:11</p> <p><b>referred</b> 61:17</p> <p><b>referring</b> 83:16</p> <p><b>refers</b> 78:8</p> <p><b>refusals</b> 50:10, 22</p> <p><b>refused</b> 50:23 86:6</p> <p><b>register</b> 78:9</p> <p><b>regular</b> 56:10</p> <p><b>reiterate</b> 85:9</p> <p><b>relate</b> 62:6</p> <p><b>related</b> 56:19 62:10 63:21</p> <p><b>relation</b> 63:16</p> <p><b>relevance</b> 56:25 62:1</p> <p><b>relevant</b> 64:17 69:9 70:2</p> <p><b>rely</b> 54:23</p> <p><b>remain</b> 52:10 61:11</p> <p><b>remember</b> 77:8</p> <p><b>remind</b> 52:9</p> <p><b>removed</b> 85:19</p> <p><b>repeat</b> 81:22</p> <p><b>report</b> 59:12 60:6, 12, 13</p> <p><b>REPORTED</b> 48:25</p> <p><b>Reporter</b> 65:11 79:6 87:4</p> <p><b>REPORTER'S</b> 87:1</p> <p><b>reports</b> 54:7</p> <p><b>representation</b> 73:23</p> <p><b>request</b> 85:9</p>	<p><b>required</b> 63:7 66:10 67:20 69:19</p> <p><b>respect</b> 55:10, 24 56:4 62:25 63:23 77:2 81:21</p> <p><b>Respondent</b> 48:15</p> <p><b>response</b> 62:24 63:3 64:7 74:11 77:4 78:20</p> <p><b>Responsibilities</b> 51:4 53:11 55:7 58:3</p> <p><b>responsible</b> 56:17 83:18</p> <p><b>RESUMING</b> 84:2</p> <p><b>reviewing</b> 67:14</p> <p><b>reviews</b> 55:25</p> <p><b>revised</b> 51:5 53:13 58:4 85:25</p> <p><b>revision</b> 86:2</p> <p><b>right-hand</b> 59:7</p> <p><b>rise</b> 64:7</p> <p><b>role</b> 52:17, 25 53:3, 20, 21 55:23 56:3, 5, 12, 22, 24 57:11, 13 58:15, 19, 20</p> <p><b>Roles</b> 51:4 53:10 54:18 58:2</p> <p><b>RPR</b> 48:25 87:3, 21</p> <p><b>&lt; S &gt;</b></p> <p><b>S&amp;I</b> 76:2</p> <p><b>screen</b> 53:5 59:14 60:18 68:14</p> <p><b>scroll</b> 59:2, 14</p> <p><b>secret</b> 61:11, 15 62:9 64:11</p> <p><b>Secretariat</b> 52:20 57:17 82:15, 19 83:12</p> <p><b>Secretary</b> 54:12 60:1</p> <p><b>Section</b> 51:4 53:24 54:1, 17 58:2 70:25 71:8, 23, 25</p>	<p>72:2, 5, 7, 21 74:3, 9, 20</p> <p><b>sections</b> 70:20, 22 71:5, 7 73:24</p> <p><b>sector</b> 58:24</p> <p><b>Security</b> 59:5, 8 60:1, 14 72:17</p> <p><b>seek</b> 70:18</p> <p><b>seeking</b> 70:15 75:1 76:12</p> <p><b>senior</b> 77:6</p> <p><b>sense</b> 69:24</p> <p><b>sensitive</b> 54:10</p> <p><b>sentence</b> 56:14</p> <p><b>separate</b> 73:17</p> <p><b>servants</b> 54:9</p> <p><b>serves</b> 52:22</p> <p><b>service</b> 52:21 54:10 55:5 68:1, 9</p> <p><b>set</b> 70:20 71:4 76:14 87:6</p> <p><b>sets</b> 78:6</p> <p><b>shape</b> 72:11</p> <p><b>share</b> 53:5 59:20, 22 68:14</p> <p><b>sharing</b> 60:17</p> <p><b>Shorthand</b> 87:4, 14</p> <p><b>show</b> 53:5 58:7</p> <p><b>SHRAGGE</b> 48:19 50:3 52:3, 5, 13 53:4 57:21 58:7, 18 60:16, 22 61:6 63:7 64:23 66:10 67:7, 19 68:12 70:4, 10 71:14, 17 72:13 80:1, 5 81:13 83:10 84:5, 13 85:21</p> <p><b>Shragge's</b> 78:19</p> <p><b>similar</b> 57:13</p> <p><b>simply</b> 62:4</p> <p><b>situating</b> 58:20</p> <p><b>small</b> 55:14 58:8</p> <p><b>Smith</b> 51:6 53:14 58:5</p> <p><b>Somebody</b> 79:9 81:5</p> <p><b>sorry</b> 61:19 69:5 77:3</p>
--	---	--	---	--

<p>81:17 83:10, 15 85:12, 15 <b>source</b> 52:21 <b>speak</b> 76:3 <b>speaking</b> 52:25 57:8 60:24 65:21 72:4 <b>speaks</b> 84:25 <b>specific</b> 62:21 65:20 73:22 78:5 81:20 <b>specifically</b> 79:10 85:1, 22 <b>spoke</b> 76:22 77:1 <b>squinting</b> 58:16 <b>staff</b> 68:4, 6, 7, 9, 10 <b>staffed</b> 54:8 <b>standard</b> 70:20 71:4 <b>start</b> 52:16 <b>statute</b> 63:2 <b>statutes</b> 64:10 <b>statutory</b> 62:22 <b>stenographically</b> 87:11 <b>STEVEN</b> 48:19 50:3 52:3 <b>stop</b> 60:17 <b>straight</b> 61:25 <b>Strategic</b> 73:1, 21 <b>strategy</b> 73:22 <b>Structure</b> 58:11 74:7, 17 <b>structured</b> 74:6 <b>style</b> 74:6 <b>subject</b> 86:5 <b>submitted</b> 79:14 80:7, 20 81:9 82:5, 8, 13, 25 <b>suggested</b> 61:14 <b>summary</b> 54:15 55:9 56:5 74:20 <b>SUPERIOR</b> 48:3 <b>support</b> 53:1 54:25 55:10, 22 73:20 76:13 77:6, 11 78:13 <b>supported</b> 66:15, 16 <b>supporting</b></p>	<p>57:12, 14 <b>surprise</b> 66:9 <b>sworn</b> 48:19 <b>System</b> 83:16  &lt; T &gt; <b>T-316-22</b> 48:1 <b>talked</b> 58:15, 18 64:24 84:13 <b>talking</b> 79:16 <b>talks</b> 53:21 54:17 <b>template</b> 76:8 <b>templates</b> 69:9 <b>terms</b> 74:6, 14 76:4 <b>test</b> 71:15 <b>testimony</b> 87:9 <b>thanks</b> 85:12 <b>themes</b> 72:10 <b>thing</b> 85:22 <b>third</b> 55:2 <b>Thomas</b> 59:4, 8 <b>time</b> 55:13 61:17, 22 64:23 87:6, 7, 10 <b>title</b> 73:25 74:1, 2 <b>titles</b> 72:9, 11 <b>today</b> 52:10 58:19 78:25 80:14 <b>told</b> 77:20 80:24 <b>top</b> 59:7 <b>traditionally</b> 70:17 <b>transcribed</b> 87:12 <b>transcript</b> 87:14 <b>Treasury</b> 53:23 <b>trick</b> 71:13 <b>true</b> 61:12 87:13 <b>trying</b> 58:14 71:13, 14 <b>turn</b> 54:19 79:9 86:9 <b>type</b> 74:21, 23 77:19 79:13 85:3 <b>types</b> 76:22, 23 77:3, 12 84:14, 21</p>	<p><b>typically</b> 70:20 71:4 73:12  &lt; U &gt; <b>U/A</b> 50:19 61:24 63:12 64:15 <b>U/T</b> 50:14 63:14 83:3 <b>unaware</b> 61:11 <b>underneath</b> 60:4 <b>understand</b> 66:20 67:7 79:22 <b>understanding</b> 54:16 57:9 79:25 <b>undertaken</b> 50:14 <b>undertakings</b> 50:9, 13 <b>unfortunately</b> 70:7 <b>Unit</b> 69:8 83:16 <b>ups</b> 64:14  &lt; V &gt; <b>various</b> 57:5 <b>vary</b> 74:6 <b>vehicle</b> 70:18 <b>Veritext</b> 48:20 87:20 <b>version</b> 58:13 68:21, 22 69:2, 4, 12 70:6 71:10, 17 84:18, 22 <b>video</b> 86:9 <b>views</b> 69:22 <b>virtual</b> 48:20 <b>visibility</b> 82:10, 12  &lt; W &gt; <b>wanted</b> 52:9 58:20 79:22 <b>website</b> 58:11 68:17 <b>WITNESS</b> 50:3 55:25 59:24 63:8 65:23 66:10 67:19 81:21 87:7, 9 <b>won't</b> 58:17</p>	<p><b>working</b> 57:14 76:2 <b>writing</b> 64:20  &lt; Y &gt; <b>Yeah</b> 55:8 59:12 71:19 79:18 84:7 <b>year</b> 76:2 <b>years</b> 86:1 <b>Yup</b> 73:11</p>
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## **A DRAFTER'S GUIDE TO CABINET DOCUMENTS**

Privy Council Office  
2013

A DRAFTER’S GUIDE TO CABINET DOCUMENTS

Table of Contents

1. Introduction ..... 1

2. When an Item Should Be Brought to Cabinet ..... 1

2.1 Regulations and Orders in Council..... 2

2.2 Federal Appointments ..... 2

2.3 Machinery of Government..... 3

3. Launching the Process ..... 3

3.1 Gathering Information ..... 3

4. Drafting Cabinet Documents..... 4

4.1 Memorandum to Cabinet (MC) ..... 4

4.1.1 Ministerial Recommendations (MR) ..... 4

Title ..... 5

Issue ..... 5

Recommendations ..... 5

Rationale ..... 6

Proposed Approach and Options..... 6

Considerations..... 8

Due Diligence ..... 9

4.1.2 Annexes..... 10

Implementation Plan Annex..... 10

Strategic Communications Plan Annex..... 11

Parliamentary Plan Annex ..... 11

4.1.3 Supplementary Information ..... 12

Detailed Proposal Description Annex ..... 13

Aide-mémoire ..... 13

4.1.4 Formatting Requirements..... 13

4.2 Drafting Guidance for Particular Proposals ..... 13

4.2.1 Government Legislation ..... 13

4.2.2. Private Members’ Business ..... 15

4.2.3 Government Responses to Parliamentary Standing Committee Reports ..... 15

4.3 Presentations ..... 16

4.3.1 Format and Information Requirements..... 16

4.4 Aide-mémoires ..... 17

5. Process for Developing Cabinet Documents ..... 18

5.1 Central Agency Consultations ..... 18

5.2 Interdepartmental Meetings..... 18

5.3 Submitting Cabinet Documents ..... 18

5.4 Submission Deadlines ..... 19

5.5 Letters to the Chairperson ..... 19

5.6 Officials’ Attendance at Cabinet and Committee Meetings..... 19



5.7 Support During Meetings.....20

5.8 Committee Decisions .....20

6. Handling Cabinet Documents .....20

Annex A: Memorandum to Cabinet Template .....22

Annex B: Ministerial Recommendations Template.....29

Annex C: Formatting Guidance for Memoranda to Cabinet (MCs).....35

Annex D: Key Resources.....38

# 1. Introduction

Cabinet and its committees constitute the forum in which Ministers collectively make decisions on government policy and initiatives. The Cabinet decision-making system is the setting in which Ministers bring policy, political and strategic considerations to bear on ministerial proposals. It is the mechanism through which Ministers can reconcile different perspectives, participate in and influence deliberations, and collectively reach decisions. More information on the Cabinet decision-making system is available in [Accountable Government: A Guide for Ministers and Ministers of State](#).

A list of the current Cabinet committees and their memberships can be found on the Prime Minister’s [website](#).

*A Drafter’s Guide to Cabinet Documents* provides guidance to public servants on supporting Ministers for their participation in Cabinet and Cabinet committee meetings. This Guide addresses the development of Cabinet documents—Memoranda to Cabinet (MCs), presentations and aide-mémoires—for Cabinet consideration.

This Guide provides drafters with information on the following topics:

- drafting requirements for Memoranda to Cabinet, presentations and aide-mémoires;
- guidance on drafting Cabinet documents on legislation, private members’ bills, and responses to parliamentary reports;
- the processes and timelines for developing and submitting Cabinet documents for Ministers’ consideration; and
- security requirements for the management of Cabinet documents.

This Guide does not provide information on the development of submissions for the Treasury Board. Drafters should instead consult the Treasury Board of Canada Secretariat’s (TBS) [Guide to Preparing Treasury Board Submissions](#) and speak with their TBS analyst.

The information provided in this document is subject to change. Drafters are encouraged to work with their Cabinet liaison units and their Privy Council Office (PCO) analysts to ensure current procedures and requirements are being appropriately followed.

# 2. When an Item Should Be Brought to Cabinet

Drafters should consider questions such as those listed below to determine whether to begin work on a Cabinet proposal:

- Is your Minister advancing a new policy?
- Does your Minister’s proposal impact the fiscal framework?
- Does your Minister’s initiative impact other Ministers’ responsibilities?
- Is your Minister implementing a Speech from the Throne or other Government commitment?
- Is your Minister introducing legislation?
- Is your Minister advancing Canada’s position at an international meeting or otherwise representing Canada?

Generally, Cabinet time focuses on decision items rather than on introductory or preliminary discussion of issues, except as requested by the Prime Minister. At Cabinet, Ministers seek their colleagues’ consideration of proposals in their area of responsibility when Ministers wish to:

- advance a new policy or initiative;
- implement priorities that were announced in the [Speech from the Throne](#) or [Budget](#) or were requested by the Prime Minister;

- propose a substantive change to an existing program or policy;
- advance a proposal that implicates other Ministers' responsibilities or other jurisdictions, or that may be controversial; and
- submit legislative proposals to Parliament or respond to a parliamentary committee or to private members' bills or motions.

Where a Minister wishes to propose an initiative for which a pre-existing source of funds has not been identified, drafters should consult PCO at an early stage to ensure that any preliminary approval processes concerning unfunded items are met in a timely fashion. This process may include seeking permission from the Prime Minister before an item can be considered by a Cabinet committee.

There are special approval processes in place for certain types of proposals, as described below.

## 2.1 Regulations and Orders in Council

Some proposals, including those on regulations and Orders in Council (OICs), require Governor in Council approval as part of their implementation. The Governor in Council is the Governor General acting on the advice of Council, that is, the Queen's Privy Council for Canada as represented by the Cabinet or a designated committee. Cabinet discusses and decides upon the policy and legal frameworks of proposals, including any recommendations that regulations and OICs be used to achieve objectives. However, Cabinet does not review or approve the regulations or OICs in question, although proposed OIC language may be included in an MC for information. Instead, proposed regulations and most OICs requiring Governor in Council approval are submitted directly by responsible Ministers to the Treasury Board, the committee designated to act as Council. Regulations and OICs approved by the Treasury Board take legal effect only once they are approved by the Governor General.

The Regulatory Affairs Sector of TBS is responsible for regulatory policy and assisting departments and agencies in developing regulatory submissions. The Orders in Council Division of PCO provides secretariat support to the Treasury Board, in its Governor in Council role, by receiving submissions from sponsoring Ministers, preparing OICs, and sending OICs approved by the Treasury Board to the Governor General for signature. Information on the regulatory approval process can be found in the TBS [Guide to the Federal Regulatory Development Process](#). Additional information on the development of Cabinet proposals involving legislation and regulations can be found under [Drafting Guidance for Particular Proposals](#) below.

## 2.2 Federal Appointments

The Governor in Council is also responsible for approving a number of federal appointments, including those of Deputy Ministers, Heads of Agencies, Crown corporation Chief Executive Officers and Directors, Ambassadors, and members of quasi-judicial review boards and tribunals. Statutes set out which appointments require Governor in Council approval. Unlike most OICs, Governor in Council appointments are not reviewed by the Treasury Board. Instead, submissions for these appointments are considered directly by Cabinet, with the prior approval of the Prime Minister. The appointments are not final until they receive the Governor General's approval.

The Senior Personnel Secretariat of PCO can provide guidance on the appointments process. Information can also be found in the [Governor in Council Appointment Procedures Guide](#) and on the [Appointments website](#).

## 2.3 Machinery of Government

Changes to the machinery of government are determined by the Prime Minister. This includes proposals to modify Ministers' powers, duties and functions, to create, modify or terminate government organizations, or to transfer responsibilities from one Minister or organization to another. If Ministers wish to propose machinery of government changes or to suggest such changes as part of a broader Cabinet proposal, they must write to the Prime Minister to seek his approval to proceed. Proposals that also include non-machinery elements—for example, new policy or funding requests—may then be brought forward to Cabinet. However, in such cases it must be noted in the proposal that machinery of government components have been reserved for the Prime Minister's approval.

Drafters should consult the Machinery of Government Secretariat of PCO at an early stage on such proposals and to obtain additional information and guidance on machinery of government requirements and processes.

## 3. Launching the Process

Once plans are in place in a department or agency to develop a Cabinet proposal, drafters should contact PCO to confirm that the item should be brought forward, to identify the requirements and timelines for completing and submitting the proposal, and to place the item on a Committee's forward agenda.

This initial discussion should also confirm which type of Cabinet paper should be prepared:

- A [Memorandum to Cabinet \(MC\)](#) is used when a Minister is seeking a Cabinet decision on a proposal.
- A [presentation \(deck\)](#) is used in conjunction with an MC to guide discussion or, more rarely, as a separate document to support a strategic discussion of a policy area, a communications strategy or another specific issue.
- An [aide-mémoire](#) is used as a discussion paper when a Minister is seeking policy development input on a complex issue or in support of a proposal set out in an MC.

Information on how to prepare each of these documents is provided below. In special circumstances, a Minister may also update Cabinet on the progress of an existing initiative without providing supporting documents. However, PCO and the Prime Minister's Office (PMO) should be informed in advance if a Minister is planning to provide such an update.

The deadlines for submitting Cabinet documents to PCO are firm and should be used to determine how far in advance the steps detailed below should be completed.

### 3.1 Gathering Information

The analysis and information used to develop a policy or program proposal needs to be reflected in a Cabinet paper. Some of this material comes from internal sources—the organization's socio-economic analysis, research, legal advice and consultations with other departments and agencies. In other cases, information is gained from discussions with external sources, including provinces, territories, international governments and through Minister-approved consultation and engagement with stakeholders and the public. Drafters may wish to consult with their communications and consultations unit or with PCO prior to initiating external discussions.

Ministers are responsible for consulting with their caucus advisory committees at an early opportunity on policy and expenditure proposals. Ministerial staff support the Minister in working with their caucus advisory committees. Factual briefings by public servants organized for one caucus are made available to other caucuses at those parties’ request and, accordingly, House Leaders or leaders of each party are kept informed of such briefings.

4. Drafting Cabinet Documents

4.1 Memorandum to Cabinet (MC)

<p>New MC templates were introduced in fall 2012. Key changes from the previous format include:</p> <ul style="list-style-type: none"><li>• Elimination of the Background/ Analysis section;</li><li>• Expansion of MR page limits;</li><li>• Introduction of an optional Detailed Program Description Annex;</li><li>• More detailed cost breakdowns and identification of any assumptions underpinning analysis and resource projections; and</li><li>• Reorganization of existing sections and requirements.</li></ul>	<p>MCs are submitted by Ministers when they are seeking a Cabinet decision on their proposals. The MC template to be used for most Cabinet proposals is in <a href="#">Annex A</a> of this Guide. The abbreviated Ministerial Recommendations (MR) template that can be used for proposals relating to some Private Members’ Business and Government responses to parliamentary committee reports is in <a href="#">Annex B</a>. Specific guidance on the information requirements and MC structure for particular cases such as legislative proposals is provided <a href="#">below</a>.</p>
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MCs should be written with the intended audience in mind—the Ministers who will discuss, make recommendations on and decide on the proposals set out in the MC. MCs need to be comprehensive so that Ministers have all the information they require to consider the matter in question. However, MCs should also be concise and straightforward.

There are general rules of thumb for drafting a good MC:

- Use everyday language;
- Avoid long complicated sentences and paragraphs;
- Avoid technical terms, jargon or acronyms that would be unfamiliar to a broad audience;
- Be concise and stick to the key points;
- Build the narrative and arguments step by step; and
- Rework every sentence until each word counts.

Drafters must also meet the information requirements for MCs, prepare English and French versions, and follow the formatting guidelines, as set out in [Annex C](#).

4.1.1 Ministerial Recommendations (MR)

The MR is the key component of the MC. It sets out the issue to be discussed, the Minister’s recommended course of action and any funding requirements, the rationale for proceeding, alternative options that could be pursued, and the considerations to be taken into account.

The maximum length of an MR, without exception, is 10 pages in English and 11 pages in French. It is therefore important to focus on the information that is essential for Ministers’ understanding and discussion.

### *Title*

The title should be short and descriptive. It should reflect any previous references to the issue, for example, as set out in the Speech from the Throne, Budget, electoral platform, or as directed by the Prime Minister.

### *Issue*

The MR should begin with a one-sentence explanation of the question to be discussed and resolved. This sentence is the link between the title and the MC's recommendations.

The sentence should be carefully written so that it clearly refers to the nature of the decision before Ministers, and may need to be adjusted as the MC takes shape. Common ways of starting this issue statement include:

- Whether to ...
- How to ...
- Whether and how to ...

### *Recommendations*

The Recommendations box sets out the Minister's proposed course of action for which he or she is seeking Cabinet's approval. Accordingly, this section is the basis for the Committee Recommendations (CR) and Record of Decision (RD) issued by the responsible Cabinet committee and Cabinet respectively.

The Recommendations box should be a self-explanatory statement of what direction the Minister is seeking from his or her colleagues. It must indicate which of the options presented in the MC is being recommended by the Minister. It should not present arguments as to why the recommendations should be adopted.

The box begins with the phrase "It is recommended that," followed by an itemized list of the approvals being sought. It sets out:

- The specific policy or initiative being recommended;
- The specific roles and authorities of implicated Ministers in implementing the proposal;
- What policy instruments (e.g., legislation, grants and contributions) will be used;
- How the proposal is being funded by existing resources, including through reallocation, or, alternatively, that there is no identified source of funds and new funding is being sought. In both cases, reference should be made to the funding profile on a cash and accrual basis as set out in a summary table (see Table 1 below); and
- The approvals requested for the associated parliamentary, strategic communications and implementation plans, as needed.

As previously noted, some proposals may require the Prime Minister's approval (e.g., machinery of government changes) in addition to that of Cabinet. In these cases, MCs must clearly identify matters that are being referred to the Prime Minister by noting that the decision in question is subject to the Prime Minister's approval. PCO analysts can assist in developing the wording to identify such *ad referendum* decisions.

Certain recommendations are common features in MCs, particularly recommendations concerning the parliamentary, strategic communications, and implementation plans. The phrases set out in the box below are standard

wording for these recommendations. Drafters may wish to consult with their PCO analyst on the wording of other recommendations.

Examples of Standard Wording in the Recommendations Section

- The Implementation Plan, as set out in Annex [X] to the Ministerial Recommendations, be approved;
- The Strategic Communications Plan, as set out in Annex [X] to the Ministerial Recommendations, be approved;
- The Parliamentary Plan, as set out in Annex [X] to the Ministerial Recommendations, be approved, and that it be implemented in consultation with the Office of the Leader of the Government in the House of Commons, the Office of the Leader of the Government in the Senate, and the Prime Minister’s Office. Should implementation of this Plan require further policy, legislative or program design changes, the Minister will return to Cabinet for approval.

*Rationale*

This section sets out the reason why action is desirable for the issue raised in the MC. This section should note the reasons why the issue has arisen or is emerging. It should also note connections with Government priorities, including those set out in the Speech from the Throne and the Budget.

The Rationale section should also state whether the proposal fills a gap in the implicated department or agency’s policies and programs or in the Government’s horizontal activities. Drafters may wish to consult their organization’s program activity architectures (PAA) to help describe any such gaps.

*Proposed Approach and Options*

This section outlines the proposed approach, that is, the sponsoring Minister’s recommended option. The proposed approach should be supported by a robust business case that is objective and factual. The section should also provide credible alternative options for Ministers’ consideration.

This section should begin by explaining the proposed approach. Drafters should clearly describe significant components of the policy, program or other activity being proposed. This information must include the timeline for the proposed approach’s launch and operation. In the case of program proposals, this section should also clearly state how and when the program will be wound up. A high-level account of this timeline is sufficient, as additional detail can be provided in the Implementation Plan Annex.

Financial information should be presented in the MC on both a cash and accrual basis. Drafters should also provide complete profiles, on a cash and accrual basis, to central agencies during the drafting and approval stages for their proposals.

The following table format should be used to present the overall resource requirements being sought for the proposed approach. This table should show the annual profile over a five-year horizon, as well as the five-year total, broken down by departments and/or agencies (if more than one organization is involved):

Table 1

Table X (\$ millions)							
	20xx- 20xx	20xx- 20xx	20xx- 20xx	20xx- 20xx	20xx- 20xx	Ongoing	Total
Department X							
Department Y							
Total							

This table should be referenced in the recommendation pertaining to the resources being used or sought for the proposal. The table can be adjusted to add other participating departments or to illustrate other timeframes (e.g., a three-year proposal). The table may include an ongoing resource column if supported by the proposal’s objectives, analysis and requirements. However, efforts should be made to develop proposals that have a clear and finite period of operation.

If the proposal is unfunded, the MC must note that if an amount lower than the requested resources is allocated, the sponsoring Minister will return to Cabinet to explain how the proposal will be implemented within the approved resource levels.

This section should also provide a detailed breakdown and analysis of the costs of the proposed approach. This should include the amount of resources projected for operations, personnel in full-time equivalents (FTEs), transfer payments, and capital, as applicable to the proposal, as set out in Table 2. The breakdown and analysis are provided for information purposes, as the Treasury Board is responsible for approving program expenditures.

Table 2

Department X (\$ millions)	20xx- 20xx	20xx- 20xx	20xx- 20xx	20xx- 20xx	20xx- 20xx	5-Yr Total	Remaining Amortizati on	On- going
ACCRUAL PROFILE								
Operations								
FTEs								
Transfer Payments								
Capital								
Other								
TOTAL								
CASH PROFILE ( ) same as accrual								
Operations								
FTEs								
Transfer Payments								
Capital								
Other								
TOTAL								

If more than one department has a role in the proposed initiative, a separate detailed table for each department should be provided. Drafters should clearly indicate which of the categories listed in the table provided above do not apply to the proposal.

In terms of cost analysis, drafters should also clearly explain any assumptions on which their analysis and projected resource requirements are based. For example, these assumptions could pertain to the scope, timeline, departmental



capacity or program design of the proposal, as well as to assumptions regarding client eligibility and uptake, future market conditions, environmental context and other factors..

Drafters should refer to the Supplementary Information Section and seek the guidance of their PCO analyst if they believe they cannot fully set out detailed cost breakdowns and costing assumptions within the MC page limits.

Drafters should set out the arguments for and evidence supporting the proposed approach, including the reasoning underpinning the instruments selected for the proposal. Information on providing citations for factual evidence can be found under [Formatting Requirements](#).

Drafters should also explain the positive and negative consequences of proceeding and not proceeding with the proposed approach, taking care not to duplicate information provided in other sections. The MC should also set out any trade-offs the Government would have to accept in adopting the recommended course of action, as well as any identified risks or limitations the approach may have for achieving its policy objectives. Drafters should indicate the strategies that would be adopted to mitigate these risks and challenges.

This section should also set out the proposed option's expected results and how performance will be measured, including by identifying key indicators. The planned evaluation and audit plan should also be outlined.

This section should also provide alternative means of addressing the issue raised by the MC. Two alternative options are typically adequate to support Ministers' discussion on how best to address the issues raised in the MC. However, drafters should discuss with their PCO analyst whether it would be appropriate to offer a different number of options.

Similar to the proposed approach, this section should describe what course of action could be pursued under the alternative options. These alternative options should present viable and credible means to achieve the intended results rather than options that simply encourage a favourable view of the proposed approach.

Information on alternative options must include the possible instruments and the costs on a cash and accrual basis. Drafters can refer to rather than repeat background information that has already been provided in relation to the proposed approach. However, the alternative options must be presented as stand-alone initiatives rather than compared with the analysis and components of the proposed approach.

Drafters should also objectively set out the strengths and weaknesses of the alternative options. This section should also indicate whether it is anticipated that stakeholders would support any of the alternative options over the proposed approach.

### *Considerations*

This section highlights factors that Ministers should or may wish to take into consideration when discussing the proposal. The section is organized into two categories: considerations that must be referenced in the MR and other considerations that may be relevant to the particular MC's subject matter. For the first category, this section must state whether or not the following considerations apply to the proposal:

- Privacy impacts;
- *Official Languages Act* requirements; and
- Gender-based analysis.

If any of the considerations outlined above are applicable to the issue being addressed in the MC, drafters should provide additional information on their relevance. Linkages should be made as necessary to information provided in other sections, particularly with regard to risks and strategies.

For the second category, the section should set out any additional factors that would be relevant to Ministers' discussion. Such considerations can be drawn from a variety of sources and touch on a number of issues and population groups. The following list provided in the MC template is not exhaustive or prescriptive but rather provides examples of the kinds of additional information that may be relevant:

- Legal risk assessment, including Charter and trade law analysis (e.g., international agreement obligations);
- Relevant reviews on the issue (e.g., Auditor General reports, spending reviews, internal audits and program evaluations);
- Horizontal policy impacts (i.e., impacts for other federal policies, etc.);
- The application of the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals;
- Provincial/territorial or regional considerations and strategies, including federal spending power considerations;
- Private and voluntary sector implications; and
- International and security perspectives.

While it is not necessary to note when considerations in this category do not apply, they are often important factors in policy and program development and implementation that should be brought to Ministers' attention. In instances where these and other considerations are pertinent, drafters should ensure that sufficient information is provided so that Ministers understand why the factors are relevant to the issue. As with the mandatory considerations, links should be made with information provided in the Rationale and Proposed Approach and Options sections.

If drafters are including a legal risk assessment as a consideration, they should indicate the likelihood of a legal challenge being initiated, as well as the likelihood of the challenge being successful. If there is an appreciable likelihood of success, the MC should also note the likely remedy to be ordered.

It is highly likely that information on provincial and territorial perspectives and on their potential involvement in the proposed initiative will be relevant for Ministers' discussion of the proposals. Drafters should consult their departments' intergovernmental units and their PCO counterpart, who may in turn, when appropriate, consult with the Federal-Provincial-Territorial Relations Branch of PCO, to determine what information should be included in the MC.

### *Due Diligence*

This section notes that the Chief Financial Officer (CFO) of the sponsoring Minister's department has reviewed the MC. This section also reflects the CFO's attestation to the sufficiency for decision-making purposes of the information provided in the MC on the financial, asset and human resource implications of the proposed and alternative options. If existing departmental resources are being reallocated to fund the proposal, the approach for the reallocation should be provided in this section.

The attestation should summarize the CFO's application of the six assertion statements set out in TBS' *Guideline on Chief Financial Officer Attestation for Cabinet Submissions*. This section should also indicate any material

observations on which the attestation assertions are based or caveats that may qualify the CFO's position. Linkages should be made, as appropriate, to the analysis provided in the Proposed Approach and Options section. While the CFO's attestation letter cannot be appended to the MC, the content of the letter can be drawn upon for drafting this section.

Drafters should consult the Supplementary Information Section if the CFO believes there is insufficient space in the MC to fully set out the conclusion based on the six assertions or to explain any underlying observations.

More information on preparing attestations can be found in the *Guideline on Chief Financial Officer Attestation for Cabinet Submissions*. Drafters should engage their CFO at an early stage of MC drafting so that the CFO is aware of any financial assumptions, risks and other issues while undertaking a due diligence review and preparing the attestation to support the drafting of this section. This early engagement will ensure that attestations inform the development of the MC and preparation of subsequent Treasury Board submissions. CFOs may also wish to consult the Office of the Comptroller General of TBS on how best to provide their attestation.

#### **4.1.2 Annexes**

There are three standard annexes to the MR:

- The Implementation Plan;
- The Strategic Communications Plan; and
- The Parliamentary Plan.

Most MCs will require all three annexes. However, as will be set out below, there are some exceptions to this requirement. Drafters may wish to consult with their PCO analyst at an early stage to determine whether any exceptions would apply to their MC.

In addition, it may be necessary to include additional attachments to the MC as annexes, such as papers or reports that the Minister wishes to release, drafting instructions for proposed legislation, negotiating instructions for concluding treaties or other agreements, or an engagement plan related to the proposal. These attachments must be approved by PCO.

##### *Implementation Plan Annex*

The Implementation Plan annex links to the Proposed Approach and Options section of the MR as it provides additional detail on how the proposed option would be implemented, operated and terminated over its timeline. This information should include key milestones in the timeline and the expected results at key junctures (e.g., the end of the fiscal year or annual anniversary of the initiative's launch, as appropriate). The Implementation Plan should be consistent with the spending profile set out in the financial tables provided in the MR.

In terms of the timeline, particular reference should be made to the point at which benefits should flow to the targeted population and other beneficiaries, when stated objectives would be achieved, and at which point the initiative would be wound up.

A broad outline of the performance measurement strategy should also be provided. This could include the anticipated outputs and the means by which they will be measured. A more detailed performance measurement strategy continues to be a requirement for Treasury Board submissions. Drafters should work closely with their PCO and TBS analysts to ensure that this requirement is met for both the MC and TB submission.

The Implementation Plan annex has a maximum length of two pages. It is not required for responses to parliamentary standing committee reports, Private Members' Bills, and government legislation and treaties that do not have associated program implementation requirements.

### *Strategic Communications Plan Annex*

The Strategic Communications Plan annex sets out the strategy for announcing the proposed initiative. It has a maximum length of two pages and is required for all MCs. This annex should be developed jointly by the Minister's Office and the department or agency. The Minister's Office supplies political analysis and strategy while departmental officials develop public service advice (e.g., background analysis).

This annex should identify the objectives and expected results for the communications strategy. Drafters should indicate how the proposed initiative fits into the Government's agenda. The annex should outline any significant considerations for the proposed strategy and set out how they would be managed.

This annex should also provide an analysis of the environment in which the proposed announcement would be made, including reference to available public opinion research and analysis of the views and positions of stakeholders, provincial-territorial governments and media on the issue addressed in the MC. With regard to stakeholders, the analysis should specify which stakeholders were consulted in the development of the proposal, the method of consultation and their reactions during this process. Based on the environment analysis, the annex should describe the risks and opportunities of the communications strategy.

Building on the public environment analysis, the annex should describe the anticipated reaction from various audiences, including stakeholders. Broad and generalized statements about the general public should be avoided in favour of describing the potential reaction of specific groups.

The annex should also give a broad overview of the storyline and core messages for the announcement, including the links to Government priorities and the proposals' benefits for Canadians.

An explanation of the anticipated profile, scope and reach of the announcement (e.g., regional, national) should be provided. The annex should set out any outreach to media and stakeholders, and any events that are planned to take place in conjunction with the announcement. The annex should indicate any measures that would be taken to sustain the strategy's message over time, including the proposed initiative's benefits to Canadians.

While the annex provides a broad overview of the communications approach, departments and agencies are expected to further develop detailed communications products, including the vehicles for announcing the initiative and the possible use of social media, well in advance of the proposal's launch. Drafters should work closely with PCO Communications on development of the strategy, as well as on any further required communications approvals.

### *Parliamentary Plan Annex*

The Parliamentary Plan annex sets out the strategy for addressing any matters concerning the proposal that may be raised in Parliament. It has a maximum length of two pages and is required for all MCs. The Parliamentary Plan may provide details, for example, on how legislation will be advanced, the possible steps that follow the tabling of a response to a standing committee report, or how parliamentarians' questions regarding the proposal will be answered.

In this annex, responsibilities should be assigned to Ministers' Offices as well as to drafters.

Each Minister's Office is asked to provide information on the Minister's consultations that are required with the Government caucus, including the consultations with caucus advisory committees, the results of the consultations and on approaches for addressing any outstanding issues. In cases where caucus consultations are not feasible, the Minister's Office should provide an explanation in the Annex, and drafters should ensure that their PCO counterpart is aware of this.

Ministers' Offices must also provide information on previous positions the Government has taken on the issue, including while in opposition and in election platforms.

Drafters should work with their Ministers' Offices to jointly prepare a parliamentary environment analysis. This analysis should describe the anticipated reaction of opposition parties, and indicate areas of agreement and disagreement between the Government and opposition positions and between opposition parties. Reference should be made as appropriate to opposition parties' election platforms and commitments, and to previous parliamentary statements.

If the introduction of legislation is proposed, drafters should work with their Ministers' Offices to jointly develop a strategy for securing House and Senate passage of the legislation. The strategy should indicate the extent of expected opposition support for the legislation. If such support is not expected, the strategy should state how opposition concerns will be addressed, including pressures to amend the bill, the likely amendments and their consequences and costs, and the Minister's approach for dealing with such amendments.

The strategy should also indicate the target date of introduction, whether the bill would be introduced in the House of Commons or Senate, whether the Minister would refer the bill to the appropriate standing committee after first or second reading, and whether there are any non-negotiable deadlines by which legislation must be successfully concluded (e.g., meeting international commitments).

In preparing the Parliamentary Plan, department and agency drafters should work closely with their parliamentary affairs units. They may also wish to consult with the PCO Legislation and House Planning Secretariat.

#### **4.1.3 *Supplementary Information***

The goal of setting page limits for the English and French versions of the MR and its annexes is to provide clear, concise and pertinent information to Ministers. These limits cannot be exceeded. Drafters should take advantage of interdepartmental meetings to convey any additional detailed information that would assist other departments and agencies in providing their views on the proposal and in briefing their Ministers.

There may be exceptional cases in which proposals cannot be adequately described and explained within the maximum page limit. Such cases could include proposals in which several departments and agencies will play an implementation role or that will be pursued through a large range of policy instruments. In addition, some proposals may have a wider than usual range of complex considerations to be weighed.

To ensure that Ministers have sufficient information on which to base their decisions in these exceptional cases, drafters may also add an additional Detailed Proposal Description Annex to the MC or prepare an aide-mémoire to accompany their proposal. It should be noted that PCO and PMO approval for

the use of either of these supplementary products must be obtained before drafting begins on them.

### *Detailed Proposal Description Annex*

This optional annex can be used, with prior PCO and PMO approval, to provide additional information on the design of the proposed program or policy. The annex could be used to provide additional context, evidence and analysis to ensure a full understanding of a complex proposal. This annex can also be used to provide additional information on the proposal's costing and on the analysis undertaken to prepare the CFO attestation as set out in the Due Diligence section above.

Drafters should not duplicate information provided in other components of the MC, particularly the MR and Implementation Plan. The annex is designed for supplementary information and should not be used to provide advice in addition to that in the MR. The annex should focus solely on the Minister's recommended approach and not the alternative options.

The maximum length of the annex is two pages, which can be extended to six pages following consultation with and approval by PCO and PMO.

### *Aide-mémoire*

An aide-mémoire could be drafted as a companion document to the MC if the detailed proposal description annex is still insufficient to provide additional information. The development of an aide-mémoire should be reserved for the most complex of proposals.

Drafters must obtain PCO and PMO approval for the inclusion of an aide-mémoire before they begin drafting.

More information on drafting aide-mémoires can be found under the [Aide-mémoires](#) section below.

## **4.1.4 Formatting Requirements**

The format and presentation of MCs must meet specific requirements. These guidelines can be found in [Annex C](#) of this Guide. The font style, font size and page margins cannot be changed to accommodate additional information. Improperly-formatted MCs will not be accepted by the PCO Cabinet Papers System Unit and will be returned to the submitting department or agency for editing.

Drafters are required to provide references to the material from which evidence and factual information provided in the MC is drawn. Footnotes and endnotes are not permitted. Instead, drafters should note the author, title and year of the document in parentheses following the relevant text. Drafters should assist other departments and agencies in obtaining copies of these documents upon request.

While the headings in the MC template may not be altered or removed, drafters are encouraged to add sub-headings if they improve the presentation and information flow of the document.

## **4.2 Drafting Guidance for Particular Proposals**

### **4.2.1 Government Legislation**

The content of the Government's legislative program—which bills will be introduced and when during a parliamentary session—is ultimately the responsibility of the Prime Minister, assisted by the Leaders of the Government in

the House of Commons and in the Senate. The main thrusts of the program are determined by Cabinet. The Leader of the Government in the House of Commons coordinates the process of translating Cabinet's policy decisions into bills to be placed before the House of Commons.

Once a prospective bill is placed on the legislative program, the first stage in the legislative process is for the Minister to bring forward for Cabinet's approval a policy proposal to introduce a new statute or to amend existing statutes. Such MCs generally follow the information requirements set out [above](#), with some adjustments.

An MC on a legislative proposal should seek policy approval for the legislation's subject matter and approach, as well as authorization to draft the legislation. In other words, bills should generally not be drafted or included in MCs until Cabinet approval is secured, except in exceptional circumstances and with the Government House Leader's approval.

Instead, the MC should attach and seek approval for drafting instructions that describe the content of the bill. The drafting instructions should be set out in clear and understandable language and be sufficiently detailed so that Ministers can make an informed decision and so that Department of Justice officials have a clear framework for drafting the bill. The drafting instructions should be reviewed by both policy and legal experts in the department to ensure these objectives are met.

If the bill departs in any material way from the approved drafting instructions, the sponsoring Minister may need to seek approvals for the new approach. In cases of urgent legislation, departments and agencies can request legislative pre-drafting authority by having their Deputy Minister write to the Legislation and House Planning Secretariat of PCO.

It should be noted the Prime Minister's prior approval should be sought for any legislative matter falling under his prerogative, including the machinery of government and the creation of new Governor in Council positions.

The MR should propose that the Leader of the Government in the House of Commons be authorized to make arrangements for the bill's introduction and that the Parliamentary Plan be implemented in consultation with the Leaders of the Government in the House of Commons and in the Senate and PMO. The Leader of the Government in the House of Commons is supported in this regard by his or her own exempt staff and Parliamentary Secretary, PCO, the Deputy Leader of the Government in the House and the Chief Government Whip.

After Cabinet has approved a Minister's proposal, a bill based on the drafting instructions is developed by the Department of Justice. Once the bill is prepared in both official languages and approved by the sponsoring Minister, the Government House Leader undertakes a final review of the bill with the responsible Minister to ensure its consistency with Cabinet's direction and its readiness with respect to the parliamentary strategy.

The sponsoring department prepares material for the Government's use in explaining the bill in Parliament, including speeches for the House of Commons and the Senate and for parliamentary standing committee review.

The funding implications, such the proposed legislation's costs to federal organizations, need to be clearly stated and a source of funds identified if one exists, as for any other MC.

Drafters preparing legislative proposals for consideration may wish to review the [Guide to Making Federal Acts and Regulations](#). Drafters should also consult the parliamentary affairs personnel of their department or agency or the Legislation



and House Planning Secretariat of PCO to ensure that they are following the appropriate process for legislative proposals.

Information on the legislative process in Parliament can be found on the [Parliament of Canada website](#).

#### **4.2.2. *Private Members' Business***

Members of Parliament and Senators from any party may introduce legislation or motions for Parliament's consideration. The Government can choose to support a Private Member's bill (PMB) either in its proposed form or with amendments, or to oppose it. Similarly, the Government could support, oppose or seek to modify a motion tabled by a Member of Parliament or Senator. Once PMBs and motions are placed on the Order Paper in the House of Commons or are introduced in the Senate, a Minister is assigned to develop the Government position for each item and to seek Cabinet approval for the proposed approach.

PMBs sponsored by either Government or opposition MPs that become law can have implications for government policies and programs. Accordingly, if a Minister proposes that the Government support a PMB either in full or with amendments, the standard MC template described [above](#) should be used to provide Cabinet with sufficient information on the merits of the proposed approach, the risks and trade-offs of so proceeding, and the considerations to bear in mind. If the Minister proposes to table amendments to the legislation, the MC must provide sufficient detail, including drafting instructions, so that the changes can be discussed by Ministers and so that legislative drafters have sufficient direction to proceed.

The standard MC template should also be used if a Minister proposes to not support a PMB introduced by a Government MP.

If a Minister proposes not to support an opposition MP's PMB, the Ministerial Recommendations (MR) template attached in [Annex B](#) should be used. The MR template is a streamlined version of the MC template that focuses on the essential information required by Cabinet to decide on the Minister's proposed approach for such PMBs.

Similarly, the standard MC template should be used if a Minister proposes that the Government support a motion or oppose a motion introduced by a Government MP. The abbreviated template can be used if the Minister proposes to oppose a motion tabled by an Opposition MP.

Drafters should verify which template to use with their PCO analyst. The abbreviated MR template should not be used for other Cabinet proposals except as indicated in this document and with PCO and PMO's prior approval.

#### **4.2.3 *Government Responses to Parliamentary Standing Committee Reports***

Standing committees in both the House of Commons and the Senate may issue reports on a policy matter and request that the Government provide a response to the report's recommendations. As with Private Members' Business, Ministers are assigned to prepare the Government Response to standing committee reports related to their areas of responsibility.

The abbreviated MR template attached in [Annex B](#) and described under the Private Member's Business section [above](#) should be used to set out the proposed approach for responding to the parliamentary standing committee report. The proposed Government Response should be attached to the MR for Ministers' consideration.



As standing committees generally request that the Government provide a response within a specific number of days, drafters should factor in these timelines in addition to those of the Cabinet decision-making system in developing the MC and Government Response.

### **4.3 Presentations**

Presentations, or “decks,” may be used for a variety of purposes in Cabinet or committee meetings. Ministers may use presentations in conjunction with an MC to guide discussion on the MC’s recommendations by highlighting key issues, program elements and the decisions being sought. Ministers may also use presentations to set out a communications strategy or other specific operational issues. However, Ministers can only bring forward stand-alone presentations to seek input from their colleagues on a policy area with the permission of the Prime Minister. Otherwise, every effort should be made to avoid using presentations for preliminary policy discussions for items that will later be addressed in MCs.

The following guidelines can be used for the format, information requirements and development of presentations to Cabinet and PCO-supported committees on policy issues within the parameters noted above. Drafters should consult with their PCO analysts on the structure of non-policy presentations such as communications overviews.

The purpose of these guidelines is to ensure that presentations fully support committees’ deliberations by providing Ministers with timely information and clear decision points on policy direction for Ministers’ discussion.

#### **4.3.1 Format and Information Requirements**

Finalized presentations submitted to PCO should be accompanied by a cover memo with the signature of the presenting Minister in a signature block similar to that of an MC.

Presentations must be made by one sponsoring Minister. However, supporting Ministers should be prepared with responsive speaking points as the chairperson may turn to them for comment during the discussion, if appropriate.

Presentations have a maximum length of 12 slides, including the title slide. The maximum length is the same for each of the English and French versions. Any supplementary information (e.g., graphs, tables, past accomplishments, etc.) should be included in annex slides, which do not count towards the slide limit. However, annex slides are for reference only and should not be presented on screen during the Minister’s presentation.

Each slide of the presentation, including the title and annex slides, must be marked “SECRET” in the upper right corner.

There should be a high contrast between the text and background in the presentation (e.g., black and white) in order to facilitate ease of reading on screen. All presentations must contain the following sections:

- Title page (slide 1);
- Key Outcomes / Recommendations (slide 2);
- Context / Analysis (slides 3—11); and
- Summary (slide 12)

Where applied, no exceptions to these guidelines will be made without the agreement of the Assistant Secretary of the responsible PCO secretariat in consultation with PMO.

### *Title Page*

The first slide of the presentation must contain the title of the presentation. Drafters can decide whether or not to include the Minister's title (e.g., "Minister of") but they should not list the date of the meeting or reference the committee in question.

### *Key Outcomes / Recommendations*

Similar to the MR section of an MC, this slide should summarize the objective of the presentation and clearly set out, in concise bullet form, the key outcomes / recommendations for which the Minister is seeking input from the committee. However, in contrast to a typical MC, these key outcomes / recommendations need not contain detailed program or costing recommendations, although that may be appropriate in some circumstances.

Rather, the key outcomes / recommendations slide could focus on specific directions that the Minister wishes to further pursue, recommend one of several options under consideration, propose principles that would inform future work, or propose the dropping of certain proposals from consideration. The slide should clearly seek support for outcomes that will advance the policy or program development process.

This section should not exceed one slide.

### *Context / Analysis*

While there are no specific information requirements for the remainder of the presentation, this section should clearly and concisely provide information in support of the discussion. The following information could be included:

- Limited background information, recent developments;
- Analysis and key considerations;
- Options for consideration;
- Costing for all options;
- Proposed implementation approach (timing, next steps); and
- Communications (stakeholders' views, key messages, strategies).

### *Summary*

The final slide should summarize the objective of the presentation (i.e., key outcomes sought/recommendations). This slide would be kept on the screen following the presentation in order to guide Ministers during their deliberations.

## **4.4 Aide-mémoires**

Aide-mémoires provide factual information and analysis in support of Ministers' exploratory discussions of non-decision items. As noted [above](#), aide-mémoires can also be used in conjunction with an MC to provide additional in-depth information on complex policy issues.

There are no formal information or format requirements for an aide-mémoire and they are not formally signed by the sponsoring Minister(s). In terms of content, drafters should ensure that the subject matter is clearly set out and that information, evidence and analysis are provided in a concise and neutral fashion. Drafters may also refer to the requirements for MCs and presentations for guidance in terms of considerations and content. Similar to presentations,

aide-mémoires supporting strategic or preliminary policy discussion should not be brought forward except at the request of the Prime Minister.

The preparation and submission of aide-mémoires follow the same process as other Cabinet documents. Drafters should discuss the proposed aide-mémoire with their PCO analyst at the earliest opportunity and hold central agencies and interdepartmental meetings in advance of its submission to PCO.

## **5. Process for Developing Cabinet Documents**

### **5.1 Central Agency Consultations**

Early drafts of MCs, presentations and aide-mémoires should be shared with the appropriate PCO, Department of Finance and TBS analysts. Consulting with central agencies at an early stage helps ensure that the proposal is aligned with the Government's overall agenda, and to identify any policy, fiscal and implementation issues that should be addressed before the document is submitted.

Unless otherwise agreed with PCO, drafters must hold at least one meeting with central agency analysts well before documents are submitted for Cabinet consideration. This meeting should be scheduled in consultation with PCO.

### **5.2 Interdepartmental Meetings**

Drafters are responsible for ensuring that other affected departments and agencies are adequately consulted in advance about upcoming proposals and that coordination across portfolios is pursued. These consultations ensure that cross-cutting issues are recognized and properly addressed in proposals and that other Ministers are prepared for Cabinet discussion. To this end, drafters should also share an early version of the Cabinet paper with other departments and agencies.

In addition, an interdepartmental meeting must be held after the central agencies meeting and central agency comments have been addressed. Central agency analysts should be invited to participate in the interdepartmental meeting. For presentations, interdepartmental meetings are required at least three weeks prior to the scheduled Cabinet committee meeting date.

These interdepartmental consultations provide an opportunity for drafters to receive expert advice from their colleagues and for other departments and agencies to obtain additional information with which to brief their Ministers. Interdepartmental meetings are also a forum for addressing any concerns raised by other departments and agencies. When departments directly involved in a proposal differ on a matter, the dispute should not be referred to Cabinet or a Cabinet committee until all other means of resolving the issue have been exhausted.

The Clerk's meetings with Deputy Ministers also provide an opportunity to review high-priority policy issues in advance of their submission for Cabinet consideration.

### **5.3 Submitting Cabinet Documents**

Once Cabinet documents have addressed, as appropriate, the input received through central agency and departmental consultations, and have been reviewed by senior departmental officials, they should be provided to the sponsoring Ministers for approval and, in the case of MCs, signature. These approvals must be completed prior to their submission.

Departments are required to submit all documents in both official languages and in the required format to the Cabinet Papers System Unit of PCO. Departments are required to provide one signed paper copy and one electronic copy in a secure format. The Cabinet Liaison Unit in each department and agency can make arrangements for the documents to be delivered to PCO.

These submission procedures apply to presentations as well. The package to the Cabinet Papers System Unit must include the Minister-signed cover memo plus two hard copies of the presentation (both English and French). A CD or USB stick with electronic copies of the presentation must also be included. The CD or USB stick should be labelled and classified no lower than SECRET. The presenting Minister's speaking points (in a single language) should be provided to the responsible PCO secretariat. The responsive speaking points of supporting Ministers can be delivered directly to the PCO secretariat.

#### **5.4 Submission Deadlines**

Departments are required to submit all Cabinet documents for Cabinet and committees chaired by the Prime Minister at least three business days in advance of a meeting and for all other Cabinet committees at least five business days in advance of the committee meeting. These deadlines should be strictly observed. Should documents not be received by the PCO Cabinet Papers System Unit by the above-noted deadlines, the related item will be removed from the agenda and rescheduled for discussion at a future meeting, except when PCO determines that there are extenuating circumstances.

#### **5.5 Letters to the Chairperson**

Letters are accepted, via the chairperson, from Ministers who are unable to attend Cabinet or a Cabinet committee meeting and wish to convey their views. Letters should be addressed to the chairperson and submitted in both official languages at least one business day in advance of a meeting to the appropriate Assistant Secretary.

#### **5.6 Officials' Attendance at Cabinet and Committee Meetings**

One member of each sponsoring Minister's exempt staff may accompany the Minister into a meeting for each main agenda item.

One official from each sponsoring Minister's department or agency may accompany the Minister into a meeting for each main agenda item, as a resource. For Cabinet and Cabinet committees chaired by the Prime Minister, this official will be the Minister's Deputy Head or Associate Deputy Head; for other committees, the official can be the Deputy Head, Associate Deputy Head, or a designated Assistant Deputy Minister-equivalent. One additional official may wait in the anteroom while the Minister is presenting an agenda item, as an additional resource. If the presenting Minister is using a PowerPoint presentation, the department or agency must provide a technician to run the presentation.

In terms of other officials attending Cabinet policy committee meetings, one Assistant Deputy Minister-equivalent official from each of the Department of Finance and TBS may be present. An Assistant Deputy Minister-equivalent from the Department of Justice may attend if the agenda item has a significant legal dimension.

Departments and agencies must submit the names of their Cabinet or Cabinet committee meeting attendees, both officials and exempt staff, to the responsible PCO secretariat at least one day in advance of a meeting so that they can be included on the security list. Departments and agencies must ensure beforehand that their attendees have a valid security clearance.

## 5.7 Support During Meetings

Officials who enter the Cabinet room are only permitted to stay for their particular item and not for the duration of the meeting. Wireless mobile devices such as cellular phones, BlackBerry smartphones and tablets (e.g., iPads) are not permitted in the Cabinet room and should be locked in the secure cabinet provided.

During the course of a discussion, senior officials may be asked to answer technical questions on behalf of a presenting Minister. Officials should only speak if invited by the chairperson or their Minister. Should this happen, officials should approach the podium provided in the Cabinet room to answer the question(s).

## 5.8 Committee Decisions

Once a Cabinet committee has concluded its deliberations, it will issue a Committee Recommendation (CR). This forms the committee's recommendation as to what decisions should be taken by Cabinet or by a committee that has been delegated the ability to ratify or approve other committees' recommendations. The CR is based on the recommendations put forward by the sponsoring Minister but can be altered by the committee.

The CR is then submitted to Cabinet or ratifying committee for its consideration. A Record of Decision (RD) is then issued that either endorses the CR or amends it. CRs and RDs are prepared and circulated by PCO to all Ministers and Deputy Ministers. CRs and RDs are Cabinet confidences and are classified no lower than SECRET.

Additional approvals may be required following a Cabinet decision. For example, it may be necessary to obtain a source of funds or to obtain Treasury Board approval prior to implementation. TBS can provide additional information on Treasury Board requirements. Similarly, PCO can provide advice on any Governor in Council approvals that may be needed.

Initiatives should not be announced until all approvals are in place. Announcements should be coordinated with PMO and with PCO.

## 6. Handling Cabinet Documents

Cabinet documents—MCs, presentations, aide-mémoires, CRs, RDs, Treasury Board submissions and agendas—are confidences of the Queen's Privy Council for Canada. Cabinet documents must be safeguarded in accordance with the security requirements established by PCO. Notably, authorized individuals (i.e., persons who have a valid security clearance and a need to know the information to perform their duties) are required to:

- Use approved means, including information technology systems, to prepare, store, and transmit Cabinet documents;
- Mark such documents no lower than SECRET on the upper right corner of every page;
- Handle such information in restricted-access areas that are approved for its level of sensitivity;
- Use security equipment and procedures approved for the level of sensitivity of the information to transport, transmit, store and dispose of Cabinet documents;

- Ensure that the information is not discussed with, viewed or overheard by unauthorized individuals; and
- Avoid discussing such information on cellular telephones or other wireless devices (e.g., BlackBerry, iPad, Bluetooth headset), unless approved secure means are used.

For additional security-related information, drafters may consult the [\*Policy on the Security of Cabinet Confidences\*](#) or contact PCO's Security Operations Division.

Annex A: Memorandum to Cabinet Template

Memorandum to Cabinet

Mémoire au Cabinet

TITLE OF THE  
MEMORANDUM  
TO CABINET

TITRE DU MÉMOIRE  
AU CABINET

Date

Date

Minister of XXXXXXX

Ministre de/du/des/de la XXXXX

*[Les noms des ministres promoteurs doivent figurer par ordre de préséance.]*  
*[Ceci est un modèle. Sur la page titre, l'ordre des langues officielles peut être inversé.]*

*[Sponsoring Ministers should be listed in order of precedence.] [This is an example only. Either Official Language can appear on the left or right on the title page.]*

Table of Contents

Section	Page Number
<u>Ministerial Recommendations</u>	
Issue	#
Recommendations	#
Rationale	#
Proposed Approach and Options	#
Considerations	#
Due Diligence	#
 Annex X to the MR: Implementation Plan	 #
Annex Y to the MR: Strategic Communications Plan	#
Annex Z to the MR: Parliamentary Plan	#



**MINISTERIAL RECOMMENDATIONS**

*(Maximum ten pages in English plus cover page and table of contents)  
(Font: 14 points. Please alternate English and French pages)*

**ISSUE**

*One sentence summary of question to be discussed and resolved.*

**RECOMMENDATIONS**

It is recommended that:

1.     **XXX**

*Proposed course of action, for which the sponsoring minister(s) is/are seeking Cabinet support.*

- *specifies roles and authorities of respective ministers in implementing the decision;*
- *indicates use of key policy instrument(s)(e.g., legislative/regulatory direction, etc); and,*
- *indicates the reallocation plan, funding implications, source of funds, profile and funding required including implementation costs. Report cash and accrual.*

*Serves as the basis for the Committee Recommendation (CR) and the Cabinet Record of Decision (RD).*

**RATIONALE**

- 2.     *Clearly outline why action is required, including origin of the issue, any gaps in existing departmental and/or horizontal programs and policies; and,*
- 3.     *Link reasons for action to strategic agenda/SFT/previous Cabinet direction provided under the current Ministry.*

**PROPOSED APPROACH AND OPTIONS**

4.     **Proposed Approach**

- *clearly outline the proposed policy/program approach, including timeframe for implementation and for program wind-up, and provide detailed breakdown (e.g., proposed FTE, capital expenditures) and analysis of costs, including any assumptions on which the costing is based;*
- *present the principal arguments and evidence in support of the recommended approach/option, including instrument choice analysis, possible adverse consequences of both proceeding and not proceeding, what trade-offs the proposed approach would require the*

*Government to accept, limitations of the approach in addressing the policy objectives, and strategies for addressing key risks/challenges; and,*

- *articulate expected results and how they will be measured (i.e., identify key indicators such as social, economic, environmental, etc.), and outline the planned evaluation and audit plan.*

5. Alternative Options

- *outline the alternative options that Ministers could consider (including the cost profile, including cash and accrual, and instrument choice analysis); and,*
- *present the principal strengths and weaknesses of options (including whether principal stakeholders support any of the alternative options).*

CONSIDERATIONS

6. *The MR must indicate whether or not the following considerations are applicable, and provide details as appropriate:*

- *privacy impacts;*
- *Official Languages Act requirements; and,*
- *gender-based analysis.*

7. *The MR may also include other considerations, where appropriate. Examples of possible additional considerations include:*

- *legal risk assessment including Charter and trade;*
- *provide information on any relevant reviews (e.g., Auditor General reports, strategic reviews, internal audits and program evaluations);*
- *horizontal policy impacts (e.g., impacts for other federal policies, etc.);*
- *sustainable development aspects and results of Strategic Environmental Assessments (as per the 1999 Cabinet Directive on Environmental Assessment of Policy, Plan and Program Proposals);*
- *provincial/territorial or regional considerations and strategies, including federal spending power considerations;*
- *private and voluntary sector implications; and,*
- *international perspectives.*

DUE DILIGENCE

8. Financial, Asset and HR Implications

*Departmental Comptroller sign-off. Include reallocation strategies and reference any assumptions or caveats on which the sign-off is based.*

---

Minister of XXXX

and

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Other Minister(s), if required  
(in order of precedence)

**ANNEX X TO THE MR****IMPLEMENTATION PLAN**  
**(Maximum two pages)**

*Provide information on the key milestones for the recommended option, including anticipated stage of delivery, expected results at the end of each fiscal year (or anniversary of initiating the proposed program), and links to the proposed spending profile.*

*Reference should be made to the point in the timeline at which benefits will accrue to the targeted population and other beneficiaries, when objectives will be achieved and when the program will be wound up.*

*Include an outline of the performance measurement strategy.*

ANNEX Y TO THE MR

STRATEGIC COMMUNICATIONS PLAN  
(Two pages maximum)

*The strategic communications plan should be provided for all Ministerial Recommendations (MRs). The Annex should be developed jointly by the Minister’s Office and the Department.*

<p><b>1. COMMUNICATIONS OBJECTIVES AND CONSIDERATIONS</b> Identify 2-3 objectives that will be achieved through the communications plan, outline expected results, and link this initiative to the Government’s agenda. Outline significant communications considerations and how these would be managed.</p>
<p><b>2. ANALYSIS OF PUBLIC ENVIRONMENT</b> Assess the public environment and identify risks/opportunities therein, including quantitative and qualitative data available through public opinion research data and analysis of previous stakeholder engagement and consultations, federal-provincial positions and media coverage. For stakeholders, identify who was consulted, the method of consultation, and their reactions.</p>
<p><b>3. ANTICIPATED REACTION</b> Provide examples of likely positive and negative reactions from various audiences (reference should be made to specific groups rather than to broad audiences such as the general public), including stakeholders.</p>
<p><b>4. STORYLINE AND CORE GOVERNMENT MESSAGES</b> In 5-6 bullets, outline the announcement storyline, relate it to Government priorities, and provide core messages. In plain language, describe the benefits and results for Canadians.</p>
<p><b>5. ANNOUNCEMENT STRATEGY</b> Indicate the profile of the announcement as well as its scope (e.g., national/regional/international). Include details on planned media and stakeholder outreach, as well as events to support the announcement. Describe measures to sustain the message and a focus on impacts and benefits for Canadians.</p>

ANNEX Z TO THE MR

PARLIAMENTARY PLAN  
(Maximum two pages)

*This annex should be provided for all Ministerial Recommendations (MRs).*

<p><b>1. REPORT OF CAUCUS CONSULTATION</b></p> <p>Provide details on consultations with caucus, including those undertaken with the Caucus Advisory Committee, on the proposal. Indicate whether caucus is supportive and outline the Minister’s approach for addressing any outstanding issues that may have been raised during consultations. If consultations have not been undertaken, the rationale must be provided. <i>(To be prepared by the Minister’s Office)</i></p>
<p><b>2. PRIOR POLICY AND POLITICAL POSITIONS</b></p> <p>Indicate whether the Government has previously taken a position on the issue in question, either in a past or current election platform; during debate or votes while in opposition; or in any similar previous fashion, and indicating specifically what those positions were. <i>(To be prepared by the Minister’s Office)</i></p>
<p><b>3. PARLIAMENTARY ENVIRONMENT ANALYSIS</b></p> <p>Outline expected reaction of all parties in the House and Senate. Highlight any potential areas of agreement between each Party and the Government position, as well as differences. Identify any shared positions and differences among Opposition Parties. Refer to platform and campaign commitments where applicable, as well as past positions in Parliament. <i>(To be prepared by the Minister’s Office and the Department)</i></p>
<p><b>4. LEGISLATIVE PLAN (if applicable)</b></p> <p>Indicate proposed timelines, including date and location (House or Senate) for introduction and plan for referral to Parliamentary Committee (i.e., before or after Second Reading) and any fixed deadlines or obligations (e.g., international commitments). <i>(To be prepared by the Minister’s Office and the Department)</i></p>
<p><b>5. PARLIAMENTARY STRATEGY</b></p> <p>Provide Minister’s strategy for securing majority support for legislative proposals, including preferred responses to potential pressures for changes, amendments that could be offered, their timing and associated costs. Also include, where appropriate, the engagement of House or Senate Committees, Take Note debates, or other Parliamentary mechanisms. <i>(To be prepared by the Minister’s Office and the Department)</i></p>

Annex B: Ministerial Recommendations Template

Ministerial Recommendations

Recommandations ministérielles

TITLE

TITRE

Date

Date

Minister of XXXXXXX

Ministre des XXXXX

*[Les noms des ministres promoteurs doivent figurer par ordre de préséance.]*  
*[Ceci est un modèle. Sur la page titre, l'ordre des langues officielles peut être inversé.]*

*[Sponsoring Ministers should be listed in order of precedence.] [This is an example only. Either Official Language can appear on the left or right on the title page.]*

Table of Contents

Section	Page Number
<u>Ministerial Recommendations</u>	
Issue	#
Recommendations	#
Proposed Approach	#
Considerations	#
Due Diligence	#
 Annex Y to the MR: Strategic Communications Plan	 #
Annex Z to the MR: Parliamentary Plan	#

**MINISTERIAL RECOMMENDATIONS**  
*(Maximum five pages in English plus cover page and table of contents)*  
*(Font : 14 points. Please alternate English and French pages)*

**ISSUE**

*One sentence summary of question to be discussed and resolved.*

**RECOMMENDATIONS**

It is recommended that:

1.     XXX

*Proposed course of action, for which the sponsoring minister(s) is/are seeking Cabinet support.*

- *recommends whether the Private Member’s bill should be opposed or supported; or*
- *recommends that the response to a Parliamentary Standing Committee report be tabled.*

*Serves as the basis for the Committee Recommendation (CR) and the Cabinet Record of Decision (RD).*

**PROPOSED APPROACH**

- 4.     *Clearly outline the proposed approach, including the principal arguments and evidence in support of the recommended approach/option, possible adverse consequences of both proceeding and not proceeding, what trade-offs the proposed approach would require the Government to accept, limitations of the approach in addressing the policy objectives, and strategies for addressing key risks/challenges; and,*
- 5.     *Link reasons for action to strategic agenda/SFT/previous Cabinet direction provided under the current Ministry.*

**CONSIDERATIONS**

- 6.     *The MR must indicate whether or not the following considerations are applicable, and provide details as appropriate:*
  - *privacy impacts;*
  - *Official Languages Act requirements; and,*
  - *gender-based analysis.*
- 7.     *The MR may include other considerations, where appropriate. Examples of possible additional considerations include:*



- *legal risk assessment including Charter and trade;*
- *provide information on any relevant reviews (e.g., Auditor General reports, strategic reviews, internal audits and program evaluations);*
- *horizontal policy impacts (e.g., impacts for other federal policies, etc.);*
- *sustainable development aspects and results of Strategic Environmental Assessments (as per the 1999 Cabinet Directive on Environmental Assessment of Policy, Plan and Program Proposals);*
- *provincial/territorial or regional considerations and strategies, including federal spending power considerations;*
- *private and voluntary sector implications; and,*
- *international perspectives.*

**DUE DILIGENCE**

6. Financial, Asset and HR Implications

*Departmental Comptroller sign-off. Include reallocation strategies and reference any assumptions or caveats on which the sign-off is based.*

<hr/> Minister of XXXX	and	<hr/> Other Minister(s), if required (in order of precedence)
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ANNEX Y TO THE MR

STRATEGIC COMMUNICATIONS PLAN

(Two pages maximum)

*The strategic communications plan should be provided for all Ministerial Recommendations (MRs). The Annex should be developed jointly by the Minister’s Office and the Department.*

<p><b>6. COMMUNICATIONS OBJECTIVES AND CONSIDERATIONS</b> Identify 2-3 objectives that will be achieved through the communications plan, outline expected results, and link this initiative to the Government’s agenda. Outline significant communications considerations and how these would be managed.</p>
<p><b>7. ANALYSIS OF PUBLIC ENVIRONMENT</b> Assess the public environment and identify risks/opportunities therein, including quantitative and qualitative data available through public opinion research data and analysis of previous stakeholder engagement and consultations, federal-provincial positions and media coverage. For stakeholders, identify who was consulted, the method of consultation, and their reactions.</p>
<p><b>8. ANTICIPATED REACTION</b> Provide examples of likely positive and negative reactions from various audiences (reference should be made to specific groups rather than to broad audiences such as the general public), including stakeholders.</p>
<p><b>9. STORYLINE AND CORE GOVERNMENT MESSAGES</b> In 5-6 bullets, outline the announcement storyline, relate it to Government priorities, and provide core messages. In plain language, describe the benefits and results for Canadians.</p>
<p><b>10. ANNOUNCEMENT STRATEGY</b> Indicate the profile of the announcement as well as its scope (e.g., national/regional/international). Include details on planned media and stakeholder outreach, as well as events to support the announcement. Describe measures to sustain the message and a focus on impacts and benefits for Canadians.</p>

ANNEX Z TO THE MR

PARLIAMENTARY PLAN

(Maximum two pages)

*This annex should be provided for all Ministerial Recommendations (MRs).*

<p><b>1. REPORT OF CAUCUS CONSULTATION</b></p> <p>Provide details on consultations with caucus, including those undertaken with the Caucus Advisory Committee, on the proposal. Indicate whether caucus is supportive and outline the Minister’s approach for addressing any outstanding issues that may have been raised during consultations. If consultations have not been undertaken, the rationale must be provided. <i>(To be prepared by the Minister’s Office)</i></p>
<p><b>2. PRIOR POLICY AND POLITICAL POSITIONS</b></p> <p>Indicate whether the Government has previously taken a position on the issue in question, either in a past or current election platform; during debate or votes while in opposition; or in any similar previous fashion, and indicating specifically what those positions were. <i>(To be prepared by the Minister’s Office)</i></p>
<p><b>3. PARLIAMENTARY ENVIRONMENT ANALYSIS</b></p> <p>Outline expected reaction of all parties in the House and Senate. Highlight any potential areas of agreement between each Party and the Government position, as well as differences. Identify any shared positions and differences among Opposition Parties. Refer to platform and campaign commitments where applicable, as well as past positions in Parliament. <i>(To be prepared by the Minister’s Office and the Department)</i></p>
<p><b>4. LEGISLATIVE PLAN (if applicable)</b></p> <p>Indicate proposed timelines, including date and location (House or Senate) for introduction and plan for referral to Parliamentary Committee (i.e., before or after Second Reading) and any fixed deadlines or obligations (e.g., international commitments). <i>(To be prepared by the Minister’s Office and the Department)</i></p>
<p><b>5. PARLIAMENTARY STRATEGY</b></p> <p>Provide Minister’s strategy for securing majority support for legislative proposals, including preferred responses to potential pressures for changes, amendments that could be offered, their timing and associated costs. Also include, where appropriate, the engagement of House or Senate Committees, Take Note debates, or other Parliamentary mechanisms. <i>(To be prepared by the Minister’s Office and the Department)</i></p>

Annex C: Formatting Guidance for Memoranda to Cabinet (MCs)

Font Size	Section		Maximum Number of Pages		See Notes
			English	French	
14	Cover page	} Mandatory sections	1 (bilingual)		} A
14	Table of contents		1	1	
14	Ministerial Recommendations (MR)		10	11	
12	Annex X to the MR - Implementation Plan *	} Mandatory sections	2	2	} B
12	Annex Y to the MR - Strategic Communications Plan		2	2	
12	Annex Z to the MR - Parliamentary Plan		2	2	
	Subtotal		17	18	
	Total (Maximum number of pages for Required Components)		35 (bilingual)		

**MARGINS:** Top: 0.5" for page numbers (1" for text) Left / Right: 1" Bottom: 1"

**NOTES:**

- A. No exception to page limit for these sections, for any type of MC.
- B. \*The Implementation Plan can be exempted in certain situations where there is no implementation issues but will continue to be required for most MCs.

**OPTIONAL ANNEXES:**

If there is a need for additional annexes please consult your PCO analyst before drafting your MC.

FORMAT - POLICES	SECTION		NOMBRE MAXIMUM DE PAGES		VOIR NOTES
			Anglais	Français	
14	Page couverture	} Sections obligatoires	1 (bilingue)		} A
14	Table des matières		1	1	
14	Recommandations ministérielles (RM)		10	11	
12	Annexe X aux RM - Plan de mise en œuvre*	} Sections obligatoires	2	2	} B
12	Annexe Y aux RM - Plan stratégique de communication		2	2	
12	Annexe Z aux RM - Plan parlementaire		2	2	
	Sous-total		17	18	
	Total (Nombre maximum de pages)		35 (bilingue)		

**MARGES :**    **Haut de la page :** 0.5" pour les numéros de pages (1" pour le texte)    **Gauche / Droite :** 1"    **Bas de la page :** 1"

**NOTES :**

- A. Aucune exception au nombre maximum de pages pour ces sections, peu importe le type de MC.
- B. Le Plan de mise en œuvre peut être exempté dans certaines situations ou il n’y a pas de plan de mise en œuvre, mais continuera à être nécessaire pour la plupart des MC

**ANNEXES OPTIONNELLES :**

S’il y a un besoin pour des annexes supplémentaires, s’il vous plaît consulter votre analyste du BCP avant de rédiger votre MC.

**MISC. (DO'S & DON'TS):**

- The Recommendations in the MR must be in a box.
- The English version of the MC should be on odd pages, French version on even pages. If the last pages of the document are all French (i.e., French version tends to be longer), continue French on odd & even pages - i.e. no need to add blank pages.
- The Minister(s) sign(s) the last page of the MR (French or English - only one language is required to be signed by the Minister). If multiple Ministers are signing, collating signatures will be done by CPSU, no need for all Ministers to sign the same paper copy.
- The mandatory annexes (Implementation Plan, Strategic Communications Plan & Parliamentary Plan) are placed last, in this order, within the annexes section.
- The electronic version can be saved as two separate documents (English version & French version), do not collate electronically.
- The CPSU should receive the signed original (collated), one copy (collated), and the electronic versions (English & French) 5 working days prior to the meeting at which the MC will be considered.
- Do not change margins or font sizes to make text fit within page limits.

**DIVERS (À FAIRE ET NE PAS FAIRE) :**

- Les Recommandations dans les RM doivent être encadrés.
- La version anglaise du MC doit se trouver sur des pages impaires et la version française sur des pages paires. Si les dernières pages du document sont toutes françaises (c.-à-d. que la version française est souvent plus longue), continuez en français sur pages paires et impaires - c.-à-d. pas besoin d'ajouter de pages blanches.
- Le(s) ministre(s) signe(nt) la dernière page des RM (français ou anglais - il est nécessaire de signer une seule des deux langues). Si plusieurs ministres signent, le regroupement des signatures se fera par le SSDC, il n'est pas nécessaire que tous les ministres signent la même copie papier.
- Les annexes obligatoires (Plan de mise en œuvre, Plan stratégique de communications et Plan parlementaire) sont incluses à la fin de la section des annexes aux RM, dans cet ordre.
- La version électronique peut être sauvegardée en deux documents séparés (une version anglaise et une version française), ne pas colliger électroniquement.
- Le SSDC devrait recevoir la version originale signée (assemblée), une copie (assemblée) et les versions électroniques (anglais et français) 5 jours ouvrables avant le comité au cours duquel le MC sera étudié.
- Ne changez pas les marges ou le format des polices de caractère afin de faire entrer le texte à l'intérieur des limites de pages.

## Annex D: Key Resources

### Publications

*Accountable Government: A Guide for Ministers and Ministers of State* (<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=ag-gr/2011/ag-gr-eng.htm>)

Cabinet Committee Mandates and Membership List (<http://www.pm.gc.ca/eng/feature.asp?pageld=53&featureld=8>)

*Guide to the Federal Regulatory Process* (<http://www.tbs-sct.gc.ca/ri-gr/documents/gfrpg-gperf/gfrpg-gperf00-eng.asp>)

*Guide to Making Federal Acts and Regulations* ([http://www.pco-bcp.gc.ca/index.asp?doc=legislation/table\\_e.htm&lang=eng&page=information&sub=publications](http://www.pco-bcp.gc.ca/index.asp?doc=legislation/table_e.htm&lang=eng&page=information&sub=publications))

*Guide to Preparing Treasury Board Submissions* ([http://www.tbs-sct.gc.ca/pubs\\_pol/oepubs/TBM\\_162/gptbs-gppct-eng.asp](http://www.tbs-sct.gc.ca/pubs_pol/oepubs/TBM_162/gptbs-gppct-eng.asp))

*Governor in Council Appointments Procedures Guide* (<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=secretariats&sub=oic-ddc&doc=procedure-processus-eng.htm#n11>)

*Guideline on Chief Financial Officer Attestation for Cabinet Submissions* (<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=27256&section=text>)

Memoranda to Cabinet Templates (<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=mc/mc-eng.htm>)

*Policy on the Security of Cabinet Confidences* (<http://publiservice.pco-bcp.gc.ca/index.asp?lang=eng&page=sec&doc=pol-eng.htm>)

Speech from the Throne ([www.sft-ddt.gc.ca](http://www.sft-ddt.gc.ca))

### Web Sites

Appointments web site (<http://www.appointments.gc.ca/>)

Budget website (<http://www.fin.gc.ca/access/budinfo-eng.asp>)

Finance Canada (<http://www.fin.gc.ca>)

Parliament of Canada (<http://www.parl.gc.ca/>)

Privy Council Office (<http://www.pco-bcp.gc.ca>)

Court File No.: T-347-22

**FEDERAL COURT**

BETWEEN:

**CANADIAN CONSTITUTION FOUNDATION**

Moving Party / Applicant

– and –

**ATTORNEY GENERAL OF CANADA**

Responding Party / Respondent

Application for Judicial Review under Sections 18 and 18.1 of the  
*Federal Courts Act*, R.S.C. 1985, c. F-7.

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**AMENDED NOTICE OF MOTION**

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**TAKE NOTICE THAT** the Moving Party, the Canadian Constitution Foundation will make a motion to the Court under Rule 359 of the *Federal Courts Rules*, SOR/98-106.

**THE MOTION IS FOR:**

1. A declaration that the Responding Party, the Attorney General of Canada, has delivered an an incomplete record in response to the Moving Party's Rule 317 Request, violated section 39 of the *Canada Evidence Act*, RSC 1985, c C-5, by failing to include list in the Schedule to the Certificate of Janice Charette, dated March 31, 2022 ("First Section 39 Certificate"), the following items:
  - a. The Minutes of the meetings of the Incident Response Group on February 10, 12, 13, 2022;



- b. The Minutes of the meeting of the Governor in Council (“Federal Cabinet”) on February 13, 2022; and
  - c. Electronic records such as, without limitation, emails, texts and other electronic correspondence “reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy” (section 39(2)(d) of the *Canada Evidence Act*).
2. An order directing the Responding Party ~~to amend the First Section 39 Certificate (“Amended First Section 39 Certificate”)~~ to ~~include~~ deliver the three sets of items set out at paragraphs 1a, 1b, and 1c above pursuant to Rule 318(1).
3. An order pursuant to Rules 151 and 152, and/or the plenary powers of this Honourable Court under the common law, its status as a “court” under s. 101 of the *Constitution Act, 1867* and/or the unwritten constitutional principle of the rule of law, directing the Responding Party to provide the items listed in the Schedule to the Certificate of Janice Charette, dated March 31, 2022 (“First Section 39 Certificate”), and/or any amended First Section 39 Certificate in relation to the items referenced in paragraphs 1a, 1b and 1c above, the Amended First Section 39 Certificate on a counsel-only basis to the Moving Party once an undertaking satisfying the conditions set out in Rule 152(2)(b) has been provided.
4. In the event that this Honourable Court grants the Motion of April 1, 2022 brought by the Moving Party under Rule 75 granting leave to file an Amended Notice of Application for Judicial Review, and under Rule 317 directing the Responding Party to provide the Record of materials before the Governor in Council in respect of the *Proclamation Revoking the Declaration of a Public Order Emergency*, SOR/2022-26 (“*Revocation Proclamation*”), which must include minutes of the meetings of the Incident Response Group on February 16, 17, 18, 19, 20, 21, 22 and 23, and any Cabinet meetings after the promulgation of the *Emergency Proclamation* and before the promulgation of the *Revocation Proclamation*, and in anticipation that the Clerk of the Privy Council will issue a certificate pursuant to section 39 of the *Canada Evidence Act* in relation to these materials (“Second Section 39 Certificate”), an order pursuant to Rules 151 and 152, and/or the plenary powers of this Honourable Court under the common law, its status as a “court” under s. 101 of the *Constitution Act, 1867* and/or the unwritten constitutional principle of the rule of law,

directing the Responding Party to provide the items listed in the Second Section 39 Certificate on a counsel-only basis to the Moving Party once an undertaking satisfying the conditions set out in Rule 152(2)(b) has been provided.

5. Such further and other relief as the Moving Party may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. On February 23, 2022, the Moving Party issued a Notice of Application for Judicial Review, T-347-22 in respect of the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 (“*Emergency Proclamation*”), made pursuant to section 17(1) of the *Emergencies Act*, RSC 1985, c 22 4th Supp.; (b) the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21 (“*Emergency Measures*”), made pursuant to section 19(1) of the *Emergencies Act*; and (c) the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22 (“*Economic Measures*”), made pursuant to section 19(1) of the *Emergencies Act*.
2. On February 23, 2022, the *Emergency Proclamation* was revoked by the *Revocation Proclamation*, pursuant to section 22 of the *Emergencies Act*. Pursuant to section 26(2) of the *Emergencies Act*, the *Emergency Measures* and *Economic Measures* expired as a direct consequence of the *Revocation Proclamation*, also on February 23, 2022.
3. On March 31, 2022, Ms. Janice Charette issued the First Section 39 Certificate. The Schedule to the First Section 39 Certificate lists the following materials, which were before the Federal Cabinet when it made the decision to promulgate the *Emergency Proclamation*, the *Emergency Measures*, and the *Economic Measures*:
  - a. three submissions dated February 2022 to the Federal Cabinet from the Honourable Marco Mendicino, Minister of Public Safety and Emergency Preparedness, one for each of the *Emergency Proclamation*, *Emergency Measures*, and *Economic Measures*, “including the signed Ministerial recommendation, a draft Order in Council regarding a proposed proclamation, a draft proclamation, and accompanying materials.”
  - b. the record recording the decision of the Federal Cabinet concerning the *Emergency Proclamation*, *Emergency Measures*, and *Economic Measures*.

4. The “Explanation pursuant to subsection 58(1) of the *Emergencies Act*” dated February 16, 2022 (“Section 58 Explanation”) states (at p. 4) that there were “robust discussions at three meetings of the Incident Response Group on February 10, 12 and 13, 2022.”
5. The Incident Response Group is a committee of Cabinet, which serves as a dedicated emergency committee to advise the Prime Minister in the event of a national crisis or during incidents elsewhere that have major implications for Canada. The membership of the Incident Response Group includes both Ministers and other officials as required.
6. In his Affidavit dated April 4, 2022 in T-306-22, T-316-22, and T-382-22, Mr. Steven Shragge (“Shragge Affidavit”), reiterated that the Incident Response Group met on February 10, 12 and 13, 2022, and also stated that Cabinet met on February 13, 2022.
7. Although the Section 58 Report and the Shragge Affidavit expressly refer to the above meetings of the Incident Response Group and Cabinet, the Responding Party has neither produced minutes of these meetings in response to the Moving Party’s Rule 317 Request nor listed these minutes in the Schedule to the First Section 39 Certificate.
8. This Honourable Court has plenary powers, under ~~both~~ the common law, its status as a “court” under s. 101 of the *Constitution Act*, and/or the unwritten constitutional principle of the rule of law, to control the integrity of its own processes as part of its core function to preserve the rule of law, including its supervisory jurisdiction under s. 18.1 of the *Federal Courts Act*. For judicial review to be effective, meaningful and fair, a court must have access to materials before the decision-maker, which can be tested in an adversarial proceeding. Without this information, there may be gaps in the evidentiary record which may leave the administrator unable to demonstrate the reasonableness of its decision or undermine the requirement that there be a reasoned explanation for an administrator’s decision. In addition, adverse inferences can be drawn against the party asserting a privilege to withhold this information from a court.
6. Pursuant to its plenary powers, this Honourable Court should order that the items listed in the ~~First Section 39 Certificate and/or the Amended First Section 39 Certificate~~ any amended First Section 39 Certificate and/or the Second Section 39 Certificate be delivered on a

counsel-only basis to the Moving Party once an undertaking satisfying the conditions set out in Rule 152(2)(b) has been provided.

9. The Moving Party brings this motion pursuant to Rules 151, 152, 317, 318 and 359 of the *Federal Courts Rules*.
10. Such further and other grounds as the Moving Party may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. First Section 39 Certificate.
2. Shragge Affidavit.
3. Section 58 Explanation, Exhibit A to the Shragge Affidavit.
4. The Written Representations of the Moving Party.
5. Such further and other evidence as the Moving Party may advise and this Honourable Court may permit.

April 8~~11~~, 2022



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Court File No.: T-347-22

**FEDERAL COURT**

B E T W E E N:

**CANADIAN CONSTITUTION FOUNDATION**

Moving Party / Applicant

and

**ATTORNEY GENERAL OF CANADA**

Responding Party / Respondent

and

**ATTORNEY GENERAL OF ALBERTA**

Intervenor

---

**Written Representations of the Respondent, Attorney General of Canada**

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May 24, 2022

**ATTORNEY GENERAL OF CANADA**

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Counsel for Respondent, the Attorney General of  
Canada

## **Table of Contents**

### **OVERVIEW 1**

<b>PART I – FACTS .....</b>	<b>2</b>
A. General Background .....	2
B. Cabinet and the Incident Response Group .....	3
<b>PART II - ISSUES .....</b>	<b>4</b>
<b>PART III – SUBMISSIONS .....</b>	<b>5</b>
A. Statutory Provisions – Confidences of the Queen’s Privy Council for Canada .....	5
B. The Governor-in-Council (GIC) is the Tribunal .....	6
C. The Applicant is mistaken about what constitutes the Certified Tribunal .....	10
D. Section 39 of the <i>Canada Evidence Act</i> is Constitutional .....	11
E. Disclosure of Section 39 documents to the Court or the parties is Prohibited .....	12
i) Candour .....	12
ii) Solidarity .....	13
F. No basis to override section 39 .....	15
G. Allegations of bias and abuse of process are unfounded .....	17
H. The s. 39 certificate does not insulate the Decision from Review .....	18
I. Conclusion .....	22
<b>PART IV – ORDER SOUGHT .....</b>	<b>22</b>
<b>PART V – LIST OF AUTHORITIES .....</b>	<b>23</b>
<b>APPENDIX A – STATUTES AND REGULATIONS .....</b>	<b>25</b>
<i>Canada Evidence Act</i> , R.S.C., 1985, c. C-5 .....	25
<i>Emergencies Act</i> , R.S.C., 1985, c. 22 (4th Supp.), PART VI .....	26
<i>Federal Courts Act</i> , R.S.C., 1985, c. F-7 .....	35
<i>Constitution Act</i> , 1867, 30 & 31 Victoria, c. 3 (U.K.) .....	36

## OVERVIEW

1. The constitutional validity of s. 39 of the *Canada Evidence Act*<sup>1</sup> is unchallenged in this application. The Court's plenary power cannot override the clear and plain intention of Parliament in s. 39 to preclude certified information from examination by a court or person. Consequently, the s. 39 certificate issued by the Interim Clerk of the Privy Council is presumed to be valid. The applicant has not adduced any evidence or raised any grounds to properly challenge the certificate. Rather the applicant merely speculates about the deliberations of ministers in a manner that goes to the heart of the purpose of confidentiality of Governor in Council (GIC) deliberations. This undermines the very purpose of s. 39, which the Supreme Court of Canada has clearly held is for ministers to feel at ease to express themselves freely in the GIC's deliberative process so that they can reconcile any different points of view and interests.

2. Any review of the s. 39 certificate must be within the boundaries set by the Supreme Court of Canada in *Babcock*: the information for which immunity is claimed must on its face fall within s. 39(1) and s. 39(2), and the Clerk cannot have improperly exercised the discretion conferred by s. 39(1). Much of the applicant's argument is premised on the improper conflation of the decision-maker, the GIC, with cabinet and the Incident Response Group (IRG), which leads it to misapprehend what is properly in the certified tribunal record.

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<sup>1</sup> [Canada Evidence Act](#), RSC 1985, c. C-5, at s [39](#). [CEA]



3. The Court has before it the Proclamation Declaring a Public Order Emergency (the Declaration), the Emergency Measures Regulations and the Emergency Economic Measures Order (collectively, the Decision), as well as affidavit evidence that attaches the “explanation of the reasons for issuing the declaration” pursuant to s. 58 of the *Emergencies Act*<sup>2</sup> (the Reasons). The Reasons and other evidence provide ample basis for the Court to ensure adherence to the rule of law, including executive accountability to legal authority, and to protect the public from arbitrary executive action.

4. As a result, far from immunizing the Decision from meaningful, effective and fair judicial review, the materials currently before the Court permit it. The Court will be able to evaluate the “decision in light of its underlying rationale, so that the decision as a whole is transparent, intelligible and justified.”<sup>3</sup>

## PART I – FACTS

### A. General Background

5. The GIC issued the Declaration on February 14, 2022, followed by the remainder of the Decision on February 15, 2022.<sup>4</sup>

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<sup>2</sup> *Emergencies Act*, RSC 1985, c 22 (4<sup>th</sup> Supp) at s. 58 [*Emergencies Act*]

<sup>3</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#), at para 15. (Vavilov)

<sup>4</sup> Affidavit of Steven Shragge dated April 4, 2022 (the Shragge Affidavit) at paras 10 and 12, Responding Motion Record (RMR), Tab 1, p 6-7. The Shragge Affidavit is also attached as Ex. N to the Affidavit of Madeleine Ross sworn on April 22, 2022 (the Ross Affidavit) for this motion, Moving Party’s Motion Record (MPMR), Tab 3. Technically there are three decisions being judicially reviewed, however, they are referred to as the Decision in these submissions for convenience as they are a package.

6. The Reasons, a report to the Houses of Parliament pursuant to s. 58 of the *Emergencies Act*, were tabled in the House of Commons together with a motion for confirmation of the Declaration on February 16, 2022 and in the Senate on February 21, 2022. The House of Commons confirmed the motion on February 21. The Decision was revoked on February 23, 2022 before the Senate could vote.<sup>5</sup>

7. In response to the applicant's 317 request, on March 31, 2022, the Interim Clerk of the Privy Council issued a certificate pursuant to s. 39 claiming a confidence of the Queen's Privy Council for Canada over three submissions dated February 2022 to the GIC from the Minister of Public Safety and Emergency Preparedness including the signed ministerial recommendations, draft Orders in Council regarding a proposed proclamation, order and regulations, a draft proclamation, accompanying materials, and the records recording the Decision of the GIC.<sup>6</sup>

## **B. Cabinet and the Incident Response Group**

8. Cabinet is the body of ministers that sets the federal government's policies and priorities.<sup>7</sup> The Prime Minister chairs cabinet, which has a membership of 39 ministers.

9. The IRG is a working group of ministers that serves as a dedicated emergency committee in the event of a national crisis or during incidents elsewhere that have major implications for Canada. The group is responsible for coordinating the federal response

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<sup>5</sup> Shragge Affidavit, at paras 4, 13-15, RMR, Tab 1, p 7.

<sup>6</sup> Ross Affidavit at paras 16 and 17, exhibits L and M. Exhibit L contains the certificate, MPMP Tab 3

<sup>7</sup> Ross Affidavit at Exs. AA and BB [PM's [website](#)], MPMP Tab 3.

to an incident. Membership of the group varies and may consist of relevant ministers and senior government leadership, based on the nature of the incident.<sup>8</sup>

10. The IRG met on February 10, 12, and 13, 2022. Cabinet met on February 13, 2022.<sup>9</sup>

11. The Queen's Privy Council for Canada convened together with the Governor General to issue the Decision of February 14 and 15, 2022.<sup>10</sup>

## **PART II - ISSUES**

12. The Attorney General of Canada (AGC) responds to the Canadian Constitution Foundation's (CCF) issues as follows:

- a) The minutes of the cabinet meeting of February 13, 2022 and of the IRG of February 10, 12, or 13, 2022 are not listed in the certificate of the Interim Clerk, issued in response to the applicant's Rule 317 request. However, they come within the definition of confidences of the Queen's Privy Council for Canada or cabinet confidences as defined in s. 39(2) of the *CEA*. They therefore cannot be delivered to the applicant.
- b) Items listed in a s. 39 *Canada Evidence Act* certificate cannot be disclosed to the applicant even on a counsel-only basis pursuant to a confidentiality undertaking.

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<sup>8</sup> Shragge Affidavit at paras 5-6, [PM's [website](#)], RMR Tab 1, p 6.

<sup>9</sup> Shragge Affidavit, at paras 8 and 9, RMR Tab 1, p 6.

<sup>10</sup> Ross Affidavit at Ex. M, letter from the Assistant Clerk of the Privy Council to the Federal Court dated March 14, 2022, MPMR Tab 3.

## PART III – SUBMISSIONS

### A. Statutory Provisions – Confidences of the Queen's Privy Council for Canada

#### **Objection relating to a confidence of the Queen's Privy Council**

**39 (1)** Where a minister of the Crown or the Clerk of the Privy Council objects to the disclosure of information before a court, person or body with jurisdiction to compel the production of information by certifying in writing that the information constitutes a confidence of the Queen's Privy Council for Canada, disclosure of the information shall be refused without examination or hearing of the information by the court, person or body.

#### **Definition**

**(2)** For the purpose of subsection (1), **a confidence of the Queen's Privy Council for Canada** includes, without restricting the generality thereof, information contained in

**(a)** a memorandum the purpose of which is to present proposals or recommendations to Council;

**(b)** a discussion paper the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;

**(c)** an agenda of Council or a record recording deliberations or decisions of Council;

**(d)** a record used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

**(e)** a record the purpose of which is to brief ministers of the Crown in relation to matters that are brought before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d); and

**(f)** draft legislation.

#### **Opposition relative à un renseignement confidentiel du Conseil privé de la Reine pour le Canada**

**39 (1)** Le tribunal, l'organisme ou la personne qui ont le pouvoir de contraindre à la production de renseignements sont, dans les cas où un ministre ou le greffier du Conseil privé s'opposent à la divulgation d'un renseignement, tenus d'en refuser la divulgation, sans l'examiner ni tenir d'audition à son sujet, si le ministre ou le greffier attestent par écrit que le

renseignement constitue un renseignement confidentiel du Conseil privé de la Reine pour le Canada.

### Définition

(2) Pour l'application du paragraphe (1), un **renseignement confidentiel du Conseil privé de la Reine pour le Canada** s'entend notamment d'un renseignement contenu dans :

- a) une note destinée à soumettre des propositions ou recommandations au Conseil;
- b) un document de travail destiné à présenter des problèmes, des analyses ou des options politiques à l'examen du Conseil;
- c) un ordre du jour du Conseil ou un procès-verbal de ses délibérations ou décisions;
- d) un document employé en vue ou faisant état de communications ou de discussions entre ministres sur des questions liées à la prise des décisions du gouvernement ou à la formulation de sa politique;
- e) un document d'information à l'usage des ministres sur des questions portées ou qu'il est prévu de porter devant le Conseil, ou sur des questions qui font l'objet des communications ou discussions visées à l'alinéa d);
- f) un avant-projet de loi ou projet de règlement.

### B.T he Governor-in-Council (GIC) is the Tribunal

13. The IRG and cabinet are not the tribunal in this case as defined by s. 2 of the *Federal Courts Act*.<sup>11</sup> As the applicant correctly notes, judicial review is generally conducted on the record that was before the tribunal or decision-maker, in this case, the GIC.

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<sup>11</sup> *Federal Courts Act*, RSC, 1985, c. F-7 at [s 2](#) defines "federal board, commission or other tribunal" as meaning "any body, person or persons having, exercising or purporting to exercise the jurisdiction or powers conferred by or under an Act of Parliament".

14. While the difference between the GIC, as the formal executive, and cabinet, as the forum for political deliberation, is often overlooked, it is an important distinction to maintain in law. The legal powers of the state are vested in the formal executive and it constitutes the decision-maker. Cabinet itself makes no decisions having legal effect.

15. The constitutional distinction between the GIC and cabinet has been explained in an article favorably cited by the Supreme Court of Canada:

*The informal and political character of cabinet "decision-making" not only makes secrecy essential to its proceedings but justifiable in an open and democratic society. In the early part of the twentieth century, Sir William Anson, founder of Oxford's law school, MP for the university from 1899 to 1914, and all-round constitutional icon, noted that "[t]he Cabinet shapes policy and settles what shall be done in important matters ... but it is not therefore the executive." Later, Sir Ivor Jennings, a late-comer to the subject but nonetheless professor of constitutional law at Cambridge at the time of his death in 1965, explained that:*

*Neither the Cabinet nor the prime minister, as such, claims to exercise any powers conferred by law. They take the decisions, but the acts which have legal effect are taken by others – the Queen, the Privy Council, a minister, a statutory commission and the like. Canadian authorities have made the same point: The prime minister and cabinet...exercise no formal powers; they decide how some regularly constituted authority – the Governor General, the Governor-in-Council, a particular minister – is to discharge functions with which that authority is legally entrusted and concerning which it will, as a matter of custom and convenience, accept direction from the prime minister and the cabinet.*

*Such is the informal place of the cabinet in constitutional law, rooted in its political function of establishing and maintaining collective responsibility.*<sup>12</sup>

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<sup>12</sup> *British Columbia (Attorney General) v. Provincial Court Judges Association of British Columbia [BC Judges]*, [2020 SCC 20](#) at paras [95-96](#), citing d'Ombraín, Nicholas. "Cabinet Secrecy" (2004), 47(3) *Canadian Public Administration*, Vol. 47, No. 3 (Fall 2004), p 332, RMR Tab 4.

16. Under the Constitution, the authority to govern Canada is vested in the Queen, as represented by the Governor General.<sup>13</sup> Section 13 of the *Constitution Act, 1867* defines the GIC, not cabinet, as a legal institution and elaborates on the relationship between the Queen's Privy Council for Canada and the GIC:

*13. The Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for Canada.*<sup>14</sup>

17. Membership in the Privy Council mainly consists of all present and former Prime Ministers and ministers of the Crown. The cabinet is the collective of Privy Councillors who are ministers of the government of the day. By constitutional convention, only those Privy Councillors who are members of the government advise the Governor General. Unlike the Queen's Privy Council for Canada, the cabinet has no legal status and therefore exercises no legal powers.

18. Rather, the cabinet is a political body. It acts as the policy-making organ of the government. By convention, cabinet determines if, how and when formal executive powers are to be exercised. It is the confidential forum in which political and strategic considerations are brought to bear on proposed Crown actions, and in which consensus

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<sup>13</sup> *Constitution Act, 1867*, at ss [9](#), [10](#).

<sup>14</sup> *Constitution Act, 1867*, at s [13](#)

can be achieved on decisions for which ministers are collectively responsible. It is above all a political forum to negotiate and deliberate.<sup>15</sup>

19. However, cabinet is not in any sense the legal executive. That is the role of the GIC.

20. The Supreme Court of Canada has recognized the distinction between these bodies, confirming that confidentiality extends to the deliberations of both, as well as to the records of their deliberations and to the documents that reflect on the content of those deliberations.<sup>16</sup> Section 39 of the CEA acknowledges the same distinction between the bodies and also stipulates that the protections afforded under that provision extends to: “the Queen’s Privy Council for Canada, committees of the Queen’s Privy Council for Canada, Cabinet and committees of Cabinet.”<sup>17</sup>

21. The IRG is an *ad hoc* working group of ministers and other officials that has the mandate of coordinating the federal response to a given incident. The IRG is not the GIC.<sup>18</sup> The s. 58 Reasons, however, make it clear that discussions before the IRG informed the decision-making of the GIC in this case and may therefore be relevant.<sup>19</sup> Should these documents be otherwise admissible to form part of the Court’s record for

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<sup>15</sup> Mallory, J. R. *The Structure of Canadian Government* (Toronto: Macmillan, 1971) P. 96, RMR Tab 5.

<sup>16</sup> *BC Judges* at [para 97](#), citing *Babcock v Canada (Attorney General)*, [2002 SCC 57](#) at [para 18](#) (*Babcock*)

<sup>17</sup> CEA, s. [39\(3\)](#)

<sup>18</sup> Prime Minister of Canada [website](#), Ross Affidavit, Ex. BB, MPMR Tab 3.

<sup>19</sup> Reasons, at p 4, second last para: “The decision to issue the declaration was informed by... robust discussions at three meetings of the Incident Response Group on February 10, 12 and 13, 2022.” Shragge Affidavit, Ex. A, RMR Tab 1A, p 12.



review, the Interim Clerk will engage s. 39 of the CEA and make a determination as to whether the public interest in their disclosure outweighs the public interest in maintaining their confidentiality. They are not part of the certified tribunal record, however.

### **C. The Applicant is mistaken about what constitutes the Certified Tribunal Record**

22. CCF's Rule 317 request was for "the record of materials before the Governor in Council in respect of the Emergency Proclamation... the Emergency Measures... [and] the Economic Measures."<sup>20</sup> This constitutes the certified tribunal record. The record before the Court on the underlying judicial review will be broader because of the affidavit evidence including the Reasons.

23. CCF has received the record that was before the GIC with the exception of those documents certified under s. 39 of the CEA.<sup>21</sup> CCF did not seek documents of the IRG or a previous cabinet meeting in its request. "Rule 318(1) shows us that the material under Rule 317 must come from the administrative decision-maker, not others."<sup>22</sup> The certified tribunal record is complete.

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<sup>20</sup> CCF Notice of Application, at Rule 317 request at para 1-3, pp 22-23, MPMR Tab 1.

<sup>21</sup> Section 39 Certificate of Interim Clerk of the Privy Council, Appendix "A" is found at Ex. L to the Ross Affidavit, MPMR Tab 3.

<sup>22</sup> *Tsleil Waututh Nation v. Canada (Attorney General)*, [2017 FCA 128](#) (TWN) at para [107](#)

Court File No. T-316-22

**FEDERAL COURT**

B E T W E E N:

**CANADIAN CIVIL LIBERTIES ASSOCIATION**

Moving Party / Applicant

- and -

**ATTORNEY GENERAL OF CANADA**

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the  
*Federal Courts Act*, R.S.C. 1985, c. F-7

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**WRITTEN REPRESENTATIONS OF THE MOVING PARTY, CCLA**

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June 28, 2022

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## CONTENTS

<b>OVERVIEW .....</b>	<b>2</b>
<b>PART I — SUMMARY OF THE FACTS.....</b>	<b>4</b>
A. Parallel Proceedings and Rule 317 Requests .....	4
B. Affidavit of Steven Shragge.....	6
C. Cross-Examination of Steven Shragge and the AGC’s Objections .....	7
<b>PART II — ISSUES.....</b>	<b>8</b>
<b>PART III — SUBMISSIONS.....</b>	<b>9</b>
A. The IRG Is Not a Cabinet Committee.....	9
(i) Legal Definition of a “Committee of Cabinet” .....	10
(ii) Application to the IRG.....	12
(iii) A Note of Caution: the <i>Ethyl</i> Case.....	15
B. Without a Section 39 Certificate, No Claim of Cabinet Confidences Is Sustainable ....	19
C. No Claim of Public Interest Immunity Can Be Maintained .....	20
(i) Timing of Disclosure .....	22
(ii) Administration of Justice .....	23
(iii) Contents of the Documents .....	23
<b>PART IV — ORDER SOUGHT.....</b>	<b>25</b>
<b>PART V — LIST OF AUTHORITIES.....</b>	<b>28</b>

## OVERVIEW

1. The Canadian Civil Liberties Association (“CCLA”) brings a motion seeking rulings on certain objections made by the Respondent, the Attorney General of Canada (“AGC”), during the cross-examination of Mr. Steven Shragge on his affidavit. The AGC has objected to: (1) the document requests listed in the CCLA’s Direction to Attend to Mr. Shragge; and (2) questions put to him during his cross-examination.

2. The objections at issue relate to the “Incident Response Group” (“IRG”), a working group struck by the Prime Minister of Canada during the so-called “Freedom Convoy” protests in early 2022. The CCLA has requested:

- any document that lists the membership of the IRG for its meetings on February 10, 12, and 13, 2022;
- any minutes of the IRG meetings on February 10, 12, and 13, 2022; and
- any notes from the IRG meetings on February 10, 12, and 13, 2022.
- any documents produced by the Privy Council Office for the IRG’s use during its meetings on February 10, 12, and 13, 2022.

3. The AGC’s objections to providing this information rest on a dubious, expansive claim of Cabinet confidences. Unsupported by a s. 39 certificate,<sup>1</sup> the AGC has claimed that essentially everything related to the IRG — even its membership — attracts Cabinet confidentiality.

4. The problem with this claim is that the IRG is not a subset or committee of Cabinet. On the AGC’s own evidence, there is “no formal link” between the IRG and Cabinet.<sup>2</sup> The AGC persistently refers to the IRG as a “working group”, not a Cabinet committee.<sup>3</sup> Unlike every other Cabinet committee, which is composed exclusively of Cabinet ministers, the IRG’s membership is variable — it can include ministers and “other officials”.<sup>4</sup> Unlike other Cabinet committees, the IRG does not advise Cabinet, exercise the authority of Cabinet, or provide a forum for Cabinet

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<sup>1</sup> See *Canada Evidence Act*, R.S.C. 1985, c. C-5, [s. 39\(1\)](#).

<sup>2</sup> Transcript of Cross-Examination of S. Shragge (May 19, 2022), at p. 38, lines 15-19 [[Moving Party’s Motion Record \(“MPMR”\), Tab 8, p. 175](#)].

<sup>3</sup> See, e.g., Excerpt of Written Representations of the AGC re. CCF Rule 317 Motion, at paras. 9, 21 [[MPMR, Tab 15, pp. 294, 300](#)]; Affidavit of S. Shragge, sworn April 4, 2022, at para. 6 [[MPMR, Tab 6, p. 98](#)].

<sup>4</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 6 [[MPMR, Tab 6, p. 98](#)].

deliberation — instead, its principal purpose is to advise the Prime Minister and share information. Indeed, the AGC’s key affiant, Mr. Steven Shragge (a Senior Policy Advisor in the Privy Council Office), observes a sharp distinction between the IRG and Cabinet:

[There is] a distinction between Cabinet and the Incident Response Group in that the Incident Response group is primarily a coordination and information sharing body intended to ensure that the Prime Minister is well informed and ministers are coordinating their activities within their respective mandates as compared to Cabinet, which is traditionally the official decision making body for passing policies which may result in bills and changes to law.<sup>5</sup>  
[Emphasis added.]

5. In these circumstances, it is difficult to see how maintaining the secrecy of the IRG furthers the rationales upon which Cabinet confidentiality is based. Cabinet confidentiality protects candour, such that members “are free to express themselves around the Cabinet table unreservedly”.<sup>6</sup> It also protects solidarity, so that all members may defend Cabinet decisions publicly, even when they are inconsistent with members’ previously expressed views.<sup>7</sup> However, the IRG does not convene around the “Cabinet table”; it neither exercises Cabinet’s decision-making power nor advises Cabinet. That being the case, maintaining secrecy over the IRG does not appear to advance Cabinet’s candour or solidarity.

6. Aside from this questionable extension of Cabinet confidentiality, the AGC’s position suffers from a fatal flaw: it has not produced a s. 39 certificate.<sup>8</sup> Such a certificate is a prerequisite to any valid claim of Cabinet confidences.

7. Without a s. 39 certificate, the AGC’s only recourse is to claim public interest immunity over the information sought. A claim of public interest immunity would require the AGC to show that the public interest in confidentiality outweighs the public interest in disclosure. Here, the balance weighs in favour of disclosure: the information sought relates to a decision that has already been publicly announced and that information is vital to the sound adjudication of this judicial

<sup>5</sup> Transcript of Cross-Examination of S. Shragge (May 19, 2022), at p. 18, lines 10-20 [MPMR, Tab 8, p.155].

<sup>6</sup> *Babcock v. Canada (Attorney General)*, 2002 SCC 57, at para. 18.

<sup>7</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, at para. 96.

<sup>8</sup> See *Canada Evidence Act*, R.S.C. 1985, c. C-5, s. 39(1).

review application. Additionally, much of the information sought likely amounts of background explanations that will not reveal deliberations between Cabinet ministers.

8. Without a valid claim of Cabinet confidences or public interest immunity, the AGC's objections to disclosing IRG-related information cannot be sustained. This Court should order the requested documents produced and the CCLA's questions answered.

9. In the event that the AGC produces a s. 39 certificate, the CCLA reserves the right to contest the validity of that certificate, in the manner described in *Babcock v. Canada (Attorney General)* and *Tsleil-Waututh Nation v. Canada (Attorney General)*.<sup>9</sup>

## **PART I — SUMMARY OF THE FACTS**

10. On February 18, 2022, the CCLA issued a Notice of Application for judicial review in respect of the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 [*Emergency Proclamation*], made pursuant to s. 17(1) of the *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.), and also in respect two regulations made pursuant to s. 19(1) of the *Emergencies Act*: the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21, and the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22.

### **A. Parallel Proceedings and Rule 317 Requests**

11. On February 23, 2022, the Canadian Constitution Foundation ("CCF") issued a parallel Notice of Application for Judicial Review (T-347-22) in respect of the same legal instruments.<sup>10</sup> The CCF also made a request under Rule 317 of the *Federal Courts Rules*, SOR/98-106, seeking:

- the record of materials before the Governor in Council in respect of the *Emergency Proclamation*;
- the record of materials before the Governor in Council in respect of the *Emergency Measures Regulations*; and

<sup>9</sup> See *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [at para. 39](#); *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128, [at para. 28](#).

<sup>10</sup> Notice of Application of the CCF (T-347-22) [[MPMR, Tab 3, p. 42](#)].

- the record of materials before the Governor in Council respect of the *Emergency Economic Measures Order*.

12. A similar request under Rule 317 was also made by the Canadian Frontline Nurses and Kristen Nagle in their judicial review proceedings (T-306-22).<sup>11</sup>

13. The applications for judicial review brought by the CCLA, CCF, and the Canadian Frontline Nurses and Kristen Nagle are all being case managed together and are anticipated to be heard together, if not formally consolidated.

14. In response to the Rule 317 requests detailed above, the AGC delivered an affidavit sworn by Jeremy Adler, which attached a certificate signed by the Interim Clerk of the Privy Council and Secretary to the Cabinet on March 31, 2022.<sup>12</sup> This certificate sets out the Interim Clerk's determination that the following documents constitute confidences of the Queen's Privy Council for Canada and that they should be protected from disclosure under s. 39 of the *CEA*:<sup>13</sup>

- three February 2022 submissions to the Governor in Council from the Honourable Marco Mendicino, Minister of Public Safety and Emergency Preparedness, concerning the Orders in Council proposed to be made pursuant to ss. 17(1) and 19(1) of the *Emergencies Act* (i.e., the *Emergency Proclamation*, the *Emergency Measures Regulations*, and the *Emergency Economic Measures Order*), which were determined to fall within s. 39(2)(a) of the *CEA*; and
- three records recording the decisions of Council concerning the Orders in Council described above, which were determined to fall within s. 39(2)(c) of the *CEA*.

15. On April 11, 2022, the CCF issued an Amended Notice of Motion seeking a declaration that the AGC's response to its Rule 317 request was incomplete.<sup>14</sup> In particular, the CCF is seeking the minutes of the February 10, 12, and 13 meetings of the IRG, the minutes of the meeting of the Governor in Council on February 13, 2022, and electronic records reflecting communications or

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<sup>11</sup> Notice of Application of the Canadian Frontline Nurses and Kristen Nagle (T-306-22) [MPMR, Tab 4, p. 66].

<sup>12</sup> Letter from AGC to CCF attaching Section 39 Certificate (April 1, 2022) [MPMR, Tab 5, p.85].

<sup>13</sup> Letter from AGC to CCF attaching Section 39 Certificate (April 1, 2022) [MPMR, Tab 5, p.85].

<sup>14</sup> Amended Notice of Motion of the CCF re. Rule 317 (April 11, 2022) [MPMR, Tab 14, p.284].

discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy.<sup>15</sup>

16. On May 25, 2022, the AGC delivered its response to the CCF’s motion. Among other things, the AGC maintains that the IRG-related documents the CCF seeks are not part of the Certified Tribunal Record and not producible under Rule 317. The AGC takes this position on the basis that the “Tribunal” that must respond to the CCF’s Rule 317 request is only the Governor in Council. The AGC’s position is that the IRG is distinguishable from the Governor in Council, as the IRG is “an *ad hoc* working group of ministers and other officials that has the mandate of coordinating the federal response to a given incident”.<sup>16</sup>

## **B. Affidavit of Steven Shragge**

17. On April 4, 2022, Mr. Steven Shragge — a Senior Policy Advisor with the Privy Council Office, Security and Intelligence Secretariat — swore his first affidavit in these proceedings.<sup>17</sup> The same day, the AGC served Mr. Shragge’s affidavit on the CCLA, CCF, and CFN.

18. Mr. Shragge has sworn that he has “operational knowledge of the mandates, memberships, and practices of decision-making and coordination structures”, though he does not have “direct knowledge of Cabinet, council and ministerial deliberation and decision-making discussions during the days directly preceding the declaration of a public order emergency on February 14, 2022”.<sup>18</sup>

19. Mr. Shragge indicates that the decision to issue the *Emergency Proclamation* was informed by “robust discussions” at the three IRG meetings in mid-February 2022.<sup>19</sup> Mr. Shragge holds significant knowledge regarding the IRG, including that:

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<sup>15</sup> See *Canada Evidence Act*, s. 39(2)(d).

<sup>16</sup> Excerpt of Written Representations of the AGC re. CCF Rule 317 Motion, at para. 21 [MPMR, Tab 15, p. 300].

<sup>17</sup> Affidavit of S. Shragge, sworn April 4, 2022 [MPMR, Tab 6, p. 93].

<sup>18</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 2 [MPMR, Tab 6, p. 97].

<sup>19</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 5 [MPMR, Tab 6, p. 98].



- the IRG is a “working group of ministers” whose membership “can vary based on the nature of the incident and include both Ministers and other officials as required”;<sup>20</sup>
- the IRG “serves as a dedicated emergency committee to advise the Prime Minister in the event of a national crisis”;<sup>21</sup>
- the IRG is a “coordination body responsible for promoting a prompt federal response to an incident to keep Canadians safe and secure, at home and abroad”;<sup>22</sup> and
- the IRG is “intended to provide advice to the Prime Minister, as well as support coordination and information exchange amongst Ministers and drive forward a whole-of-government response to incidents”.<sup>23</sup>

20. Mr. Shragge attaches four documents to his affidavit, including the government’s “Explanation pursuant to subsection 58(1) of the *Emergencies Act*”. Like Mr. Shragge’s affidavit, the s. 58(1) Explanation indicates that the IRG’s “robust discussions” informed the decision at issue.<sup>24</sup>

### C. Cross-Examination of Steven Shragge and the AGC’s Objections

21. On May 12, 2022, the CCLA served the on the AGC a Direction to Attend to Mr. Shragge.<sup>25</sup> This Direction to Attend included the following requests for documents relating to the IRG:

- any document that lists the membership of the IRG for the meetings held on February 10, 12, and 13, 2022;
- any minutes of the IRG meetings of February 10, 12, and 13, 2022; and
- any notes from the IRG meetings of February 10, 12, and 13, 2022.

<sup>20</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 6 [MPMR, Tab 6, p.98].

<sup>21</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 5 [MPMR, Tab 6, p.98].

<sup>22</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 5 [MPMR, Tab 6, p.98].

<sup>23</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 5 [MPMR, Tab 6, p.98].

<sup>24</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 5 [MPMR, Tab 6, p.98]; “February 14, 2022 Declaration of Public Order Emergency Explanation pursuant to subsection 58(1) of the *Emergencies Act*”, at p. 4, attached as Exhibit A to the Affidavit of Steven Shragge, sworn April 4, 2022 [MPMR, Tab 6, p. 100].

<sup>25</sup> Direction to Attend to Steven Shragge (May 12, 2022) [MPMR, Tab 7, p. 136].

22. The AGC has refused to produce these documents, mostly due to an assertion of Cabinet confidences.<sup>26</sup>

23. Pursuant to the above Direction to Attend, the CCLA cross-examined Mr. Shragge on May 19, 2022. During that cross-examination, Mr. Shragge cast considerable doubt on the notion that the IRG is a Cabinet committee that attracts the protection of s. 39. Among other things, Mr. Shragge indicated that there is “no formal link” between the IRG and Cabinet.<sup>27</sup> The substance of his evidence is discussed in greater detail below.<sup>28</sup>

24. During the cross-examination of Mr. Shragge, the AGC made a number of objections on the basis of Cabinet confidences. These included objections to the questions of:

- whether the PCO prepared any documents for the IRG and, if so, whether those documents could be produced for inspection;
- whether the minutes from the February 10, 12, and 13 meetings of the IRG were put before either Cabinet or the Governor in Council; and
- whether the documents that the IRG considered at those meetings were put before Cabinet or the Governor in Council.

## **PART II — ISSUES**

25. The overarching issue before the Court is whether the AGC’s objections to disclosing IRG-related information on the basis of Cabinet confidences should be sustained. The determination of this issue turns on three questions:

- A. whether the IRG is a “committee of Cabinet” within the meaning of s. 39(3) of the *Canada Evidence Act*;
- B. whether the AGC’s claim of Cabinet confidences is sustainable in the absence of a s. 39 certificate; and

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<sup>26</sup> Letter from AGC to CCLA re. Documents Requested in Direction to Attend to Steven Shragge (May 27, 2022) [MPMR, Tab 10, p. 191].

<sup>27</sup> Transcript of Cross-Examination of S. Shragge (May 19, 2022), at p. 38, lines 15-19 [MPMR, Tab 8, p. 175].

<sup>28</sup> Transcript of Cross-Examination of S. Shragge (May 19, 2022), at p. 18, lines 10-20 [MPMR, Tab 8, p. 155].

- C. if not, whether any claim of public interest immunity can be maintained to support the AGC's objections.

### **PART III — SUBMISSIONS**

26. The basic rationales and principles underlying Cabinet confidentiality and s. 39 of the *Canada Evidence Act* should not be in dispute. What is in dispute is whether — particularly in the absence of a s. 39 certificate — the AGC can extend Cabinet confidentiality over a working group that is not part of Cabinet: the IRG.

#### **A. The IRG Is Not a Cabinet Committee**

27. In order for a claim of Cabinet confidences to IRG-related information, that information must fall within one of the subparagraphs of s. 39(2) of the *Canada Evidence Act*. Section 39(2) provides:

(2) For the purpose of subsection (1), a confidence of the Queen's Privy Council for Canada includes, without restricting the generality thereof, information contained in

(a) a memorandum the purpose of which is to present proposals or recommendations to Council;

(b) a discussion paper the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;

(c) an agenda of Council or a record recording deliberations or decisions of Council;

(d) a record used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

(e) a record the purpose of which is to brief Ministers of the Crown in relation to matters that are brought before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d); and

(f) draft legislation.

28. Additionally, s. 39(3) provides that “Council” means “the Queen’s Privy Council for Canada, committees of the Queen’s Privy Council for Canada, Cabinet and committees of Cabinet” (emphasis added).

29. Accordingly, in considering the Attorney General’s claim of Cabinet confidences, a key question for the Court will be whether the IRG is a part of “Council”. The IRG can only be a part of Council if it is a “committee of Cabinet” within the meaning of s. 39(3).

**(i) Definition of a “Committee of Cabinet”**

30. There is no clear definition of what constitutes a “committee of Cabinet”. Neither the *Canada Evidence Act* nor the *Access to Information Act* provides a helpful definition, and there appears to be no judicial interpretation directly on point.

31. The only authoritative sources that have previously adjudicated the issue of whether a particular entity is a Cabinet committee are the provincial privacy commissioners. One early decision, *Ontario (Economic Development and Trade) (Re)*, provides that a Cabinet committee must be “composed of Ministers where some tradition of collective ministerial responsibility and Cabinet prerogative can be invoked to justify the application of this exemption”.<sup>29</sup>

32. A more recent and thorough analysis was conducted in *Office of the Premier and Executive council operations and Ministry of Skills Development and Labour, Re*.<sup>30</sup> In that case, an individual made a request under British Columbia’s *Freedom of Information and Privacy Protection Act*, R.S.B.C. 1996, c. 165, for the release of a number of documents, including certain minutes of the “Communities & Safety Committee”. The Premier’s Office responded that portions of the documents could be disclosed, but that two paragraphs of the Communities & Safety Committee minutes should be withheld on the basis that this was a “committee of the Executive Council” and its deliberations were protected by s. 12(1) of the Act.<sup>31</sup> The applicant sought review by the Privacy Commissioner.

<sup>29</sup> *Ontario (Economic Development and Trade) (Re)*, 1993 CanLII 4927 (ON IPC), [at p. 9](#).

<sup>30</sup> *Office of the Premier and Executive council operations and Ministry of Skills Development and Labour, Re*, 2002 CanLII 42472 (BC IPC).

<sup>31</sup> *Office of the Premier and Executive council operations and Ministry of Skills Development and Labour, Re*, 2002 CanLII 42472 (BC IPC), [at para. 28](#). [Section 12\(1\)](#) of the BC FOIPPA provides that “[t]he head of a public body

33. The Privacy Commissioner concluded that the Communities & Safety Committee was not a committee of the Executive Council. The Committee was composed of some members of the legislature who were members of Cabinet and some who were not.<sup>32</sup> A non-Cabinet member was the chair, and a Cabinet member was the vice-chair. Relying on previous cases and secondary sources, the Privacy Commissioner held that Cabinet committees are “in every sense a body of Cabinet, bear its collective responsibilities and are fundamentally not an amalgam of persons who do and do not hold Cabinet membership” (emphasis added).<sup>33</sup> He concluded:

Historical and jurisprudential perspectives, as well as literal and logical perspectives on the words used in s. 12(1) of the Act, viewed in conjunction with relevant provisions of the *Interpretation Act* and the *Constitution Act*, strongly compel the conclusion that a committee of the Executive Council, for the purposes of s. 12(1), means a committee that is composed of members of the Executive Council. I am not persuaded that, however desirable such committees may be, it includes advisory committees of non-Cabinet members working together with one or more Cabinet members. [...] I am reinforced in this conclusion by the purposes set out in s. 2(1) of the Act and by the fact that s. 12(1) is a mandatory exception embodying the traditional rationale for Cabinet confidentiality, which did not embrace a multitude of advisory bodies with members who were not members of the Executive Council or an historical equivalent.<sup>34</sup> [Emphasis added.]

34. This decision provides insight on two points. First, together with its progeny,<sup>35</sup> it indicates that other adjudicators have taken up the task of adjudicating whether a particular body *asserted*

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must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees”.

<sup>32</sup> *Office of the Premier and Executive council operations and Ministry of Skills Development and Labour, Re*, 2002 CanLII 42472 (BC IPC), [at para. 89](#).

<sup>33</sup> *Office of the Premier and Executive council operations and Ministry of Skills Development and Labour, Re*, 2002 CanLII 42472 (BC IPC), [at para. 95](#), citing J.R. Mallory, *The Structure of Canadian Government*, rev. ed. (Toronto: Gage Publishing Ltd., 1984), at pp. 113-114.

<sup>34</sup> *Office of the Premier and Executive council operations and Ministry of Skills Development and Labour, Re*, 2002 CanLII 42472 (BC IPC), [at para. 97](#).

<sup>35</sup> See, e.g., *British Columbia (Office of The Premier) (Re)*, 2009 CanLII 26565 (BC IPC), [at para. 27](#); *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner)*, 2011 BCSC 112, [at paras. 81-92](#).

to be a Cabinet committee is *in fact* such a committee. Second, these decisions tie the determination of whether a body is a Cabinet committee to the basic rationale for Cabinet confidentiality.

35. To what extent does the recognized basis for Cabinet confidentiality inform what constitutes a “committee of Cabinet”? There is no dispute that there is a long tradition protecting Cabinet confidentiality that recognizes its public importance. As the Supreme Court has recognized, “[t]he process of democratic governance works best when Cabinet members charged with government policy and decision-making are free to express themselves around the Cabinet table unreservedly”, “without fear that what they read, say or act on will later be subject to public scrutiny”.<sup>36</sup> However, that does not entail that any and all words spoken or documents considered by a minister suddenly attract the protection of Cabinet confidentiality.

36. Indeed, the gravamen of Cabinet confidentiality is the protection of Cabinet *deliberations*.<sup>37</sup> The Supreme Court has said that confidentiality applies whether deliberations take place in formal meetings of Cabinet or in “committees composed of ministers, such as Treasury Board” (emphasis added).<sup>38</sup> The confidentiality extends not just to records of deliberations, but also to documents that reflect the contents of those deliberations.

## **(ii) Application to the IRG**

37. In this case, the issues with the IRG do not require this Court to define the legal boundaries of Cabinet committees with precision. The evidence that has emerged has made it clear that the IRG — which neither deliberates to make decisions Cabinet has delegated to it, nor advises Cabinet — cannot properly be characterized as a Cabinet committee.

38. The IRG plainly stands on a distinct footing from the other Cabinet committees, the list of which is published on the Prime Minister’s website.<sup>39</sup> The website indicates that Cabinet

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<sup>36</sup> *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [at para. 18](#).

<sup>37</sup> See *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [at para. 19](#).

<sup>38</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, [at para. 97](#).

<sup>39</sup> “Website of the Prime Minister entitled Cabinet Committee Mandate and Membership current as of December 3, 2021” (Cross-examination of S. Shragge (May 19, 2022), Exhibit #2) [[MPMR, Tab 9, p. 184](#)].

committees “carry out most of the day-to-day work of the Cabinet” (emphasis added).<sup>40</sup> The website lists 12 committees.

39. With the notable exception of the IRG, one feature is common to every Cabinet committee: they are all composed *exclusively* of ministers of Cabinet. Other than the IRG, the individual members of every committee are listed.

40. In contrast, the IRG is a “working group” that “may consist of relevant ministers and senior government leadership, as needed, based on the nature of the incident”.<sup>41</sup> Mr. Shragge has given evidence that the membership of the IRG can include “other officials”.<sup>42</sup> Beyond this, the IRG’s membership remains secret.

41. Based on the AGC’s own evidence, the IRG is not a committee of Cabinet. Indeed, throughout Mr. Shragge’s affidavit and his cross-examination, he went to great lengths to maintain the distinction between the IRG and Cabinet. As indicated above, Mr. Shragge (and the AGC) exclusively described the IRG as a “working group” and *not* a Cabinet committee.<sup>43</sup> He says that it is a group that brings together ministers and senior officials “to coordinate, to share information, to maintain situational awareness and to work towards resolving issues of national significance”.<sup>44</sup>

42. Importantly, based on his practice and experience, Mr. Shragge has understood there to be a sharp distinction between the IRG and Cabinet:

[T]here’s a distinction between Cabinet and the Incident Response Group in that the Incident Response group is primarily a coordination and information sharing body intended to ensure that the Prime Minister is well informed and ministers are coordinating their activities within their respective mandates as compared to Cabinet, which is traditionally the official decision making body for

<sup>40</sup> “Website of the Prime Minister entitled Cabinet Committee Mandate and Membership current as of December 3, 2021”, at p. 1 (Cross-Examination of S. Shragge (May 19, 2022), Exhibit #2) [MPMR, Tab 9, p. 184].

<sup>41</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 6 [MPMR, Tab 6, p.98].

<sup>42</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 6 [MPMR, Tab 6, p.98].

<sup>43</sup> Transcript of Cross-Examination of S. Shragge (May 19, 2022), at p. 17, line 20, to p. 18, line 4 [MPMR, Tab 8, p. 154].

<sup>44</sup> Transcript of Cross-Examination of S. Shragge (May 19, 2022), at p. 17, line 25 to p. 18, line 4 [MPMR, Tab 8, p. 154].

passing policies which may result in bills and changes to law.<sup>45</sup>  
[Emphasis added.]

43. Mr. Shragge also “reiterate[d] the IRG in and of itself is not an official decision making body; it's an information exchange and coordination body as compared to the Cabinet”.<sup>46</sup>

44. Mr. Shragge confirmed that there is “no formal link” between the IRG and Cabinet.<sup>47</sup> It follows that the IRG does not provide advice to Cabinet. Instead, the IRG is designed to provide advice to the *Prime Minister*, and to support coordination and information exchange — though not, apparently, deliberation or decisions *per se*— amongst ministers.<sup>48</sup>

45. Indeed, in this particular case, it is apparent that the IRG has not served the function of Cabinet or advised the Governor in Council in making the decision to invoke the *Emergencies Act*. The AGC has made clear that not even the minutes of the IRG meetings on February 10, 12, and 13 were put before the Governor in Council.<sup>49</sup>

46. Put simply, a body that has no formal links to Cabinet, does not provide advice to Cabinet, is composed of officials who are not exclusively Cabinet ministers, has no decision-making powers delegated to it by Cabinet, and does not engage in deliberation along the lines that Cabinet does, cannot be a committee of Cabinet that attracts the protection of s. 39. The presence of the Prime Minister or other ministers at the IRG working group meetings is not sufficient to convert that group into a committee of Cabinet — indeed, if that were the case, ministers could cast the cloak of Cabinet confidences over essentially any room they enter.

47. Accordingly, the IRG is not a Cabinet committee and not a part of “Council” within the meaning of s. 39(3) of the *Canada Evidence Act*.

<sup>45</sup> Transcript of Cross-Examination of S. Shragge (May 19, 2022), at p. 18, lines 10-20 [MPMR, Tab 8, p. 155]

<sup>46</sup> Transcript of Cross-Examination of S. Shragge (May 19, 2022), at p. 27, lines 3-7 [MPMR, Tab 8, p. 164]

<sup>47</sup> Transcript of Cross-Examination of S. Shragge (May 19, 2022), at p. 38, lines 15-19 [MPMR, Tab 8, p. 175]

<sup>48</sup> Affidavit of S. Shragge, sworn April 4, 2022, at para. 5 [MPMR, Tab 6, p.98].

<sup>49</sup> The AGC has indicated that the other parties have “received the record that was before the GIC with the exception of those documents certified under s. 39 of the CEA” (Excerpt of Written Representations of the AGC re. CCF Rule 317 Motion, at para. 23 [MPMR, Tab 15, p. 301]). It is clear this record did not include the minutes of IRG meetings on February 10, 12, or 13 because the AGC has stated that, *if those minutes need to be produced*, then “the Interim Clerk will engage s. 39 of the CEA to determine whether the public interest in their disclosure outweighs the public interest in their confidentiality” (*ibid.*, at para. 47).



(iii) *A Note of Caution: the Ethyl Case*

48. The AGC’s attempt to bring the IRG under the umbrella of Cabinet and its committees represents an expansion of confidentiality of which this Court should be extremely cautious. Indeed, in other cases involving Cabinet confidences, both this Court and the Federal Court of Appeal have expressed misgivings about the tactical expansion of confidentiality and have taken steps to restrain it.

49. The case that best illustrates this point is *Canada (Environment) v. Canada (Information Commissioner) [Ethyl]*.<sup>50</sup> In that case, Ethyl Canada Inc. made a request to the Minister of the Environment under the *Access to Information Act*, R.S.C. 1985, c A-1 [ATIA], for certain Cabinet “discussion papers” relevant to decisions regarding a fuel additive known as “MMT”.<sup>51</sup> While the Minister identified four relevant documents, the Access to Information and Privacy Secretariat of Environment Canada denied their release on the basis of Cabinet confidences.<sup>52</sup>

50. Ethyl then complained to the Information Commissioner, who concluded that the complaint had merit. The Commissioner recommended that at least background explanations and analyses be released,<sup>53</sup> but the Minister declined to do so.<sup>54</sup>

51. The Information Commissioner then sought judicial review of the Minister’s decision. During the proceedings, the Clerk of the Privy Council objected to the disclosure of the documents and certified that the four MMT documents were Cabinet confidences under ss. 39(2)(a) and (e) of the *Canada Evidence Act*.<sup>55</sup>

52. The Commissioner succeeded in this Court. The application judge concluded that “[b]y creating exceptions [e.g., the exception for “discussion papers” in s. 39(4)(b)],<sup>56</sup> Parliament intended that certain types of information be released”. He quoted the Minister who sponsored the

<sup>50</sup> *Canada (Environment) v. Canada (Information Commissioner)*, 2003 FCA 68, aff’d *Canada (Information Commissioner) v. Canada (Minister of Environment)*, 2001 FCT 277.

<sup>51</sup> *Canada (Environment) v. Canada (Information Commissioner)*, 2003 FCA 68, at paras. 3-4.

<sup>52</sup> *Canada (Environment) v. Canada (Information Commissioner)*, 2003 FCA 68, at para. 5.

<sup>53</sup> *Canada (Environment) v. Canada (Information Commissioner)*, 2003 FCA 68, at para. 6.

<sup>54</sup> *Canada (Environment) v. Canada (Information Commissioner)*, 2003 FCA 68, at para. 7.

<sup>55</sup> *Canada (Environment) v. Canada (Information Commissioner)*, 2003 FCA 68, at para. 7.

<sup>56</sup> Section 39(4)(b) of the *Canada Evidence Act* provides that a discussion paper described in s. 39(2)(b) can be exempt from Cabinet confidences if the decisions to which the discussion paper relates have been made public or four years have passed since the decisions were made.

bill enacting s. 39, who indicated that Parliament's intended "the factual basis on which decisions are taken to be made public".<sup>57</sup>

53. The application judge reviewed this history of this discussion paper exception. He noted that, when s. 39 was enacted, the government had developed a manual describing what "discussion papers" were:

Normally a department or agency wishing to initiate a policy proposal will begin with the preparation of a Discussion Paper. That paper will describe the problem or issue and, where relevant, contain a full discussion of the alternatives for dealing with it. It will not contain recommendations or the political or other sensitive considerations and argumentation bearing on or leading to them.<sup>58</sup>

54. The application judge observed that, almost immediately after the passage of s. 39, the government implemented a change that eliminated discussion papers: it integrated the information in those papers into a document known as the "Memorandum to Cabinet".<sup>59</sup> By eliminating discussion papers, the exceptions for discussion papers built into the *ATIA* and s. 39 of the *Canada Evidence Act* were also rendered meaningless.

55. In the application judge's view, Parliament intended that a certain type of information be released — "regardless of the title given to the information".<sup>60</sup> He held that "[i]f a document contains information the purpose of which is to provide background explanations, analyses of problems or policy options, Parliament meant for this information to be disclosed".<sup>61</sup> He was critical of the move to incorporate discussion papers into Memoranda to Cabinet:

Transforming the "discussion paper" into the "analysis" section of the current Memorandum to Cabinet effectively limits access to background explanations, analysis of problems or policy options provided for in the *Access Act*. Such a change to the Cabinet Paper

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<sup>57</sup> *Canada (Information Commissioner) v. Canada (Minister of Environment)*, 2001 FCT 277, [at para. 24](#), quoting Minutes of Proceedings and Evidence of the Standing Committee of Justice and Legal Affairs with respect to Bill C-43, *An Act to enact the Access to Information Act*, July 9, 1981, p. 50: 18-19.

<sup>58</sup> *Canada (Information Commissioner) v. Canada (Minister of Environment)*, 2001 FCT 277, [at para. 40](#).

<sup>59</sup> *Canada (Information Commissioner) v. Canada (Minister of Environment)*, 2001 FCT 277, [at paras. 41-43](#).

<sup>60</sup> *Canada (Information Commissioner) v. Canada (Minister of Environment)*, 2001 FCT 277, [at para. 45](#).

<sup>61</sup> *Canada (Information Commissioner) v. Canada (Minister of Environment)*, 2001 FCT 277, [at para. 45](#).

System could be viewed as an attempt to circumvent the will of Parliament.<sup>62</sup> [Emphasis added.]

56. In the result, the application judge held that “in keeping with the intention of Parliament, the Clerk is required to sever background explanations, analyses of problems, or policy options from Cabinet confidences within a Memorandum to Cabinet when such information can reasonably be severed” (emphasis added).<sup>63</sup>

57. All of the foregoing was upheld at the Federal Court of Appeal.<sup>64</sup> The Federal Court of Appeal was clear that the Clerk need not conduct a “line-by-line analysis and identify, for example, information about a background explanation within part of a document which cannot stand alone as a ‘discussion paper’”.<sup>65</sup> The question is “whether there is within, or appended to, the documents an organized body or *corpus* of words which, looked upon on its own, comes within the definition”.<sup>66</sup>

58. Ultimately, the *Ethyl* case establishes that the exercise of s. 39 of the *Canada Evidence Act* is amenable to a review for substance in addition to form.<sup>67</sup> Both this Court and the Federal Court of Appeal recognized that a discussion paper by any other name is still a discussion paper. As such, if a document meets the discussion paper exception that *Parliament* built into s. 39(4)(b), then it falls outside the ambit of Cabinet confidentiality.

59. Since the elimination of discussion papers prior to *Ethyl*, the government has also seen fit to eliminate another type of Cabinet document: *aide-mémoires*. Until approximately 2019, *aide-mémoires* were “used as a discussion paper when a Minister is seeking policy development input on a complex issue or in support of a proposal set out in a [Memorandum to Cabinet]”.<sup>68</sup> For unstated reasons, these documents are no longer produced.

<sup>62</sup> *Canada (Information Commissioner) v. Canada (Minister of Environment)*, 2001 FCT 277, [at para. 45](#).

<sup>63</sup> *Canada (Information Commissioner) v. Canada (Minister of Environment)*, 2001 FCT 277, [at para. 51](#).

<sup>64</sup> With the addition that the government be given an opportunity to claim any unconsidered exemption to disclosure that may apply (*Canada (Environment) v. Canada (Information Commissioner)*, 2003 FCA 68, [at para. 27](#)).

<sup>65</sup> *Canada (Environment) v. Canada (Information Commissioner)*, 2003 FCA 68, [at para. 26](#).

<sup>66</sup> *Canada (Environment) v. Canada (Information Commissioner)*, 2003 FCA 68, [at para. 26](#).

<sup>67</sup> See also *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128, [at para. 28](#).

<sup>68</sup> Privy Council Office, “A Drafter’s Guide to Cabinet Documents”, at p. 3 (Continued Cross-Examination of S. Shragge (June 15, 2022), Exhibit #2) [[MPMR, Tab 13, p. 248](#)]; Continued Cross-examination of S. Shragge (June 15, 2022), at p. 85, line 24 to p. 86, line 2 [[MPMR, Tab 12, p. 234](#)].

60. There has also been a move to limit the availability of even general information about Cabinet documents. In the past, the Privy Council Office produced a “Drafter’s Guide” that explained the contents of Cabinet documents.<sup>69</sup> This Court relied on an earlier version of that guide in *Ethyl*, in order to consider whether properly disclosable information had been smuggled into the memoranda at issue. While previous guides were available publicly, the newest iteration is secret. Mr. Shragge indicated that a copy of the current guide would be easy to obtain — indeed, he has one in his possession — but the AGC has objected to its production.<sup>70</sup>

61. In this way, the government’s pre-*Ethyl* efforts to broaden Cabinet confidentiality and inhibit review of s. 39 certificates have continued to advance.

62. The AGC’s attempt to extend Cabinet confidentiality to the IRG is the next step in this campaign. However, the assertion that the IRG is a part of Cabinet does not make it so. As the courts in *Ethyl* did with the memoranda at issue there, this Court can look to the substance of the IRG to determine what it really is. On the evidence, it is apparent that it is not part of Cabinet, and therefore it should not benefit from Cabinet confidentiality.

63. The substance of the AGC’s claim of Cabinet confidentiality is also surprisingly expansive. Indeed, it has claimed that this confidentiality applies to even the *membership* of the IRG. What the membership would reveal about the IRG that is not already known is not clear; *a fortiori*, it is not clear what the membership would reveal about Cabinet. And the AGC has not just refused to disclose the static members of the working group — it also will not reveal who attended any of the IRG meetings, including whether those outside the federal government attended.<sup>71</sup> It is unclear how a meeting could be protected by cabinet confidence if the attendees to the meeting are from different levels of government. This is a uniquely expansive claim of Cabinet confidences.

64. The Supreme Court in *Babcock* recognized that the “draconian” limitations of s. 39 would likely have the practical effect of making it difficult to set aside a s. 39 certification.<sup>72</sup> That effect

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<sup>69</sup> See generally Privy Council Office, “A Drafter’s Guide to Cabinet Documents” (Continued Cross-Examination of S. Shragge (June 15, 2022), Exhibit #2) [MPMR, Tab 13, p. 243].

<sup>70</sup> Transcript of Continued Cross-examination of S. Shragge (June 15, 2022), p. 72, lines 12-20 [MPMR, Tab 13, p. 221].

<sup>71</sup> Transcript of Continued Cross-Examination of S. Shragge (June 15, 2022), p. 65, line 5 to p. 66, line 4 [MPMR, Tab 13, p. 214].

<sup>72</sup> *Babcock v. Canada (Attorney General)*, 2002 SCC 57, at paras. 39-40.

is not challenged here. However, the government’s efforts in relation to s. 39 — namely, to narrow the types of documents produced to Cabinet, to limit access to general information about those documents, and to make expansive claims about Cabinet confidences — frustrate any potential for judicial review. This is frustration cannot be reconciled with Parliament’s intention to leave some potential for review latent in s. 39.

65. While all of the foregoing substantially undermines the AGC’s claim of Cabinet confidences, that claim presently suffers from a more fundamental concern: it lacks the support of a s. 39 certificate.

**B. Without a Section 39 Certificate, No Claim of Cabinet Confidences Is Sustainable**

66. Section 39 sets up a clear procedure for bringing information within its ambit: the Clerk of the Privy Council (or a minister) must certify that the “information constitutes a confidence of the Queen’s Privy Council for Canada”.<sup>73</sup> This is the “trigger by which information becomes protected”.<sup>74</sup>

67. The Clerk must answer two questions before certifying information: (1) whether the information is a Cabinet confidence within the meaning of ss. 39(1) and 39(2); and (2) if so, whether it is “information which the government should protect taking into account the competing interests in disclosure and retaining confidentiality”.<sup>75</sup>

68. The Supreme Court of Canada has been clear: “If and only if, the Clerk or minister answers these two questions positively and certifies the information, do the protections of s. 39(1) come into play” (emphasis added).<sup>76</sup> These protections — in particular, the protection that disclosure of information shall be refused without examination of the information by the court — are only triggered where there is a valid certification.<sup>77</sup>

69. This Court has confirmed that a s. 39 certificate is a necessary prerequisite to reliance on Cabinet confidences. Indeed, in *Parker v. Canada (Attorney General)*, Associate Chief Justice

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<sup>73</sup> *Canada Evidence Act*, [s. 39\(1\)](#).

<sup>74</sup> *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [at para. 21](#).

<sup>75</sup> *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [at para. 22](#).

<sup>76</sup> *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [at para. 22](#).

<sup>77</sup> *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [at para. 23](#).

Gagné rejected the AGC’s argument that a s. 39 certificate is not always necessary.<sup>78</sup> After reviewing the sections of *Babcock* described above, the Associate Chief Justice concluded that, absent a s. 39 certificate, the AGC “cannot legitimately rely on the statutory process for Cabinet confidentiality that precludes this Court from reviewing the documents over which Cabinet confidentiality is claimed”.<sup>79</sup>

70. As in *Parker*, no s. 39 certificate has been produced. As in *Parker*, this was a choice. The Attorney General has been aware of the need for a s. 39 certificate over substantial amounts of the information at issue since at least May 12, 2022, when the Direction to Attend to Mr. Shragge was served. The AGC was arguably aware of the need to obtain a s. 39 certificate over this information even earlier — on April 1, 2022, when the CCF served a Notice of Motion for an order pursuant to Rule 317 that the AGC produce the minutes of the IRG and related information.<sup>80</sup> In these circumstances, and given the AGC’s participation in *Parker*, the AGC cannot legitimately argue that it need not produce a s. 39 certificate in order to rely on a claim of Cabinet confidences.

71. Accordingly, as in *Parker*, “as a result of the choice made by the [AGC] not to produce a section 39 certificate, the common law now applies and this Court has to review the materials before the GIC and balance the interests at stake”.<sup>81</sup>

### C. No Claim of Public Interest Immunity Can Be Maintained

72. The Associate Chief Justice’s statement in *Parker* that “the common law now applies” is a statement that, where the AGC fails to produce a s. 39 certificate, the common law of public interest immunity is the only means of maintaining the confidentiality of the information at issue.<sup>82</sup>

73. Public interest immunity “prevents the disclosure of a document where the court is satisfied that the public interest in keeping the document confidential outweighs the public interest in its

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<sup>78</sup> *Parker v. Canada (Attorney General)*, 2021 FC 496, [at para. 31](#).

<sup>79</sup> *Parker v. Canada (Attorney General)*, 2021 FC 496, [at para. 36](#).

<sup>80</sup> Amended Notice of Motion of the CCF re. Rule 317 (April 11, 2022) [*MPMR*, *Tab 14*, p.284].

<sup>81</sup> *Parker v. Canada (Attorney General)*, 2021 FC 496, [at para. 38](#).

<sup>82</sup> See *Parker v. Canada (Attorney General)*, 2021 FC 496, [at para. 27](#), citing *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [at para. 19](#).

disclosure”.<sup>83</sup> This requires a “careful balancing of the competing public interests”, which “must be weighed with reference to a specific document in the context of a particular proceeding”.<sup>84</sup>

74. The main factors — also known as the *Carey* factors — relevant to this balance are:

- (1) the level of the “decision-making process”;
- (2) the “nature of the policy concerned”;
- (3) the “particular contents of the documents”;
- (4) the timing of disclosure;
- (5) the “importance of producing the documents in the interests of the administration of justice”; and
- (6) whether the party seeking the production of the documents “alleges unconscionable behaviour on the part of the government”.<sup>85</sup>

75. The AGC has the burden of showing that, on balance, these factors weigh in favour of maintaining public interest immunity. This typically requires the government to put in a “detailed affidavit” to support its claim of public interest immunity.<sup>86</sup>

76. In this case, the balance of the *Carey* factors supports disclosure. It is true that the nature of the policy, which relates to the government’s response to the Freedom Convoy protests, is sensitive. While it is also true that the level of the decision to invoke the *Emergencies Act* is high — it was a decision made by the Governor in Council — it is important to recall that what is being sought is information related to the IRG, not the substance of Cabinet or Governor in Council deliberation. Given that the IRG is not a Cabinet committee, the level of the information sought is not as high as it might have otherwise seemed.

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<sup>83</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, at para. 99.

<sup>84</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, at para. 100.

<sup>85</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, at para. 101, citing *Carey v. Ontario*, [1986] 2 S.C.R. 637, at pp. 670-673.

<sup>86</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, at para. 102.



77. The remaining factors — the timing of disclosure, the administration of justice, and the particular contents of the documents — all support disclosure.<sup>87</sup>

**(i) *Timing of Disclosure***

78. With respect to the timing of disclosure, the Supreme Court of Canada has indicated that the importance of time turns on the contents of the documents.<sup>88</sup> For example, there will not be a strong interest in confidentiality in respect of a document that merely reveals a Cabinet decision that has become public; however, ministers can rightly expect that a document that weighs several possible responses to a situation will remain confidential “for some prolonged time even after the decision is publicly announced”.<sup>89</sup>

79. This was the case, for example, in *Nova Scotia (Attorney General) v. Judges of the Provincial Court and Family Court of Nova Scotia*, where “the details of the considerations that were before Cabinet ... have not been made public”.<sup>90</sup> In such a case, ministers fairly expect that their considerations will remain confidential for some time.

80. In contrast, the situation here is the unique due to s. 58(1) of the *Emergencies Act*: the basis for the decision at issue has been explained to a degree in the s. 58(1) explanation. As a result, at this time, the interest in confidentiality has waned. The AGC is no longer in a position to argue that the substance of the deliberations need to remain confidential — indeed, that substance has already been revealed to greater extent than usual in instances involving decisions made by the Governor in Council.

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<sup>87</sup> The sixth factor is not applicable because there are no allegations of unconscionable behaviour on the part of the government.

<sup>88</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, [at para. 109](#).

<sup>89</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, [at para. 109](#).

<sup>90</sup> *Nova Scotia (Attorney General) v. Judges of the Provincial Court and Family Court of Nova Scotia*, 2020 SCC 21, [at para. 66](#).



(ii) *Administration of Justice*

81. The foregoing is not to say that the information related to the IRG has no value. To the contrary, that information is essential to fair and adequate adjudication of this judicial review application. This leads to consideration of the next *Carey* factor: the administration of justice.

82. The Supreme Court of Canada has indicated that, in cases involving Cabinet deliberations, a strong public interest will usually be necessary to justify disclosure; often, that public interest will relate to the administration of justice.<sup>91</sup> The Court identified two administration of justice considerations: “the importance of the case and the need or desirability of producing the documents to ensure that [the case] . . . can be adequately and fairly presented”.<sup>92</sup>

83. In this case, the documents and information relating to the IRG are essential to the fair and adequate presentation of the case. Notwithstanding that the outlines of the government’s decision are explained in the s. 58(1) explanation, the IRG-related information has the potential to fill in the gaps between those lines. Indeed, both Mr. Shragge’s affidavit and the s. 58(1) explanation indicate that the decision at issue “was informed by robust discussions at three meetings of the Incident Response Group (IRG) on February 10, 12, and 13, 2022” (emphasis added).<sup>93</sup> Thus, on the AGC’s own evidence, the information relating to the IRG is an important basis for the decision. It is difficult to see how the AGC can rely on the robust nature of these discussions while also insulating them from review by the parties or the Court.

(iii) *Contents of the Documents*

84. This factor is somewhat complicated to address because the documents do not all stand on the same footing. A document that discloses the membership of the IRG and a background explainer produced by the Privy Council Office are not as sensitive as a document that could reveal

<sup>91</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, at para. 113.

<sup>92</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, citing *Carey v. Ontario*, [1986] 2 S.C.R. 637, at p. 671.

<sup>93</sup> Affidavit of Steven Shragge, sworn April 4, 2022, at para. 5 [MPMR, Tab 6, p. 98]; “February 14, 2022 Declaration of Public Order Emergency Explanation pursuant to subsection 58(1) of the *Emergencies Act*”, at p. 4, attached as Exhibit A to the Affidavit of Steven Shragge, sworn April 4, 2022 [MPMR, Tab 6, p. 100].

a dispute between ministers. Accordingly, “background” documents are far more likely to be disclosed than documents that reveal deliberations.

85. In order to properly adjudicate the AGC’s eventual claim of public interest immunity, this Court may need to determine which documents reveal merely background information and which documents truly reveal the substance of deliberations between ministers. As presaged in *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, this may be a situation in which the strength of the claim of public interest immunity is not clear.<sup>94</sup> As a result, this Court should inspect the document in private to resolve any doubts.<sup>95</sup> This would also ensure that there is no inadvertent disclosure of a document that should in fact remain confidential.

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86. For those reasons, this Court should (1) confirm that the AGC cannot rely on a claim of Cabinet confidences under s. 39 of the *Canada Evidence Act* absent a s. 39 certificate; and (2) order that the AGC file, under seal and within 14 days, any documents over which public interest immunity may be claimed. In the event that this Court determines that public interest immunity cannot be maintained over some or all of those documents and the information at issue, this Court should order that Mr. Shragge reattend for cross-examination, during which he should answer those questions and produce those documents no longer covered by valid Cabinet confidentiality objections.<sup>96</sup>

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<sup>94</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, [at para. 103](#).

<sup>95</sup> *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20, [at para. 103](#).

<sup>96</sup> Although the AGC does not appear to be contesting this point, it bears noting that all of these documents are within the power, possession, or control of Mr. Shragge. By letter on June 13, 2022, Mr. Shragge confirmed that he has “some material that PCO prepared to support a senior official participating in the Sunday, February 13, 2022 IRG meeting”, that he “could have access to the agendas and the material to support the Chair of the IRG for the February 10, 12, and 13, 2022 IRG meetings” [MPMR, Tab 11, p. 195]. As this Court held in *Canadian Coalition for Firearm Rights v. Canada (Attorney General)*, 2022 FC 332, [at para. 21](#), records that are accessible to an employee, particularly an employee like Mr. Shragge, who has a broad scope of authority within the Privy Council Office by virtue of being a Senior Policy Advisor, meet the “power, possession, or control” requirement.

**PART IV — ORDER SOUGHT**

87. The moving party, CCLA, respectfully requests:

1. Rulings on the objections made by the Respondent, the Attorney General of Canada (“AGC”), to the document requests listed in the CCLA’s May 12, 2022, Direction to Attend to Steven Shragge, specifically that the following objections made on the basis of Cabinet confidences were invalid:
  - a. the AGC’s objection to the CCLA’s request for any document that lists the membership of the Incident Response Group for the meetings held on each of February 10, 2022, February 12, 2022, and February 13, 2022;
  - b. the AGC’s objection to the CCLA’s request for any and all minutes of the February 10, 2022, Incident Response Group meeting;
  - c. the AGC’s objection to the CCLA’s request for any and all notes, including Mr. Shragge’s, of the February 10, 2022, Incident Response Group meeting;
  - d. the AGC’s objection to the CCLA’s request for any and all minutes of the February 12, 2022, Incident Response Group meeting;
  - e. the AGC’s objection to the CCLA’s request for any and all notes, including Mr. Shragge’s, of the February 12, 2022, Incident Response Group meeting;
  - f. the AGC’s objection to the CCLA’s request for any and all minutes of the February 13, 2022, Incident Response Group meeting; and
  - g. the AGC’s objection to the CCLA’s request for any and all notes, including Mr. Shragge’s, of the February 13, 2022, Incident Response Group meeting.
2. Rulings on the objections made by the AGC during the Applicant’s cross-examination of Steven Shragge on May 19, 2022, specifically that the following objections made on the basis of Cabinet confidences were invalid:
  - a. the AGC’s objection to the question of which ministers were members of the IRG in February 2022;
  - b. the AGC’s objection to a request for the attendee list for each of the IRG meetings in February 10, 12, and 13, 2022;

- c. the AGC's objection to the questions of whether there were documents prepared by the Privy Council Office ("PCO") for the Incident Response Group ("IRG") and whether, if so, those documents can be produced;
  - d. the AGC's objection to the question of whether the minutes of the IRG meetings on February 10, 12, and 13 were put before Cabinet;
  - e. the AGC's objection to the question of whether the minutes of the IRG meetings on February 10, 12, and 13 were put before the Governor in Council;
  - f. the AGC's objection to the question of whether the documents that the IRG considered at its meetings on February 10, 12, and 13 were put before Cabinet; and
  - g. the AGC's objection to the question of whether the documents that the IRG considered at its meetings on February 10, 12, and 13 were put before the Governor in Council.
- 3. a declaration that the AGC cannot rely on s. 39 of the *Canada Evidence Act* to support a claim of Cabinet confidences without a valid s. 39 certification;
  - 4. a declaration that the IRG is not a "committee of Cabinet" within the meaning of s. 39(3) of the *Canada Evidence Act*;
  - 5. an order that the AGC file, under seal and within 14 days, any documents over which public interest immunity may be claimed;
  - 6. subject to this Court's determination of whether any claim of public interest immunity is sustainable, an order that:
    - a. Mr. Shragge re-attend for cross-examination by the CCLA, at the AGC's expense;
    - b. Mr. Shragge answer any question put to him during his cross-examination on May 19, 2022, that was not answered on the basis of an invalid objection, as well as any proper question arising from his answer(s);

- c. Mr. Shragge produce for inspection any document that was not produced on the basis of an invalid objection; and
7. such further and other relief as the CCLA may request and this Honourable Court may deem just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28 DAY OF JUNE 2022.**

A handwritten signature in blue ink, appearing to read 'E. Krajewska', is written over a horizontal line.

Ewa Krajewska  
Brandon Chung

*Counsel for the Moving Party,  
Canadian Civil Liberties Association*

## **PART V — LIST OF AUTHORITIES**

### **CASELAW**

1. [\*Canada \(Environment\) v. Canada \(Information Commissioner\)\*, 2003 FCA 68](#)
2. [\*Babcock v. Canada \(Attorney General\)\*, 2002 SCC 57](#)
3. [\*British Columbia \(Attorney General\) v. British Columbia \(Information and Privacy Commissioner\)\*, 2011 BCSC 112](#)
4. [\*British Columbia \(Attorney General\) v. Provincial Court Judges' Association of British Columbia\*, 2020 SCC 20](#)
5. [\*British Columbia \(Office of The Premier\) \(Re\)\*, 2009 CanLII 26565 \(BC IP\)](#)
6. [\*Canada \(Environment\) v. Canada \(Information Commissioner\)\*, 2003 FCA 68](#)
7. [\*Canada \(Information Commissioner\) v. Canada \(Minister of Environment\)\*, 2001 FCT 277](#)
8. [\*Canadian Coalition for Firearm Rights v. Canada \(Attorney General\)\*, 2022 FC 332](#)
9. [\*Carey v. Ontario\*, \[1986\] 2 S.C.R. 637](#)
10. [\*Nova Scotia \(Attorney General\) v. Judges of the Provincial Court and Family Court of Nova Scotia\*, 2020 SCC 21](#)
11. [\*Office of the Premier and Executive council operations and Ministry of Skills Development and Labour, Re\*, 2002 CanLII 42472 \(BC IPC\)](#)
12. [\*Ontario \(Economic Development and Trade\) \(Re\)\*, 1993 CanLII 4927 \(ON IPC\)](#)
13. [\*Parker v. Canada \(Attorney General\)\*, 2021 FC 496.](#)
14. [\*Tsleil-Waututh Nation v. Canada \(Attorney General\)\*, 2017 FCA 128](#)

### **STATUTES**

1. [\*Canada Evidence Act\*, R.S.C. 1985, c. C-5](#)
2. [\*Freedom of Information and Protection of Privacy Act\*, R.S.B.C. 1996, c. 165](#)