

FEDERAL COURT

B E T W E E N:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant / Moving Party

and

ATTORNEY GENERAL OF CANADA

Respondent / Responding Party

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Court File No.: T-347-22

FEDERAL COURT

B E T W E E N:

CANADIAN CONSTITUTION FOUNDATION

Applicant / Moving Party

and

ATTORNEY GENERAL OF CANADA

Respondent / Responding Party

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Applications for Judicial Review Under Sections 18 and 18.1 of the *Federal Courts Act*

RESPONDING MOTION RECORD OF THE ATTORNEY GENERAL OF CANADA
(Applicants' Motion to Adduce Additional Affidavit pursuant to Rules 312 and 369)

December 23, 2022

ATTORNEY GENERAL OF CANADA

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Court File No.: T-316-22

FEDERAL COURT

B E T W E E N:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant / Moving Party

and

ATTORNEY GENERAL OF CANADA

Respondent / Responding Party

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ATTORNEY GENERAL OF ALBERTA

Intervener

Court File No.: T-347-22**FEDERAL COURT**

B E T W E E N:

CANADIAN CONSTITUTION FOUNDATION

Applicant / Moving Party

and

ATTORNEY GENERAL OF CANADA

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and

ATTORNEY GENERAL OF ALBERTA

Intervener

Applications for Judicial Review Under Sections 18 and 18.1 of the *Federal Courts Act*

**WRITTEN REPRESENTATIONS OF THE RESPONDENT IN RESPONSE TO
APPLICANTS' MOTION TO ADDUCE EVIDENCE FROM THE PUBLIC ORDER
EMERGENCY COMMISSION**

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OVERVIEW

1. The Applicants' motion to supplement the record should be dismissed for two reasons. First, the evidence they seek to adduce is inadmissible on judicial review as it was not the record of the Governor in Council (GIC), which is the decision-maker in this case. Second, the evidence does not fall into any of the *Access Copyright* exceptions. The evidence is being tendered not for context, but to challenge the substantive merits of the decision before the Court.

2. Parties must take the record as they find it and the Court cannot accede to requests to bootstrap and bolster the record in this manner, no matter which party seeks to do so.

3. Furthermore, it would not be in the interests of justice to admit the evidence. Doing so would interfere with the Public Order Emergency Commission's (Commission) process. The Commission has not yet concluded its process or had a chance to fully assess and consider the evidence or to issue its report. The Court does not know whether the Commission will accept, qualify, or reject the evidence. The Court also does not know whether the proposed evidence represents a "judicious selection" amongst all of the evidence tendered in that process, as the Applicants baldly claim. The Court should defer to the Commission's jurisdiction and process before admitting any of the documents or testimony that remain before it.

PART I – STATEMENT OF FACTS

4. The record before the Court in these applications shows the following:

- a. The Incident Response Group (IRG) was convened and deliberated on February 10, 12, and 13, 2022.¹
- b. Cabinet was convened and deliberated on February 13, 2022 at 8:30pm.²
- c. The GIC was convened and on February 14, 2022, made Order in Council PC 2022-0106, an *Order directing that a Proclamation be issued*, pursuant to the powers granted to the GIC under s. [17\(1\)](#) of the *Emergencies Act*.³
- d. The material before the GIC in making Order in Council PC 2022-0106 consisted of two documents: a submission to the GIC from the Minister of Public Safety and Emergency Preparedness (the Minister) and Council's record of decision. The Minister's submission to the GIC is described as including the Minister's signed recommendation, a draft order in council, a draft proclamation, and accompanying materials.⁴
- e. The GIC was convened and on February 15, 2022, made Order in Council PC 2022-0107, the *Emergency Measures Regulations* (EMR) and Order in Council PC 2022-0108, the *Emergency Economic Measures Order* (EEMO), both pursuant to the powers granted to the GIC under s. [19\(1\)](#) of the *Emergencies Act*.⁵
- f. The material before the GIC in making Order in Council PC 2022-0107 (EMR) consisted of two documents: the Minister's submission to the GIC and the Council's record of decision. The Minister's submission to the GIC is described as including the Minister's signed recommendation, a draft order in council, draft regulations, and accompanying materials.⁶
- g. The material before the GIC in making Order in Council PC 2022-0108 (EEMO) consisted of two documents: the Minister's submission to the GIC and the GIC's

¹ IRG minutes, February 10, 2022, February 12, 2022 and February 13, 2022.

² Cabinet minutes, February 13, 2022.

³ Order in Council [PC 2022-0106](#) (*Proclamation*).

⁴ Certificate of the Interim Clerk of the Privy Council, dated April 29, 2022.

⁵ Orders in Council [PC 2022-0107](#) and [PC 2022-0108](#).

⁶ Certificate of the Interim Clerk of the Privy Council, dated April 29, 2022.

record of decision. The Minister's submission to the GIC is described as including the Minister's signed recommendation, a draft order in council, a draft economic measures order and accompanying materials.⁷

5. On February 18 and 24, 2022, the Applicants commenced their applications for judicial review under s. [18.1](#) of the *Federal Courts Act*, challenging the *Proclamation*, EMR, and EEMO on the basis that they were *ultra vires*, unreasonable, and violated sections 2, 7, and 8 of the *Canadian Charter of Rights and Freedoms*.

6. The GIC was convened and on February 23, 2022, made the *Revoking Proclamation*, which revoked the declaration of a state of emergency under the *Emergencies Act*.⁸ Pursuant to s. [15\(2\)](#) of the *Emergencies Act*, all orders and regulations made by the GIC further to the prior declaration (i.e., the EMR and EEMO) were revoked upon revocation of the declaration.

PART II - POINTS IN ISSUE

7. The proposed additional affidavit and new evidence does not satisfy the legal test under Rule [312](#) and it would not be in the interest of justice to admit it.

⁷ Certificate of the Interim Clerk of the Price Council, dated April 29, 2022.

⁸ Order in Council [PC 2022-0150](#) (*Revoking Proclamation*).

PART III – SUBMISSIONS

A. APPLICABLE RULES & LEGAL PRINCIPLES

1) The Scope of the Record on Judicial Review

8. Reviewing courts are not trial courts; they review the decisions of administrative decision-makers whom Parliament or legislatures designate to decide matters. This significantly affects the admissibility of evidence before a reviewing court.⁹ The only material relevant on a judicial review is the material that was considered by the administrative decision-maker in coming to its decision.¹⁰ Based on this record, the court conducts a review of the tribunal decision. As the Federal Court of Appeal has held:

The main principle behind this general rule is [...]: the distinction between the administrative decision-makers as the bodies designated by Parliament as the merits-deciders and the Federal Courts as merely reviewing courts, nothing more.¹¹

9. Rule [317](#) of the *Federal Courts Rules* allows applicants for judicial review to seek “material relevant to an application that is in the possession of the tribunal whose order is the subject of the application.” However, this concept of relevance is limited to the actual material the administrative decision-maker had before it when making the order under judicial review, and nothing more.¹²

⁹ *Tsleil-Waututh Nation v Canada (Attorney General)*, [2017 FCA 128](#) at paras [85-87](#) [*TWN*]; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency [Access Copyright]*, [2012 FCA 22](#) at paras [14-19](#); *Bernard v Canada (Revenue Agency)*, [2015 FCA 263](#) at paras [22-28](#) [*Bernard*].

¹⁰ *TWN* at paras [112](#), [113](#) and [114](#).

¹¹ *TWN* at para [87](#).

¹² *TWN* at paras [112](#), [113](#) and [114](#).

10. This is because judicial reviews are distinguishable from other types of legal proceedings. In an action, for instance, the court makes determinations of fact on all of the evidence before it to determine liability and damages. To facilitate this “search for truth,” relevance is defined broadly “in relation to the allegations set out in the pleadings”. Evidence is then disclosed between adversarial parties to enable the litigants to clarify the strength of their claim and to allow a court to make the required findings of fact in a fair and efficient manner.¹³

11. There is no similar right to discovery in an application for judicial review, however.¹⁴ Here, the Court is reviewing the GIC’s Orders in Council by way of a judicial review. The evidentiary record is therefore governed by s. [18.1](#) of the *Federal Courts Act*, read together with s. [2](#) of the *Federal Courts Act*, Rule [317](#) of the *Federal Courts Rules*, and the relevant case law.

2) Admission of New Evidence Under Rule 312

12. To admit new evidence under Rule [312](#) of the *Federal Courts Rules*, an applicant must satisfy two preliminary requirements: 1) the evidence must be admissible on the application for judicial review; and 2) the evidence must be relevant to an issue that is properly before the reviewing court.¹⁵

13. As noted above, the general rule is that the evidentiary record on judicial review is restricted to the record that was before the decision-maker, and evidence that was not before the decision-maker is not admissible.

¹³ *Glegg v Smith & Nephew Inc.*, [2005 SCC 31](#) at para [22](#).

¹⁴ *Sosiak v Canada (Attorney General)*, [2003 FCA 205](#) at para [26](#).

¹⁵ *Forest Ethics Advocacy Association v National Energy Board*, [2014 FCA 88](#) at paras [4-6](#).

14. There are three limited recognized exceptions to allow for the filing of evidence on judicial review that goes beyond the record before the decision-maker:

- First, the background information exception. Sometimes the Court will receive an affidavit that provides general background in circumstances where that information might assist it in understanding the issues relevant to the judicial review. Care must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider;
- Second, sometimes an affidavit is received on judicial review in order to highlight the complete absence of evidence before the administrative decision-maker when it made a particular finding; and
- Third, sometimes affidavits are necessary to bring to the attention of the judicial review court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker, so that the judicial review court can fulfil its role of reviewing for procedural unfairness.¹⁶

15. Even if the two preliminary requirements of admissibility and relevancy are satisfied, an applicant must still convince the Court that it should exercise its discretion to grant an order under Rule [312](#). Although several criteria are considered in this regard,¹⁷ the “overriding consideration is whether the interests of justice will be served” by permitting the additional affidavit to be admitted.¹⁸

¹⁶ *Access Copyright* at paras [19-20](#).

¹⁷ *Oceanex Inc. v Canada (Transport)*, [2017 FC 496](#) at paras [20-22](#).

¹⁸ *Holy Alpha and Amega Church of Toronto v Canada (Attorney General)*, [2009 FCA 101](#) at para [2](#); see also *Atlantic Engraving Ltd. v Lapointe Rosenstein*, [2002 FCA 503](#), at para [8](#).

B. THE PROPOSED NEW EVIDENCE IS INADMISSIBLE

16. The new evidence the Applicants seek to file is inadmissible because it is not the record of the GIC and it does not fall within any of the exceptions to that general rule. The evidence goes to the merits of the decision under review as opposed to providing background or contextual information to assist the Court in understanding the record before it. It is also not being adduced to show that a key finding of fact is unsupported by any evidence at all, or to establish a breach of natural justice or procedural fairness, neither of which are raised in these proceedings. The evidence should therefore not be admitted.

1) The decision-maker is the Governor in Council

17. Judicial review applications under s. [18.1](#) of the *Federal Courts Act* can only be conducted in respect of a decision or order made by a decision-maker designated by Parliament to exercise powers conferred under a statute.¹⁹ Here, the only body that made the orders that are the subject of the underlying applications for judicial review is the GIC. To adopt the approach proposed by the Applicants would render the record before the “federal board, commission or other tribunal” under judicial review essentially boundless and would mean that any person or body who may have supplied information to the tribunal would constitute the tribunal.²⁰

18. When it enacted the *Emergencies Act*, Parliament clearly and expressly conferred the powers under ss. [17\(1\)](#) and [19\(1\)](#) to the GIC, to the exclusion of all others. It specifically did not confer power on any individual minister, or on a collective of ministers.

¹⁹ *Federal Courts Act*, ss. [18.1](#) and [2](#).

²⁰ *TWN* at paras [67](#), [86](#), [87](#), [114](#).

19. The GIC is defined as meaning the “Governor General in Council or Governor in Council means the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the King’s Privy Council for Canada.”²¹

20. Within our constitutional framework, Cabinet cannot qualify as a federal board, commission, or other tribunal under s. [18.1](#) of the *Federal Courts Act* because it cannot exercise powers conferred under an Act of Parliament. Canada is a constitutional monarchy with executive authority, including powers conferred under acts of Parliament, vested in the King, as represented by the Governor General, aided and advised by the King’s Privy Council for Canada. Cabinet only exists as a matter of constitutional convention, such that its deliberations are separate from the advice tendered by the King’s Privy Council for Canada to the Governor General in the making of legal decisions.

21. Furthermore, in selecting the GIC as the sole decision-maker under the *Emergencies Act*, Parliament ensured that certain requirements would be met in the exercise of these powers, namely the making of formal instruments, their registration and their publication in the official gazette of Canada. None of these requirements attach to a Cabinet decision.

22. The record before this Court shows that the GIC was convened and duly constituted to perform its constitutionally-assigned role and exercised the powers conferred to it by Parliament under ss. [17\(1\)](#) and [19\(1\)](#) of the *Emergencies Act*.²² The GIC was duly convened and made the

²¹ [Interpretation Act](#), RSC, 1985, c I-21, s. [35](#).

²² *Proclamation*, Order in Council [PC 2022-0106](#), and Orders in Council [PC 2022-0107](#) and [PC 2022-0108](#).

orders that are the subject of the applications on February 14 and 15, separately from Cabinet, which met on February 13.²³ The GIC considered its own separate record consisting of the Minister's submission (which included the Minister's formal recommendation and the draft legal instruments, among other things), and recorded its own decision.²⁴

23. Unquestionably, there were other government actors involved in the general matter of whether to invoke the *Emergencies Act*, including the IRG, Cabinet, the Prime Minister, the Clerk of the Privy Council, the Prime Minister's National Security and Intelligence Advisor, the Commissioner of the RCMP, and others. However, none of these government actors were the decision-maker for the purposes of judicial review under s. [18.1](#) of the *Federal Courts Act*. The decision-maker was the GIC.

2) The proposed new evidence is not the record before the Governor in Council

24. None of the exhibits that the Applicants seek to adduce is the material of the decision-maker, the GIC. The Clerk of the Privy Council has identified the Minister's submission to the GIC, and the record of the Council's decision, as constituting the record that was before the decision-maker.²⁵

25. The transcripts of testimony given to the Commission (Exhibits "C", "D", "G", "J", and "K" to the affidavit of Cara Zwibel (the Zwibel Affidavit), as well as the public summary of *in*

²³ Cabinet minutes, February 13, 2022.

²⁴ Certificate of the Interim Clerk of the Privy Council, dated April 29, 2022.

²⁵ Certificate of the Interim Clerk of the Privy Council dated April 29, 2022.

camera testimony given to the Commission (Exhibit “I”), were clearly not before the decision-maker and are inadmissible.

26. The February 14, 2022 Memorandum from the Clerk of the Privy Council to the Prime Minister (Memorandum) and its transmittal e-mail (Exhibits “A” and “B”) are also not the materials of the GIC. Even though a minister may be part of a collective, the Court cannot assume documents prepared for the purpose of individual consideration and use by that single minister were brought before or considered by the collective, in the absence of evidence to support this assumption. Moreover, the Memorandum was not “clearly before Cabinet,”²⁶ as the Applicants suggest. The email of Jeremy Adler was sent on February 14, 2022, but Cabinet met the day before. (The same applies with respect to the February 14, 2022 e-mail from Jody Thomas at Exhibit “L”.) As such, these documents are inadmissible.

27. Concerning the documents related to the policing plan developed in February 2022 (Exhibits “E” and “F”) and Jody Thomas’ e-mail of February 14, 2022 regarding a threat assessment (Exhibit “L”), these documents are also not the materials of the GIC. The same applies to the interview summary of four senior Canadian Security Intelligence Service officials (Exhibit “H”), as it concerns an interview on August 29, 2022 that post-dates the orders in council by several months. As a result, all of these documents are inadmissible.

²⁶ Applicants’ written representations at para 34.

C. NONE OF THE EXCEPTIONS TO ADMIT NEW EVIDENCE ARE MET

28. The Applicants' proposed evidence also does not fall into any of the *Access Copyright* exceptions. The evidence goes beyond providing summaries and background to assist the reviewing court in understanding the record before it, and instead provides fresh evidence going to the merits of the orders in council made by the GIC, taking it out of the first exception.²⁷ This is also not a situation where a key finding of fact is unsupported *by any evidence at all*. Finally, the proposed evidence is unrelated to issues of natural justice or procedural fairness, which are not raised in this proceeding.

29. Allowing into evidence recollections of events provided by the Prime Minister, the Clerk, and other witnesses months after the orders in council were made is contrary to the purpose of a judicial review, which is to review the reasonableness or the legality of a decision at the time it was made. "Bootstrapping" is impermissible, regardless of which party attempts to do it.²⁸

30. Furthermore, the recommendations from the Clerk to the Prime Minister, including Mr. Adler's e-mail and the Memorandum, and the excerpts of the testimony of the Prime Minister and the Clerk, go beyond providing "general background" information to assist in "understanding the issues relevant to the judicial review."²⁹ The same can be said for the other proposed evidence, including documents related to the policing plan (Exhibits "E", "F", and "G").

²⁷ *Bernard* at paras [20-23](#).

²⁸ *Canada (Attorney General) v Oshkosh Defense Canada, Inc.*, [2018 FCA 102](#) at para [45](#).

²⁹ *Access Copyright* at paras [20](#) & [23](#).

31. The Applicants' proposed evidence has been selectively chosen to support their arguments on the merits, not to provide any required context for the Court. To provide an obvious example, the Applicants omit any testimony from the Prime Minister in relation to the completeness of the policing plan they seek to tender before this court.³⁰ To allow the Applicants to selectively add evidence going to the merits distorts the purpose and scope of this exception.

32. Moreover, this evidence does not fall under the second exception permitting new evidence that highlights the complete absence of evidence before the decision-maker when it made a particular finding.³¹ As the Federal Court of Appeal has noted, this covers rare situations where a key finding of fact is "unsupported by any evidence at all"³² – not situations where there is evidence underlying a particular decision but a party wishes there were more evidence, as is the case here.

33. The third exception concerns evidence relevant to an issue of natural justice, procedural fairness, improper purpose, or fraud that could not have been placed before the decision-maker and that does not interfere with the role of the decision-maker as merits-decider. None of the proposed evidence in the Zwibel Affidavit is of this type nor do the Applicants' notices of application raise issues of natural justice or procedural fairness.

³⁰ [POEC – Volume 31 – November 25, 2022 \(publicorderemergencycommission.ca\)](#), pp 53-55, 83-85, 186 & 187.

³¹ *Re Keeprite Workers' Independent Union et al and Keeprite Products Ltd.*, [1980 CanLII 1877](#), 29 OR (2d) 513 (ONCA).

³² *Bernard* at para [24](#).

D. ADMISSION OF EVIDENCE NOT IN THE INTERESTS OF JUSTICE

34. Should the Court nonetheless be of the view that that the Zwibel Affidavit is admissible and relevant, the Court should not exercise its discretion to grant an order under Rule [312](#). Doing so would not be in the interests of justice.

35. Admitting this evidence would impinge on the Commission's process. The Commission is mandated to examine and report on the circumstances that led to the declaration of a public order emergency and the measures taken by the GIC by means of the EMR and the EEMO, particularly with respect to the impact of certain identified factual issues. The Commissioner is directed to make findings about the use of the *Emergencies Act*, the appropriateness and effectiveness of the measures, and to make recommendations on those topics.³³

36. This mandate overlaps with that of the Court on judicial review but the record before the Court is necessarily far narrower in reviewing the lawfulness of the GIC's decision to make the impugned orders – for the reasons noted above.

37. The Commission, on the other hand, heard from many witnesses over 30 days of factual hearings and received more than 60,000 documents as part of its investigative process. Evidence was admitted through witnesses, who were questioned by Commission counsel as well as counsel

³³ See Order in Council [PC 2022-392](#) (April 25, 2022) and *Emergencies Act*, [s. 63\(1\)](#).

for the parties, and through a bulk entry exhibit process to accommodate the tight timelines in the inquiry.³⁴

38. All of this evidence – including the selections chosen by the Applicants’ counsel on this motion – remain before the Commission for its consideration. Commissioner Rouleau has indicated he intends to take a “judicial attitude” to his job, and will make findings and conclusions based on the evidence presented to him.³⁵

39. As a matter of comity, the Court should defer to the Commission’s jurisdiction and avoid making a decision on partial evidence from a large evidentiary record that is not before it. This avoids the risk of the Court making findings of fact in relation to this selection of evidence that conflict with those of the Commission, which has the benefit of the entire record before it. That risk is manifest, as the Court does not know whether the Commission will accept, qualify, or reject the evidence the Applicants seek to import into this proceeding. It is for the Commission – not the Applicants – to make a “judicious selection”³⁶ amongst all of the evidence tendered before it, in its final report.

40. The Applicants are attempting to create a parallel proceeding in which they ask this Court to render a decision through a different legal and evidentiary lens, but based on a curated selection of evidence that was before the Commission.³⁷ The Respondent could not respond to the

³⁴ [POEC - Volume 28 - November 22, 2022 \(publicorderemergencycommission.ca\)](#), pp 206-208.

³⁵ [POEC - Volume 1 - October 13, 2022 \(publicorderemergencycommission.ca\)](#), p 11.

³⁶ Applicants’ written representations at para 18.

³⁷ *Beno v Canada (Commissioner and Chairperson, Commission of Inquiry into the Deployment of Canadian Forces to Somalia)*, [1997 CanLII 6346](#), [1997] 2 FC 527 (CA).

Applicants' curated view of the evidence heard by the Commissioner without further expanding the record. What the Applicants seek to do is improper and it would not be in the interests of justice for the Court to admit any of these documents or testimony. Doing so would also be inconsistent with s. [30\(10\)\(a\)\(i\)](#) of the *Canada Evidence Act*,³⁸ which renders inadmissible any part of a business record made in the course of an investigation or inquiry. The Applicants have not identified any reason why these records would be admissible.

PART IV - ORDER SOUGHT

41. The Respondent seeks an Order dismissing the Applicants' motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at the City of Toronto, in the province of Ontario, this 22nd day of December 2022.

John Provart for

Chris Rupar / John Provart / Nick Dodokin
Counsel for the Respondent

³⁸ *Canada Evidence Act*, RSC 1985, c C-5, s. [30\(10\)\(a\)\(i\)](#).

PART V – TABLE OF AUTHORITIES

1. *Tsleil-Waututh Nation v Canada (Attorney General)*, [2017 FCA 128](#)
2. *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, [2012 FCA 22](#)
3. *Bernard v Canada (Revenue Agency)*, [2015 FCA 263](#)
4. *Glegg v Smith & Nephew Inc.*, [2005 SCC 31](#)
5. *Sosiak v Canada (Attorney General)*, [2003 FCA 205](#)
6. *Forest Ethics Advocacy Association v National Energy Board*, [2014 FCA 88](#)
7. *Oceanex Inc. v Canada (Transport)*, [2017 FC 496](#)
8. *Holy Alpha and Omega Church of Toronto v Canada (Attorney General)*, [2009 FCA 101](#)
9. *Atlantic Engraving Ltd. v Lapointe Rosenstein*, [2002 FCA 503](#)
10. *Canada (Attorney General) v Oshkosh Defense Canada, Inc.*, [2018 FCA 102](#)
11. *Re Keeprite Workers' Independent Union et al and Keeprite Products Ltd.*, [1980 CanLII 1877](#), 29 OR (2d) 513 (ONCA)
12. *Beno v Canada (Commissioner and Chairperson, Commission of Inquiry into the Deployment of Canadian Forces to Somalia)*, [1997 CanLII 6346](#), [1997] 2 FC 527 (CA)

APPENDIX “A” – STATUTES AND REGULATIONS

<p><i>Emergencies Act, R.S.C., 1985, c. 22 (4th Supp.)</i></p>	<p><i>Loi sur les mesures d’urgence, L.R.C. (1985), ch. 22 (4^e suppl.)</i></p>
<p>Effect of expiration of declaration</p>	<p>Cessation d’effet</p>
<p>15 (1) Where, pursuant to this Act, a declaration of a public welfare emergency expires either generally or with respect to any area of Canada, all orders and regulations made pursuant to the declaration or all orders and regulations so made, to the extent that they apply with respect to that area, as the case may be, expire on the day on which the declaration expires.</p>	<p>15 (1) Dans les cas où, en application de la présente loi, une déclaration de sinistre cesse d’avoir effet soit de façon générale, soit à l’égard d’une zone du Canada, ses décrets ou règlements d’application, ainsi que les dispositions des autres décrets ou règlements qui concernent cette zone, cessent d’avoir effet en même temps.</p>
<p>Effect of revocation of declaration</p>	<p>Abrogation</p>
<p>(2) Where, pursuant to this Act, a declaration of a public welfare emergency is revoked either generally or with respect to any area of Canada, all orders and regulations made pursuant to the declaration or all orders and regulations so made, to the extent that they apply with respect to that area, as the case may be, are revoked effective on the revocation of the declaration.</p>	<p>(2) Dans les cas où, en application de la présente loi, la déclaration est abrogée soit de façon générale, soit à l’égard d’une zone du Canada, ses décrets ou règlements d’application, ainsi que les dispositions des autres décrets ou règlements qui concernent cette zone, sont abrogés en même temps.</p>
<p>Effect of revocation of continuation</p>	<p>Cas de prorogation</p>
<p>(3) Where, pursuant to this Act, a proclamation continuing a declaration of a public welfare emergency either generally or with respect to any area of Canada is revoked after the time the declaration would, but for the proclamation, have otherwise expired either generally or with respect to that area,</p>	<p>(3) Dans les cas où une proclamation de prorogation de la déclaration soit de façon générale, soit à l’égard d’une zone du Canada est abrogée après la date prévue à l’origine pour la cessation d’effet, générale ou à l’égard de cette zone, de la déclaration, celle-ci, ses décrets ou règlements d’application, ainsi que les dispositions des autres décrets ou règlements qui concernent la zone, sont abrogés en même temps.</p>
<p>(a) the declaration and all orders and regulations made pursuant to the declaration, or</p>	<p>Cas de modification</p>
<p>(b) the declaration and all orders and regulations made pursuant to the declaration to the extent that the</p>	<p>(4) Dans les cas où, en application de la présente loi, une proclamation de modification de la déclaration est abrogée, les décrets ou règlements consécutifs à la modification, ainsi que les dispositions des</p>

declaration, orders and regulations apply with respect to that area,

as the case may be, are revoked effective on the revocation of the proclamation.

Effect of revocation of amendment

(4) Where, pursuant to this Act, a proclamation amending a declaration of a public welfare emergency is revoked, all orders and regulations made pursuant to the amendment and all orders and regulations to the extent that they apply pursuant to the amendment are revoked effective on the revocation of the proclamation.

Declaration of a public order emergency

17 (1) When the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 25, may, by proclamation, so declare.

Contents

(2) A declaration of a public order emergency shall specify

- (a)** concisely the state of affairs constituting the emergency;
- (b)** the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and
- (c)** if the effects of the emergency do not extend to the whole of Canada, the area of Canada to which the effects of the emergency extend.

Orders and regulations

19 (1) While a declaration of a public order emergency is in effect, the Governor in Council may make such orders or regulations with respect to the following

autres décrets et règlements qui lui sont consécutifs, sont abrogés en même temps.

Proclamation

17 (1) Le gouverneur en conseil peut par proclamation, s'il croit, pour des motifs raisonnables, qu'il se produit un état d'urgence justifiant en l'occurrence des mesures extraordinaires à titre temporaire et après avoir procédé aux consultations prévues par l'article 25, faire une déclaration à cet effet.

Contenu

(2) La déclaration d'état d'urgence comporte :

- a)** une description sommaire de l'état d'urgence;
- b)** l'indication des mesures d'intervention que le gouverneur en conseil juge nécessaires pour faire face à l'état d'urgence;
- c)** si l'état d'urgence ne touche pas tout le Canada, la désignation de la zone touchée.

Gouverneur en conseil

19 (1) Pendant la durée de validité de la déclaration d'état d'urgence, le gouverneur en conseil peut, par décret ou règlement, prendre dans les domaines suivants toute mesure qu'il croit, pour des motifs raisonnables, fondée en l'occurrence :

- a)** la réglementation ou l'interdiction :
 - (i)** des assemblées publiques dont il est raisonnable de penser qu'elles auraient pour effet de troubler la paix,
 - (ii)** des déplacements à destination, en provenance ou à l'intérieur d'une zone désignée,
 - (iii)** de l'utilisation de biens désignés;
- b)** la désignation et l'aménagement de lieux protégés;

matters as the Governor in Council believes, on reasonable grounds, are necessary for dealing with the emergency:

- (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.

Restriction

(2) Where a declaration of a public order emergency specifies that the effects of the emergency extend only to a specified area of Canada, the power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or

c) la prise de contrôle ainsi que la restauration et l'entretien de services publics;

d) l'habilitation ou l'ordre donné à une personne ou à une personne d'une catégorie de personnes compétentes en l'espèce de fournir des services essentiels, ainsi que le versement d'une indemnité raisonnable pour ces services;

e) en cas de contravention aux décrets ou règlements d'application du présent article, l'imposition, sur déclaration de culpabilité :

(i) par procédure sommaire, d'une amende maximale de cinq cents dollars et d'un emprisonnement maximal de six mois ou de l'une de ces peines,

(ii) par mise en accusation, d'une amende maximale de cinq mille dollars et d'un emprisonnement maximal de cinq ans ou de l'une de ces peines.

Limitation

(2) Dans les cas où la déclaration ne concerne qu'une zone désignée du Canada, les décrets et règlements d'application du paragraphe (1) et les pouvoirs et fonctions qui en découlent n'ont d'application qu'à l'égard de cette zone.

Idem

(3) Les décrets et règlements d'application du paragraphe (1) et les pouvoirs et fonctions qui en découlent sont appliqués ou exercés :

a) sans que soit entravée la capacité d'une province de prendre des mesures en vertu d'une de ses lois pour faire face à un état d'urgence sur son territoire;

b) de façon à viser à une concertation aussi poussée que possible avec chaque province concernée.

imposed by or pursuant to any such order or regulation, may be exercised or performed only with respect to that area.

Idem

(3) The power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, shall be exercised or performed

(a) in a manner that will not unduly impair the ability of any province to take measures, under an Act of the legislature of the province, for dealing with an emergency in the province; and

(b) with the view of achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed.

Inquiry

63 (1) The Governor in Council shall, within sixty days after the expiration or revocation of a declaration of emergency, cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.

Report to Parliament

(2) A report of an inquiry held pursuant to this section shall be laid before each House of Parliament within three hundred and sixty days after the expiration or revocation of the declaration of emergency.

Enquête

63 (1) Dans les soixante jours qui suivent la cessation d'effet ou l'abrogation d'une déclaration de situation de crise, le gouverneur en conseil est tenu de faire faire une enquête sur les circonstances qui ont donné lieu à la déclaration et les mesures prises pour faire face à la crise.

Dépôt devant le Parlement

(2) Le rapport de l'enquête faite en conformité avec le présent article est déposé devant chaque chambre du Parlement dans un délai de trois cent soixante jours suivant la cessation d'effet ou l'abrogation de la déclaration de situation de crise.

<p><i>Federal Courts Act, R.S.C., 1985, c. F-7</i></p> <p>Definitions</p> <p>2 (1) In this Act,</p> <p>action for collision includes an action for damage caused by one or more ships to another ship or ships or to property or persons on board another ship or ships as a result of carrying out or omitting to carry out a manoeuvre, or as a result of non-compliance with law, even though there has been no actual collision; (<i>action pour collision</i>)</p> <p>Associate Chief Justice[Repealed, 2002, c. 8, s. 15]</p> <p>Canadian maritime law means the law that was administered by the Exchequer Court of Canada on its Admiralty side by virtue of the <i>Admiralty Act</i>, chapter A-1 of the Revised Statutes of Canada, 1970, or any other statute, or that would have been so administered if that Court had had, on its Admiralty side, unlimited jurisdiction in relation to maritime and admiralty matters, as that law has been altered by this Act or any other Act of Parliament; (<i>droit maritime canadien</i>)</p> <p>Chief Justice[Repealed, 2002, c. 8, s. 15]</p> <p>Court[Repealed, 2002, c. 8, s. 15]</p> <p>Court of Appeal[Repealed, 2002, c. 8, s. 15]</p> <p>Crown means Her Majesty in right of Canada; (<i>Couronne</i>)</p> <p>federal board, commission or other tribunal means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred</p>	<p>Loi sur les Cours fédérales, R.C. (1985), ch. F-7</p> <p>Définitions</p> <p>2 (1) Les définitions qui suivent s'appliquent à la présente loi.</p> <p>action pour collision S'entend notamment d'une action pour dommages causés par un ou plusieurs navires à un ou plusieurs autres navires ou à des biens ou personnes à bord d'un ou plusieurs autres navires par suite de l'exécution ou de l'inexécution d'une manoeuvre, ou par suite de l'inobservation du droit, même s'il n'y a pas eu effectivement collision. (<i>action for collision</i>)</p> <p>biens Biens de toute nature, meubles ou immeubles, corporels ou incorporels, notamment les droits et les parts ou actions. (<i>property</i>)</p> <p>Cour[Abrogée, 2002, ch. 8, art. 15]</p> <p>Cour d'appel ou Cour d'appel fédérale[Abrogée, 2002, ch. 8, art. 15]</p> <p>Couronne Sa Majesté du chef du Canada. (<i>Crown</i>)</p> <p>Cour suprême[Abrogée, 1990, ch. 8, art. 1]</p> <p>droit canadien S'entend au sens de l'expression « lois du Canada » à l'article 101 de la <i>Loi constitutionnelle de 1867</i>. (<i>laws of Canada</i>)</p> <p>droit maritime canadien Droit — compte tenu des modifications y apportées par la présente loi ou par toute autre loi fédérale — dont l'application relevait de la Cour de l'Échiquier du Canada, en sa qualité de juridiction de l'Amirauté, aux termes de la <i>Loi sur l'Amirauté</i>, chapitre</p>
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<p>by or under an Act of Parliament or by or under an order made under a prerogative of the Crown, other than the Tax Court of Canada or any of its judges or associate judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the Constitution Act, 1867; (<i>office fédéral</i>)</p> <p>Federal Court of Appeal[Repealed, 2002, c. 8, s. 15]</p> <p>final judgment means any judgment or other decision that determines in whole or in part any substantive right of any of the parties in controversy in any judicial proceeding; (<i>judgement définitif</i>)</p> <p>judge[Repealed, 2002, c. 8, s. 15]</p> <p>practice and procedure includes evidence relating to matters of practice and procedure; (<i>pratique et procédure</i>)</p> <p>property means property of any kind, whether real or personal or corporeal or incorporeal, and, without restricting the generality of the foregoing, includes a right of any kind, a share or a chose in action; (<i>biens</i>)</p> <p>Registry means a registry established by the Chief Administrator of the Courts Administration Service pursuant to the Courts Administration Service Act for the purposes of this Act; (<i>greffe</i>)</p> <p>relief includes every species of relief, whether by way of damages, payment of money, injunction, declaration, restitution of an incorporeal right, return of land or chattels or otherwise; (<i>réparation</i>)</p>	<p>A-1 des Statuts révisés du Canada de 1970, ou de toute autre loi, ou qui en aurait relevé si ce tribunal avait eu, en cette qualité, compétence illimitée en matière maritime et d'amirauté. (<i>Canadian maritime law</i>)</p> <p>greffe Greffe établi, pour l'application de la présente loi, par l'administrateur en chef du Service administratif des tribunaux judiciaires aux termes de la Loi sur le Service administratif des tribunaux judiciaires. (<i>Registry</i>)</p> <p>juge[Abrogée, 2002, ch. 8, art. 15]</p> <p>juge en chef[Abrogée, 2002, ch. 8, art. 15]</p> <p>juge en chef adjoint[Abrogée, 2002, ch. 8, art. 15]</p> <p>judgement définitif Jugement ou autre décision qui statue au fond, en tout ou en partie, sur un droit d'une ou plusieurs des parties à une instance. (<i>final judgment</i>)</p> <p>navire Bâtiment ou embarcation conçus, utilisés ou utilisables, exclusivement ou non, pour la navigation, indépendamment de leur mode de propulsion ou de l'absence de propulsion. Y sont assimilés les navires en construction à partir du moment où ils peuvent flotter, les navires échoués ou coulés ainsi que les épaves et toute partie d'un navire qui s'est brisé. (<i>ship</i>)</p> <p>office fédéral Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour canadienne de l'impôt et ses juges et juges adjoints, d'un organisme constitué</p>
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<p>Rules means provisions of law and rules and orders made under section 46; (<i>règles</i>)</p> <p>ship means any vessel or craft designed, used or capable of being used solely or partly for navigation, without regard to method or lack of propulsion, and includes</p> <p>(a) a ship in the process of construction from the time that it is capable of floating, and</p> <p>(b) a ship that has been stranded, wrecked or sunk and any part of a ship that has broken up. (<i>navire</i>)</p> <p>Supreme Court[Repealed, 1990, c. 8, s. 1]</p> <p>Trial Division[Repealed, 2002, c. 8, s. 15]</p> <p>Senate and House of Commons</p> <p>(2) For greater certainty, the expression federal board, commission or other tribunal, as defined in subsection (1), does not include the Senate, the House of Commons, any committee or member of either House, the Senate Ethics Officer, the Conflict of Interest and Ethics Commissioner with respect to the exercise of the jurisdiction or powers referred to in sections 41.1 to 41.5 and 86 of the <i>Parliament of Canada Act</i>, the Parliamentary Protective Service or the Parliamentary Budget Officer.</p> <p>Deeming</p> <p>(3) Despite subsection (2), the Parliamentary Budget Officer is deemed to be a federal board, commission or other tribunal for the purpose of subsection 18.3(1).</p>	<p>sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la <i>Loi constitutionnelle de 1867</i>. (<i>federal board, commission or other tribunal</i>)</p> <p>pratique et procédure Pratique et procédure, y compris en matière de preuve. (<i>practice and procedure</i>)</p> <p>règles Dispositions de droit, règles et ordonnances établies en vertu de l'article 46. (<i>Rules</i>)</p> <p>réparation Toute forme de réparation en justice, notamment par voie de dommages-intérêts, de compensation pécuniaire, d'injonction, de déclaration, de restitution de droit incorporel, de bien meuble ou immeuble. (<i>relief</i>)</p> <p>Section de première instance[Abrogée, 2002, ch. 8, art. 15]</p> <p>Sénat et Chambre des communes</p> <p>(2) Il est entendu que sont également exclus de la définition de office fédéral le Sénat, la Chambre des communes, tout comité de l'une ou l'autre chambre, tout sénateur ou député, le conseiller sénatorial en éthique, le commissaire aux conflits d'intérêts et à l'éthique à l'égard de l'exercice de sa compétence et de ses attributions visées aux articles 41.1 à 41.5 et 86 de la <i>Loi sur le Parlement du Canada</i>, le Service de protection parlementaire et le directeur parlementaire du budget.</p> <p>Présomption</p> <p>(3) Malgré le paragraphe (2), le directeur parlementaire du budget est réputé avoir le statut d'office fédéral pour l'application du paragraphe 18.3(1).</p>
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<p>Application for judicial review</p> <p>18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.</p> <p>Time limitation</p> <p>(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.</p> <p>Powers of Federal Court</p> <p>(3) On an application for judicial review, the Federal Court may</p> <p>(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or</p> <p>(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.</p> <p>Grounds of review</p> <p>(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal</p>	<p>Demande de contrôle judiciaire</p> <p>18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.</p> <p>Délai de présentation</p> <p>(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.</p> <p>Pouvoirs de la Cour fédérale</p> <p>(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :</p> <p>a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;</p> <p>b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.</p> <p>Motifs</p> <p>(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :</p>
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<p>(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;</p> <p>(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;</p> <p>(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;</p> <p>(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;</p> <p>(e) acted, or failed to act, by reason of fraud or perjured evidence; or</p> <p>(f) acted in any other way that was contrary to law.</p> <p>Defect in form or technical irregularity</p> <p>(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may</p> <p>(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and</p> <p>(b) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.</p>	<p>a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;</p> <p>b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;</p> <p>c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;</p> <p>d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;</p> <p>e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;</p> <p>f) a agi de toute autre façon contraire à la loi.</p> <p>Vice de forme</p> <p>(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.</p>
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<p><i>Federal Courts Rules, SOR/98-106</i></p> <p>Additional steps</p> <p>312 With leave of the Court, a party may</p> <p>(a) file affidavits additional to those provided for in rules 306 and 307;</p> <p>(b) conduct cross-examinations on affidavits additional to those provided for in rule 308; or</p> <p>(c) file a supplementary record.</p> <p>Material from tribunal</p> <p>317 (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.</p> <p>Request in notice of application</p> <p>(2) An applicant may include a request under subsection (1) in its notice of application.</p> <p>Service of request</p> <p>(3) If an applicant does not include a request under subsection (1) in its notice of application, the applicant shall serve the request on the other parties.</p>	<p><i>Règles des Cours fédérales, DORS/98-106</i></p> <p>Dossier complémentaire</p> <p>312 Une partie peut, avec l'autorisation de la Cour :</p> <p>a) déposer des affidavits complémentaires en plus de ceux visés aux règles 306 et 307;</p> <p>b) effectuer des contre-interrogatoires au sujet des affidavits en plus de ceux visés à la règle 308;</p> <p>c) déposer un dossier complémentaire.</p> <p>Matériel en la possession de l'office fédéral</p> <p>317 (1) Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.</p> <p>Demande incluse dans l'avis de demande</p> <p>(2) Un demandeur peut inclure sa demande de transmission de documents dans son avis de demande.</p> <p>Signification de la demande de transmission</p> <p>(3) Si le demandeur n'inclut pas sa demande de transmission de documents dans son avis de demande, il est tenu de signifier cette demande aux autres parties.</p>
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<p><i>Interpretation Act, RSC, 1985, c I-21</i></p> <p>General definitions</p> <p>35 (1) In every enactment, Act, in respect of an Act of a legislature, includes a law of the Legislature of Yukon, of the Northwest Territories or for Nunavut; (<i>loi provinciale</i>)</p> <p>...</p> <p>Governor General in Council or Governor in Council means the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada; (<i>gouverneur en conseil</i> ou <i>gouverneur général en conseil</i>)</p> <p>...</p> <p>Governor in Council may amend schedule</p> <p>(2) The Governor in Council may, by order, amend the schedule by adding thereto the name of any country recognized by the order to be a member of the Commonwealth or deleting therefrom the name of any country recognized by the order to be no longer a member of the Commonwealth.</p>	<p><i>Loi d'interprétation, L.R.C. (1985), ch. I-21</i></p> <p>Définitions d'application générale</p> <p>35 (1) Les définitions qui suivent s'appliquent à tous les textes.</p> <p>...</p> <p>gouverneur en conseil ou gouverneur général en conseil Le gouverneur général du Canada agissant sur l'avis ou sur l'avis et avec le consentement du Conseil privé de la Reine pour le Canada ou conjointement avec celui-ci. (<i>Governor General in Council</i> or <i>Governor in Council</i>)</p> <p>...</p> <p>Modification de l'annexe</p> <p>(2) Le gouverneur en conseil peut, par décret, reconnaître l'acquisition ou la perte, par un pays, de la qualité de membre du Commonwealth et, selon le cas, inscrire ce pays à l'annexe ou l'en radier.</p>
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<p style="text-align: center;"><i>Canada Evidence Act, R.S.C., 1985, c. C-5</i></p> <p>Business records to be admitted in evidence</p> <p>30 (1) Where oral evidence in respect of a matter would be admissible in a legal proceeding, a record made in the usual and ordinary course of business that contains information in respect of that matter is admissible in evidence under this section in the legal proceeding on production of the record.</p> <p>Inference where information not in business record</p> <p>(2) Where a record made in the usual and ordinary course of business does not contain information in respect of a matter the occurrence or existence of which might reasonably be expected to be recorded in that record, the court may on production of the record admit the record for the purpose of establishing that fact and may draw the inference that the matter did not occur or exist.</p> <p>Copy of records</p> <p>(3) Where it is not possible or reasonably practicable to produce any record described in subsection (1) or (2), a copy of the record accompanied by two documents, one that is made by a person who states why it is not possible or reasonably practicable to produce the record and one that sets out the source from which the copy was made, that attests to the copy's authenticity and that is made by the person who made the copy, is admissible in evidence under this section in the same manner as if it were the original of the record if each document is</p>	<p style="text-align: center;">Loi sur la preuve au Canada, L.R.C. (1985), ch. C-5</p> <p>Les pièces commerciales peuvent être admises en preuve</p> <p>30 (1) Lorsqu'une preuve orale concernant une chose serait admissible dans une procédure judiciaire, une pièce établie dans le cours ordinaire des affaires et qui contient des renseignements sur cette chose est, en vertu du présent article, admissible en preuve dans la procédure judiciaire sur production de la pièce.</p> <p>Présomption à tirer du défaut de renseignements</p> <p>(2) Lorsqu'une pièce établie dans le cours ordinaire des affaires ne contient pas de renseignements sur une chose dont on peut raisonnablement s'attendre à trouver la survenance ou l'existence consignées dans cette pièce, le tribunal peut, sur production de la pièce, admettre celle-ci aux fins d'établir ce défaut de renseignements et peut en conclure qu'une telle chose ne s'est pas produite ou n'a pas existé.</p> <p>Copie des pièces</p> <p>(3) Lorsqu'il n'est pas possible ou raisonnablement commode de produire une pièce décrite au paragraphe (1) ou (2), une copie de la pièce accompagnée d'un premier document indiquant les raisons pour lesquelles il n'est pas possible ou raisonnablement commode de produire la pièce et d'un deuxième document préparé par la personne qui a établi la copie indiquant d'où elle provient et attestant son authenticité, est admissible en preuve, en vertu du présent article, de la même manière que s'il s'agissait de l'original de cette pièce pourvu que les documents satisfassent aux conditions suivantes : que leur auteur les ait préparés soit sous forme</p>
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(a) an affidavit of each of those persons sworn before a commissioner or other person authorized to take affidavits; or

(b) a certificate or other statement pertaining to the record in which the person attests that the certificate or statement is made in conformity with the laws of a foreign state, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the foreign state.

Where record kept in form requiring explanation

(4) Where production of any record or of a copy of any record described in subsection (1) or (2) would not convey to the court the information contained in the record by reason of its having been kept in a form that requires explanation, a transcript of the explanation of the record or copy prepared by a person qualified to make the explanation is admissible in evidence under this section in the same manner as if it were the original of the record if it is accompanied by a document that sets out the person's qualifications to make the explanation, attests to the accuracy of the explanation, and is

(a) an affidavit of that person sworn before a commissioner or other person authorized to take affidavits; or

(b) a certificate or other statement pertaining to the record in which the person attests that the certificate or statement is made in conformity with the laws of a foreign state, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the foreign state.

Court may order other part of record to be produced

d'affidavit reçu par une personne autorisée, soit sous forme de certificat ou de déclaration comportant une attestation selon laquelle ce certificat ou cette déclaration a été établi en conformité avec les lois d'un État étranger, que le certificat ou l'attestation prenne ou non la forme d'un affidavit reçu par un fonctionnaire de l'État étranger.

Cas où la pièce est établie sous une forme nécessitant des explications

(4) Lorsque la production d'une pièce ou d'une copie d'une pièce décrite au paragraphe (1) ou (2) ne révélerait pas au tribunal les renseignements contenus dans la pièce, du fait qu'ils ont été consignés sous une forme qui nécessite des explications, une transcription des explications de la pièce ou copie, préparée par une personne qualifiée pour donner les explications, accompagnée d'un document de cette personne indiquant ses qualités pour les donner et attestant l'exactitude des explications est admissible en preuve, en vertu du présent article, de la même manière que s'il s'agissait de l'original de cette pièce. Le document prend la forme soit d'un affidavit reçu par une personne autorisée, soit d'un certificat ou d'une déclaration comportant une attestation selon laquelle ce certificat ou cette déclaration a été établi en conformité avec les lois d'un État étranger, que le certificat ou l'attestation prenne ou non la forme d'un affidavit reçu par un fonctionnaire de l'État étranger.

Le tribunal peut ordonner qu'un autre fragment de la pièce soit produit

(5) Lorsque seul un fragment d'une pièce est produit en vertu du présent article par une partie, le tribunal peut examiner tout autre fragment de la pièce et ordonner que, avec le fragment de la pièce ainsi produit

(5) Where part only of a record is produced under this section by any party, the court may examine any other part of the record and direct that, together with the part of the record previously so produced, the whole or any part of the other part thereof be produced by that party as the record produced by him.

Court may examine record and hear evidence

(6) For the purpose of determining whether any provision of this section applies, or for the purpose of determining the probative value, if any, to be given to information contained in any record admitted in evidence under this section, the court may, on production of any record, examine the record, admit any evidence in respect thereof given orally or by affidavit including evidence as to the circumstances in which the information contained in the record was written, recorded, stored or reproduced, and draw any reasonable inference from the form or content of the record.

Notice of intention to produce record or affidavit

(7) Unless the court orders otherwise, no record or affidavit shall be admitted in evidence under this section unless the party producing the record or affidavit has, at least seven days before its production, given notice of his intention to produce it to each other party to the legal proceeding and has, within five days after receiving any notice in that behalf given by any such party, produced it for inspection by that party.

Not necessary to prove signature and official character

précédemment, l'ensemble ou tout fragment de cet autre fragment de la pièce soit produit par cette partie en tant que pièce produite par elle.

Le tribunal peut examiner la pièce et entendre des témoins

(6) Aux fins de déterminer si l'une des dispositions du présent article s'applique, ou aux fins de déterminer la valeur probante, le cas échéant, qui doit être accordée aux renseignements contenus dans une pièce admise en preuve en vertu du présent article, le tribunal peut, sur production d'une pièce, examiner celle-ci, admettre toute preuve à son sujet fournie de vive voix ou par affidavit, y compris la preuve des circonstances dans lesquelles les renseignements contenus dans la pièce ont été écrits, consignés, conservés ou reproduits et tirer toute conclusion raisonnable de la forme ou du contenu de la pièce.

Avis de l'intention de produire une pièce ou un affidavit

(7) Sauf si le tribunal en décide autrement, aucune pièce ou aucun affidavit n'est admissible en preuve en vertu du présent article, à moins que la partie qui produit la pièce ou l'affidavit n'ait, au moins sept jours avant sa production, donné à chacune des autres parties à la procédure judiciaire un avis de son intention de le produire et ne l'ait, dans les cinq jours qui suivent la réception d'un avis à cet effet donné par l'une de ces parties, produit aux fins d'examen par cette partie.

La preuve de la signature et de la qualité officielle n'est pas nécessaire

(8) Si la preuve est produite sous forme d'affidavit, en vertu du présent article, il n'est pas nécessaire de prouver la

(8) Where evidence is offered by affidavit under this section, it is not necessary to prove the signature or official character of the person making the affidavit if the official character of that person is set out in the body of the affidavit.

Examination on record with leave of court

(9) Subject to [section 4](#), any person who has or may reasonably be expected to have knowledge of the making or contents of any record produced or received in evidence under this section may, with leave of the court, be examined or cross-examined thereon by any party to the legal proceeding.

Evidence inadmissible under this section

(10) Nothing in this section renders admissible in evidence in any legal proceeding

(a) such part of any record as is proved to be

(i) a record made in the course of an investigation or inquiry,

(ii) a record made in the course of obtaining or giving legal advice or in contemplation of a legal proceeding,

(iii) a record in respect of the production of which any privilege exists and is claimed, or

(iv) a record of or alluding to a statement made by a person who is not, or if he were living and of sound mind would not be, competent and compellable to disclose in the legal proceeding a matter disclosed in the record;

(b) any record the production of which would be contrary to public policy; or

signature ou la qualité officielle de la personne souscrivant l'affidavit si la qualité officielle de la personne est énoncée dans le corps de l'affidavit.

Interrogatoire sur la pièce avec autorisation du tribunal

(9) Sous réserve de l'[article 4](#), lorsqu'une personne a connaissance de l'établissement ou du contenu d'une pièce produite ou admise en preuve en vertu du présent article, ou lorsqu'on peut raisonnablement s'attendre à ce qu'elle en ait connaissance, cette personne peut, avec la permission du tribunal, être interrogée ou contre-interrogée à ce sujet par toute partie à la procédure judiciaire.

Preuve qui ne peut être admise aux termes de l'article

(10) Le présent article n'a pas pour effet de rendre admissibles en preuve dans une procédure judiciaire :

a) un fragment de pièce, lorsqu'il a été prouvé que le fragment est, selon le cas :

(i) une pièce établie au cours d'une investigation ou d'une enquête,

(ii) une pièce établie au cours d'une consultation en vue d'obtenir ou de donner des conseils juridiques ou établie en prévision d'une procédure judiciaire,

(iii) une pièce relativement à la production de laquelle il existe un privilège qui est invoqué,

(iv) une pièce reproduisant une déclaration ou faisant allusion à une déclaration faite par une personne qui n'est pas ou ne serait pas, si elle était vivante et saine d'esprit, habile et contraignable à divulguer dans la

<p>(c) any transcript or recording of evidence taken in the course of another legal proceeding.</p> <p>Construction of this section</p> <p>(11) The provisions of this section shall be deemed to be in addition to and not in derogation of</p> <p>(a) any other provision of this or any other Act of Parliament respecting the admissibility in evidence of any record or the proof of any matter; or</p> <p>(b) any existing rule of law under which any record is admissible in evidence or any matter may be proved.</p> <p>Definitions</p> <p>(12) In this section,</p> <p>business means any business, profession, trade, calling, manufacture or undertaking of any kind carried on in Canada or elsewhere whether for profit or otherwise, including any activity or operation carried on or performed in Canada or elsewhere by any government, by any department, branch, board, commission or agency of any government, by any court or other tribunal or by any other body or authority performing a function of government; (<i>affaires</i>)</p> <p>copy and photographic film, in relation to any record, includes a print, whether enlarged or not, from a photographic film of the record, and photographic film includes a photographic plate, microphotographic film or photostatic negative; (<i>copie et pellicule photographique</i>)</p>	<p>procédure judiciaire une chose divulguée dans la pièce;</p> <p>b) une pièce dont la production serait contraire à l'ordre public;</p> <p>c) une transcription ou un enregistrement de témoignages recueillis au cours d'une autre procédure judiciaire.</p> <p>Interprétation de l'article</p> <p>(11) Les dispositions du présent article sont réputées s'ajouter et non pas déroger :</p> <p>a) à toute autre disposition de la présente loi ou de toute autre loi fédérale concernant l'admissibilité en preuve d'une pièce ou concernant la preuve d'une chose;</p> <p>b) à tout principe de droit existant en vertu duquel une pièce est admissible en preuve ou une chose peut être prouvée.</p> <p>Définitions</p> <p>(12) Les définitions qui suivent s'appliquent au présent article.</p> <p>affaires Tout commerce ou métier ou toute affaire, profession, industrie ou entreprise de quelque nature que ce soit exploités ou exercés au Canada ou à l'étranger, soit en vue d'un profit, soit à d'autres fins, y compris toute activité exercée ou opération effectuée, au Canada ou à l'étranger, par un gouvernement, par un ministère, une direction, un conseil, une commission ou un organisme d'un gouvernement, par un tribunal ou par un autre organisme ou une autre autorité exerçant une fonction gouvernementale. (<i>business</i>)</p> <p>copie et pellicule photographique Relativement à une pièce, est assimilée à une copie une épreuve, agrandie ou non, tirée d'une pellicule photographique représentant cette pièce, et pellicule</p>
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<p>court means the court, judge, arbitrator or person before whom a legal proceeding is held or taken; (<i>tribunal</i>)</p> <p>legal proceeding means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration; (<i>procédure judiciaire</i>)</p> <p>record includes the whole or any part of any book, document, paper, card, tape or other thing on or in which information is written, recorded, stored or reproduced, and, except for the purposes of subsections (3) and (4), any copy or transcript admitted in evidence under this section pursuant to subsection (3) or (4). (<i>pièce</i>)</p>	<p>photographique s'entend notamment d'une plaque photographique, d'une pellicule microphotographique et d'un cliché au photostat. (<i>copy and photographic film</i>)</p> <p>pièce Sont assimilés à une pièce l'ensemble ou tout fragment d'un livre, d'un document, d'un écrit, d'une fiche, d'une carte, d'un ruban ou d'une autre chose sur ou dans lesquels des renseignements sont écrits, enregistrés, conservés ou reproduits, et, sauf pour l'application des paragraphes (3) et (4), toute copie ou transcription admise en preuve en vertu du présent article en conformité avec le paragraphe (3) ou (4). (<i>record</i>)</p> <p>procédure judiciaire Toute procédure ou enquête, en matière civile ou pénale, dans laquelle une preuve est ou peut être faite, y compris l'arbitrage. (<i>legal proceeding</i>)</p> <p>tribunal Le tribunal, le juge, l'arbitre ou la personne devant qui une procédure judiciaire est exercée ou intentée. (<i>court</i>)</p>
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